Lau Siew Kim v Yeo Guan Chye Terence and Another
[2007] SGCA 54

Case Number	: CA 13/2007
Decision Date	: 30 November 2007
Tribunal/Court	: Court of Appeal
Coram	: Belinda Ang Saw Ean J; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s)	: Chew Swee Leng (ComLaw LLC) and Sng Kheng Huat (Sng & Co) for the appellant; Michael Khoo SC, Josephine Low and Andy Chioh (Michael Khoo & Partners) for the respondents
Parties	: Lau Siew Kim — Yeo Guan Chye Terence; Theodore Yeo Guan Huat alias Yeo Guan Huat

Family Law – Advancement – Presumption – Presumption of advancement still relevant in Singapore – Strength of presumption varying with circumstances in accordance with modern social conditions – Factors to be considered in determining strength of presumption

Land – Interest in land – Spouses holding properties as joint tenants – Unequal contributions to purchase prices of jointly-owned properties – Interplay between presumptions of resulting trust and advancement – Presumption of advancement applying to presume intention of parties for rule of survivorship to operate

Trusts – Resulting trusts – Presumed resulting trusts – Time at which respective contributions of parties should be determined for purposes of presuming a resulting trust – Nature of contributions giving rise to presumption of resulting trust

Trusts – Resulting trusts – Spouses holding properties as joint tenants – Whether presumption of resulting trust arising on facts – Whether presumption of advancement applying to displace the initial presumption – Whether sufficient evidence adduced to rebut presumption of advancement

30 November 2007 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

1 In modern societies, more properties are now being held in joint names. This has been engendered by a number of factors including rising property prices, joint-income families, gender equality, greater longevity, tax planning and the function of a home both as a residence and an asset. Given the increasing number of disputes involving the joint ownership of property, particularly between spouses, a clear articulation and understanding of the law governing the proprietary rights of co-owners is now more relevant than ever before. In this context, not all have properly grasped when and why equity has deigned to intervene so as to temper the seemingly unrelenting inflexibility of the common law and/or statutes.

2 The law of implied trusts was conceived to validate and facilitate the recognition of equitable interests whenever fairness required that formal title ownership be adjusted to reflect the real interests of the parties in a property. One such example of how equity has intervened to resolve uncertainty when it arises in connection with the beneficial ownership of property is through the presumption of resulting trust. A resulting trust is presumed to exist when the transferee has not given full consideration or is a fiduciary or is under an obligation to return the property to the transferor. Such a presumption is justified by the finding of a presumed intention of the transferor

that he desires to retain ownership despite having parted with the legal title. A countervailing presumption is the presumption of advancement that applies to certain close relationships where it might be logically surmised that the transferor intended to make a gift to the transferee. Needless to say, both presumptions can be refuted by evidence of the real objective of the transferor. The presumptions are, in the final analysis, no more than evidential guidelines distilled from contemporary norms.

3 The present appeal addresses the merits of inferring and imposing a resulting trust on a joint tenancy of property based on the alleged presumed intention of a deceased joint tenant. Given the existence of a spousal relationship, the competing and diametrically opposite presumptions of resulting trust and advancement take centre stage in this inquiry. Current community attitudes and societal trends must be taken into account and are indispensable to a close scrutiny and study of each of these presumptions; equitable rules and doctrines should always be approached and applied in nothing less than a practical and principled manner. Larger policy issues also figure in the equation, extending not merely to real property in general, but to other types of property, such as bank accounts, as well. It must be emphasised, however, that *not* every instance of property jointly held by spouses would necessarily justify a "post-mortem" by the estate of a deceased spouse in order to divide the property with a view to claiming a beneficial interest proportionate to that party's contributions. To that extent, one must consider and clarify the interplay between the presumption of resulting trust on the one hand and the presumption of advancement on the other, to determine which prevails in any given instance of a joint tenancy. To facilitate digestion of this judgment, we now set out the schematic arrangement we have adopted to address the issues raised:

(1) Facts

  (a) Background

  (b) The Minton Rise property

  (c) The Jalan Tari Payong property

(2) The trial judge's decision

(3) The parties' contentions

  (a) The appellant's case

  (b) The respondents' case

(4) Equitable principles and doctrines

  (a) Historical background of equity

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(5) Presumption of resulting trust

  (a) Historical origins

  (b) Presumption of fact or law?

  (c) Modern-day application

(i) Abolishing the presumption of resulting trust?

(ii) A more moderate approach

(6) Presumption of advancement

(a) Parent-child relationships

(b) Spousal relationships

(i) Relevance of the Women's Charter

(7) Joint tenancies

(a) The case of joint tenancies between spouses: Interplay between the presumptions of resulting trust and advancement

(8) The present appeal

(a) Whether the presumption of resulting trust arises on the facts

(i) Time at which respective contributions of the parties should be determined

(ii) Nature of contributions which give rise to the presumption of resulting trust

(iii) The Minton Rise property

(iv) The Jalan Tari Payong property

(b) Application of the presumption of advancement

(i) Relevance of the second will

(ii) Legal advice on joint tenancy

(iii) Financial independence of the appellant

(iv) State of the relationship between the parties

(c) Rebuttal of the presumption of advancement

(i) Analysis of the evidence adduced by the respondents

(9) Conclusion

Facts

4 The factual essence of the present appeal may be captured within a narrow compass. The respondents had sought, *inter alia*, a declaration by the trial judge that the appellant held the

properties at 149 Hougang Street 11 #10-136, Minton Rise, Singapore ("the Minton Rise property") and 18 Jalan Tari Payong, Singapore ("the Jalan Tari Payong property") on trust for the estate of Yeo Hock Seng, deceased ("the Estate"). The trial judge found that an unrebutted presumption of resulting trust arose on the facts with respect to both properties and it was declared that the appellant held the two properties on trust for both herself and the Estate, in proportions corresponding to their respective financial contributions to the purchase of the properties. The appellant now appeals against the whole of the trial judge's decision.

Background

5 The respondents are the only sons of the late Yeo Hock Seng ("Yeo"). Yeo had two acrimonious divorces, one with his first wife, the mother of the respondents, and the other with his second wife. These occurred in 1988 and 1996 respectively. For more than a decade before his death, Yeo was estranged from the respondents and both respondents admitted to not having any contact with their father during that period. On 18 December 2000, Yeo married the appellant, his third wife. This marriage endured until he passed away on 23 November 2004 as a result of a heart attack.

6 Yeo made two wills in his lifetime. His first will was dated 28 January 1992, and in it, he left all his real and personal property to the first respondent. Subsequently, on 20 May 1996, Yeo made another will ("second will") which revoked his first will; the appellant was the sole beneficiary named in the second will. However, upon the application of the respondents in Suit No 32 of 2005, the High Court declared that the second will had been deemed to be revoked by the subsequent marriage of Yeo to the appellant on 18 December 2000. Summary judgment on this issue was awarded to the respondents on 5 July 2005. The appellant appealed against that decision but her appeal was dismissed with costs on 27 July 2005. As such, the rules governing intestacy would dictate the devolution of the Estate. This leads to the nub of the controversy. What property constitutes the Estate?

7 Yeo had interests in three properties at the time of his demise: 33 Fowlie Road, Singapore and 35 Fowlie Road, Singapore (collectively, "the Fowlie Road property"), the Minton Rise property and the Jalan Tari Payong property. The Fowlie Road property was initially 33 Fowlie Road ("the original 33 Fowlie Road"). It was demolished in 2002 and a pair of semi-detached houses was built in its place, *ie*, 33 Fowlie Road and 35 Fowlie Road. 33 Fowlie Road was sold in February 2004 for $1.828m. 35 Fowlie Road remains unsold. The Fowlie Road property was registered in Yeo's sole name and the property is not the subject of dispute in the present appeal. The subject matter of this appeal comprises only the Minton Rise property and the Jalan Tari Payong property (collectively, "the Properties"), both of which were held on the basis of a joint tenancy in the names of Yeo and the appellant. After Yeo's demise, however, the appellant became the sole registered owner of the Properties by virtue of the rule of survivorship.

The Minton Rise property

8 In April 2000, Yeo and the appellant purchased the Minton Rise property, a Housing and Urban Development Corporation maisonette under the fiancé/fiancée scheme as joint tenants. The property was the matrimonial home of Yeo and the appellant, and, to date, the appellant is still living in it.

9 The purchase price of the Minton Rise property was $495,000, and was partially financed by a housing loan of $396,000 jointly obtained by both Yeo and the appellant from Standard Chartered Bank on 6 June 2006. The balance purchase price of $99,000 was paid by Yeo from his overdraft

account with Oversea-Chinese Banking Corporation Limited. Yeo's overdraft account was discharged by a term loan of $1,200,000 which Yeo and the appellant obtained on 6 June 2006, in their joint names, from Standard Chartered Bank. This, in turn, was secured by a mortgage on the original 33 Fowlie Road.

The Jalan Tari Payong property

10 On 10 March 2004, Yeo and the appellant purchased 18 Jalan Tari Payong at an auction, as joint tenants, for $1,100,000. To finance the purchase, a housing loan of $770,000 secured by the property was obtained jointly by Yeo and the appellant from United Overseas Bank Limited ("UOB") on 19 March 2004. A further short-term loan of $80,000 was obtained by Yeo and the appellant from UOB, by way of a joint letter of undertaking, to repay that sum from the sale proceeds of 33 Fowlie Road. The balance of the purchase price, which amounted to $250,000, was financed by the overdraft facilities obtained by Yeo and the appellant from UOB. This was also secured by the original 33 Fowlie Road; after the redevelopment of the Fowlie Road property and the sale of 33 Fowlie Road, the overdraft facilities were subsequently revised and secured solely by 35 Fowlie Road.

11 Yeo and the appellant bought the Jalan Tari Payong property with an intention to redevelop it into two semi-detached houses (18 and 18A Jalan Tari Payong). Construction commenced in June 2004 and the works were only completed in 2005 after Yeo's death. The redevelopment of the Jalan Tari Payong property was financed by a construction loan of $822,500 from UOB, obtained jointly by both Yeo and the appellant on 7 July 2004. Following Yeo's demise, on 5 May 2005, the appellant obtained a revised construction loan from UOB, in her sole name, to complete the redevelopment of the Jalan Tari Payong property.

12 18A Jalan Tari Payong was sold on 22 June 2006 for $1.5m and the proceeds of sale were used to discharge the construction loan and the expenses incurred in the redevelopment of the property. The Jalan Tari Payong property in issue in the present appeal is, therefore, only the property at 18 Jalan Tari Payong.

The trial judge's decision

13 The trial judge held in *Yeo Guan Chye Terence v Lau Siew Kim* [2007] 2 SLR 1 ("the High Court decision") that the existence of a resulting trust overrode the right of survivorship in the joint tenancies of both the Minton Rise property and the Jalan Tari Payong property. She acknowledged that it was axiomatic that the right of survivorship dictated that both the properties in joint tenancies belonged to the appellant. However, she opined that this would result in the Estate being left with nothing, which appeared to her to be both unintended and unjust. The learned trial judge was therefore of the view that equity ought to intervene, in this case, to ensure that although Yeo and the appellant were joint tenants at law, they were actually deemed to be tenants in common in equity, in accordance with the proportion of their respective financial contributions.

14 With respect to the Minton Rise property, the trial judge had "grave doubts" on whether the appellant had indeed contributed to its acquisition (see the High Court decision at [49]). Nevertheless, as: (a) the appellant was the joint borrower of the housing loan for the Minton Rise property; (b) the Minton Rise property was the matrimonial home of Yeo and the appellant; and (c) the appellant had continued to reside there, the trial judge concluded that the appellant could not be deprived of *all* interest in that property. Hence, it was held that there was a resulting trust over the Minton Rise property in the proportions of the financial contributions of Yeo and the appellant. After scrutinising the repayment scheme of the housing loan and acknowledging that the appellant had paid the monthly mortgage instalments for the bulk of the housing loan upon Yeo's demise, the

trial judge was of the view that "rough and ready justice" (see the High Court decision at [58]) dictated that the proportions of the property to be held on trust should be 50% to the Estate and 50% to the appellant.

15 As for the Jalan Tari Payong property, the trial judge assumed that the payment of monthly instalments were in equal proportions as it was a joint loan and "[n]owhere in the evidence was it stated who paid for the monthly instalments of the housing loan" (see the High Court decision at [61]). However, she also considered the amount of the purchase price covered by the short-term loan and the overdraft account secured on the Fowlie Road property as having been contributed by Yeo. Accordingly, it was determined that 65% of the beneficial interest of the Jalan Tari Payong property was to be apportioned to the Estate, and 35% was to be apportioned to the appellant.

16 The trial judge, after assessing the applicability of the presumption of advancement, found that it did not displace the presumption of a resulting trust on the facts. She opined that the "Singapore courts [had] moved away from the presumption of advancement on the basis that the presumption of advancement [was] no longer applicable in modern times unless there [was] evidence to support the same"; it was to be treated as an evidential instrument of last resort where there was no direct evidence as to the intention of the parties rather than as an oft-applied rule of thumb (see the High Court decision at [65]–[66]). On the facts, the judge held that the presumption of advancement between husband and wife would not apply as it was a reverse situation in the present case – Yeo, the husband, did not work and it was the appellant wife who worked and was the apparent breadwinner. Therefore, there was no evidence comporting with any purported intention on the part of Yeo to present the Minton Rise property or the Jalan Tari Payong property as outright gifts to the appellant.

The parties' contentions

The appellant's case

17 The appellant contended that the trial judge erred in holding that there was a resulting trust over the Properties in favour of the Estate. The evidence showed that Yeo intended to ensure that the appellant would benefit from the acquisition of the Properties and that upon his death, she would inherit his interest. Yeo and the appellant were duly advised by their solicitors, and were fully aware of the operation of the right of survivorship when they purchased the Properties in joint names and as joint tenants. In addition, the appellant also disputed the trial judge's computation of the parties' respective contributions towards the acquisition of the Properties.

18 Counsel for the appellant submitted during the hearing before us that the strength of the presumption of resulting trust would vary from case to case; in cases where the parties were related, and especially in an intimate relationship such as a marriage, the presumption of resulting trust should be weak and slight evidence should suffice to rebut it. It was also stressed that Yeo had made a will in favour of the appellant which was only revoked by operation of law and not voluntarily by Yeo. As such, there was no reason to presume that Yeo had intended to retain a beneficial share of the Properties upon his demise despite the operation of the rule of survivorship.

19 Further, the appellant's case was that the presumption of advancement was premised on both moral and equitable obligations, and not on financial dependency. In the present case, there was a *prima facie* presumption of advancement which would shift the burden to the respondents to show that Yeo had *not* intended to benefit the appellant in their joint acquisition of the Properties. The respondents had not discharged the burden and there should not be any resulting trust imposed on the Properties; the appellant should, in the circumstances, be the absolute owner of the Properties

both in law and in equity.

The respondents' case

20 The respondents took the view that the trial judge had rightly imposed the resulting trust on the Properties. They asserted that the only evidence of the alleged explanation by solicitors to Yeo and the appellant on the legal effect of joint tenancy was provided by the appellant herself during re-examination by her own counsel, and this was unsupported by any other independent evidence; no weight should thus be given to it. Instead, the reason why the Properties were purchased in joint names was merely because it was convenient and necessary in order to obtain a longer-term loan from the banks; there was no intention on the part of Yeo to confer a benefit on the appellant by the acquisition of the Properties.

21 Counsel for the respondents pointed out during the hearing that the fact that Yeo had made a second will in favour of the appellant must be assessed in the context that the Properties were purchased more than four years after the second will was made; Yeo did not have these properties within his contemplative horizon when the second will was executed. Furthermore, when one considered the imposition of a resulting trust, it was the intention of the parties which was *specific* to the property in question that was relevant rather than a *general* intention expressed by way of a will. It was submitted that there was inadequate evidence to rebut the presumption of resulting trust, and, as such, there should be a resulting trust imposed on the properties in accordance with the parties' contributions towards acquisition.

22 Finally, with respect to the presumption of advancement, the respondents' stance was that the doctrine clearly existed, but it would not apply on the facts of the present case. The application of the presumption, it was submitted, was now limited to specific instances, such as the traditional husband-and-wife relationship where the wife was economically dependent on the husband. The appellant was financially independent and quite unlike the housewife for whom the presumption would operate. In the result, the trial judge was fully entitled to make a finding that the present case involved a "reverse situation" which fell outside the scope of operation of the presumption of advancement.

Equitable principles and doctrines

23 The equitable presumptions of resulting trust and advancement are only one particular dimension of equity and they need to be assessed against the larger backdrop of general equitable principles and doctrines. In order to better understand these equitable presumptions and to apply them appropriately in the modern context, it would be helpful first to examine the court's general equitable jurisdiction.

Historical background of equity

24 Equity is the body of principles which has evolved progressively to mitigate the severity sometimes occasioned by the rigid application of the rules of the common law. Its origins lay in the exercise by the Chancellor of the residual discretionary power of the King to do justice among his subjects in circumstances in which, for one reason or another, justice could not be obtained in a common law court. Several centuries earlier, Aristotle conceived equity as "a rectification of law where the law falls short by reason of its universality" (Aristotle, *Nicomachean Ethics*, Book V, ch 10) and, indeed, one of the perceived sources of inadequacy and injustice in the common law was the generality of the law's rules, and the law's inability to mould its rules to fit the circumstances of the particular case: see Patricia Loughlan, "The Historical Role of the Equitable Jurisdiction" in *The*

Principles of Equity (Patrick Parkinson ed) (Lawbook Co, 2nd Ed, 2003) ch 1 ("Loughlan's chapter") at p 6. Thus, the equitable jurisdiction functioned to prevent, correct and sometimes reverse the individual failures of justice occasioned by a rule-dependent and rule-governed decision-making forum. As Lord Ellesmere aptly observed in the *Earl of Oxford's Case* (1615) 1 Chan Rep 1 at 6; 21 ER 485 at 486:

> The Cause why there is a Chancery is, for that Mens Actions are so divers[e] and infinite, [t]hat it is impossible to make any general Law which may aptly meet with every particular Act, and not fail in some Circumstances.

25 In early Chancery decisions, therefore, all the circumstances of individual cases were considered and adjudication was contextual and pragmatic. There was no abstracting methodology, no doctrine of strict binding precedent, and, accordingly, no commitment to the values of continuity, consistency, uniformity and predictability which support and justify that doctrine at common law: see Loughlan's chapter at p 8. Over time, however, equity has gradually metamorphosised from a jurisdiction of fluid, pragmatic, conscience-based decision making to one founded primarily upon the application of authoritative rules, maxims, principles and precedents. This was a natural judicial reaction to the arbitrariness of early instances of the exercise of equitable jurisdiction which attempted to make a virtue out of inconsistency. Indeed, in more relevant times, for example, in *Campbell Discount Co Ltd v Bridge* [1961] 1 QB 445, Harman LJ sagely cautioned against applying equitable principles as they used to be in the early Chancery decisions. He remarked at 459:

> Equitable principles are, I think, perhaps rather too often bandied about in common law courts as though the Chancellor still had only the length of his own foot to measure when coming to a conclusion. Since the time of Lord Eldon the system of equity for good or evil has been a very precise one, and equitable jurisdiction is exercised only on well-known principles.

26 Today, paradoxically, the creativity of equity has become progressively circumscribed and, to some extent, calcified. In fact, there has even been cause for academic misgivings on how the rules that equity established for the application of its principles had become so fixed that a "*rigor aequitatis*" had developed and "equity itself displayed the very defect that it was designed to remedy": see Jill E Martin, *Modern Equity* (Sweet & Maxwell Ltd, 17th Ed, 2005) at para 1-002. Lord Denning had even remarked extra-judicially in "The Need For a New Equity" (1952) 5 CLP 1 at 8 that:

> The Courts of Chancery are no longer courts of equity. … They are as fixed and immutable as the courts of law ever were.

27 The increasing rigidity of application of equitable principles stems, perhaps understandably, from a reluctance to countenance judicial law-making and a concern to avoid arbitrariness and uncertainty. The English judiciary's reluctance to undermine Parliament was manifested in Lord Lloyd of Berwick's judgment in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669 ("*Westdeutsche*") at 740:

> To extend the equitable jurisdiction for the first time to cover a residual injustice at common law, which Parliament chose not to remedy, would, I think, be [a] great … usurpation of the role of the legislature, and [a] clear … example of judicial law-making …

The concern to avoid uncertainty, on the other hand, is clearly exemplified by observations such as those of Bagnall J in *Cowcher v Cowcher* [1972] 1 WLR 425 ("*Cowcher*"). These observations were made in relation to the application of the reinvented constructive trust as a powerful proprietary

remedy to be awarded on the basis of what the judge felt was "just", without any clear guiding principles. He stated at 430:

> I am convinced that in determining rights, particularly property rights, the only justice that can be attained by mortals, who are fallible and are not omniscient, is justice according to law; the justice which flows from the application of sure and settled principles to proved or admitted facts. So in the field of equity the length of the Chancellor's foot has been measured or is capable of measurement.

28 Equity's capacity to develop new rights and remedies has not, however, been entirely surrendered. Indeed, Bagnall J had prudently qualified his words in *Cowcher* at 430 in noting:

> This does not mean that equity is past childbearing; simply that its progeny must be legitimate – by precedent out of principle. It is well that this should be so; otherwise, no lawyer could safely advise on his client's title and every quarrel would lead to a law suit.

An apparent balance has thus been struck between uncertainty and judicial law-making by way of "palm tree" justice on the one hand, and the continuing need for equity's creativity to mitigate the rigours of the law on the other. In our view, this balance governs the manner in which equitable principles and doctrines ought to be developed and applied in the modern context. The courts should be principled and pragmatic when resolving the tension of applying an unguided and untrammelled discretion as an antidote to the blind acceptance of inflexible hard and fast rules.

Modern development

29 Despite the reluctance of the courts to "invent" and "create" new rights and remedies, equity is, and must necessarily be, still capable of flexible development to address new circumstances. Glass JA in the Australian case of *Allen v Snyder* [1977] 2 NSWLR 685 recognised this, and, at the same time, delineated the parameters within which such development should take place. He opined at 689:

> It is inevitable that judge made law will alter to meet the changing conditions of society. That is the way it has always evolved. But it is essential that new rules should be related to fundamental doctrine. If the foundations of accepted doctrine be submerged under new principles, without regard to the interaction between the two, there will be high uncertainty as to the state of the law, both old and new.

30 That "new" rights and remedies should be developed from existing principles and precedents rather than "plucked" seemingly from the air at the whim of the judge was also a concern expressed by the English Court of Appeal in *In re Diplock* [1948] Ch 465. It was declared at 481–482 that:

> [I]f [a] claim in equity exists it must be shown to have an ancestry founded in history and in the practice and precedents of the courts administering equity jurisdiction. It is not sufficient that because we may think that the "justice" of the present case requires it, we should invent such a jurisdiction for the first time.

Indeed, this aptly corresponds to Bagnall J's view in *Cowcher* that equity's "progeny must be legitimate – by precedent out of principle" (see [28] above).

31 Although caution has been oft-expressed with respect to the development of new equitable principles, a number of significant developments have nevertheless emerged in the past half-century

and the courts in several common law jurisdictions have gradually extended and developed existing principles so as to meet modern social needs. The proprietary estoppel doctrine is one such example. The traditional concepts of resulting and constructive trusts have also been developed and refined to deal with joint acquisition of residential property by married and cohabiting couples, by diffidently acknowledging the myriad modern partnerships that now exist between such couples; the principles of resulting and constructive trusts are now unrecognisable from the concepts known by those names at the time of the Judicature Acts (Supreme Court of Judicature Act 1873 (c 66) (UK) and Supreme Court of Judicature Act 1875 (c 77) (UK)): see Robert Pearce & John Stevens, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 4th Ed, 2006) ("Pearce & Stevens") at pp 29–30. As society progresses and as lifestyles, attitudes and norms change, modern development of the law and of equitable principles becomes inexorable, and, indeed, necessary. The penetrating observations of Prof Pearce and Mr Stevens at p 28 of their book are particularly pertinent:

> The law is a coherent and dynamic whole, subject to constant re-evaluation and adjustment, sometimes culminating in the birth of new principles and doctrines. Equity has made a tremendous contribution to this whole and the continuous process of remoulding equitable rights and remedies should be seen as an essential part of this overall process of legal development.

32 Finally, the four primary perspectives which should guide the court in the development of equitable principles have been succinctly encapsulated by Gary Watt in *Trusts and Equity* (Oxford University Press, 2nd Ed, 2006) at pp 47–48 as: (a) precedent; (b) principle; (c) policy; and (d) pragmatism. When a judge is presented with a legal problem, the judge is bound to look first to statutory law and judicial *precedent* for a solution, but if it appears to the judge that there is no clear solution in precedent, the judge should in theory seek to produce a solution consistent with *principles* derived from precedent. Judges do not, however, reach their decisions in a logical vacuum; they are very often acutely aware of the impact that their decisions might have upon the wider community or society at large, and are therefore sensitive to *policy* considerations. Last, but by no means least, above all considerations of principle and policy, and sometimes even above precedent, judges are concerned to achieve a solution which works in practice and one that will not bring the whole process into disrepute; the judicial process must be *pragmatic* and sensitive to public interests. In fact, Lord Goff of Chieveley had candidly observed in *Westdeutsche* ([27] *supra*) at 685:

> It is a truism that, in deciding a question of law in any particular case, the courts are much influenced by considerations of practical justice, and especially by the results which would flow from the recognition of a particular claim on the facts of the case before the court.

33 We summarise. Equity has been transformed from its early days of decision making founded on conscience to a body of discrete rules, principles and remedies. This move has been largely driven by a need for certainty and consistency. However, courts must be mindful of the equal need for a legal system which reflects contemporary societal values and caters to the modern community. Equity must be grounded by established principles, but, at the same time, these principles must be applied in a progressive and flexible manner to do justice in the current context; courts cannot, and must not, mechanically apply, in the same manner today, equitable principles which were formulated to provide for circumstances prevalent and putatively relevant centuries ago. It cannot be overstated how important it is to be aware of the genesis of equity which was motivated by the compelling need to mitigate the severity caused by, *inter alia*, the generality and rigidity of the common law; equity should not, in the modern context, be applied such that it displays the "very defect that it was designed to remedy" (see [26] above). Principled pragmatism should be the key to the court's approach in the application of equitable principles. With this general approach in mind, we turn now to consider the presumption of resulting trust and the presumption of advancement in the present-day context.

Presumption of resulting trust

34 Resulting trusts are presumed to arise in two sets of circumstances. These circumstances were appositely summarised by Lord Browne-Wilkinson in *Westdeutsche* at 708 as follows:

> Under existing law a resulting trust arises in two sets of circumstances: (A) where A makes a voluntary payment to B or pays (wholly or in part) for the purchase of property which is vested either in B alone or in the joint names of A and B, there is a presumption that A did not intend to make a gift to B: the money or property is held on trust for A (if he is the sole provider of the money) or in the case of a joint purchase by A and B in shares proportionate to their contributions. It is important to stress that this is only a *presumption*, which presumption is easily rebutted either by the counter-presumption of advancement or by direct evidence of A's intention to make an outright transfer … (B) Where A transfers property to B *on express trusts*, but the trusts declared do not exhaust the whole beneficial interest … Both types of resulting trust are traditionally regarded as examples of trusts giving effect to the common intention of the parties. A resulting trust is not imposed by law against the intentions of the trustee (as is a constructive trust) but gives effect to his presumed intention. [emphasis in original]

Resulting trusts of the second type operate to "fill the gap" in the beneficial ownership of property where an express trust fails. Resulting trusts of the first type, on the other hand, are commonly termed "presumed resulting trusts", and, as is apparent from the passage above, the *presumption* of resulting trust only applies to the first set of circumstances discussed by Lord Browne-Wilkinson. As the present case concerns the issue of presumptions, no more needs to be said regarding resulting trusts of the second type.

35 There is an important distinction between the presumption of resulting trust and the resulting trust itself. The presumption is an inference of a fact drawn from the existence of other facts, whereas the resulting trust is the equitable response to those facts, proved or presumed: see Robert Chambers, *Resulting Trusts* (Clarendon Press, Oxford, 1997) at p 32. The difference between them is explained in *Resulting Trusts* (*ibid*) as follows:

> The facts which give rise to the presumption of resulting trust are (i) a transfer of property to another, (ii) for which the recipient does not provide the whole of the consideration. The facts which give rise to the resulting trust itself are (i) a transfer of property to another, (ii) in circumstances in which the provider does not intend to benefit the recipient.

Robert Chambers has quite appropriately highlighted two essential points: first, that the lack of consideration required for the presumption is *not* a requirement for the resulting trust; and second, that the lack of intention to benefit the recipient required for the resulting trust is precisely the fact being inferred when the presumption is applied. It is thus apparent that a resulting trust may arise independently of the presumption so long as it can be shown that the transfer was not intended to benefit the recipient; and, in a similar vein, a resulting trust may not *necessarily* arise *even if* there was no consideration, if it can be shown that the transfer was *indeed* intended to benefit the recipient.

36 The presumption of resulting trust is based on a traditional common-sense presumption that, outside of certain relationships, an owner of property never intends to make a gift, and, by extension, that a person who provides the money required to purchase a property intends to obtain an equivalent equitable interest in the property acquired. Equity, with its superbly realistic grasp of human motivations, "assumes bargains, and not gifts" (*per* Spence J (Supreme Court of Canada) in *Goodfriend v Goodfriend* (1972) 22 DLR (3d) 699 at 703 quoting in turn from an article by

Prof Donovan Waters entitled "The Doctrine of Resulting Trusts in Common Law Canada" (1970) 16 McGill LJ 187 at 199). In the normal course of events, persons who expend large sums in the context of a purchase of land "do not harbour particularly altruistic intentions, but really expect, regardless of the destination of the legal title purchased, to derive a beneficial return from their investment in the form of an aliquot share of the equity. [The] [r]esulting trust doctrine ensures a default position which gives effect to this expectation": see Kevin Gray & Susan Francis Gray, *Elements of Land Law* (Oxford University Press, 4th Ed, 2005) ("Gray & Gray") at para 10.12. The presumption of resulting trust is about the intentions of property owners and, as may be distilled by the analysis in [35] above, it is rebuttable by evidence of a contrary intention. Lord Upjohn commented in *Vandervell v Inland Revenue Commissioners* [1967] 2 AC 291 at 313:

> In reality the so-called presumption of a resulting trust is no more than a long stop to provide the answer when the relevant facts and circumstances fail to yield a solution.

Indeed, it is also important to bear in mind the illuminating remarks made by Lindley LJ on the purpose of trusts in *Standing v Bowring* (1885) 31 Ch D 282 where he dissected the framework of the presumption of resulting trust. He stated at 289:

> Trusts are neither created nor implied by law to defeat the intentions of donors or settlors; they are created or implied or are held to result in favour of donors or settlors in order to carry out and give effect to their true intentions, expressed or implied.

37 It is therefore clear, from this jurisprudential analysis, that the presumption of resulting trust is an *inference* or even an *estimate* as to what a party's intention is likely to be, based on certain assumptions arising from a set of given facts. It stems from a rationalisation of human behaviour derived, in turn, from common experience and the societal climate. Accordingly, the instances for the application of the presumption must not remain stagnant; instead, they must necessarily change with time as behaviour, lifestyle and attitudes change. Murphy J illuminatingly explained this in *Calverley v Green* (1984) 155 CLR 242 at 264 as follows:

> Presumptions arise from common experience … If common experience is that when one fact exists, another fact also exists, the law sensibly operates on the basis that if the first is proved, the second is presumed. It is a process of standardized inference. As standards of behaviour alter, so should presumptions, otherwise the rationale for presumptions is lost, and instead of assisting the evaluation of evidence, they may detract from it. There is no justification for maintaining a presumption that if one fact is proved, then another exists, if common experience is to the contrary.

Deane J had also noted, in the same case, at 270:

> The weight to be given to a presumption of a resulting trust in the resolution of what is essentially an issue of fact may vary in accordance with changing community attitudes and with the contemporary strength or weakness of the rationale of the rule embodying the presumption …

38 We agree. Just as all other equitable principles should be developed to reflect contemporary societal values, so should the presumption of resulting trust (and the presumption of advancement). In fact, this is all the more so in the case of presumptions. The very rationale of presumptions is based on a process of standardised inferences which are inexorably linked to contemporary community attitudes, expectations, values and ethical norms. As such, presumptions must remain dynamic in order to remain relevant and functional. The question is whether, and if so how, the presumption of resulting trust should be modified and developed to adapt to present-day circumstances. In answering

this question, one must also bear in mind that even within communities, familial relationships are not grounded on identical bonds or expectations; we do not live in a homogeneous society. Before we turn to consider the appropriate application of the presumption of resulting trust in the modern context, it may be helpful at this juncture to set out briefly its historical origins.

Historical origins

39 Prior to the enactment of the Statute of Uses in 1536, feoffments (historically, a grant of lands as a fee) to the use of the feoffer (one who granted the feoffment) were often made for the purposes of devising land by will and avoiding the feudal incidents that might become payable on its descent to the heir. The joint ownership of several feoffees (ones to whom a feoffment was granted) to uses, and replacement of those who died, would ensure that the legal estate never passed by descent at all: see *Resulting Trusts* ([35] *supra*) at pp 16–17.

40 The use was described in Austin Wakeman Scott & William Franklin Fratcher, *The Law of Trusts* (Little, Brown and Company, 4th Ed, 1989) vol V at §405, pp 9–10, as follows:

> *During the fifteenth century the practice of conveying the legal title to land with a reservation of the beneficial interest became so common that an inference arose that when land was conveyed without consideration the intention of the transferor was that the land should be held for his use.* The courts accordingly held that a transferee who gave no consideration presumptively held upon a resulting use for the transferor. This inference could be rebutted by showing that the use was expressly declared to be in the transferee or in a third person. [emphasis added]

The equitable presumption of resulting trust was developed on a strict analogy as a response to the resulting use, a rule of the common law: see *Dyer v Dyer* (1788) 2 Cox 92 at 93; 30 ER 42 at 43. The social and legal landscape of the 15th and 16th centuries as described in the above passage thus formed the basis for the presumption of resulting trust. It cannot be doubted that property practices in the present-day 21st century have radically and irreversibly departed from that historical background. Hope JA wryly commented in *Dullow v Dullow* (1985) 3 NSWLR 531 ("*Dullow*") at 535:

> It seems rather ridiculous that troubles in England at the end of the Middle Ages should be the basis, in the late twentieth century, for making findings of fact, for that is what the presumption essentially involves.

41 Given the very different circumstances that exist today in Singapore, there is *a fortiori* a pressing need for a re-evaluation of the application of the presumption of resulting trust against the backdrop of modern society to be undertaken.

Presumption of fact or law?

42 Before turning to discuss the appropriate manner of application of the presumption of resulting trust in Singapore today, however, it is important first to consider whether the presumption should be more appropriately characterised as one of fact or law.

43 The law recognises, either as a matter of common sense or policy, that in certain situations, specific assumptions or *presumptions* need to be made. In certain situations, these presumptions are conclusive, in which case they are irrebuttable and must be applied by the court without qualification. In other circumstances, the court is required to apply the presumption unless it is disproved. The weakest form of presumption is where there is no legal compulsion to apply it; it is left to the

discretion of the court as to whether it should operate in the circumstances of the case: see Jeffrey Pinsler, *Evidence, Advocacy and the Litigation Process* (LexisNexis, 2nd Ed, 2003) at p 251. These presumptions are respectively characterised as irrebuttable presumptions of law, rebuttable presumptions of law and presumptions of fact. The category within which the presumption of resulting trust falls delineates the preliminary parameters for the court's application of that presumption – if it is a presumption of *law*, the court *must* apply the presumption whenever certain specific circumstances are present from the facts of a case; if it is a presumption of *fact*, however, the court has the *discretion* whether or not to apply the presumption of resulting trust.

44 In Sudipto Sarkar & V R Manohar, *Sarkar's Law of Evidence* (Wadhwa and Company Nagpur, 16th Ed, 2007) ("*Sarkar*"), the authors lucidly explain the basis for presumptions of fact and law at vol 1, pp 101–102:

> ***Presumptions of fact*** or *natural presumptions* are inferences which are naturally and logically drawn from the experience and observation of the course of nature, the constitution of human mind, the springs of human action, the usages and habits of society. …
>
> …
>
> Presumptions of law or *artificial presumptions* are inferences or propositions established by law, – the inferences, which the law peremptorily requires to be made whenever the facts appear which it assumes as the basis of that inference. The presumptions of law are in reality rules of law, and part of the law itself and the court may draw the inference whenever the requisite facts are developed in pleadings [*etc*]. *Presumptions of law are based, like presumptions of fact on the uniformity of deduction which experience proves to be justifiable; they differ in being invested by the law with the quality of a rule, which directs that they* ***must*** *be drawn*; they are not permissive like natural presumptions which may or may not be drawn …
>
> [emphasis added, emphasis in original in bold italics]

45 As mentioned above at [37], the presumption of resulting trust stems from a purported understanding of human nature derived, in turn, from common experience and the societal climate. It appears to be a *natural* presumption in that it is an inference "naturally and logically drawn from the experience and observation of the course of nature" (see [44] above). Indeed, Indian treatises on the law of evidence have classified "*benami* transactions" (purchases made in the names of others and commonplace in India, which bear a "curious resemblance" to the transactions triggering the operation of the presumption of resulting trust: see *Bilas Kunwar v Desraj Ranjit Singh* AIR 1915 Privy Council 96) as falling under s 114 of the Indian Evidence Act 1872, the equivalent of s 116 of our Evidence Act (Cap 97, 1997 Rev Ed), which generally encompasses *presumptions of fact*: see, for example, vol 2 of *Sarkar* at p 1853 and vol III of Sripada Venkata Joga Rao, *Sir John Woodroffe & Syed Amir Ali's Law of Evidence* (LexisNexis Butterworths, 17th Ed, 2002) ("*Law of Evidence*") at p 4700. It is our view, however, that although the presumption of resulting trust was derived from an understanding of human nature based on experience, much like how the presumption arising in "*benami* transactions" was drawn from common experience in India, the former presumption, *unlike* the latter, has been elevated to become a *rule of law*. It is a *principle of equity*, which though also based on the "uniformity of deduction which experience proves to be justifiable", is additionally imbued or "invested by the law with the quality of a rule" (see [44] above).

46 As such, we characterise the presumption of resulting trust as a rebuttable *presumption of law* which will arise whenever the circumstances set out in the extract at [34] above are present. We note, however, that though the presumption of resulting trust must be *applied* in those

circumstances, the *strength* of the presumption must vary according to the facts of the case and the contemporary community attitudes and norms. In fact, given the necessary nuances that this approach entails, one might even view the presumption of resulting trust as a mixed presumption of law *and* of fact.

Modern-day application

Abolishing the presumption of resulting trust?

47 The presumption of resulting trust, in its original unvarnished form, has been subjected to strident criticism, especially in Australia. The operation of the presumption is often regarded as archaic and anachronistic, and the presumption appears to enshrine outdated values. Apart from Hope JA's disapproval of the presumption based on its historical origins in *Dullow* (see [40] above), McHugh J in *Nelson v Nelson* (1995) 184 CLR 538 ("*Nelson*"), a decision of the High Court of Australia, also expressed doubts as to the utility and viability of the presumption as applied in its traditional form. He stated at 602:

> No doubt in earlier centuries, the practices and modes of thought of the property owning classes made it more probable than not that, when a person transferred property [without consideration], the transferor did not intend the transferee to have the beneficial as well as the legal interest in the property. But times change. *To my mind – and, I think, to the minds of most people – it seems much more likely that, in the absence of an express declaration or special circumstances, the transfer of property without consideration was intended as a gift to the transferee. That being so, there is a strong case for examining whether the presumption of a resulting trust accords with the effect of contemporaneous practices and modes of thought*. …
>
> A presumption is a useful aid to decision making only when it accurately reflects the probability that a fact or state of affairs exists or has occurred. … If the presumptions do not reflect common experience today, they may defeat the expectations of those who are unaware of them.
>
> [emphasis added]

48 Similarly in *Dullow*, Hope JA adopted the view that a very different presumption might have been devised today but for the ancient feudal system in which the presumption of resulting trust had its roots. He opined at 535:

> Without this background [the history of the resulting use and resulting trust], one would have thought that there could have developed principles which assumed that when land was transferred into the name of a person, whether with or without consideration, and no matter where the consideration came from, that person was presumed to hold both legal and beneficial ownership. This could be disproved and it could be shown that the intention of the person causing the land to be transferred was to have the beneficial ownership himself.

49 In *Calverley v Green* ([37] *supra*), Murphy J reassessed the law on presumptions of resulting trust and concluded at 264 that the presumptions were "inappropriate to our times, and are opposed to a rational evaluation of property cases arising out of personal relationships". He was of the opinion that the presumption of resulting trust and, consequently, the presumption of advancement, should both be discarded. In particular, he was mindful of the Torrens system of titles in place in Australia and made the following observations at 265:

> In the absence of [the presumptions of resulting trust and advancement], the legal title reflects

the interests of the parties, unless there are circumstances (not those false presumptions) which displace it in equity. False presumptions which override the registered title are destructive of an orderly Torrens title system and should not be tolerated. The Torrens system permits the protection of interests by the use of caveats, so that the registered title reflects the true position and prevents the Torrens system becoming as complex as the old system.

50 These concerns have also recently found expression in an article by an academic. Asst Prof Kelvin Low ("Low") in his article, "The Presumption of Advancement: A Renaissance?" (2007) 123 LQR 347 ("Low's article"), had questioned the rationale behind the presumption of resulting trust. He suggests that courts must explain why equity was suspicious of gifts rather than merely assert that that was the case, and concludes at 350 that "[a] particularly strong case must surely be made to justify a presumption out of step with reality and the expectations of the public". In addition, he has quite correctly highlighted the increasing diversity and decreasing homogeneity of societies and expressed doubts about the suitability of any blanket presumptions premised upon assumptions based on certain familial relations. Finally, he postulates that there is now a clear case for the abolition of the presumption of resulting trust. The logic of this is hard to fault.

51 Low, nevertheless, recognises that despite its flaws, the presumption of resulting trust is too firmly entrenched in the law for such a radical development to take root immediately (Low's article at 351). Deane J in *Calverley v Green* at 266 had expressed broadly similar sentiments and stated that the presumptions of resulting trust and advancement were too well entrenched as "land-marks" in the law of property to be simply discarded by judicial decision. Notwithstanding their critical remarks on the presumptions of resulting trust and advancement, both Hope JA in *Dullow* and McHugh J in *Nelson* ([47] *supra*) also took the view that the presumptions cannot now be discarded by judicial decision and any major overhaul of the presumptions is, all said and done, a matter for the Legislature. We agree.

A more moderate approach

52 Instead of radically abolishing the presumption of resulting trust or "downgrading" the presumption from a rebuttable presumption of law to a presumption of fact which may be applied in a judge's discretion (see Low's article at 351), we are of the view that a more moderate and nuanced approach is sufficient, and indeed appropriate, to align the presumption of resulting trust with modern expectations and practices. The preferred approach concerns the *strength* of the presumption which should vary when invoked in different factual matrices. The presumption of resulting trust is certainly not, in today's legal landscape, an immutable rule to be applied blindly and rigidly in the same manner to *all* cases; it should be given varying weight depending upon the particular context. The quality of the evidence required to rebut the presumption in each case should, in turn, vary with the strength of the presumption. This approach is well supported by authoritative decisions in common law.

53 More than a century ago, in *Fowkes v Pascoe* (1875) 10 Ch App 343, Mellish LJ pressed for a flexible application of the presumption of resulting trust. He stated at 352–353:

> [T]he presumption must, beyond all question, be of very different weight in different cases. In some cases it would be very strong indeed. If, for instance, a man invested a sum of stock in the name of himself and his solicitor, the inference would be very strong indeed that it was intended solely for the purpose of a trust, and the Court would require very strong evidence on the part of the solicitor to prove that it was intended as a gift; and certainly his own evidence would not be sufficient. On the other hand, a man may make an investment of stock in the name of himself and some person, although not a child or wife, yet in such a position to him as to make it extremely probable that the investment was intended as a gift. In such a case, although the rule of law, if

there was no evidence at all, would compel the Court to say that the presumption of trust must prevail, even if the Court might not believe that the fact was in accordance with the presumption, yet, if there is evidence to rebut the presumption, then, in my opinion, the Court must go into the actual facts.

This approach was followed very recently by Peter Prescott QC sitting as Deputy Judge in *Vajpeyi v Yusaf* [2003] EWHC 2788 (Ch). He determined at [71] that the evidence necessary to rebut the presumption of resulting trust depended on the strength of the presumption, and that:

> [T]he strength of the presumption depends upon the facts and circumstances which gave rise to it. *This is because the doctrine of resulting trusts is supposed to be based on common sense*. [emphasis added]

54 Similarly, in Australia, Deane J took the view that the weight to be given to a presumption of resulting trust was variable – this variation depended on the contemporary strength or weakness of the rationale of the rule embodying the presumption and on community attitudes: see the extract from *Calverley v Green* at [37] above. He added at 270:

> *The generalization that a presumption of resulting trust "should not give way to slight circumstances" can no longer properly be accepted as an unqualified rule.* Indeed, in a case where a presumption of resulting trust or a "presumption" of advancement applies in circumstances where the relationship between the parties does not, as a matter of modern experience, provide any firm rational basis for presuming either an intention to retain the beneficial interest or an intention to confer it on the other party, the presumption may be found to be of practical importance only in those cases where the evidence, including evidence of the actual relationship between the parties, does not enable the Court to make a positive finding of intention … [emphasis added]

55 Today, it cannot be gainsaid that the strength (or weight) of the presumption of resulting trust should vary with the context in which it is invoked, and thus the *application* of the presumption of resulting trust must be sufficiently nuanced to adequately address the myriad of modern matrices in which the presumption might arise. This pragmatic approach affords the courts considerable flexibility in shaping and applying the presumption of resulting trust so as to dovetail with the present-day circumstances; in this way, the presumption can be adjusted to meet the changing conditions of society, and such a development is legitimate as being "by precedent out of principle" (see [28] above). Courts should now be prepared to depart from the archaic rigid applications of the presumption of resulting trust and examine each set of facts which comes before them against the backdrop of contemporary practice and attitudes. The application of the presumption in cases concerning certain similar factual elements may, and should, however, be broadly uniform, provided that contemporary community and social values have been appropriately encapsulated; this will ensure the necessary consistency and certainty in the law of resulting trusts. In adopting this approach, courts must remain alive to the inextricable connection between the presumption of resulting trust and the social climate of the day; the nature of a presumption as a process of "standardized inference" (see [37] above) based on common experience and legitimate expectations is of foremost importance in this exercise.

Presumption of advancement

56 The presumption of advancement is an antidote to the rigid injustice periodically occasioned by the mechanical application of the presumption of resulting trust: In limited circumstances where a person voluntarily transfers property into the name of another, or contributes to its purchase, the law

presumes that a gift was intended and that the transferor or contributor did not intend to retain any interest in the property concerned. In applying the presumptions of resulting trust and advancement, the Canadian Supreme Court has adopted an approach that suggests one presumption would prevail over the other *right from the outset* based on the facts of the case: see *Pecore v Pecore* (2007) 279 DLR (4th) 513 ("*Pecore*"). This is exemplified, *inter alia*, by the emphatic assertions made by Rothstein J at [27] and [55] of *Pecore* respectively:

> The presumption of resulting trust is the general rule for gratuitous transfers. However, depending on the nature of the relationship between the transferor and transferee, *the presumption of a resulting trust will not arise and there will be a presumption of advancement instead* …
>
> …
>
> Where a gratuitous transfer is being challenged*, the trial judge must begin his or her inquiry by determining the proper presumption to apply* and then weigh all the evidence relating to the actual intention of the transferor to determine whether the presumption has been rebutted.
>
> [emphasis added]

57 We must, however, respectfully disagree with the Canadian approach. The genesis of the presumption of advancement lay in *remedying* the unjust operation of the presumption of resulting trust in certain circumstances; its functionality is limited to, and indeed dependent on, the prior existence of a presumed resulting trust. The unrebutted presumption of advancement mandates that the legal title of property reflects the beneficial interests of the parties involved. As such, the application of the presumption of resulting trust, which divorces equitable interests from legal interests, must initially be established before the need for the presumption of advancement even arises. We are of the view that a two-stage test remains helpful and, indeed, necessary. The court must first determine if the presumption of resulting trust arises on the facts; and it is *only* if a resulting trust is presumed that the presumption of advancement would apply to displace that initial presumption. In addition, it should also be noted that the actual *effect* of the presumptions of resulting trust and advancement relates to the *burden of proof* in the particular case. As Abella J in *Pecore* astutely noted at [81]:

> If the presumption of advancement applies, an individual who transfers property into another person's name is presumed to have intended to make a gift to that person. The burden of proving that the transfer was not intended to be a gift, is on the challenger to the transfer. If the presumption of resulting trust applies, the transferor is presumed to have intended to retain the beneficial ownership. The burden of proving that a gift *was* intended, is on the recipient of the transfer. [emphasis in original]

Having set out the above preliminaries, we turn now to consider the presumption of advancement proper.

58 The presumption of advancement typically arises as a consequence of a pre-existing relationship between the parties to the transfer or acquisition, where the transferor or contributor is regarded as morally obliged to provide for the person benefiting: see Pearce & Stevens ([31] *supra*) at p 253. The presumption was described by Lord Eldon in *Murless v Franklin* (1818) 1 Swans 13 at 17; 36 ER 278 at 280 as follows:

> The general rule that on a purchase by one man in the name of another, the nominee is a trustee for the purchaser, is subject to exception where the purchaser is under a species of natural

obligation to provide for the nominee.

59 Just like the presumption of resulting trust, the presumption of advancement is "no more than a long stop to provide the answer when the relevant facts and circumstances fail to yield a solution" (see [36] above). It should be treated as "an evidential instrument of last resort where there is no direct evidence as to the intention of the parties rather than as an oft-applied rule of thumb": see *Teo Siew Har v Lee Kuan Yew* [1999] 4 SLR 560 ("*Teo Siew Har*") at [29]. Indeed, in *Neo Tai Kim v Foe Stie Wah* [1985] 1 MLJ 397 ("*Neo Tai Kim*"), the Privy Council accepted that where the trial judge had found as a fact that there was a common intention that the property in question should be bought for the wife as the matrimonial home, the common intention *by itself* established the beneficial ownership and *precluded the operation of any presumption*. It is therefore apparent that the presumption of advancement will operate only where there is no direct evidence that may reveal the intention of the parties; only then will there be any necessity to *infer* or *presume* intention.

60 Relationships which attract the presumption of advancement have traditionally included transfers from husband to wife, and from father to child. These categories of relationships have, however, been established in a markedly different social context from the present. It goes without saying that the application of the presumption of advancement, just like the presumption of resulting trust, should be assessed in accordance with contemporary norms. Indeed, the two traditional categories of relationships have each already been remoulded and refined in different jurisdictions as social realities and practices have changed over time. Nevertheless, further extension and extrapolation may be appropriate, and indeed required, to cater to the myriad matrices that prevail in today's society. As Deane J sagely noted in *Calverley v Green* ([37] *supra*) at 268, the categories of relationships to which the presumption of advancement applies are not "finally settled or closed". He was of the view (*ibid*) that:

> It is arguable that [the categories of relationships] should be adjusted to reflect modern concepts of the equality in status and obligations of a wife vis-à-vis a husband … and of a mother vis-à-vis a father … *Any adjustment of those relationships must however, be made by reference to logical necessity and analogy and not by reference to idiosyncratic notions of what is fair and appropriate*. [emphasis added]

This passage has been adopted and endorsed by our local High Court in *Damayanti Kantilal Doshi v Shobhana J Doshi* [1998] 1 SLR 530 at [26]. We agree. There can be no doubt that the approach of principled pragmatism should also be adopted in the courts' modern application of the presumption of advancement.

61 That the presumption of advancement must be applied in tandem with the contemporary societal climate is also exemplified by the outright rejection of the presumption in India. It is well-settled law that there is no presumption of advancement in Indian laws: see vol III of *Law of Evidence* ([45] *supra*) at p 3656 and vol 2 of *Sarkar* ([44] *supra*) at p 1853. This is due to the widespread and persistent practice of making "*benami*" transfers (see [45] above for a brief explanation of these transactions) for no obvious reason or apparent purpose. This palpably illustrates that the application of the presumption of advancement must be considered against the backdrop of the particular community; there should not be a blind adherence or slavish application of the presumption simply to dovetail with the English approach. The rejection of the presumption of advancement in India reflects a recognition that the logical and apt operation of the presumption in England does not translate to an equally appropriate operation in India, which has a vastly different culture and popular mindset. In the case of Singapore, the differences between our local climate and the English system are not as stark and the presumption of advancement still accords with the community's contemporary societal norms and expectations in particular situations. Nevertheless,

there will inevitably be certain inherent divergences in the attitudes and norms of any two countries, especially where one is oriental and the other, occidental; in fact, these divergences would also exist even amongst different communities within a society. As such, it is vital that the application of the presumption of advancement be nuanced in accordance with the particular context.

Parent-child relationships

62 We turn, first, to consider briefly the parent-child relationships which give rise to the presumption of advancement. Traditionally, there was a strong presumption of advancement between a father and his child. In *In re Roberts, deceased* [1946] Ch 1, Evershed J held at 5:

> It is well-established that a father making payments on behalf of a son prima facie, and in the absence of contrary evidence, is to be taken to be making and intending an advance in favour of the son and for his benefit.

This application of the presumption of advancement was subsequently extrapolated to include the relationship between a child and a person standing *in loco parentis*. Jessel MR explained the rationale for this extension of the presumption in *Bennet v Bennet* (1879) 10 Ch D 474 ("*Bennet*") at 477 as follows:

> [A]s regards a child, a person not the father of the child may put himself in the position of one *in loco parentis* to the child, and so incur the obligation to make a provision for the child.

63 Given that the presumption of advancement arises in the case of a child *vis-à-vis* his or her father, or a person standing *in loco parentis*, the courts' long-standing rejection of the presumption in the case of a child *vis-à-vis* his or her *mother* appears to be a curious anomaly especially when viewed in the present social context. The reason for this differentiation between a mother and a father or even a mother and a person standing *in loco parentis* was set out by Jessel MR in *Bennet* at 478:

> [I]n our law there is no moral legal obligation … no obligation according to the rules of equity… on a mother to provide for her child: there is no such obligation as a Court of Equity recognises as such.

Such reasoning embodies archaic patriarchal concepts of the family. In the modern social context, mothers must almost invariably share the responsibility to provide for their children: see Pearce & Stevens ([31] *supra*) at p 255; see also s 68 of the Women's Charter (Cap 353, 1997 Rev Ed) which provides that it shall be the duty of every *parent* to maintain or contribute to the maintenance of his or *her* children. Indeed, the logic behind this reasoning had raised doubts even as early as in the late 19th century. In *Sayre v Hughes* (1868) LR 5 Eq 376, Sir John Stuart VC astutely observed at 381:

> It has been argued that a mother is not a person bound to make an advancement to her child, and that a widowed mother is not a person standing in such a relation to her child as to raise a presumption that in a transaction of this kind a benefit was intended for the child. *But the case of a stranger who stands* in loco parentis *seems not so strong as that of a mother.* In the case of *Re De Visme* it was said that a mother does not stand in such a relationship to a child as to raise a presumption of benefit for the child. The question in that case arose on a petition in lunacy, and it seems to have been taken for granted that no presumption of benefit arises in the case of a mother. *But maternal affection, as a motive of bounty, is, perhaps, the strongest of all, although the duty is not so strong as in the case of a father, inasmuch as it is the duty of a father to advance his child*. [emphasis added]

64 Despite the obvious logical flaws in the rejection of the presumption of advancement in the case of a mother and her child, the English courts appeared to have continued in this approach for a long period. In the relatively recent late 20th century case of *Sekhon v Alissa* [1989] 2 FLR 94, Hoffmann J had applied the presumption of *resulting trust*, instead of advancement, when dealing with a case where both a mother and her daughter had contributed to the purchase of the property conveyed into the daughter's sole name. The mother was eventually held to have some interest in the property to the extent of the amount of her contribution, as there was insufficient evidence to rebut the presumption of resulting trust. This traditional distinction between a mother and a father for the purposes of applying the presumption of advancement has been quite correctly trenchantly criticised by academics as being "hopelessly out of touch with the egalitarian nature of contemporary society" (see Gray & Gray ([36] *supra*) at para 10.30). English courts have attempted to get around the conventional gender bias of the presumption of advancement by requiring very little evidence to prove a mother's donative intent to her child, for example, Jessel MR had noted in *Bennet* that there was "very little additional motive required to induce a mother to make a gift to her child" (at 480). More recently, however, it may be distilled from some cases a tentative inclination, on the part of the English courts, to depart from the artificial and historical distinction between a paternal and a maternal relationship. In *In re Cameron, decd* [1999] Ch 386, Lindsay J opined at [52] that in the light of the difference between Victorian and modern attitudes to the ownership and ability to dispose of property, *both* parents (instead of just the father) should nowadays be taken to be *in loco parentis* unless the contrary was proved. Although that case was concerned with whether a gift was a "portion" made in order to establish a child in life or make substantial provision for him, Lindsay J's remarks probably reflect the modern trend in English judicial attitudes towards the relationship between a mother and her child, and herald a plausible avenue by which the presumption of advancement should be developed so that it has application to a mother-child relationship. Indeed, at least one academic has opined that Lindsay J's views should now also be taken as applicable to the presumption of advancement generally: see Philip H Pettit, *Equity and the Law of Trusts* (Butterworths, 9th Ed, 2001) at p 172.

65 In Australia, the courts appear less reticent in advocating the modern application of the presumption of advancement equally in both father-child and mother-child relationships. In *Dullow* ([40] *supra*), Hope JA found it unnecessary in the circumstances to consider what the correct principle was in relation to any presumption of advancement when a mother placed property in the name of a child. However, he did remark in *obiter* at 541 that:

> [A]s at present advised, I think that if the law is to be left constrained by presumptions, the same presumption should apply to gifts to children by both mother and father.

Similarly, in *Brown v Brown* (1993) 31 NSWLR 582 at 591, Gleeson CJ was of the view that, in modern times, the drawing of any rigid distinction between parents "may be accepted to be inappropriate". Kirby P, in the same case at 599, supported the principle that the presumption of advancement, if it is still to be applied today, "must be applied equally to gifts by mothers … as by fathers".

66 Finally, in 1995, it was held by the High Court of Australia that a presumption of advancement should indeed operate between a mother and her child: see *Nelson* ([47] *supra*). Although in that case the presumption of advancement was found to be rebutted by the evidence of the mother's intention to hold the beneficial interest herself, that should not detract from the fact that the Australian courts have definitively and conclusively departed from the traditional limits on the application of the presumption of advancement. In approving the Supreme Court of New South Wales' extension of the presumption of advancement, Dawson J opined at 576 that there was no longer any justification for maintaining the distinction between a father and a mother in the application of the presumption of advancement. McHugh J adopted a similar stance on this issue and explained this at

601 in the following terms:

> While the presumption of advancement continues to apply to transfers of property between father and child, consistency of doctrine requires that the presumption should also apply to transfers of property by a mother to her child. If the presumption of advancement arises, as Sir George Jessel thought, from the obligation of a father to provide for his child, the mother as well as the father now has a legal obligation to support their child. But independently of any legal obligation of a mother, it would not accord with the reality of society today for the law to presume that only a father has a moral obligation to support or is in a position to advance the interests of a child of the marriage.

67 It is, therefore, clear that there have been a number of recent developments to the presumption of advancement, by an extrapolation of the father-child relationship, which traditionally attracts the operation of the presumption. Indeed, it has been emphatically acknowledged that "to treat the established categories [of relationships giving rise to the presumption of advancement] as frozen in time … would not be characteristic of the doctrines of equity" (*per* Gibbs CJ in *Calverley v Green* ([37] *supra*) at 250). An extension and/or modification of the traditional categories to accord with modern views would, to our minds, allow for the flexibility and dynamism that is especially necessary in the application of historical equitable doctrines while maintaining a sufficient nexus to fundamental doctrine. Further, just as how the presumption of resulting trust may vary in strength according to the factual circumstances in each case, we are of the view that the presumption of advancement may similarly vary.

68 One possible factor within the parent-child category which could affect the weight of the presumption of advancement may be the number of children the parent (or person standing *in loco parentis*) has; *ceteris paribus*, the greater the number of children one has, the less likely that a transfer of property of substantial value to a single child without similar provision for the other children would be intended as a pure gift to that child. Of course, the presumption of advancement should still operate in such a case, but it is likely that less weighty evidence would be required to rebut the presumption of a gift as compared to a case where the recipient child was the only child of the transferor parent. All the circumstances of the case must be considered. For example, if a transfer were made by a parent to the only child of majority age in a family of several children, the presumption of advancement may have only slight relevance. At this point, it should briefly be mentioned that, despite the majority view in *Pecore* ([56] *supra*) that the presumption of advancement in parent-child relationships should not apply to independent adult children, we do not see any reason to confine the application of the presumption in the same manner. Indeed, we are more inclined to the view of Abella J in *Pecore*, which regarded the presumption of advancement as emerging no less from affection than from dependency and thus would logically apply to all gratuitous transfers from parents to *any* of their children, regardless of the age of the child or dependency of the child on the parent (see [90]–[103] of *Pecore*). The present case is, however, unconcerned with the parent-child relationship; thus, there is no necessity for us to make any firm pronouncements in relation to this category of relationships, or to dwell on this issue any further.

Spousal relationships

69 The spousal relationship between Yeo and the appellant lies at the heart of the present appeal; as such, it is important to turn now to this category of relationships which attracts the operation of the presumption of advancement.

70 As mentioned, the presumption of advancement typically arises between a husband and his wife. The principle was stated by Malins VC in *In re Eykyn's Trusts* (1877) 6 Ch D 115 at 118 as

follows:

> The law of this Court is perfectly settled that when a husband transfers money or other property into the name of his wife only, then the presumption is, that it is intended as a gift or advancement to the wife absolutely at once, subject to such marital control as he may exercise. And if a husband invests money, stocks, or otherwise, in the names of himself and his wife, then also it is an advancement for the benefit of the wife absolutely if she survives her husband …

The husband-wife relationship which attracts the presumption of advancement has been subsequently extended to include a situation where the transferor or contributor husband is *engaged* to be married to the beneficiary wife and they do not subsequently break their engagement to marry each other.

71 In *Moate v Moate* [1948] 2 All ER 486 ("*Moate*"), Jenkins J explained the compelling logic of this extension at 487 as follows:

> I can see no practical distinction … between a transfer by an intending husband to an intending wife and a transfer as between a husband and a wife. The reason for presuming advancement is stronger where the gift is made in contemplation of the marriage before it is actually solemnised than it is where the transaction is post-nuptial. It seems to me the presumption would be, in the former case, that the intending husband is making a gift to the lady in consideration of the marriage, a gift by way of wedding present which he intends to take effect in her favour beneficially provided the marriage is duly solemnised. I, therefore, hold that the presumption in this case is that the husband intended this to be a provision by way of gift to his wife provided the marriage was duly solemnised.

The High Court of Australia has similarly held in *Wirth v Wirth* (1956) 98 CLR 228 ("*Wirth*") that a transfer of property by a prospective husband to his intended wife made in contemplation of the marriage for which they had contracted raises a presumption of advancement just as a similar transfer made after the celebration of the marriage raises the same presumption. In coming to this conclusion, Dixon CJ remarked at 238:

> To say that a transfer of property to an intended wife made in contemplation of the marriage raised a presumption of a resulting trust but a similar transfer made immediately after the celebration of the marriage raised a presumption of advancement involves almost a paradoxical distinction that does not accord with reason and can find a justification only on the ground that the doctrine depends in categories closed for historical reasons. That is not characteristic of doctrines of equity.

72 It appears, therefore, that the courts are willing to modify and extend the established categories of relationships to which the presumption of advancement applies, to accommodate the contemporary social climate and the particular circumstances in the cases which come before the court; a steadfast and rigid adherence to the historical application of the presumption has been rightly rejected. In fact, the Australian courts have also expressed at least *some* inclination to extend the application of the presumption of advancement even to "de facto relationships" in the light of the progressive prevalence and openness of such relationships in recent times.

73 The conventional position is that there is no presumption of advancement between cohabiting couples (whether sexual or homosexual), nor between a man and his mistress: see, for example, *Rider v Kidder* (1805) 10 Ves 360; 32 ER 884, *Soar v Foster* (1858) 4 K & J 152; 70 ER 64, *Allen v Snyder* ([29] *supra*) and *Diwell v Farnes* [1959] 1 WLR 624. In *Calverley v Green* ([37] *supra*), however, although the majority rejected the application of the presumption of advancement to a relationship

"devoid of the legal characteristic which warrants a special rule affecting the beneficial ownership of property by the parties to a marriage" (*per* Mason and Brennan JJ at 260), Gibbs CJ adopted quite a different line of argument. He observed at 250–251:

> The question is whether the relationship which exists between two persons living in a de facto relationship makes it more probable than not that a gift was intended when property was purchased by one in the name of the other. The answer that will be given to that question will not necessarily be the same as that which would be given if the question were asked concerning a man and his mistress who were not living in such a relationship. The relationship in question is one which has proved itself to have an apparent permanence, and in which the parties live together, and represent themselves to others, as man and wife. … *Once one rejects the test applied in* Soar v. Foster *as too narrow, and rejects any notion of moral disapproval, such as is suggested in* Rider v. Kidder*, as inappropriate to the resolution of disputes as to property in the twentieth century, it seems natural to conclude that a man who puts property in the name of a woman with whom he is living in a de facto relationship does so because he intends her to have a beneficial interest, and that a presumption of advancement is raised.* [emphasis added]

74 It is obvious that Gibbs CJ's remarks were driven, at least in part, by his pragmatism in acknowledging the changing conditions of society and a desire to desist from the historical reasons for confining the presumption of advancement to cases of *legal* spouses. Though his remains the lone voice advocating for such a change, academics have acknowledged that it is *arguable* that changing social attitudes to *de facto* relationships, especially where they are recognised legislatively, should be reflected by the courts in the application of the presumption of advancement: see G E Dal Pont & D R C Chalmers, *Equity and Trusts in Australia and New Zealand* (LBC Information Services, 2nd Ed, 2000) at p 591. However, given that legislative recognition and public consensus about the status of *de facto* relationships have yet to emerge locally, any development along the lines envisaged by Gibbs CJ may be, in our view, presently unwarranted. The point to be highlighted here is simply that equitable principles such as the presumption of advancement should constantly be re-examined and adjusted in the light of contemporary reality and this approach has quite correctly and undoubtedly been adopted by foreign courts, albeit in varying degrees.

75 In order to ensure that the presumption of advancement dovetails with modern norms and expectations, courts have also increasingly regarded the presumption to be of varying strength in spousal relationships characterised by different dynamics. In *Pettitt v Pettitt* [1970] AC 777 ("*Pettitt*"), Lord Reid, with his customary acuity, observed that the strength of the presumption of advancement, when applied to spousal relationships, should *generally* be considered as having diminished significance. He stated at 793:

> I do not know how this presumption first arose, but it would seem that the judges who first gave effect to it must have thought either that husbands so commonly intended to make gifts in the circumstances in which the presumption arises that it was proper to assume this where there was no evidence, or that wives' economic dependence on their husbands made it necessary as a matter of public policy to give them this advantage. I can see no other reasonable basis for the presumption. These considerations have largely lost their force under present conditions, and, unless the law has lost all flexibility so that the courts can no longer adapt it to changing conditions, the strength of the presumption must have been much diminished.

In the same case, Lord Upjohn acknowledged at 813 that the presumptions of resulting trust and advancement "have been criticised as being out of touch with the realities of today", but he nevertheless remained optimistic that "when properly understood and properly applied to the circumstances of today", the presumptions "remain as useful as ever in solving questions of title".

Nevertheless, he appeared to have regarded the ready rebuttal of the presumptions by "comparatively slight evidence" as the proper application of these presumptions then (at 814).

76 Locally, the Court of Appeal recently considered the presumption of advancement in some detail in *Low Gim Siah v Low Geok Khim* [2007] 1 SLR 795 ("*Low Gim Siah*"). Chan Sek Keong CJ, in delivering the judgment of the court, accepted that the presumption of advancement was generally of varying strength in different circumstances; he opined at [33] that:

> [T]he amount of evidence required to rebut the presumption would depend on the strength of the presumption, *ie*, how readily the court would be prepared to make the presumption.

Chan CJ further pronounced on the application of the presumption in certain spousal relationships at [43]–[44] as follows:

> In our view, it is correct to say that the cases where the presumption of advancement was held to have lost its robustness or diminished in importance were cases concerning joint contributions by married couples in acquiring the matrimonial home or properties acquired using joint savings. They were not concerned with the traditional and well-established categories of father-and-child and husband-and-wife relationships where one party is under a moral or equitable obligation to support the other party.
>
> … The presumption of advancement has been applied in England in such relationships for over two centuries and justified on the basis of a *moral or equitable obligation* on the part of one to care for the other. Such moral obligations do not change even if social conditions change. Hence, we find it difficult to accept an argument that in modern Singapore, fathers and husbands have somehow changed their paternal or marital obligations so radically that the presumption is no longer applicable or should not be applied. There is no doubt that many married women in Singapore are financially independent of their husbands. But there are also many of them who are not or who choose to be housewives in order to look after their husbands, their children and their homes. … In our view, in the case of such relationships, there is no reason to treat the presumption of advancement as having lost its robustness or diminished in its vigour, and there is no reason why it should not be applied to resolve questions of title in the absence of any evidence indicating otherwise.
>
> [emphasis in original]

77 We maintain the view expressed in *Low Gim Siah*. The presumption of advancement is still very relevant today in the established (both traditional and extended) categories of relationships; it is the strength of the presumption that should vary with the circumstances in accordance with modern social conditions. Thus, on this point, we must respectfully depart from the learned trial judge's bare assertion that the Singapore courts had moved away from the presumption of advancement and that the presumption was no longer applicable in modern times unless there was evidence to support it (see [16] above). In fact, we find that the strength of the presumption of advancement, whether in cases concerning spouses or otherwise, should not even be *generally* diminished as appeared to be suggested in *Pettitt*. Instead, it should only be where the present realities are such that the putative intention inherent in the presumption of advancement is not readily inferable from the circumstances of the case, that the presumption would be a weak one easily rebuttable by any slight contrary evidence.

78 The overall aim of the presumption of advancement is to discern the intention of the transferor. As Gibbs CJ remarked in *Calverley v Green* ([37] *supra*) at 250:

> The presumption should be held to be raised *when the relationship between the parties is such that it is more probable than not that a beneficial interest was intended to be conferred*, whether or not the purchaser owed the other a legal or moral duty of support. [emphasis added]

The nuanced, fact-sensitive approach advocated in *Low Gim Siah* is therefore preferred; *all* the circumstances of the case should be taken into account by the court when assessing how strongly the presumption of advancement should be applied in the particular case. The financial dependence of the recipient on the transferor or contributor, mentioned in *Low Gim Siah*, is but one factor which may affect the strength of the presumption of advancement. In our judgment, two key elements are crucial in determining the strength of the presumption of advancement in any given case: *first*, the *nature* of the relationship between the parties (for example, the obligation (legal, moral or otherwise) that one party has towards another or the dependency between the parties); and *second*, the *state* of the relationship (for example, whether the relationship is a close and caring one or one of formal convenience). The court should consider whether, in the entirety of the circumstances, it is readily presumed that the transferor or contributor intended to make a gift to the recipient and, if so, whether the evidence is sufficient to rebut the presumption, given the appropriate strength of the presumption in that case.

Relevance of the Women's Charter

79 Finally, it is appropriate to consider briefly the relevance of the Women's Charter in relation to the presumption of advancement as applied between spouses.

80 Sections 51 and 52 of the Women's Charter, taken with s 112 of the same legislation, have resulted in a "deferred community of property" approach in the determination of the property rights of spouses. The former two sections have the effect of rendering the fact, that a woman is married, irrelevant to her proprietary interests; her entitlement to proprietary interests depends on the same rules as the entitlement of an unmarried woman or man. The latter section, on the other hand, has empowered the courts with a broad discretion to divide "matrimonial assets" between spouses during or after matrimonial proceedings to terminate their marriage; it is based on the principle of "community of property", under which both spouses have a joint interest in certain property, regardless of which spouse purchased or otherwise acquired it: see Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 799–800.

81 Therefore, the "community of property" approach to the property rights of spouses only operates where there are matrimonial proceedings terminating a marriage. When the marriage subsists, property law, including the law of resulting trusts, applies, *without modification*, to determine the respective proprietary rights of spouses. The application of the ordinary rules of law and equity relating to real and personal property are discussed by Anthony Dickey QC in *Family Law* (LBC Information Services, 3rd Ed, 1997). He noted at p 587 that "there are no special rules concerning the normal interests of spouses in property" and continued:

> It is true that a presumption of advancement – that is, of a gift – arises upon the transfer of property to a wife either by or at the direction of her husband where the wife is not a purchaser of the property. This presumption supersedes the presumption of a resulting trust which otherwise operates upon a transfer of property to a person who is not a purchaser of it. *However, the presumption of advancement is not confined to spouses but generally speaking extends to all relationships which have traditionally involved an obligation by one party to provide for the other. Its rationale, like that of a resulting trust, is the presumed intention of the parties in particular circumstances*.

> It is also true that different legal significance can be attributed to acts between spouses than would otherwise be attributed to similar acts between strangers. *This, however, concerns simply a difference in the likely intention of the parties or the reason for their actions. The substantive rules of property law remain the same*.
>
> [emphasis added]

We agree. The presumption of advancement is not, and should not be, affected by considerations relating to the division of matrimonial property such as that embodied in s 112 of the Women's Charter. It is an inquiry as to the intentions of parties which would be, from common experience, presumably different when particular relationships, for instance, the spousal relationship, exist between the parties.

82 Indeed, the "community of property" principle (on which s 112 of the Women's Charter is based) which places particular emphasis on fairness to the homemaker spouse and the equality of spouses which, in turn, find expression in the interests of each party to a marriage in their property holdings, comes into play *only* when there exists matrimonial proceedings resulting in a terminated marriage. It is our view that even where a marriage is "terminated" by the demise of one spouse, the "separation of property" principle, which applies to spouses during the subsistence of their marriage, should continue to apply and the parties' respective property rights should continue to be governed by the usual rules of property law, including the law of resulting trusts, unmodified by considerations involving the division of matrimonial assets. This is subject, of course, to the regulation of the succession regime where applicable: for instance, s 7 of the Intestate Succession Act (Cap 146, 1985 Rev Ed) dictates that where a deceased dies intestate, his or her surviving spouse will receive at least half of his or her estate; and s 3 of the Inheritance (Family Provision) Act (Cap 138, 1985 Rev Ed) provides that where a testator had failed to make reasonable provision for the maintenance of his or her surviving spouse, the court may, upon application by or on behalf of the surviving spouse, order that reasonable provision be made out of the testator's net estate for the maintenance of the surviving spouse. Thus, to our minds, the need for a just determination of spousal property rights on one spouse's demise, given the view that marriage is an equal partnership, is sufficiently addressed by the succession regime; there is no necessity, or indeed any basis, to adjust or apply the presumption of advancement in line with s 112 of the Women's Charter.

Joint tenancies

83 We turn now to consider the presumption of resulting trust (and correspondingly, the presumption of advancement) in relation to properties held on joint tenancies. It is trite law that joint tenancies are generally abhorred by equity and unless there is an express declaration or any other intention shown to the contrary, or unless the parties have contributed to the purchase money in equal shares, legal joint tenants of a property will be presumed to hold that property as beneficial tenants in common of shares proportionate to their contribution to the acquisition of that property: see for example, *Pettitt* ([75] *supra*); *Bernard v Josephs* [1982] Ch 391; and *Springette v Defoe* [1992] 2 FLR 388. This proposition is explained in *Halsbury's Laws of Singapore* vol 9(2) (LexisNexis, 2003) at para 110.026 as follows:

> In a specialised instance, the maxim that equality is equity finds expression in the abhorrence of a joint tenancy or correspondingly, the preference for a tenancy in common as a form of common ownership of property. The right of survivorship which is an incident of a joint tenancy has the effect of divesting a deceased joint tenant of his unsevered interest and giving the survivor the entirety of the estate, producing a disproportionate effect. The preference for a tenancy in common means that in equity, the court construing the intentions of the parties leans towards

holding that they are tenants in common in proportion to their contributions to the purchase price. The parties will only be held to be joint tenants when they purchase in equal shares and no contrary intention is shown that they were to be otherwise than joint tenants.

It is, therefore, clear that the presumption of resulting trust (and, consequently, the presumption of advancement) features prominently as a means by which equity intervenes in a legal joint tenancy. In a variety of circumstances, legal *joint tenants* are presumed to hold the property in question on trust for themselves as *tenants in common* in accordance with their respective contributions to the purchase price of the said property. This may be primarily explained by the contrast between the common law presumption of joint tenancy and equity's inclination towards a tenancy in common.

84 There has traditionally been a common law presumption of joint tenancy engendered, *inter alia*, by the following reasons: (a) the enforcement of feudal services by feudal lords was likely to be simpler and more effective because the right of survivorship made it more likely that the land would vest in one tenant from whom feudal dues could be exacted; (b) the investigation of title by purchasers was easier because joint tenants held a single title whereas each tenant in common had a separate title; and (c) if a joint tenant died there remained only one title whereas if a tenant in common died, his share might be left to a number of persons thereby proliferating the number of titles to be searched before the land could be sold as a whole (see Adrian J Bradbrook, Susan V MacCallum & Anthony P Moore, *Australian Real Property Law* (LBC Information Services, 2nd Ed, 1997) at para 10.17).

85 Equity, in contrast to common law, has preferred a tenancy in common to a joint tenancy as the medium of co-ownership. Tenancy in common represents certainty and fairness in the property relations of co-owners; each tenant in common holds a fixed beneficial interest immune from the caprice of survivorship. Thus, whereas the law has leaned in favour of joint tenancy largely for reasons of convenience, equity has always inclined towards tenancy in common for reasons of fairness. Although, in some extremely general sense, it is true that "equity follows the law" and, therefore, equity's starting assumption is that joint tenants of the legal estate likewise hold the equitable estate as joint tenants, this assumption is readily displaced by any of a number of contra-indications that, regardless of the legal joint tenancy, equitable ownership was intended to take the form of a tenancy in common (see Gray & Gray ([36] *supra*) at paras 11.55–11.57). These contra-indications include cases of unequal contributions to purchase price and purchasers who are commercial partners or business tenants.

86 Legislation supersedes the common law presumption of joint tenancy in many jurisdictions and the manner of co-ownership of real property at law has generally become statutorily regulated. In England, the provisions of the Law of Property Act 1925 (c 20) (UK) ("the 1925 Act") *extend* the common law presumption to its logical conclusion by providing that co-ownership may *never* take the form of a tenancy in common, and by ensuring that all co-ownership in distinct shares is inevitably swept into equity. The mandatory stipulation that co-owners must hold land as joint tenants is contained in s 34(2) of the 1925 Act, which states:

> Where, after the commencement of this Act, land is expressed to be conveyed to any person in undivided shares and those persons are of full age, the conveyance *shall* (notwithstanding anything to the contrary in this Act) operate as if the land had been expressed to be conveyed to the grantees, or, if there are more than four grantees, to the four first named in the conveyance, as *joint tenants* upon the statutory trusts hereinafter mentioned and so as to give effect to the rights of the persons who would have been entitled to the shares had the conveyance operated to create those shares … [emphasis added]

The cumulative effect of the 1925 Act has been "to facilitate the purchaser of the legal estate, who no longer faces the risk of investigating a fragmented title", and his task is "further eased by the fact that the maximum number of persons who may be joint tenants of one and the same legal estate in land is now generally restricted to four" (see Gray & Gray at para 11.21). The rigours of this statutory mandate are mitigated by the intervention of equity, which allows for more than four equitable co-owners of land and readily presumes beneficial tenancies in common in appropriate cases.

87 The mandatory stipulation found in the English property legislation is absent locally. However, there appears to be a *statutory presumption*, much like the traditional presumption at common law, that co-owners hold land as joint tenants, *unless the contrary is indicated*. The relevant provision in the Land Titles Act (Cap 157, 2004 Rev Ed) ("LTA") is s 53(1) and states as follows:

> *In every instrument affecting registered land, co-tenants claiming under the instrument shall, unless they are described as tenants-in-common, hold the land as joint tenants*; and if they are described as tenants-in-common, the shares in the registered land to be held by them shall, subject to subsection (2), be specified in the instrument. [emphasis added]

Hence, it appears that in Singapore, in so far as registered land is in issue, co-owners are presumed to hold land as joint tenants; it is only where the co-owners are described as tenants in common that this default position or presumption is displaced. As such, just as equity inclines towards a tenancy in common when faced with the common law presumption of joint tenancy, equity may similarly intervene in the statutory presumption of joint tenancy in Singapore to deem, as beneficial tenants in common, co-owners holding local registered land as joint tenants at law.

88 This was not always the case in Singapore. Section 53(1) of the LTA was introduced by the Land Titles Act (Act 27 of 1993). In the repealed Land Titles Act (Cap 157, 1985 Rev Ed), the only provision which dealt with the manner of holding in the co-ownership of property was s 48(1), which stated:

> Instruments affecting registered land *shall* disclose the full name, the address and the occupation or conjugal status of each person claiming thereunder, and, in the case of co-tenants, the manner in which they intend to hold. [emphasis added]

The draftsman of Singapore's Torrens registration scheme, John Baalman, had commented on this provision in *The Singapore Torrens System* (The Government of the State of Singapore, 1961) at p 110. He regarded the requirement, that co-tenants state the manner in which they intend to hold the land in question, as *mandatory* and indicated that the land registrar ought to refuse registration of any instrument which failed to comply with this. He added (*ibid*):

> Any construction of a co-tenancy which rests on presumption – whether it be the common law presumption of a joint tenancy, or the equitable presumption of a tenancy in common – *or any statutory presumption which draws conclusions from the character of the parties or the nature of their estates or interests*, is confusing. Insistence on the parties expressly describing their interests will avoid that confusion. [emphasis added]

89 Pursuant to s 48(1), as originally enacted, it appears, therefore, that the equitable presumption of a tenancy in common might have been displaced and rendered unnecessary, since the parties would have been mandated to consider and decide on a manner of holding. There would have been no need for presumptions of any sort, since the parties' legal manner of holding would not be a mere result of convenience and there would be no need to introduce, and no room to accommodate, broad notions of general "fairness" as strived for by equity. Presumptions are ultimately default judicial

guidelines which are called into play *only* when parties' intentions are uncertain; where parties' intentions on the manner of holding are clearly reflected in a legal instrument, as envisaged by the original s 48(1), these intentions ought to be given effect to, both legally and beneficially.

90 However, the original s 48(1) has been amended and re-enacted as s 53(1) of the LTA. Regrettably, this change has not been clarified either during the parliamentary debates or in the reports of the Select Committee. Ironically, s 53(1) of the LTA presently contains a statutory presumption similar to that abhorred by Baalman in his commentary – it presumes that co-owners would hold land as joint tenants unless they describe themselves as tenants in common, and appears thus to be a statutory presumption which draws conclusions from the nature of the parties' estates or interests, *ie*, the co-ownership of land. It would seem that Parliament has now settled on a default position where equitable presumptions may still be required to effect justice between the parties given that they may have been presumed to be joint tenants at law without any informed or voluntary intention on their part to hold the land they co-own in such a manner. Admittedly, a quick perusal of the current land transfer form shows that transferees are required to complete the field stipulating the manner of holding of the property to be transferred. One may suggest that the Land Registry only accepts land transfer forms in which that field is duly completed. However, such administrative forms and procedures must be viewed against the backdrop of the governance of primary legislation such as the LTA, and s 53(1) of the LTA certainly seems to envisage that parties may omit to stipulate their manner of holding of land, and provides a catch-all default position to cater to such situations.

91 In various Australian states, the land registrars have, in fact, adopted the approach of insisting that all instruments presented for registration that will confer an estate or interest on two or more persons set out clearly the manner in which the persons are to hold the estate or interest (see Douglas J Whalan, *The Torrens System in Australia* (The Law Book Company Limited, 1982) at p 102). Nevertheless, Whalan rightly acknowledges that the position where registrarial vigilance breaks down must be considered. We find that this point of view is also relevant locally: Even if the Land Registry may strive, in practice, only to accept land transfer forms which expressly stipulate the transferees' choice of manner of holding of the property transferred, as in the case of Australia, the *default statutory position* where registarial vigilance breaks down must still be considered. This is so, even though it may be said that, *in most cases*, parties do voluntarily intend to hold the land in the manner of holding expressly stated on the certificate of title of the property.

92 The statutory presumption of joint tenancy also requires one to consider the corresponding application of the equitable tendency towards tenancies in common as manifested in the presumption of resulting trust arising in particular circumstances. Under s 53(1) of the LTA, there may exist situations where co-owners hold land as legal joint tenants without fully appreciating or voluntarily intending the consequences of such manner of holding; there is, therefore, room for the intervention of equity to ensure fairness between the parties. Indeed, although co-owners may be reflected as joint tenants in the land register, and although they will be treated as joint tenants in so far as third parties are concerned, this does not preclude the court from investigating the beneficial ownership of the parties *inter se* in order to determine if they are to be treated as joint tenants or tenants in common as between themselves (see *In re Foley (Deceased)* [1955] NZLR 702 at 705). Whalan persuasively contends in *The Torrens System in Australia* at p 103:

> Where it is probable that [the registered co-owners of land] had no idea that the estate or interest was held by them as joint tenants or any knowledge of the difference between such a tenancy and a tenancy in common, and there is no direct evidence of an intention on their part to acquire and hold the estate or interest as joint tenants, the court ought to find in favour of a tenancy in common if there is any evidence to justify such a finding.

93 At this point, it is pertinent for us to emphasise that it is *only* where the registered co-owners of land had *not* made a conscious and informed choice to hold as joint tenants at law that equity kicks in to presume a tenancy in common. In contrast, where co-owners had expressly specified their intention to hold land in a legal joint tenancy, there would be no cause for equity not to follow the law; thus, in such instances, legal joint tenants should also be beneficial joint tenants unless it may be shown that the expressly-stated choice should be vitiated for some reason. In this respect, we note that the Law Reform Commission of Western Australia ("LRCWA") had astutely observed in its *Report on Joint Tenancy and Tenancy in Common* (Project No 78, November 1994) at para 2.26:

> Where the nature of the co-ownership is not specified it is most likely due to an oversight or because the transferees are not clear in their minds as to the exact nature of their co-ownership. Rejection of instruments which do not specify the nature of the co-ownership will force the transferees (or, in the case of a gift, the transferors) to think about the type of co-ownership they desire.

The LRCWA had, therefore, suggested that s 60 of the Transfer of Land Act 1893 (WA) (which deems persons registered as joint proprietors of land to be joint tenants) should be repealed and replaced by a new provision which requires instruments of transfer to two or more persons submitted for registration *to specify* whether the co-owners are joint tenants or tenants in common; any instrument which does not state the nature of the co-ownership must not be registered.

94 If legislation were, in fact, amended to mandatorily require parties to specify the manner of holding of land in the instrument of transfer, this would ensure that all colowners would be aware of their manner of holding in registered land. Further, if the additional recommendation of the LRCWA – that a simple explanation of the significance of the distinction should be contained in the instrument of transfer – were implemented, colowners could be regarded as having knowingly intended to acquire and hold the estate or interest in the manner of holding specified. This is especially so, given that instruments of transfer are normally completed by a solicitor who should explain to the relevant parties the legal distinction between the two types of colownership so that they can make an informed choice of whichever type of colownership they desire. Hence, we are of the view that *if* legislation were as that suggested by the LRCWA, there would be no need, generally, for any intervention on the part of the courts or equity to presume a completely different beneficial manner of holding. Interestingly, as we have pointed out earlier (see [88] above), the progenitor of the present s 53(1) of the LTA approximated such a position.

95 However, given the present s 53(1) of the LTA, there may still be cases whereby the colowners of land would have been stated as holding land as joint tenants *as per the default position*. It is our view, therefore, that any steps towards the wholesale renunciation of the equitable presumption, which mitigates the rigours of a default legal joint tenancy, may presently be premature. Nevertheless, valuable insights may be distilled from the above analyses and recommendations of the LRCWA. In our judgment, if cogent evidence is adduced to show that registered colowners had in fact exercised their informed and voluntary intention to hold land as legal joint tenants, and if this evidence is accepted by the court, then the presumption of resulting trust which may arise to impose an equitable tenancy in common should be displaced and equity should, instead, as a matter of course, follow the law. Such evidence could take the form of sworn testimony from the solicitor attesting to the completion of the land transfer form, or even from one of the colowners concerned; each case must, ultimately, be decided on its facts.

96 Having established the role of equity in the context of legal joint tenancies in Singapore generally, we turn now to consider the specific case of joint tenancies between spouses.

The case of joint tenancies between spouses: Interplay between the presumptions of resulting trust and advancement

97 The present appeal centres on properties held by Yeo and the appellant as joint tenants at law; the respondents contend that the parties were in fact beneficial tenants in common and that the appellant should be deemed to hold the properties on trust for both herself and the Estate, upon the demise of Yeo. Given the wider implications and ramifications arising from a decision on property rights in a legal joint tenancy, especially in a joint tenancy between spouses, it is important to consider and set out the modern approach of the courts to these cases.

98 Where married couples are concerned, authorities suggest that courts are inclined to take a broader-brush approach when faced with the presumption of resulting trust; there appears to be a tendency towards inferring an intention to share *equally*, though in the Singapore context this is not the correct approach: see *eg*, *NK v NL* [2007] 3 SLR 743 at [23]–[24] and [29]. In *Rimmer v Rimmer* [1953] 1 QB 63, Romer LJ discussed the principles applicable to spouses in the presumption of resulting trust. These principles were enumerated at 76 as follows:

> [F]irst, that cases between husband and wife ought not to be governed by the same strict considerations, both at law and in equity, as are commonly applied to the ascertainment of the respective rights of strangers when each of them contributes to the purchase price of property, and, secondly, that the old-established doctrine that equity leans towards equality is peculiarly applicable to disputes between husband and wife, where the facts, as a whole, permit of its application.

Lord Upjohn in *Pettitt* ([75] *supra*) also appraised the presumption of a resulting trust in the matrimonial context, and espoused the view at 815 that:

> [W]here both spouses contribute to the acquisition of a property … in the absence of evidence [to the contrary] … they intended to be joint beneficial owners and this is so whether the purchase be in the joint names or in the name of one.

99 These observations by Lord Upjohn were subsequently considered by Mason and Brennan JJ in the High Court of Australia (see *Calverley v Green* ([37] *supra*)). They suggested that an inference of the type postulated by Lord Upjohn ought to qualify the basic presumption of resulting trust. They thoughtfully added the following qualifying observations at 259–260:

> *It may be conceded that Lord Upjohn's inference reflects the notion that both spouses may contribute to the purchase of assets during the marriage (as they often do nowadays) and that they would wish those assets to be enjoyed together during their joint lives and to be enjoyed by the survivor when they are separated by death.* Such an inference is appropriate only as between parties to a lifetime relationship … The exclusive union for life which is undertaken by both spouses to a valid marriage, though defeasible and oftentimes defeated, remains the foundation of the legal institution of marriage … though it is no necessary element of the relationship of de facto husband and wife. … It would be wrong to apply either the presumption of advancement or Lord Upjohn's inference to a relationship devoid of the legal characteristic which warrants a special rule affecting the beneficial ownership of property by the parties to a marriage. …
>
> *Where the contributors to the purchase price are not husband and wife, the taking of a conveyance in their joint names is less likely to support an inference that they intend the right of survivorship to govern their beneficial interests*.

[emphasis added]

100 Mason and Brennan JJ's further refinement of Lord Upjohn's inference in *Pettitt* was applied recently by the High Court of Australia in *The Trustees of the Property of Cummins* (*a bankrupt*) *v Cummins* (2006) 224 ALR 280 ("*Cummins*"). It was unanimously held that where a husband and wife purchased property in unequal shares and took registered title in their joint names, and where the property was treated as their family home, they would hold the property as joint tenants in equity as well as at law. It was stated at [71]–[72]:

> The present case concerns the traditional matrimonial relationship. Here, the following view expressed in the present edition of Professor Scott's work respecting beneficial ownership of the matrimonial home [*The Law of Trusts* ([40] *supra*) vol V at p 239] should be accepted:
>
> > It is often a purely accidental circumstance whether money of the husband or of the wife is actually used to pay the purchase price to the vendor, whether both are contributing by money or labor to the various expenses of the household. It is often a matter of chance whether the family expenses are incurred and discharged or services are rendered in the maintenance of the home before or after the purchase.
>
> To that may be added the statement in the same work [at pp 197–198]:
>
> > Where a husband and wife purchase a matrimonial home, each contributing to the purchase price and title is taken in the name of one of them, it may be inferred that it was intended that each of the spouses should have a one-half interest in the property, regardless of the amounts contributed by them. [Footnote omitted]
>
> That reasoning applies with added force in the present case where the title was taken in the joint names of the spouses. *There is no occasion for equity to fasten upon the registered interest held by the joint tenants a trust obligation representing differently proportionate interests as tenants in common. The subsistence of the matrimonial relationship, as Mason and Brennan JJ emphasised in* Calverley v Green*, supports the choice of joint tenancy with the prospect of survivorship*.
>
> [emphasis added]

101 The weight of the authorities seems to favour a pragmatic approach to the presumption of resulting trust in cases involving married spouses. The strength of the presumption appears to be much weaker in cases where married spouses who contribute jointly (whether in equal proportions or otherwise) to the purchase of a property (in particular, their matrimonial homes) hold that property as legal joint tenants. In such instances, there is a presumptive inference that the parties intended to hold the property as joint tenants in *equity* as well. In our judgment, this position usually accords with reality; indeed, the operation of the rule of survivorship is consistent with the practical workings of an ordinary, caring matrimonial relationship. However, instead of considering this inference at the stage of the presumption of resulting trust, we are of the view that it is more appropriately accommodated within the framework of the presumption of advancement which should, in any event, be raised and applied in cases concerning spouses.

102 In fact, Mason and Brennan JJ had also proposed that Lord Upjohn's inference might be able to qualify the presumption of advancement in favour of a wife. This was raised at 260 where they remarked:

> [I]t can be said that the antiquity of the presumption of advancement does not preclude the elevation of such an inference to the level of a presumption to be applied where the absence of the spouses' common intention leaves room for its operation. The doctrines of equity are not ossified in history …

We agree with this approach. The presumption of advancement that already arises between husband and wife may be developed and extended to additionally apply in the situation where married spouses purchase property as legal joint tenants; an intention may be inferred on the part of the contributing spouse(s) for the operation of the rule of survivorship. In a typical caring and amiable matrimonial relationship, it will be more probable than not that the parties intended the absolute beneficial ownership of the property to be conferred on the survivor. As is the case for the other applications of the presumption of advancement, a fact-sensitive approach must be taken as well. The *nature* and *state* of the relationship are similarly essential when considering the application of the presumption of advancement where spouses hold property as legal joint tenants. In addition, other factors such as the nature of the purchase of the *property* itself may affect the strength of the presumption; where the property was purchased as a matrimonial home for the parties and did indeed so serve, the stronger the presumption that both spouses intended for the rule of survivorship to operate and for the beneficial ownership of the property to devolve to the surviving spouse absolutely.

103 Some authorities now suggest that the presumption of advancement is displaced where property is purchased by spouses jointly contributing to the purchase price. In *Equity and the Law of Trusts* ([64] *supra*), the author emphatically states, with respect to contributions by both spouses to the purchase price of property, at p 179:

> In this situation the role of the presumption of advancement is now negligible. *Even if the property is conveyed into the name of the wife alone the strength of the presumption has diminished virtually to vanishing point*. [emphasis added]

This proposition appears to be based, at least partly, on Lord Upjohn's remarks in *Pettitt* ([75] *supra*) at 815 where he stated:

> But where *both spouses contribute to the acquisition of a property, then my own view (of course in the absence of evidence) is that they intended to be joint beneficial owners and this is so whether the purchase be in the joint names or in the name of one*. This is the result of an application of the presumption of resulting trust. Even if the property be put in the sole name of the wife, I would not myself treat that as a circumstance of evidence enabling the wife to claim an advancement to her, for it is against all probabilities of the case unless the husband's contribution is very small. [emphasis added]

104 Three observations are in order. *First*, it should be noted that the first half of Lord Upjohn's passage cited above was precisely the passage relied upon by the High Court of Australia as "Lord Upjohn's inference" which *supports* the notion that where both spouses contributed to the purchase of property, "they would wish those assets to be enjoyed together during their joint lives and to be enjoyed by the survivor when they are separated by death" (see [99] above). Despite rejecting the application of the presumption in these cases, Lord Upjohn was of the view that the two contributing spouses would likely have intended to be "joint beneficial owners"; thus leading the Australian judges to correctly interpret his comments as an inference that in such situations, the parties intended their beneficial interests to be governed by the rule of survivorship.

105 This leads us to the *second* point: The displacement of the presumption of advancement by Lord Upjohn in *Pettitt* is based on the traditional understanding and application of the presumption as

one which operates to give the entire beneficial interest of the property to the wife immediately. On our extension of the presumption, the intention that is presumed is not an intention to give absolutely with *immediate* effect, but, rather, for the rule of survivorship to operate to pass the absolute interest of the property to the survivor of the two spouses. This interpretation is supported by the fact that a resulting trust need not necessarily relate to the entire interest in the property. The presumption of *resulting trust* may be rebutted as to a life interest, but may still operate in respect of the interest in remainder: see, for example, *Napier v Public Trustee (Western Australia*) (1980) 32 ALR 153. Conversely, the intention may be that the contributing party should receive the income from the purchased property during his life – to this extent the resulting trust prevails, but the property should belong to the benefiting party after his death, *ie*, the resulting trust is rebutted as to the remainder: see, for example, *Young v Sealey* [1949] Ch 278. We are of the view that the presumption of advancement could similarly operate with respect to only *part* of the interest in the property in question; it may be rebutted as to the life interest of a property but prevail as to the remainder – one such case would be where a property is held on joint tenancy and it is inferred that there is an intention for the rule of survivorship to operate.

106 *Third*, and also a related point, *Pettitt* was a case concerned with a matrimonial breakdown between living spouses where the *joint* intentions of the parties were relevant. Although it was said in *Teo Siew Har* ([59] *supra*) that the application of the presumption of advancement should depend on the facts and circumstances of the case rather than on the nature of the proceedings, matrimonial or otherwise (at [31]), the views articulated in *Pettitt* appeared to pertain quite specifically to circumstances where it is the *life* beneficial interest of the property that is at stake. Lord Diplock in *Gissing v Gissing* [1971] AC 886 ("*Gissing*") at 907 regarded *Pettitt* as having this narrower embrace:

> [B]ut as I understand the speeches in *Pettitt* v. *Pettitt* four of the members of your Lordships' House who were parties to that decision took the view that even if the "presumption of advancement" as between husband and wife still survived today, it could seldom have any decisive part to play in disputes between *living spouses* in which some evidence would be available in addition to the mere fact that the husband had provided part of the purchase price of property conveyed into the name of the wife. [emphasis added]

It is clear to us that the rejection of the presumption of advancement in the circumstances envisaged in *Pettitt* was with respect to cases where both spouses are still living. In our judgment, not only would there be more evidence as to the intention of the parties where the spouses are both living (as contemplated by Lord Diplock in *Gissing*), the proprietary *interest* that is in dispute is also different from that in a case where only one spouse is surviving. As counsel for the appellant rightly highlighted during the hearing before us, most of the leading cases on resulting trusts, imposed between spouses holding property as joint tenants (such as *Pettitt*), are cases dealing with matrimonial matters where both living spouses wished to go behind the legal joint tenancy either to sever the shares of the property or to obtain the entire interest of the property independent of the other party. Indeed, we are unaware of any leading case which imposes a resulting trust on the surviving spouse who *prima facie* inherits absolutely by way of survivorship the property previously held as joint tenants with his or her late spouse. Therefore, to our minds, *Pettitt* and other like authorities do not, in any way, constrain our extension of the presumption of advancement to all cases of joint tenancy between spouses, leading in turn to the absolute devolution of the jointly-held property to the surviving tenant, unless this is evidentially rebutted.

107 To summarise, both the presumption of resulting trust and the presumption of advancement may feature whenever there is a legal joint tenancy in place and there are unequal contributions to the purchase price of the jointly-owned property. The presumption of resulting trust will operate in such a situation since equity abhors joint tenancy as a form of common ownership. The presumption

of advancement, on the other hand, comes into play to displace the presumption of resulting trust where there is a pre-existing relationship between the parties which falls into one of the established categories of relationships. In particular, where the joint tenants are spouses, the presumption of advancement applies to presume an intention on the part of the parties for the rule of survivorship to operate; the scope of the presumption should be expanded to include (if it does not already so include) the inference of an intention for the absolute beneficial ownership of the property to be conferred on the surviving joint tenant. A holistic examination of all the facts will, nevertheless, be necessary in assessing the application of the presumption of advancement, as well as in determining the strength of the presumption in any given case. As always, a pragmatic principled approach must be adopted.

108 Finally, it bears reiteration that the above approach and principles apply equally to other pre-existing relationships which attract the operation of the presumption of advancement (such as parent-child relationships), as well as to other property (besides real property) which may be held in joint tenancy. In particular, in the case of bank accounts held *and operated* jointly by persons in the established categories of relationships, there will be a strong inference that the rule of survivorship is intended to apply. This may be reinforced, if there exist bank documents which prescribe and declare the operation of survivorship in relation to the joint account; such documents could constitute cogent evidence of the parties' intention that the absolute benefit of the account should devolve to the surviving joint account-holder. Nevertheless, this needs to be assessed in relation to the factual matrix; see *Low Gim Siah* ([76] *supra*) at [51].

109 With the general law and approach as set out above in mind, we turn now to deal with the present appeal.

The present appeal

Whether the presumption of resulting trust arises on the facts

110 Both the Properties were held by Yeo and the appellant in their joint names as legal joint tenants. On the present facts, equity will follow the law and the parties will be deemed to hold the Properties as joint tenants in equity as well, *unless* the parties' contributions to the purchase price of the Properties were *unequal*. Only then will Yeo and the appellant be presumed to hold the Properties as beneficial tenants in common of shares proportionate to their contributions to the acquisition of the Properties (see [83] above). Since the respondents' claim requires the court to go behind the absolute legal title of the Properties which devolved to the appellant by way of survivorship, it is necessary to establish that the presumption of resulting trust in fact arises. Hence, we turn now to examine the respective contributions of Yeo and the appellant to the purchase of the Properties.

111 It is the appellant's case that the respondents' position – that the funding in respect of the Properties was provided entirely by Yeo – is factually incorrect. She took issue with the trial judge's computation of the respective contributions of the parties towards the Properties and contended that the Properties were jointly purchased and the liability was joint. The respondents, on the other hand, argued that the larger proportion of the purchase price of each of the Properties (if not the *entire* purchase price) was provided for by Yeo; hence, there should be a resulting trust imposed on the Properties such that the appellant, as legal absolute owner of the Properties, would hold the Properties on trust for herself and Yeo in proportions corresponding to their respective contributions. As equity followed the law in a joint tenancy where the parties contributed equally to the purchase price of the property and where there were no indications of contrary intention, it was, therefore, crucial to consider the respective contributions of Yeo and the appellant in order to determine if the present case was encompassed within the scope of operation of the presumption of resulting trust.

Time at which respective contributions of the parties should be determined

112 A resulting trust crystallises at the time the property is acquired: see *Curley v Parkes* [2004] EWCA Civ 1515. The extent of the beneficial interests of the respective parties where a resulting trust arises must be determined at the time when the property was purchased and the trust created (*per* Gibbs CJ, *Calverley v Green* ([37] *supra*) at 252); *ex hypothesi*, the respective contributions of the parties to the purchase price of the property, which when unequal gives rise to a presumption of resulting trust, must similarly be determined at the time of acquisition of the property in question. This may not, however, be entirely uncontroversial – there are authorities, which seem to suggest that *all* contributions by the parties to the acquisition of the property, up to the time of adjudication, may be considered by the courts in determining the existence and the scope of a resulting trust. For example, it was stated by Lord Denning MR in *Bernard v Josephs* ([83] *supra*) at 398:

> As between husband and wife, when the house is in joint names and there is no declaration of trust, the shares are usually to be ascertained by reference to their respective contributions – just as when it is in the name of one or other only. *The share of each depends on all the circumstances of the case, taking into account their contributions at the time of acquisition of the house*: *and, in addition, their contributions in cash, or in kind, or in services – up to the time of separation*. [emphasis added]

113 However, *Bernard v Josephs* appears not to have drawn a clear distinction between resulting and constructive trusts. Indeed, there was no mention of "resulting trusts" in Lord Denning's judgment. The thrust of his decision was to apportion a property between an engaged couple whose engagement had broken down. The case was analogised to one of a matrimonial breakdown and the judgment centred on doing justice to the parties by taking into consideration *all* their contributions to the acquisition of the property. The relevant contributions taken into consideration by Lord Denning included contributions in *kind* and in *services*. This is more consistent with the concept of a constructive trust. A court will impose a constructive trust on a party where it would be inequitable to allow that party to deny to another party a beneficial interest in the land acquired; this necessitates the consideration of *all* contributions by the parties, money or otherwise. A resulting trust, on the other hand, is in theory strictly based on the parties' respective contributions to the *purchase price* of the property, and each party's entitlement to the beneficial interest of the property is the *exact mathematical equivalent* of his or her contribution. The distinction between the two types of implied trusts is apparent from *Midland Bank plc v Cooke* [1995] 4 All ER 562 where Mrs Cooke was entitled to a 6.74% share of the beneficial interest of a house by way of a presumed resulting trust but was awarded a 50% share by the court by way of a constructive trust, taking into account all her indirect contributions to the house. Lord Denning in *Bernard v Josephs* appeared to have amalgamated the two types of trusts and to have focused simply on a fair apportionment of the property between the parties upon the breakdown of their relationship. In our view, his consideration of contributions up to the time of separation was more appropriate for the imposition of a constructive trust; for the purposes of presuming a resulting trust, the parties' contributions that are to be considered should instead be confined to those made at the time of the acquisition of the property.

Nature of contributions which give rise to the presumption of resulting trust

114 Pearce & Stevens ([31] *supra*) state unequivocally at p 243 that:

> Whilst "indirect" contributions may constitute sufficient detriment to call for the imposition of a constructive trust if there was an express common intention to share the ownership of the land, only "direct" contributions to the purchase price will give rise to a presumption of resulting trust

in favour of the contributor.

The question then is: What amounts to a "direct" contribution to the purchase price?

115 It has been held that the payment of mortgage instalments should *not* be regarded as a direct contribution to the purchase price of a property: see *Calverley v Green* ([37] *supra*). Mason and Brennan JJ explained at 257–258:

> The payment of instalments under the mortgage was not a payment of the purchase price but a payment towards securing the release of the charge which the parties created over the property purchased.

A similar position was taken by the English Court of Appeal in *Curley v Parkes*. Peter Gibson LJ stated at [14] of his judgment:

> Because of the liability assumed by the mortgagor in a case where monies are borrowed by the mortgagor to be used on the purchase, the mortgagor is treated as having provided the proportion of the purchase price attributable to the monies so borrowed. Subsequent payments of the mortgage instalments are not part of the purchase price already paid to the vendor, but are sums paid for discharging the mortgagor's obligations under the mortgage ...

116 A distinction may, however, be drawn between contributions made to the repayment of a mortgage on the basis of an agreement made when the mortgage is taken out, and subsequent payments of mortgage instalments. In the former case, the payment of mortgage instalments pursuant to the agreement between the parties will be "direct" contributions to the purchase price and will give rise to a resulting trust. This was the case in *Cowcher v Cowcher* ([27] *supra*) where Bagnall J held that a resulting trust was presumed in favour of the wife who had made some of the repayments on a mortgage taken out by her husband, pursuant to a prior agreement between them. The concept of a prior agreement prevailing over any *prima facie* "direct" contribution as a relevant consideration for the presumption of resulting trust also manifests itself in "bridging finance" cases. Wheeler J discussed these cases in *Bertei v Feher* [2000] WASCA 165 at [44]:

> For example, where finance is raised, which is plainly intended to be "bridging finance" it seems to me that it may be undesirably artificial to say that it is the money raised under the mortgage for which, temporarily, both parties may be liable, rather than what is intended to be the ultimate source of funding, (for example, money from the sale of one party's home) which constitutes the payment of the purchase price. Similarly, for example, if a relative of one of the parties provides the whole or some of the purchase price as a short term measure until that party is able to obtain funds from, for example, access to a fixed term investment, it would not, I think, be correct to regard that relative as the person making the contribution to the purchase price.

117 It is difficult to fault the logic of this. Therefore, the court will, and should, give effect to any agreement between the parties at the time of acquiring the property in question as to the ultimate source of funds for the purchase of that property. However, in the absence of any such agreement, the payment of mortgage instalments or other financial contributions *subsequent* to the initial acquisition of the property will *not* give rise to any beneficial interest by way of a resulting trust.

118 Having established the principles to be applied in the determination of the respective *relevant* contributions of Yeo and the appellant in the acquisition of the Properties, the pertinent issue is whether a presumption of resulting trust should arise on the present facts.

The Minton Rise property

119 The purchase price of the Minton Rise property ($495,000) was paid fully by a housing loan of $396,000 jointly obtained by Yeo and the appellant, as well as $99,000 from an overdraft account in Yeo's sole name. These are the relevant sums for consideration in determining the respective direct contributions of the parties for our purposes. Undue emphasis should not be placed on the repayment of the mortgage instalments. Regardless of who was responsible for subsequent repayments of the housing loan, Yeo and the appellant should each be taken as having contributed half of the amount of the housing loan towards the purchase price of the Minton Rise property since *both* of them have assumed liability for the loan *jointly*: see *Curley v Parkes*. To this extent, we must respectfully depart from the learned trial judge's analysis in which she took into account the payment of the monthly mortgage instalments (see [14] above).

120 With respect to the $99,000 paid from Yeo's overdraft account, the appellant sought to argue that this sum was a joint contribution by both Yeo and the appellant as the overdraft facility from which the sum was paid was subsequently discharged by another loan jointly obtained from Standard Chartered Bank by both Yeo and the appellant. We are of the view, however, that the initial $99,000 drawn from Yeo's overdraft account should *prima facie* be the direct contribution relevant in presuming a resulting trust; the subsequent discharge of the facility by the joint loan is analogous to the repayment of mortgage instalments – it is not part of the purchase price already paid to the vendor, but merely goes towards discharging Yeo's obligations under his overdraft facility. The subsequent discharge of the overdraft account by the joint loan will only be relevant as a direct contribution to purchase price if there can be shown to be a *prior agreement* between the parties *at the time of purchase* of the Minton Rise property that the use of moneys from Yeo's overdraft account for the purchase price was merely a form of temporary bridging finance and that it was intended that Yeo and the appellant jointly take out a loan to discharge that overdraft facility. No such prior agreement is apparent from the evidence adduced by the parties. Admittedly, the joint loan that had purportedly discharged the relevant overdraft facility had been taken out by the parties a mere two months after the purchase of the Minton Rise property. However, the short lapse of time *per se* is insufficient to show the necessary prior agreement between the parties that the ultimate source of funding of the $99,000 was intended *from the outset, at the time of the acquisition of the property*, to be from both parties jointly, instead of from Yeo alone.

121 Accordingly, as the appellant should be deemed to have contributed half the housing loan, and Yeo should be deemed to have contributed the other half of the housing loan *as well as* the amount paid out from his overdraft account, the respective contributions of the parties are *unequal*. The presumption of resulting trust thus arises on the facts with respect to the Minton Rise property.

The Jalan Tari Payong property

122 The purchase of the Jalan Tari Payong property ($1,100,000) was paid by a housing loan of $770,000 jointly obtained by Yeo and the appellant; a short-term loan of $80,000 obtained by way of a joint letter of undertaking by Yeo and the appellant to repay the sum from the sale proceeds of 33 Fowlie Road; as well as $250,000 from an overdraft facility belonging to both Yeo and the appellant and secured on the original 33 Fowlie Road, and later, on 35 Fowlie Road. These component sums are the relevant "direct contributions" to the purchase price for the purpose of presuming a resulting trust; they will be considered *ad seriatim*.

123 As in the case of the Minton Rise property, Yeo and the appellant should each be deemed to have contributed half of the housing loan which they had obtained in joint names towards the purchase price of the Jalan Tari Payong property; and in the absence of prior agreement to the

contrary, subsequent mortgage repayments should not be a relevant consideration for the purposes of a resulting trust. No evidence of any such prior agreement was adduced.

124 With respect to the short-term loan of $80,000, since Yeo and the appellant *both* assumed liability under the letter of undertaking to repay that sum, *prima facie*, they should both be considered to have *jointly* contributed that sum towards the purchase price of the Jalan Tari Payong property. However, from the letter of undertaking, it is clear that the parties intended the repayment of the $80,000 to be from the sale proceeds of 33 Fowlie Road. As such, the loan of $80,000 advanced to both Yeo and the appellant may be regarded as a form of "bridging finance" as envisaged by Wheeler J in *Bertei v Feher* ([116] *supra*), with the sale proceeds of 33 Fowlie Road (which belonged solely to Yeo) constituting the intended ultimate source of funding for the $80,000. The letter of undertaking reflects the common intention of Yeo and the appellant, and this agreement between them should prevail for the purposes of determining the relevant direct contributions to the purchase price. Yeo should thus be regarded as the sole contributor of the $80,000 obtained from the short-term loan.

125 The remaining $250,000 was drawn from an overdraft facility belonging to both Yeo and the appellant, and both parties should each be considered to have contributed half that sum towards the purchase price of the Jalan Tari Payong property since both have assumed equal liability for the loan. Admittedly, the overdraft facility from which the $250,000 was drawn was secured on the original 33 Fowlie Road and, later, on 35 Fowlie Road, both of which undisputedly belonged solely to Yeo. However, contrary to the conclusion arrived at by the learned trial judge (see [15] above), we are of the view that the liability of a borrower under an overdraft facility is, in no way, diminished by the existence and ownership of the security provided. It is trite that failure to make repayment in accordance with the terms of a loan agreement will entitle the lender to bring an action against the borrower for the amount due. This action will be in pursuit of a claim *in personam* and may be brought irrespective of the existence of any security: see *Burgess on Law of Loans and Borrowing* (Struan Scott ed) (Sweet & Maxwell, Looseleaf Ed, August 2005 release) at para 3.15, p 3017. The options of disregarding the security and suing the borrower on the loan, or of realising the security and suing for the balance if it proves insufficient, are open to the lender. Therefore, since it is the liability also assumed by the borrower that constitutes the reason for attributing the loan amount to the borrower when determining contributions to the purchase price of the property, and since that liability is not diminished by the existence of the additional collateral security, the ownership of that security should usually be irrelevant in considering the question of contribution to the purchase price of the property for the purposes of the presumption of resulting trust.

126 Finally, it should be pointed out that contributions to the cost of repairs or renovation of a property *may* be relevant when computing a party's contribution to the purchase price of property. In Pearce & Stevens ([31] *supra*), it was stated at p 246:

> Where the property is repaired or renovated, and its value is thereby increased, a person who contributes towards the cost of such repairs or renovations will be entitled to an interest in the land by way of a resulting trust proportionate to the extent to which the increase was attributable to their contribution. Improvements made much later than the date of purchase may give rise to a constructive trust.

Hence, where a property is redeveloped *closely after purchase* and where its value is increased by the redevelopment, contributions to the costs of redevelopment can be relevant in determining the respective proportion of contributions to the purchase price of the property for the purposes of a presumption of resulting trust. In the present case, however, the evidence supporting the appellant's assertion at trial – that she had contributed her own money to the redevelopment of the Jalan Tari

Payong property – was contradictory and rather unconvincing. It was undisputed that the appellant had obtained a revised construction loan in her *sole* name to complete the redevelopment of the Jalan Tari Payong property after Yeo's demise, but, save for the amounts that were borrowed, no other evidence was adduced to elucidate the actual proportions of the parties' contributions. As such, we are of the view that, in this case, the relevant contributions to consider for the purposes of the presumption of resulting trust are the contributions towards the purchase price of the property; the evidence adduced on the parties' contributions towards the redevelopment costs of the Jalan Tari Payong property is, without more, insufficient and inconclusive. Having said that, if it were absolutely necessary for a just resolution of the matter, we may have directed a fact specific inquiry into this issue as this was not properly explored during the trial. Such an inquiry might well lead to the appropriate legal framework giving recognition or credit to the appellant's revision of the construction loan in her sole name to complete the redevelopment of the property.

127 Therefore, the appellant would be deemed to have contributed half of the housing loan and half of the $250,000 obtained from the joint overdraft facility with Yeo; and Yeo would be deemed to have contributed the other half of the housing loan and the $250,000 obtained by overdraft *as well as* the $80,000 from the short-term loan which was subsequently repaid from the sale proceeds of 33 Fowlie Road. As the contributions of Yeo and the appellant are unequal, the presumption of resulting trust also arises with respect to the Jalan Tari Payong property.

Application of the presumption of advancement

128 As the relationship between the parties concerned is a spousal one, the presumption of advancement would apply to rebut or displace the presumption of resulting trust. The respondents had attempted to argue that the presumption of advancement should not apply with respect to the Minton Rise property as it was purchased by Yeo and the appellant jointly eight months *before* they were married. However, the case of a fiancé-fiancée relationship is encompassed within the extended application of the presumption of advancement contemplated by the courts in both *Moate* ([71] *supra*) and *Wirth* ([71] *supra*) where the transferor or contributor husband is *engaged* to be married to the beneficiary wife and they do not subsequently break their engagement to marry each other: see discussion at [70]–[71] above. Indeed, it is also not irrelevant that the Minton Rise property was in fact the matrimonial home. We find, therefore, that the presumption of advancement should operate in relation to *both* the Minton Rise property and the Jalan Tari Payong property. The issue is: How strong is the presumption of advancement on the present facts? Does it rebut the initial presumption of a resulting trust?

Relevance of the second will

129 Yeo had named the appellant the sole beneficiary of *all* his properties upon his death in his second will. This will was executed in 1996, before the purchase of the Properties. Unsurprisingly, the appellant and the respondents take different positions with regard to the relevance of the second will in determining the parties' respective beneficial interests in the Properties. The appellant had contended that the will was evidence of Yeo's intention to benefit the appellant upon his death and, thus, such evidence rebutted the presumption of resulting trust and reinforced the presumption of advancement at least in so far as the remainder interest in the Properties was concerned. In contrast, the respondents' case was that the will was made at a time when the purchase of the Properties was not even within Yeo's contemplation, and, in the presumptions of resulting trust and advancement, it was the *specific* intention of conferring the benefit of *particular* properties on the recipient that was relevant rather than a *general* intention reflected in a will made several years before the acquisition of the Properties.

130 In considering the relevance of the second will, it is important to consider the rationale behind its deemed statutory revocation. After all, if the second will had not been revoked by the subsequent marriage of Yeo to the appellant (see [6] above), the appellant would, without more, have been the absolute owner of *all* of Yeo's properties, including the Properties.

131 The second will was revoked pursuant to s 13(1) of the Wills Act (Cap 352, 1996 Rev Ed) ("Wills Act") which states as follows:

> Every will made by a man or woman shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not in default of such appointment pass to his or her heir, executor or administrator or the person entitled under the Intestate Succession Act.

As such, on a strict application of the above provision, the appellant's own marriage to Yeo constituted the very trigger, by operation of law, for the revocation of the second will, in which she was named the sole beneficiary. Ironically, this result appears to defeat the very objective underpinning s 13(1) of the Wills Act.

132 There appears to be a dearth of local cases pronouncing on the rationale of s 13(1) of the Wills Act. However, an examination of the authorities on the English equivalent provision – s 18 of the English Wills Act 1837 (c 26) ("the English Wills Act") – confirms that the purpose of such legislation was to protect the spouse of the testator in the marriage that occurs after the execution of the will. The provision was originally devised to prevent injustice to the wife and offspring, of any subsequent marriage, who would otherwise inherit the testator's estate by way of intestate succession. Indeed, in I J Hardingham, M A Neave & H A J Ford, *The Law of Wills* (The Law Book Company Limited, 1977), the authors note the rationale of s 18 of the English Wills Act to be axiomatic (at pp 103–104):

> It has been observed that the purpose or rationale of the law as to revocation of wills by marriage is to let in claims by wives and children, it being reasonable to suppose that their claims will be properly protected and adjusted by the law as to intestacy.

They add at p 104, citing F B Adams J in *Burton v McGregor* [1953] NZLR 487 at 490:

> To maintain a will made before marriage may result in injustice to children or even to the wife herself, and there are, it is said, good reasons why it should not be done unless a contrary intention is clearly expressed on the face of the will.

133 In the present case, the appellant had anomalously lost her rights as the sole beneficiary of Yeo's second will by virtue of the very legislation that was enacted to protect her and any children she might have had with Yeo during their marriage. Instead, she is now reduced to claiming an interest in the Estate under the intestate succession regime, together with Yeo's children of a previous marriage from whom he was estranged in his lifetime (see [5] above). Further, as an indirect result, the absolute rights in properties that had *prima facie* devolved to the appellant by way of survivorship have also become prone to challenge from the respondents; the respondents would not have had the *locus standi* to challenge those rights but for the fact that Yeo's second will had been, by a strange quirk of timing, statutorily invalidated. These adverse consequences to the appellant are plainly contrary to the manifest purport and intent of s 13(1) of the Wills Act.

134 As such, we are of the view that the existence of Yeo's second will should be given an appropriate amount of weight in determining his intention in relation to the interests in the Properties upon his death. The revocation of a will by a subsequent marriage takes place by operation of law,

and it takes effect without the testator ever having evidenced any actual intention to revoke it: see for example, *Re Lim Kim Chye*, deceased [1936] MLJ 60. Therefore, Yeo's unrevoked intention, *as reflected by his execution of the second will*, should be viewed as being relevant in our consideration since the revocation of the will by virtue of s 13(1) of the Wills Act does not, in any way, indicate any *de facto* change of intention on Yeo's part. The fact that Yeo had intended for the appellant to benefit absolutely from *all* his assets after his demise buttresses the appellant's contention that he had intended for her to be the absolute owner of the Properties by way of survivorship. To our minds, the existence of the second will, though legally invalid and unenforceable, adds considerable strength to the presumption of advancement in respect of the surviving interest in both jointly-held properties.

Legal advice on joint tenancy

135 The appellant had emphasised that the Properties were held in joint tenancy by Yeo and herself *after advice by their lawyers on the legal effect of a joint tenancy*; it was clear that Yeo had in fact *intended* for the operation of the rule of survivorship in respect of these properties. We do note, however, the respondents' point that this assertion of legal advice was unsupported by independent evidence. Nevertheless, in *Calverley v Green* ([37] *supra*), the High Court of Australia suggested that the fact that the parties had agreed to hold a property on joint tenancy may *in itself* be of some relevance in considering the intention of the parties with respect to their beneficial interests in that property. It was stated at 256:

> In conjunction with other facts, the very fact that the plaintiff had become a joint tenant at the defendant's direction or, at least, with his consent may be a fact of some importance in deciding whether the defendant intended her to have a corresponding beneficial interest.

136 Further, in *Cummins* ([100] *supra*), the High Court of Australia also highlighted that it was unrealistic to suggest that the solicitor for the purchasers of the property in question did not at any point advise his clients on the significance of taking title as joint tenants rather than as tenants in common: see [73] of the decision. Although it appeared that the court's remark in *Cummins* was partly prompted by the fact that the conveyance in that case was not uneventful, with the contract for the sale and purchase being settled only after the issue of a notice to complete by the solicitors for the vendor, we are of the view that, in the modern conveyancing context, it is nonetheless more likely than not that parties represented legally in property transactions would be advised on the consequences of those transactions, including the consequences of joint tenancy where the property is to be co-owned in that manner. Any omission to inform potential joint tenants of their legal positions may even result in professional liability on the part of the lawyer. We are prepared to assume, on this aspect of practice, that solicitors generally carry out their responsibilities diligently.

137 The fact that Yeo and the appellant were legally represented in the conveyancing of the Properties is not disputed; it is the appellant's assertion, that legal advice on the effect of joint tenancy was rendered, that the respondents take issue with. As such, on the present facts, we are of the view that legal representation results in a *prima facie* inference of *informed* consent on the part of the parties to hold the Properties as joint tenants at law. In line with the discussion at [94] and [95] above, it appears that the parties in the present case had, in fact, voluntarily intended to hold the Properties in such a manner and there is a strong case to be made for equity following the law in this instance; the presumption of advancement with respect to the surviving interest in both properties is, therefore, relatively strong on the present facts. In our judgment, the juxtaposition of the factual circumstances in the present case makes the inference, that Yeo had intended for the appellant to benefit from the rule of survivorship which is an intrinsic facet of joint tenancy, more probable than not.

Financial independence of the appellant

138 The trial judge had noted that Yeo did not work and that it was the appellant, instead, who had worked and earned a living. The respondents, on their part, had asserted that the appellant was financially independent and did not expect Yeo to support her; she was "hardly the housewife for whom the presumption of advancement would operate". Indeed, it must be recognised that the presumption of advancement is stronger and more readily inferable in cases where the beneficiary is financially dependent on the transferor or contributor. This was the position taken by the Court of Appeal in *Low Gim Siah* ([76] *supra*); Chan Sek Keong CJ, in delivering the judgment of the court, had stated at [44]:

> There is no doubt that many married women in Singapore are financially independent of their husbands. But there are also many of them who are not or who choose to be housewives in order to look after their husbands, their children and their homes. Infant children will always be financially dependent on their fathers and mothers. In our view, in the case of such relationships, there is no reason to treat the presumption of advancement as having lost its robustness or diminished in its vigour, and there is no reason why it should not be applied to resolve questions of title in the absence of any evidence indicating otherwise.

139 It must, however, be emphasised and reiterated that financial dependence is but *one* of the many factors relevant in determining the strength of the presumption of advancement in any given case (see the discussion at [77]–[78] above). This is a factor going towards the *nature* of the relationship between the parties. Other factors, including those relevant to the *state* of the parties' relationship, are equally, if not more, important in the court's application of the presumption of advancement. Counsel for the respondents, Mr Michael Khoo SC ("Mr Khoo"), had in fact candidly conceded at the hearing before us that it was not *necessarily* the case that the presumption of advancement would not operate in favour of working wives; he rightly acknowledged that each case must be taken on its own facts. Thus, while it is relevant that the appellant was financially independent of Yeo and the nature of the relationship between the parties was not one of financial dependence, this is not a *determinative* factor in applying the presumption of advancement. The entirety of the factual matrix must be taken into account in considering the strength of the presumption.

State of the relationship between the parties

140 Finally, we must turn to look at the *state* of the relationship between Yeo and the appellant. Generally, and logically, the more loving the relationship between spouses (or indeed, between a parent and a child), the more inferable is the intention on the part of the transferor or contributor to confer a benefit on the recipient, and thus the stronger the presumption of advancement.

141 From the evidence in the present case, it is clear that Yeo was well disposed towards the appellant, right up to his untimely demise; their relationship was a loving one. The parties' architect, Mr Selvanayagam S Nadarajah, gave evidence at trial that Yeo and the appellant were a devoted couple. This testimony, it bears emphasis, was not challenged in the court below. Mr Khoo had forthrightly acknowledged during the hearing that neither of the respondents was in any position to dispute the close relationship of Yeo and the appellant since there was no evidence to the contrary; he could only observe that, as with all loving relationships, there might be stormy periods. In our opinion, the *state* of the relationship is not affected by the various nuances, highs and lows that are part and parcel of *any* human relationship. It is the consistent and underlying relation between the parties that is crucial. Thus, it is the fact that Yeo and the appellant had an undeniably close and caring relationship, at the time of the acquisition of the Properties, which is relevant apropos our

determination of the strength of the presumption of advancement.

Rebuttal of the presumption of advancement

142 On an examination of all the circumstances of the present case, it appears to us that the cumulative facts are such as to give rise to a strong presumption of advancement. Has sufficiently weighty evidence of a contrary intention been adduced such that the presumption may be rebutted and a resulting trust should be imposed? The respondents' rebuttal of the presumption of advancement should hence be considered.

Analysis of the evidence adduced by the respondents

143 The respondents have adduced evidence to support three assertions in order to rebut the presumption of advancement: first, that the joint acquisition of the Properties was pursuant to a convenient arrangement whereby Yeo provided the Fowlie Road property as security for the credit facilities and, together with the younger appellant, obtained a longer repayment period; second, that the Jalan Tari Payong property was jointly acquired as an investment project to be redeveloped and sold and was never intended as a gift to the appellant; and third, that until his demise, Yeo had retained control of the Properties, only allowing the appellant to take a more active role to build up her experience.

144 With respect to the first assertion made by the respondents – that the joint acquisition of the Properties was merely pursuant to a convenient arrangement – the objective evidence does not suggest that convenience was the *only* reason for the parties' acquisition of the Properties as joint tenants. It may be the case that Yeo was older and a longer term of loan would have been granted by the banks if the Properties were purchased in joint names; it might even have been *one of the considerations* that the parties had when acquiring the Properties jointly. However, the respondents have not persuasively shown that the parties did not intend to hold the Properties beneficially as joint tenants *as well*. The evidence may reflect the practical financial advantages in the parties holding the Properties as joint tenants, but it does not serve to *rebut* any inferred or presumed intention on the part of Yeo to confer a benefit on the appellant – that of the surviving interest in the Properties. Therefore, in our view, although the presumption of advancement may be rebutted by establishing that the relevant transfer or contribution was made for the purpose of convenience (for example, in cases of jointly-held bank accounts: see *Marshal v Crutwell* (1875) LR 20 Eq 328 and *Low Gim Siah* ([76] *supra*) at [52]–[53]), this is plainly not the case on the facts of the instant case.

145 The second and third points raised by the respondents appear to be based on a narrow understanding of the presumption of advancement as encompassing merely an outright gift to the person benefiting at the time of the transfer or conveyance. As mentioned above at [105], the presumption of advancement may operate in respect of *part* of the interest in property as well as, for instance, the remainder or surviving interest. The transferor or contributor may have intended to give only a right of survivorship and no "present beneficial interest at all" (see *Clelland v Clelland* [1945] 3 DLR 664 at 666). Indeed, in *Commissioner of Stamp Duties v Byrnes* [1911] AC 386, the Privy Council took the view that the mere fact that any rents and profits generated from the property concerned were returned to the purchaser or transferor would *not* conclusively rebut the presumption of advancement. Accordingly, in the present case, even if the Jalan Tari Payong property was to be an investment and the sale proceeds thereof were either to be used by both Yeo and the appellant together or to be divided between them, and even if Yeo had retained control of the Properties, this did not negate any inference that Yeo had intended for the appellant to be the absolute owner of the Properties *upon his demise*.

146 In our judgment, the evidence adduced by the respondents is clearly insufficient to rebut the presumption of advancement in the present case. The circumstances of the case weigh heavily in favour of inferring an intention on the part of Yeo that the appellant should benefit from the operation of the rule of survivorship in relation to both the Minton Rise property and the Jalan Tari Payong property, and the scant evidence adduced by the respondents falls short of adequately establishing a contrary intention. Therefore, the presumption of advancement fastens and holds in the present case and there should not be any resulting trust imposed on the Properties; the appellant's absolute ownership of both properties should be upheld.

Conclusion

147 The presumptions of resulting trust and advancement must be applied in accordance with the modern context; a fact-sensitive approach is necessary and courts should be both pragmatic and principled in dealing with issues where these presumptions come into play. The presumptions are judicial devices for allocating the burden of proof when property disputes arise. They continue to be relevant and can still be sensibly applied. In circumstances where there is scant evidence of the objective of a transaction, they can shield vulnerable individuals. Where a legal joint tenancy is concerned, the initial inquiry of the court should be whether a presumption of resulting trust arises in the first place. It is only where the *prima facie* circumstances of unequal contributions to the purchase price of the property exist, and there is a lack of any apparent contrary intention, that the presumption of resulting trust may operate; otherwise the legal joint tenancy will reflect the beneficial interests of the parties. Indeed, we should reiterate that where objective evidence of the considered and voluntary intention of registered legal joint tenants to hold land as such is adduced and accepted by the court, there is no room to look beneath the express intentions of the parties as reflected in the legal title; there is, consequently, no foundation for the application of the presumption of resulting trust. *If* it is established that the presumption of resulting trust applies, it is then appropriate to turn to examine the relationship between the parties. Where there is a subsisting relationship which is one of equity's darlings (for example, husband-wife, parent-child), the presumption of advancement arises to *prima facie* displace the presumption of resulting trust. The next step is then to determine the strength of the presumption of advancement based on all the facts of the case, and to consider if that presumption can be rebutted by evidence of an intention on the part of the transferor or contributor to permanently retain an interest in the property.

148 On the facts of the present case, a strong, indeed one might even say compelling, presumption of advancement arises and it may properly be inferred from all the circumstances that Yeo had clearly intended to confer the benefit of survivorship to the appellant in respect of the Properties. To our minds, the respondents could not even begin to succeed in rebutting this presumption. Accordingly, and for the above reasons, we allow the appeal and affirm the appellant's *absolute* ownership of the Properties.

149 The appellant is entitled to the costs of proceedings below, as well as the costs of this appeal, with the usual consequential orders.

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