

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2026] SGCA 42

Court of Appeal / Civil Appeal No 22 of 2025

Between

Cheng Tze Tzuen (alias Zhong
Zhixuan)

... Appellant

And

Dang Lan Anh

... Respondent

JUDGMENT

[Family Law — Void marriage — Whether marriage of convenience entered
before 1 October 2016 can be void]

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Cheng Tze Tzuen (alias Zhong Zhixuan)

v

Dang Lan Anh

[2026] SGCA 42

Court of Appeal — Civil Appeal No 22 of 2025

Sundaresh Menon CJ, Ang Cheng Hock JCA and Debbie Ong Siew Ling JAD

22 January, 14 April 2026

21 October 2026

Judgment reserved.

Debbie Ong Siew Ling JAD (delivering the judgment of the majority consisting of Ang Cheng Hock JCA and herself):

1 The appeal before us raises a question of public importance: whether a marriage of convenience contracted *prior* to 1 October 2016 is void under the Women's Charter 1961 ("Charter").

2 The Women's Charter 1961 (2020 Rev Ed) ("WC 2020") makes reference to "marriages of convenience" in its heading to s 11A. Section 11A itself provides that a marriage solemnised on or after 1 October 2016 is void if a party enters into the marriage knowing or having reason to believe that the purpose of the marriage is to assist the party or the other party to the marriage to obtain an immigration advantage and any gratification is offered, given or received as an inducement or reward to any party to the marriage for entering into the marriage. In this judgment, a marriage of convenience is understood to

refer to a marriage which satisfies the substantive requirements set out in s 11A of the WC 2020, regardless of when it was solemnised.

3 Marriages of convenience have also been loosely referred to as “sham” marriages. It is useful to state here, for the purposes of this judgment, what a reference to a “sham” marriage may encompass:

(a) **Marriages for other purposes:** At the broadest level, a sham marriage refers to a marriage where the parties do not intend to live together as husband and wife or to fulfil the obligations of marriage in s 46 of the Charter. This includes cases of the type considered in *Brodie v Brodie* [1917] P 271 (“*Brodie*”) (see [70] below), where the parties marry for purposes other than to establish a genuine matrimonial union, and may not necessarily involve any immigration advantage.

(b) **Marriages for immigration advantage:** These are marriages entered into for an immigration advantage but *without gratification* involved. Such marriages would *not* fall within the scope of s 11A of the WC 2020.

(c) **Marriages of convenience:** At the narrowest level are marriages of convenience, which are entered into for an immigration advantage and accompanied by gratification.

4 For reference, as various versions of the Charter are referred to in the course of this judgment, we set out the following for clarity: “WC 2009” refers to the Women’s Charter (Cap 353, 2009 Rev Ed) as it stood at the time the parties in the present case solemnised their marriage, “WC 2020” refers to the version currently in force, and “Charter” refers to the legislation generally, encompassing both versions.

5 In the present case, the deceased, Mr Cheng Meng Koon (“Deceased”), married the respondent, Ms Dang Lan Anh (“Respondent”), a Vietnamese national, on 26 January 2011. The Deceased was previously divorced and this was his second marriage. The appellant, Mr Cheng Tze Tzuen (“Appellant”), is the Deceased’s only son.

6 As the Deceased died intestate, the Respondent, as his wife, presently stands entitled to half of his estate. On 14 October 2024, the Appellant filed HC/OA 1057/2024 (“OA 1057”) in the General Division of the High Court (“High Court”) seeking, amongst other things, a declaration that the marriage between the Deceased and the Respondent was void as it was a sham marriage or a marriage of convenience, so as to exclude the Respondent from any share in the Deceased’s estate. However, as s 11A of the WC 2020 only applies to a marriage solemnised on or after 1 October 2016, the question that arises is whether the marriage in issue can nonetheless be declared void on some other ground under the Charter.

7 The judge of the High Court (“Judge”) made no order on the application. CA/CA 22/2025 is the Appellant’s appeal against the Judge’s decision. Having considered the parties’ submissions, we dismiss the appeal and provide our reasons in this judgment.

Background facts

8 As the Respondent did not enter an appearance in the proceedings, we set out the facts based on the Appellant’s account in the proceedings below. The Appellant contends that the marriage in question was a marriage of convenience. In support of this, he relies on his own account and those of several

members of his extended family, including the Deceased's siblings and sibling-in-law, who attest to the following facts.

9 First, the Deceased had never mentioned his marriage to the Respondent to any family member, despite sharing a close relationship with his family.

10 Second, unlike his first marriage, the solemnisation of his second marriage to the Respondent completely excluded his family and friends. Neither the Appellant nor any family members or friends were invited to the ceremony, and the witnesses named in the marriage certificate are unknown to the Appellant and his family.

11 Third, the marriage brought about no discernible change in the Deceased's living arrangements or behaviour. He neither brought the Respondent to live with him in his HDB flat nor moved out to live with her, and throughout the purported marriage until his death, he continued residing with his sister.

12 Fourth, shortly before the marriage, the Deceased had been experiencing a relapse into drug addiction and financial hardship, accompanied by harassment from loan sharks. Yet, notably, during the year of his marriage to the Respondent, this harassment ceased, though it remained unclear to the family how the Deceased had managed to pay off the debts. The Appellant suggests that as the cessation of harassment coincided with the marriage, the Deceased may have settled his debts through payments received from the Respondent in exchange for entering the marriage.

13 Finally, and perhaps most tellingly, when the Deceased fell terminally ill with cancer and died less than a year after the marriage, the Respondent

provided no support and made no contact with his family. Throughout his hospitalisation and his stay at the hospice, the Respondent remained entirely absent, and the Deceased made no mention of her even on his deathbed.

14 On 8 January 2012, the Deceased passed away, intestate. His assets primarily comprise his 14% share in a HDB flat and his Central Provident Fund (“CPF”) moneys. He made no nomination of the beneficiary of his CPF moneys. For context, the Deceased and his sister lived together in a HDB flat which they initially owned as joint tenants before converting to a tenancy-in-common, with the Deceased holding a 14% share. According to the Deceased’s siblings, the 14% share was calculated on the basis that the Deceased’s sister would “hold” six shares (*ie*, around 86% of the flat) for her five siblings and a nephew, while the Deceased would “hold” one share (*ie*, around 14% of the flat) for the Appellant. This was, however, merely their explanation for how ownership of the HDB flat was apportioned; the Appellant does not contend that the Deceased held his interest in the flat on trust for him.

15 Shortly after the Deceased’s death, the family learnt of his marriage to the Respondent through a letter dated 2 March 2012 from the Insolvency and Public Trustee’s Office (“IPTO”). The letter informed them that the Respondent, as the Deceased’s wife, was entitled to a portion of his CPF moneys. As the family had no information about the Respondent, IPTO placed a notice in the newspaper, *The Straits Times*, to seek information on the Respondent and her whereabouts. However, no such information could be obtained.

16 Subsequently, on 16 July 2024, the family was informed by the Immigration and Checkpoints Authority (“ICA”) that the Respondent had been deported for immigration offences in 2011. According to the Appellant, his

uncle (*ie*, the Deceased's brother-in-law) was also informed by the police that the Respondent had been arrested for vice activities prior to her deportation in June 2011.

17 Finally, on 14 October 2024, the Appellant commenced OA 1057 in the High Court.

The Appellant's case below

18 Before the court below, the Appellant advanced two main arguments. First, the Appellant argued that there was sufficient circumstantial evidence to establish that this was a marriage of convenience, based on the following: (a) the Deceased did not inform his family about the alleged marriage; (b) the Deceased never lived with the Respondent, either at the time of marriage or thereafter; (c) the Respondent was absent when the Deceased was terminally ill with cancer; (d) there were no joint assets between the parties, nor any trace of communication or other evidence of a relationship between them, as one would expect from a genuine couple; and (e) police investigations suggested that the Respondent was a sex worker who likely made payment to the Deceased in exchange for entering into the marriage and receiving an immigration advantage, particularly given that the Deceased's serious financial troubles ceased sometime after the marriage.

19 Second, the Appellant contended that the approach taken in *Gian Bee Choo v Meng Xianhui* [2019] 5 SLR 812 ("*Gian Bee Choo*") and adopted in *Kee Cheong Keng v Dinh Thi Thu Hien* [2025] 3 SLR 1555 ("*Kee Cheong Keng*") should be followed. These cases held that a marriage of convenience, although contracted prior to 1 October 2016, could nonetheless be declared void. The Appellant argued that the conditions for issuing a valid marriage licence under

the Charter were expanded from the requirement that there should be “no lawful impediment to the marriage” under s 17(2)(d) of the WC 2009 to the requirement that the parties are not “prevented from marrying by this Act or any other law” under s 18(1)(a) of the WC 2020. Following the reasoning in *Gian Bee Choo* and *Kee Cheong Keng*, the Appellant submitted that the intention to enter into an immigration-advantage sham marriage was a lawful impediment; had this been declared to the Registrar of Marriages (“Registrar”), a marriage licence would not have been issued. He submitted that a marriage of convenience would contravene several laws, including s 5(b)(i) of the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) (“PCA”), s 57(1)(k) of the Immigration Act (Cap 133, 2008 Rev Ed) (“IA 2008”), and s 415 of the Penal Code (Cap 224, 2008 Rev Ed), thereby preventing the parties from marrying. A failure to declare these breaches would result in an invalid marriage licence and, in turn, a void marriage under s 105 read with s 13 of the WC 2020.

20 In OA 1057, in addition to seeking a declaration that the marriage between the Deceased and the Respondent was void, the Appellant sought a declaration that the Deceased’s assets be distributed amongst the Deceased’s immediate family members in accordance with the prevailing laws, rules and regulations to the exclusion of the Respondent.

21 Subsequently, on 14 February 2025, the Appellant sought additional orders through a letter to the court. These included orders that: (a) the Appellant be entitled to apply for a grant of letters of administration over the Deceased’s estate without requiring a renunciation or consent from the Respondent, on the basis that the Respondent is excluded from such administration; and (b) the

Appellant be at liberty to distribute, deal with, and/or administer the Deceased's estate on the same basis.

Decision of the court below

22 The Judge's grounds of decision are found in *Cheng Tze Tzuen v Dang Lan Anh* [2025] SGHC 112 ("GD"). The Judge declined to grant the declaration sought and made no order. Based on the available affidavit evidence and in the absence of any evidence to the contrary, the Judge was satisfied that the marriage was one of convenience (GD at [8]). However, the Judge held that the WC 2020 did not provide any legal basis to declare such a marriage void.

23 The Judge noted that there were two conflicting lines of authorities in local jurisprudence on the issue of whether, generally, marriages of convenience contracted prior to 1 October 2016 are void – *Tan Ah Thee v Lim Soo Foong* [2009] 3 SLR(R) 957 ("*Tan Ah Thee*"), *Toh Seok Kheng v Huang Huiqun* [2011] 1 SLR 737 ("*Toh Seok Kheng*") and *Soon Ah See v Diao Yanmei* [2016] 5 SLR 693 ("*Soon Ah See*") fall on the side which would support the argument that such marriages of convenience remain valid, while *Gian Bee Choo* and *Kee Cheong Keng* fall on the other side which holds such marriages to be void. We note that *Tan Ah Thee* and *Toh Seok Kheng* do not deal with marriages of convenience as such, but only with marriages for other purposes; we examine these two cases in greater detail later in this judgment.

24 The Judge held that the reasoning of *Tan Ah Thee* remained pertinent. She explained that s 105 of the WC 2020 is an exhaustive provision which does not accommodate grounds beyond those specified as reasons to regard a marriage as void (GD at [30]). Further, s 11A of the WC 2020 does not apply

to marriages of convenience solemnised prior to 1 October 2016. Section 11A states:

Avoidance of marriages of convenience

11A.—(1) A marriage solemnised on or after 1 October 2016, whether in Singapore or elsewhere, is void if —

(a) a party to the marriage contracts or otherwise enters into the marriage knowing or having reason to believe that the purpose of the marriage is to assist the party or the other party to the marriage to obtain an immigration advantage; and

(b) any gratification, whether from a party to the marriage or another person, is offered, given or received as an inducement or reward to any party to the marriage for entering into the marriage.

(2) However, a marriage is not void under subsection (1) if it is proved that both parties to the marriage believed on reasonable grounds, when contracting or entering into the marriage, that the marriage would result in a genuine marital relationship.

(3) A marriage solemnised on or after 1 October 2016 is deemed to be void under subsection (1) if either party to the marriage is convicted of an offence under section 57C(1) of the Immigration Act 1959 in respect of the marriage.

(4) In this section, “gratification” and “immigration advantage” have the meanings given by section 57C(6) of the Immigration Act 1959.

25 The Judge remarked that creating new grounds that affect the status of marriage should be approached with caution given the significance of marriage which brings with it changes in a person’s status (GD at [32]). She disagreed with the reasoning in *Gian Bee Choo* and *Kee Cheong Keng* that a marriage licence would be invalidated by a failure to declare an intention to enter a marriage of convenience as this would amount to stipulating a new ground in s 105 of the WC 2020 or extending the applicable time period specified in ss 11A and 105(aa) of the WC 2020 (GD at [30]). While the Judge accepted that there has been a policy stance expressed in other statutes against marriages of convenience, she was of the view that the scope of the policy in respect of

the *validity* of marriages and its application in the context of the WC 2020 had been specified by the words of ss 11A and 105(aa) of the WC 2020. She also pointed out that a distinction must be drawn between the *legal consequences* and the *validity of an act* – it does not follow that committing a crime or fraud on the Registrar necessarily constitutes a lawful impediment or a circumstance that prevents parties from marrying, the failure of which to declare would nullify the act upon which the crime is based (GD at [31]).

26 With respect to the reliefs sought, the Judge stated that the appropriate course was to seek relief at the Family Justice Courts (“FJC”) and take up a discussion with IPTO (GD at [36]). The Deceased’s assets comprised (a) estate assets, being the Deceased’s 14% share in the HDB flat; and (b) non-estate assets, being the Deceased’s CPF moneys.

(a) In respect of the estate assets, the Judge held that the appropriate course was for the Appellant to commence proceedings in the FJC. In making the present application, the Appellant sought to circumvent the need for the Respondent’s renunciation given that the Respondent, being the spouse of the Deceased, would have priority to the letters of administration. This was not appropriate (GD at [38]–[40]).

(b) As for the distribution of the estate, the Appellant sought to exclude the Respondent from her entitlement to the estate. Again, this was not appropriate. If the Appellant obtained letters of administration, he would stand as trustee of the estate and be concerned with the distribution of the administered estate amongst the persons entitled, owing a duty to distribute trust property to the persons beneficially and indefeasibly entitled to it, including the Respondent (GD at [41]–[42]).

(c) In respect of the non-estate assets, the Appellant had adduced no evidence as to what view the Public Trustee took on the funds after the advertisement was made, or whether the funds were being held as unclaimed funds (GD at [53]).

The Appellant's case in this appeal

27 In the proceedings below, the assistant registrar directed the Appellant to address the issue of whether the High Court had jurisdiction to hear the matter. On appeal, the Appellant submits that the High Court is the appropriate court to hear the matter and grant the relief sought, namely, a declaration that the marriage between the Respondent and the Deceased is void. The Appellant does not raise on appeal his claims for probate relief.

28 The Appellant submits that there is a legal basis to declare the marriage between the Deceased and the Respondent void for two reasons:

(a) Section 105 of the Charter only applies to applications in the FJC for annulment by parties to the marriage and hence its exhaustive nature does not limit a third party such as the Appellant. Therefore, the Judge erred in relying on s 105 of the Charter to determine whether the marriage was void; and

(b) Section 11A of the WC 2020 does not prevent the court from declaring void a marriage of convenience solemnised before 1 October 2016, particularly where the marriage was contracted after marriages of convenience had already been criminalised. Public policy considerations require a less restrictive interpretation of the provisions in the Charter to address the real mischief. Accordingly, the approach adopted in *Gian Bee Choo* and *Kee Cheong Keng*, namely, that a false declaration that

there is no lawful impediment to the marriage renders the marriage licence invalid and the marriage thereby void, ought to be followed.

29 As was the case in the proceedings below, the Respondent did not enter an appearance in the appeal. An order was made by the Appellate Division of the High Court for service of the notice of appeal, the undertaking for security for costs, and the order for substituted service to be effected by publication of an advertisement translated into the Vietnamese language in one issue of a daily nationwide Vietnamese newspaper circulating in Vietnam. This was duly complied with by the Appellant’s solicitors.

The Court’s invitation for further views

30 We heard the appeal on 22 January 2026. Following the hearing, we invited the Attorney-General’s Chambers (“AGC”) to assist the court pursuant to s 49(3) of the Supreme Court Judicature Act 1969 (2020 Rev Ed) (“SCJA”) and O 9 r 22(3) of the Rules of Court 2021 (“ROC 2021”) in addressing a list of questions concerning the interpretation and policy intent of the relevant provisions of the Charter. These questions may be broadly summarised as follows:

- (a) First, what constitutes a valid marriage licence under the Charter? In particular, under what circumstances and on what basis can a marriage licence issued by the Registrar be declared invalid by the court?
- (b) Second, what constitutes a “lawful impediment to the marriage” under s 17(2)(d) of the WC 2009? Does it mean the same thing as being “prevented from marrying by this Act or any other law” under s 16(2)(a) of the WC 2020? In particular, was the

reformulation of the term “legal impediment” in 2023 intended to effect a substantive change in the law, or was it a mere modernisation of the term?

- (c) Third, would the court be undertaking an impermissible lawmaking function by holding that a marriage is invalid in circumstances falling outside s 11A of the WC 2020, such as where there is an intention to enter into the marriage to gain an immigration advantage without gratification being given or received? In particular, is s 11A solely concerned with the *ipso facto* invalidation of a marriage of convenience solemnised on or after 1 October 2016 without the need for an order of annulment, or has Parliament scoped the policy against sham marriages to s 11A alone, thereby closing the door on the court voiding similar sham marriages on other grounds?

The AGC’s response

31 On 26 February 2026, the AGC replied, setting out first a summary of its views on the current legal position regarding marriages of the following character:

- (a) Marriages of convenience solemnised on or after 1 October 2016 are clearly void pursuant to s 11A of the WC 2020.
- (b) As for marriages of convenience solemnised before 1 October 2016, it is open to interpretation whether the principles in *Tan Ah Thee* and *Toh Seok Kheng* should apply (particularly since it is unclear whether gratification was in issue in *Toh Seok Kheng*) and there is

ostensibly a conflict of High Court authorities for this category of marriages.

(c) As for marriages for immigration advantage or marriages for other purposes, whether before or after 1 October 2016, *Tan Ah Thee* and *Toh Seok Kheng*, which decided that there is no legal basis to declare such marriages void, appear to remain good law.

32 The AGC stated that in considering the two conflicting lines of High Court decisions (referred to at [31(b)] above), it was unable to uncover any clear policy intention as to which approach was preferred by the relevant policyholders, nor could it discern any clear legislative intention from the relevant Parliamentary debates. As such, the AGC took the view that the question of which line of decisions to adopt remains a matter for judicial determination.

33 Given the absence of clear policy or legislative intention, the AGC considered it most appropriate to provide only brief observations on the three questions and indicated that it was unable to provide written submissions or attend any oral hearing to advocate for a particular position:

(a) On the first question, the AGC noted that, apart from s 15(3)(a) of the WC 2020, which provides that a marriage licence is void where the notice of marriage has ceased to have effect, the WC 2020 does not prescribe specific grounds on which a marriage licence may be declared invalid.

(b) On the second question, the AGC noted that it was not aware of any local cases discussing the difference between the phrases “lawful impediment to the marriage” and “prevented from marrying by this Act

or any other law”. The change was effected as part of a suite of amendments replacing the statutory declaration previously made before a Commissioner of Oaths with an online declaration in a prescribed form.

(c) On the third question, the AGC noted that the earlier line of authorities, in particular *Tan Ah Thee* and *Toh Seok Kheng*, appear to remain good law in respect of marriages entered for an immigration advantage and other purposes, whether before or after 1 October 2016.

34 The AGC also indicated that it would forward the court’s questions to the relevant policyholders and update the court should they wish to provide any substantive comments.

The MSF’s comments

35 On 31 March 2026, the AGC conveyed to the court the comments of the Ministry of Social and Family Development (“MSF”):

(a) The MSF responded that the reformulation from “no lawful impediment to the marriage” under s 17(2)(d) of the WC 2009 to “prevented from marrying by this Act or any other law” under s 16(2)(a) of the WC 2020 was not intended to effect any substantive change in the law. The amendment was intended to streamline the provision by subsuming the impediments previously set out in ss 17(2)(b) to 17(2)(e) of the WC 2009 within s 16(2)(a) of the WC 2020.

(b) The MSF also commented that s 11A of the WC 2020 was not intended to have retrospective effect. Sections 11A and 105(aa) were enacted in early 2016 and apply to marriages solemnised on or after 1

October 2016, rendering void marriages that are marriages of convenience. Section 11A does not purport to affect the validity of marriages of convenience solemnised before 1 October 2016.

The Appellant’s response

36 We invited the Appellant, if he wished, to submit on the points raised by the AGC and the MSF.

37 The Appellant makes three main points. First, the Appellant agrees with the AGC that *Toh Seok Kheng* remains good law in two aspects: (a) that a false declaration that there is no lawful impediment to the marriage can render a marriage licence invalid and the marriage void (a proposition first set out in *Tan Ah Thee*, albeit in *obiter*, and left undisturbed in *Toh Seok Kheng*), and (b) that the grounds in s 105 of the Charter are exhaustive. However, whilst urging the court to apply the lawful impediment analysis implicitly adopted in *Toh Seok Kheng*, the Appellant argues that a different outcome should follow in the present case. The Appellant distinguishes the present case on the basis that, unlike the facts in *Toh Seok Kheng* where there was no lawful impediment to the marriage given the absence of any criminalisation of or public policy against marriages of convenience at that time, the present case involves a clear and established public policy against such arrangements.

38 Second, the Appellant argues that in light of the MSF’s clarification that “lawful impediment” in s 17(2)(d) of the WC 2009 bears the same meaning as “prevented from marrying by this Act or any other law” in s 16(2)(a) of the WC 2020, the line of reasoning originating in *Tan Ah Thee* and applied in *Gian Bee Choo* and *Kee Cheong Keng* should be followed.

39 Finally, the Appellant submits that the MSF’s clarification that s 11A of the WC 2020 does not purport to affect marriages solemnised before 1 October 2016 confirms that the court’s ability to declare such a marriage void remains intact.

Issue to be determined

40 As alluded to above at [6], the issue before this court is whether a marriage of convenience solemnised *prior* to 1 October 2016 is void.

41 We affirm the Judge’s decision that the marriage in issue cannot be declared void. In this regard, we are of the view that this marriage, solemnised in 2011 *before* the enactment of s 11A, is valid. The formation of marriage is governed by a statutory regime under which a marriage is void only on the grounds expressly provided in the Charter. In the present case, none of those grounds apply to the parties’ marriage which was solemnised in 2011.

42 Before turning to the main issue, we pause briefly to address the Appellant’s submission on the jurisdiction of the High Court to hear the matter and grant a declaration of nullity of marriage sought by a third party. We note that the General Division of the High Court, or High Court (as defined above at [6]), had jurisdiction to hear this matter under s 16(1) of the SCJA, as the Respondent was served with the originating process and did not contest jurisdiction. Although the Appellant relies on provisions in the Charter relating to nullity of marriage, he is not seeking to exercise the court’s matrimonial jurisdiction. Section 93 of the Charter confines matrimonial proceedings to those between “parties to the marriage”, and the Appellant, as a third party, falls outside this. The matter therefore falls within the High Court’s general civil jurisdiction under s 16(1) of the SCJA rather than the matrimonial jurisdiction

exercised through the Family Division of the High Court under s 22 of the Family Justice Act 2014 (2020 Rev Ed) read with s 17(1)(a) of the SCJA. The High Court further has the power to grant declaratory relief pursuant to s 18 read with the First Schedule of the SCJA, and O 4 r 7 of the ROC 2021 (*Tan Ah Thee* at [16]–[17] referring to *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1995] 3 SLR(R) 233 at [16]–[17]). As the Appellant has demonstrated a “real interest” in bringing the action, a “real controversy” between the parties for the court to resolve, and that the declaration sought concerns a right personal to him which is enforceable against an adverse party (see *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [72]), he has the requisite *locus standi* to seek such relief.

43 That said, we make no pronouncement on the Judge’s comments concerning the succession of the Deceased’s estate, as this was not a ground of appeal before us.

44 We now turn to the main issue before us.

The law on the formation of marriage in the Women’s Charter

45 The grounds on which a marriage is void are encoded in s 105 of the WC 2020 which provides:

Grounds on which marriage is void

105. A marriage which takes place after 1 June 1981 is void on the following grounds only:

(a) that it is not a valid marriage by virtue of sections 3(4), 5, 9, 10, 11, 12 and 13;

(aa) where the marriage was solemnised on or after 1 October 2016, that it is not a valid marriage by virtue of section 11A.

The exhaustive nature of s 105 of the Charter

46 Section 105 of the WC 2020 expressly states that a marriage which takes place after 1 June 1981 is void “on the following grounds only”. The High Court in *Tan Ah Thee* had highlighted the exhaustive nature of this provision (at [35]):

35 ... s 105 which sets out the grounds on which a marriage is void is an all exhaustive provision and no marriage in Singapore which has been solemnised after 1 June 1981 can be declared void on the basis of any matter which is not included in or referred to by s 105. It is particularly significant that the operative words of the section are “*shall* be void on the following grounds *only*”. [emphasis in original]

47 The Appellant accepts this as a general proposition but contends that s 105 of the Charter does not apply in the present case for two reasons: (a) first, s 104 of the Charter limits nullity applications to a “husband and wife”; and (b) second, the Court of Appeal in *UDA v UDB* [2018] 1 SLR 1015 (“*UDA*”) recognised that a third party may, in very limited circumstances, obtain a declaration that a marriage is void through proceedings that fall outside Part X of the WC 2009 (at [28]). On this basis, the Appellant argues that he is not bound by the “exhaustive” nature of s 105, which falls within Part X, and may instead rely on the wider s 7 of the WC 2020.

48 We disagree. The statement in *UDA* at [28] was made in the context of determining whether a third party’s claim to an alleged matrimonial asset constituted a matrimonial proceeding. The Court of Appeal’s observation that a third party may obtain a declaration of nullity through proceedings outside Part X was directed at clarifying that such proceedings do not invoke the court’s *matrimonial* jurisdiction (as noted above at [42]), and not at suggesting that a third party is free from the substantive constraints of s 105. We are of the view that even where a third party invokes the court’s general civil jurisdiction for

declaratory relief (as in the present case), the grounds available for declaring a marriage void or voidable are still those set out in ss 105 and 106 of the Charter.

49 The Appellant further relies on s 7 of the Charter, which provides as follows:

Continuance of marriage

7. Every marriage solemnised in Singapore after 15 September 1961, other than a marriage which is void under the provisions of this Act, shall continue until dissolved —

- (a) by the death of one of the parties;
- (b) by order of a court of competent jurisdiction; or
- (c) by a declaration made by a court of competent jurisdiction that the marriage is null and void.

50 We accept that s 7 recognises the procedural mechanism by which a marriage may be brought to an end by a declaration. However, s 7 itself does not furnish the substantive grounds for determining whether such a declaration should be granted.

51 Thus, in our view, s 105 of the Charter sets out the *exclusive* grounds on which a marriage is void, and a third party, such as the Appellant, seeking a declaration of nullity may only rely on those grounds.

Capacity provisions and essential validity of marriage

52 Based on a plain reading of s 105 of the WC 2020, it is clear that the grounds on which marriages solemnised after 1 June 1981 are void are those found in ss 3(4), 5, 9, 10, 11, 12 and 13 of the WC 2020, and for marriages solemnised on or after 1 October 2016, the additional ground in s 11A also applies. All the grounds listed in s 105, *save for s 13*, are capacity provisions that go to the essential validity of a marriage. Section 3(4) requires that at least

one party be non-Muslim; s 9 requires that the parties be at least 18 years of age; s 10 requires that they be not related within prohibited degrees; ss 5 and 11 require that they not be in a subsisting marriage; and s 12 requires that they be of different sexes. Together, these requirements determine the parties’ capacity to marry under the WC 2020.

53 In contrast, s 13 of the WC 2020, which was the former s 22 of the WC 2009 at the time the parties married in 2011, governs the “formal validity” of the marriage. Section 13 of the WC 2020 provides that:

Avoidance of marriages solemnised in Singapore without valid licence or by unauthorised person

13. A marriage solemnised in Singapore is void unless it is solemnised —

- (a) on the authority of a valid marriage licence or a valid special marriage licence; and
- (b) by the Registrar or a licensed solemniser.

54 The requirements for a valid marriage licence are set out in s 17 of the WC 2009, which we reproduce below:

Registrar to issue marriage licence on proof of conditions by statutory declaration

17.—(1) The Registrar shall, at any time after the expiration of 21 days and before the expiration of 3 months from the date of the notice and upon payment of the prescribed fee, issue a marriage licence in the prescribed form.

(2) The Registrar shall not issue a marriage licence until he has been satisfied by statutory declaration made by each of the parties to the proposed marriage —

- (a) that one of the parties has been resident within Singapore for at least 15 days preceding the date of the notice;
- (b) that —
 - (i) each of the parties is 21 years of age or above, or, if not, is divorced or is a widower or

widow or has had his or her previous marriage declared null and void, as the case may be; or

(ii) if either party is a minor who has not been previously married — the consent of the appropriate person mentioned in the Second Schedule has been given in writing, or has been dispensed with, or the consent of the High Court has been given in accordance with section 13;

(c) that neither party is below the age of 18 years;

(d) that there is no lawful impediment to the marriage; and

(e) that neither of the parties to the intended marriage is married under any law, religion, custom or usage to any person other than the person with whom such marriage is proposed to be contracted.

(3) If any party giving a notice of marriage or making a statutory declaration does not understand the English language, the Registrar shall, before issuing the marriage licence, ascertain whether that party is cognizant of the purport of the notice or declaration and, if not, shall interpret or cause to be interpreted the notice or declaration to that party into some language which he understands.

55 The version currently in force is s 16 of the WC 2020, which provides as follows:

Declaration by intending parties

16.—(1) Where a notice of marriage is given to the Registrar, each of the parties to the intended marriage must also submit to the Registrar a declaration in the prescribed form and manner.

(2) The form prescribed for the purpose of subsection (1) must provide for a party (X) to declare —

(a) whether the parties to the intended marriage are prevented from marrying by this Act or any other law;

(b) if any party is not a citizen of Singapore or permanent resident of Singapore — whether X has been physically present in Singapore for the prescribed period before the date of the notice of marriage;

- (c) if the parties are required to attend and complete a marriage preparation programme — whether the parties have done so;
- (d) if X was previously married but has been divorced — whether X owes any arrears in respect of any maintenance which is payable under a maintenance order; and
- (e) whether X has been convicted of an offence under any of the following provisions:
 - (i) section 6A (marrying again during lifetime of husband or wife);
 - (ii) section 57C(1) of the Immigration Act 1959 (entering into marriage of convenience);
 - (iii) section 494 of the Penal Code 1871 (marrying again during lifetime of husband or wife) as in force immediately before 1 January 2020.

56 Marriage is a public institution and not merely a private agreement between two parties. The law imposes legal obligations on the parties upon the solemnisation of their marriage. The formalities required by s 13 of the WC 2020 reflect this public character. First, a valid marriage licence must be obtained (s 13(a) of the WC 2020). The process of obtaining a marriage licence includes publishing the parties' notice of marriage (s 14 of the WC 2020); any person may enter a caveat against the issue of a marriage licence, stating the grounds of objection (s 19 of the WC 2020). Second, the marriage must be solemnised by a person holding a valid licence to do so (s 13(b) of the WC 2020). If either of these requirements are not met, the marriage is rendered void under s 13 read with s 105 of the WC 2020, a point which we return to later at [64].

57 Section 13 also operates to ensure that, as far as practicable, the parties possess the relevant capacities before they are permitted to marry in Singapore. Amongst other things, it operates as a filter that disallows the solemnisation of

marriages which would be in breach of any of the capacity provisions in s 105 of the Charter; the Registrar would not issue a marriage licence if he or she is aware of such a contravention.

58 As s 13 of the WC 2020 requires a marriage to be “solemnised”, it also ensures that, as far as possible, the parties have consented to the marriage by their declaration at solemnisation. Section 23 of the WC 2020 provides that the solemniser must ask the parties whether each is willing to take the other as his wife or her husband, and the solemniser must not solemnise the marriage unless satisfied that both parties freely consent to the marriage. To be clear, we add that if there is no consent, the marriage is valid but *voidable* by virtue of s 106 of the Charter; it is not *void* under s 105 of the Charter.

59 Section 13 also encourages compliance with matters that are not essential requirements for forming a valid marriage, such as attending marriage preparation programmes (see s 16(2)(c) of the WC 2020).

60 Section 13 plays a vital role in the marriage regime in Singapore. It is a provision regulating the formal validity of marriages *celebrated in Singapore*. Marriages that are formally valid but fail to comply with capacity provisions will still be void for lack of *essential validity*. Conversely, marriages that satisfy the capacity provisions but not the requisite formalities will be void for lack of *formal validity*.

61 This distinction between formal and essential validity is well entrenched in jurisprudence, both locally (see, for example, *Re Maria Huberdina Hertogh; Inche Mansor Adabi v Adrianus Petrus Hertogh & Anor* [1951] MLJ 164; *Arpinya Rongchotiawattana v Wee Oh Keng* [1997] 3 SLR(R) 378; *Wong Kai Woon v Wong Kong Hom* [2000] SGHC 176 at [46]–[49]) and in other

jurisdictions (see Convention on Celebration and Recognition of the Validity of Marriages (14 March 1978), HCCH No 26, (entered into force 1 May 1991); *Dicey, Morris and Collins on The Conflict of Laws* (Lord Collins of Mapesbury and Jonathan Harris gen eds) (Sweet & Maxwell, 16th Ed, 2022) (“*Conflict of Laws*”) at para 17-002).

62 In this regard, by established conflict of laws rules, a marriage is formally valid if the formalities required by the law of the country of celebration have been complied with but is essentially valid only if the parties have capacity to marry under the law of their domicile. It follows that parties domiciled in Singapore cannot avoid the application of the capacity provisions of the Charter by marrying abroad. That said, if they marry abroad, they are not required to comply with s 13 which is a formality provision for marriages solemnised in Singapore; it suffices that they comply with the formalities of the country of celebration. Section 13 of the WC 2020 expressly provides for its application to a “marriage solemnised *in Singapore*” [emphasis added]. In contrast, ss 5, 9, 10, 11, 11A and 12 of the WC 2020 expressly apply to marriages “solemnised in Singapore *or elsewhere*” [emphasis added]. This reinforces the distinction between s 13, which concerns the formal validity of a marriage, and the other provisions in s 105, which govern the parties’ capacity to marry.

63 The practical significance of this distinction may be illustrated by way of a hypothetical example. Suppose the parties in the present case had chosen to solemnise their marriage overseas. Any challenge to the formal validity of that marriage, such as whether a marriage licence had been properly obtained, would be governed exclusively by the law of the place of celebration, not Singapore law. If the position in *Gian Bee Choo* and *Kee Cheong Keng* were correct – that a false declaration of no lawful impediment has the consequence of invalidating the marriage licence and thereby rendering the marriage void –

then parties who marry abroad would escape this consequence entirely, since the validity of any licence or other formal requirement would be determined by foreign law instead of s 13 of the WC 2020. The distinction between formal and essential validity therefore serves a coherent and necessary purpose: it recognises parties' choices in this globalised world on where they wish to celebrate their marriage but also ensures that the substantive capacity provisions of the Charter apply with equal force and consistency, regardless of where the marriage ceremony takes place.

64 As alluded to above at [56], s 13 also operates as a substantive ground for declaring a marriage void under s 105. That said, its scope is confined to the *formal* aspects of marriage, such as where parties marry without any licence at all or where the licence ceases to have effect due to expiration or cancellation of the notice of marriage (see s 15 of the WC 2020 and Leong Wai Kum, *Marriage, Spouses and Assets* (Academy Publishing, 2025) at paras 1.84–1.86). The *validity of the marriage licence* cannot be called into question only by reason of not declaring one's true intentions or motivations for marriage, or non-compliance with even minor or inconsequential elements. However, this would be the effect of extending the scope of s 13 of the WC 2020 to render marriages void on the basis of a false declaration, as suggested in *Gian Bee Choo* and *Kee Cheong Keng*, an approach which the Appellant urges us to adopt. In this regard, we find useful the following passage by Ormrod J which the House of Lords in *Vervaeke v Smith* [1983] 1 AC 145 ("*Vervaeke*") cited with approval (at 152):

... if the parties exchange consents to marry with due formality, intending to acquire the status of married persons, it is immaterial that they intend the marriage to take effect in some limited way or that one or both of them may have been mistaken about, or unaware of, some of the incidents of the status which they have created. **To hold otherwise would impair the effect of the whole system of law regulating marriages in this country, and gravely diminish the value of the system of registration of marriages on which so much depends in a**

modern community. Lord Merrivale P in *Kelly v Kelly* 148 LT 143 at 144 said: “In a country like ours, where the marriage status is of very great consequence and where the enforcement of the marriage laws is a matter of great public concern, it would be intolerable if the marriage law could be played with by people who thought fit to go to a register office and subsequently, after some change of mind, to affirm that it was not a marriage because they did not so regard it.”... [emphasis added in bold]

The law does not inquire into the private motives of the parties

65 Our position is further reinforced by the principle that, absent a specific statutory provision that permits this, the law generally does not inquire into the private motives of parties entering into a marriage. This principle, first articulated locally in *Tan Ah Thee* (at [56]), can be traced to the English decision in *Vervaeke* (at 152) and has since been recognised in several other jurisdictions, including Canada (see, for example, *Iantsis v Papatheodorou* [1971] 1 OR 245), Australia (see, for example, *In the Marriage of B J and G Otway* (1986) 11 Fam LR 99 at 102), and New Zealand (see, for example, *Skelton v Waisoongnoen* [2002] NZFLR 894 (“*Skelton*”) at [28]), where the courts have generally held that sham marriages, including marriages entered into for an immigration advantage and marriages of convenience, are valid.

66 We begin with the case of *Tan Ah Thee*. There, during his first marriage, the deceased had an extra-marital relationship with the defendant, and a son was born out of this affair. After the death of his first wife in 1994, the deceased publicly acknowledged his relationships with the defendant and their son, and in 1996 a marriage was solemnised between the deceased and the defendant. The plaintiffs were children from the deceased’s first marriage who sought a declaration that the deceased’s subsequent marriage to the defendant was void on the ground, amongst others, that it was a sham marriage contrary to public policy. The plaintiffs argued that it was a sham marriage as the defendant’s sole or predominant motive in registering the marriage was to revoke the will made

by the deceased prior to his second marriage to the defendant. The defendant applied to strike out the claim on the basis that it disclosed no reasonable cause of action. The application was partially disallowed by an assistant registrar. Both the plaintiffs and the defendant appealed against that decision.

67 In dismissing the plaintiffs' appeal and allowing the defendants' appeal, Judith Prakash J (as she then was) held that "the Charter provides a complete code on the law applicable to marriages in Singapore ... and there is no room for the court to apply any other standard" (*Tan Ah Thee* at [19]). Prakash J rejected the plaintiffs' argument that the court could declare a marriage void on a ground other than those provided for in s 105 of the Charter (*Tan Ah Thee* at [54]). In any case, on the contention that a sham marriage should be void, her view was that (at [56]–[57]):

56 ... the law desists from identifying what are the "proper" motives of marriage and does not allow the parties' private motives to undermine the validity of the marriage. In *Vervaeke (formerly Messina) v Smith* [1983] AC 145, the parties married for the sole purpose of allowing the female party to continue working in England as a prostitute. The House of Lords held that, as "horrible and sordid" as the marriage was, the marriage was valid. The House of Lords expressed its view (at 152) as follows:

... in the English law of marriage there is no room for mental reservations or private arrangements regarding the parties' personal relationships once it is established that the parties are free to marry one another, have consented to the achievement of the married state and observed the necessary formalities. ...

57 The above view was echoed by the Singapore Court of Appeal in *Kwong Sin Hwa v Lau Lee Yen* [1993] 1 SLR(R) 90 ...

68 As referenced in *Tan Ah Thee*, the case of *Kwong Sin Hwa v Lau Lee Yen* [1993] 1 SLR(R) 90 ("*Kwong Sin Hwa*") also supports the position that the law does not allow the parties' private motives to *undermine the validity of the marriage*. The Court of Appeal in *Kwong Sin Hwa* at [33] approved the

following passage from *Ng Bee Hoon v Tan Heok Boon* [1992] 1 SLR(R) 335 (“*Ng Bee Hoon*”) at [49], albeit reaching a different conclusion from the High Court in *Ng Bee Hoon*:

49 In my view, if a man and a woman (who are not barred from marrying each other) exchange consents to marry with due formality before a person lawfully authorised to solemnise a marriage under the Charter, intending to acquire the status of married persons, it is immaterial that they intend the marriage to take effect in some limited way or that one or both of them may have been mistaken about, or unaware of, some of the incidents of the status which they have created. To hold otherwise would impair the effect of the whole system of law regulating marriages in Singapore, and gravely diminish the value of the system of registration of marriages on which so much depends. Marriage status is ... of great public concern. It is intolerable for the law on marriage to be played with by people who thought fit to go to the Registry and subsequently, after some change of mind, to affirm that it was not a marriage in the full sense because they did not so regard it.

69 Both *Kwong Sin Hwa* and *Ng Bee Hoon* concerned the issue of “wilful refusal” to consummate a marriage. Where parties had a prior agreement to postpone consummation until after a customary or religious ceremony, a question arose as to which party was wilfully refusing consummation if one refused to proceed with the ceremony. The Court of Appeal in *Kwong Sin Hwa* held, contrary to the High Court’s view in *Ng Bee Hoon* (at [33]–[34]), that such an agreement was not against public policy as the parties were only postponing consummation. Hence, a spouse who withheld sexual relations before the ceremony was not the one wilfully refusing consummation – rather, it was the other spouse who declined to proceed with the ceremony who was wilfully refusing consummation (*Kwong Sin Hwa* at [38]).

70 In the English case of *Brodie*, a wife petitioned for the restitution of conjugal rights. She had pressed the respondent to marry her whilst she was pregnant with their child; and he agreed to do so if, and only if, she would sign

an agreement providing that the parties might live separate and apart after the marriage as if they were unmarried. This she did, and a ceremony took place forthwith at the registry office. It was held that the agreement not to cohabit was void as against public policy; and a decree of restitution of conjugal rights was granted (at 273). Such a decree affirmed the validity of the marriage in question.

71 In *Kwong Sin Hwa*, the Court of Appeal distinguished *Brodie* at [22], reasoning as follows:

22 The *Brodie* pre-nuptial agreement is far different in nature and character from the pre-nuptial agreement in ... this case. **The *Brodie* pre-nuptial agreement was intended to enable the husband to resile from the marriage and evade his marital obligations altogether. That agreement if implemented and enforced, would make a mockery of the law regulating marriages. Obviously such an agreement is unquestionably against public policy and void.** ... On the other hand, the pre-nuptial agreement here ... was nothing of that kind. The intention of the parties was to comply both with the law and with the custom; if implemented, it was intended to fulfil the parties' marital obligations. The only effect on the relationship of the parties as husband and wife was that it postponed their cohabitation and consummation of the marriage. It was not intended to negate the marriage or enable one or both parties to resile from the marriage. We do not see how such pre-nuptial agreement can be regarded and treated on the same footing as the *Brodie* pre-nuptial agreement. [emphasis added in bold]

72 These cases illustrate that, once parties have validly consented to enter into the legal status of marriage and complied with the requisite requirements of capacity and formality, their private motives and expectations concerning married life do not ordinarily affect the validity of the marriage, even if those intentions are reflected in agreements which enforceability may be separately considered by the courts.

73 Indeed, it is clear from the foregoing discussion that the law expects the parties to uphold the obligations of marriage. In Singapore, these obligations are

anchored in s 46 of the Charter which provides that parties are mutually bound to cooperate with each other in safeguarding the interests of the union, and caring and providing for the children. An agreement to resile from these obligations may be void as against public policy, but the marriage itself is not void. We illustrate with a hypothetical practical example. Suppose A, who is pregnant with B's child, agrees with B that after solemnising their marriage, they will live apart and not have to provide financially for each other during the marriage. In reliance on the agreement, they get married in order to confer legitimate status on their child. Suppose during the marriage, A seeks maintenance from B for herself as she has to care for the child and is unable to work to be financially independent. In this scenario, B may not be allowed to resist the maintenance claim by relying on their agreement which contravenes s 46 of the Charter and consequently, maintenance may be ordered against him despite their prior agreement.

74 As stated above at [65], this premise that the law does not inquire into the motives of parties to a marriage has been endorsed judicially not only in Singapore and the United Kingdom, but in other jurisdictions as well. We find useful the observations of the New Zealand Family Court in *Skelton*, where the court emphasised that courts should not make value judgements about the motivations for marriage (at [28]):

28 Common experience suggests that people marry for a variety of reasons and in a wide variety of circumstances. ... In some instances there is a degree of pressure from parents or family; in others (such as when the wife is pregnant) there is a sense of obligation or duty; on occasions actual or perceived financial or social advantages will be a dominant factor; achieving the status of marriage rather than wanting to establish and recognise a relationship of permanence and commitment may also be a relevant consideration, as in *M v H* and *Silver v Silver* (supra). Arranged marriages have traditionally occurred without the parties having met before the day they marry. Similarly people have widely differing

expectations of marriage, and may choose, or be obliged by circumstances, to live apart for lengthy periods. It will only be in rare cases that any of these factors will provide a proper basis for a finding of lack of consent to the marriage contract itself.

75 In our view, this position is reflected in the structure of the Charter as well. We observe that the capacity grounds in ss 3(4), 5, 9, 10, 11, and 12 of the WC 2020 do not concern parties' intentions or future plans for their marital relationships. The only exception is the recently enacted s 11A, which incorporates the element of knowledge (or "having reason to believe") that the purpose of the marriage is to assist one party to obtain an immigration advantage. But s 11A is a tightly circumscribed provision targeting marriages entered into for the purpose of obtaining an immigration advantage where gratification is involved. Far from supporting a broader inquiry into matrimonial intent, s 11A's narrow scope is consistent with the general approach under the Charter that the law does not inquire into the private motives of parties entering into a marriage. Indeed, permitting such an inquiry would introduce considerable uncertainty into the institution of marriage, given that parties enter into marriages for a wide variety of reasons and may have differing expectations of married life. It should not be open to a party to seek to invalidate a marriage merely because those expectations were not met or the marriage subsequently broke down.

Three groups of "sham" marriages: valid or void?

76 Having set out the law and principles on the formation of marriage in the Charter, we consider whether the three categories of marriages outlined above at [3] are valid or void.

Marriages for other purposes

77 We have described at [3(a)] above that “marriages for other purposes” are those where, for various reasons, the parties do not intend to live together as husband and wife or to fulfil the obligations of marriage enshrined in s 46 of the Charter.

78 We consider two alternative positions addressing whether such marriages are valid or void: (a) the first is that a sham marriage is void as parties participated in a marriage ceremony without “truly” consenting to the marriage and such marriages are contrary to public policy; and (b) the second is that, whatever the parties’ motives may be, a marriage is valid so long as the parties consented to marry each other, and that consent was not vitiated by fraudulent misrepresentations or mistake as to the identity of the other party or the nature of the ceremony. On the latter view, there is no room for private motives or intentions to prevent the formation of a valid marriage.

79 *Vervaeke*, which was referred to in *Tan Ah Thee* (see [67] above), offers a striking example of how two jurisdictions may arrive at opposite conclusions on the same issue. In *Vervaeke*, the *Belgian* court found such a sham marriage void on the basis that the parties had “delusively indulged in a marriage ceremony without in fact really consenting to a marriage” and had thereby “behaved against public policy”, such that “[t]he disturbancy of public order, the protection of what belongs to the essence of a real marriage and of human dignity, exact that such a sham-marriage be declared invalid” (at 149). On the other hand, the *English* court recognised that very same marriage to be valid, holding as follows: “... in the English law of marriage there is no room for mental reservations or private arrangements regarding the parties’ personal relationships once it is established that the parties are free to marry one another,

have consented to the achievement of the married state and observed the necessary formalities” (at 149). We observe that the English position is such that where two parties use the status of marriage to obtain certain advantages, they will also bear the legal consequences of that act. Thus, in *Vervaeke*, the wife bore the legal consequences of entering a marriage of convenience, which ultimately prevented her from having the capacity to marry her second husband whose death would have made her a wealthy widow had her purported marriage to him been valid.

80 The High Court in *Toh Seok Kheng* applied *Tan Ah Thee*, which had in turn followed *Vervaeke* in holding that a sham marriage was invalid (see above at [66]–[67]). In *Toh Seok Kheng*, the plaintiff was the deceased’s mother, and the defendant was the deceased’s wife. The deceased had married the defendant in 2005 without his family’s knowledge, and the family only learnt of the marriage after his death in 2009. When the plaintiff applied for letters of administration of the deceased’s intestate estate, the defendant lodged a caveat indicating her intention to make a similar application. The plaintiff responded by seeking two declarations: that the marriage was an invalid sham marriage, and that she be appointed sole administrator of the estate. Prakash J reiterated in *Toh Seok Kheng* that (at [12]–[13]):

12 ... the legal position is both clear and settled – the court cannot declare a marriage void on a ground other than those provided for in s 105 of the Women’s Charter (Cap 353, 1997 Rev Ed) (“the Charter”). It was held in *Tan Ah Thee v Lim Soo Foong* [2009] 3 SLR(R) 957 (“*Tan Ah Thee*”), that the grounds for holding a marriage to be void are exhausted by s 105 of the Charter. Those grounds do not include annulling a marriage because it was entered into pursuant to motives which some might consider improper and may therefore render it a sham marriage in their eyes. Nor do they include annulling a marriage in which spouses continue to conduct their respective lives as though they were unmarried.

13 The law as it stands abstains from prescribing the “proper” motives for marriage and does not allow the spouses’ private motives to undermine the validity of their marriage. In *Vervaeke (formerly Messina) v Smith* [1983] AC 145, the parties married for the singular purpose of allowing the female party to continue working in England as a prostitute. The House of Lords held that, as “horrible and sordid” as the marriage was, the marriage was valid. ...

81 We adopt Prakash J’s reasoning, and are similarly of the view that “sham” marriages for other purposes cannot be declared void under any provision in the Charter.

82 We also observe that, although the marriages in *Gian Bee Choo* and *Kee Cheong Keng* were marriages of convenience, neither decision went so far as to hold that the same public policy considerations would apply to sham marriages entered into for other purposes, such that those marriages should be rendered void. Indeed, the judge in *Gian Bee Choo* stressed at [103]:

103 ... sham marriages in a broad and generic sense, where parties enter into the sham marriage for “motives which some might consider improper” or where “spouses continue to conduct their respective lives as though they were unmarried” ... are not relevant to this case, and I need not say more regarding whether there was a general public policy against sham marriages in that broad sense. However, with regard to immigration-advantage sham marriages [accompanied by gratification] *specifically*, I find that there was already a public policy that existed against such sham marriages in 2007. [emphasis in original]

83 Thus, *Gian Bee Choo* and *Kee Cheong Keng* remain consistent with *Tan Ah Thee*, which did not concern a marriage of convenience. Rather, the allegation in *Tan Ah Thee* was that the marriage was void because the defendant’s sole or predominant motive in causing it to be registered was to revoke the deceased’s prior will (*Tan Ah Thee* at [53]).

Marriages for immigration advantage

84 We next turn to the second category of marriages, namely, marriages entered into for an immigration advantage with no gratification involved (see above at [3(b)]). It bears noting that, even for marriages solemnised on or after 1 October 2016, s 11A of the WC 2020 does not render void marriages entered into for an immigration advantage where no gratification is involved. This was the position in *Toh Seok Kheng*, where there was no allegation or evidence that gratification was involved in the marriage allegedly entered into for an immigration advantage (*Toh Seok Kheng* at [4]). For the reasons given by Prakash J in *Toh Seok Kheng*, reproduced at [80] above, we are similarly of the view that such marriages are not rendered void merely because they were entered into for an immigration advantage, absent gratification, and cannot be declared void on that basis under the Charter.

Marriages of convenience solemnised prior to 1 October 2016

85 We turn to the third and final category of marriages, namely, marriages of convenience (see above at [3(c)]). We use the term “marriages of convenience” to refer to marriages entered into for an immigration advantage and accompanied by gratification, thereby possessing the substantive characteristics set out in s 11A of the WC 2020, regardless of when they were solemnised.

86 It is clear that s 11A does not apply to the marriage of convenience in the present case as ss 105(aa) and 11A of the WC 2020 were not in existence in 2011. Following its enactment, s 11A expressly provides that it only applies to marriages solemnised on or after 1 October 2016. The thrust of the Appellant’s contention is that the same policy underlying s 11A of the WC 2020 applies equally to this marriage, notwithstanding that it was entered into prior to 1

October 2016, such that the court should interpret the provisions in the Charter to render the marriage void and address the underlying mischief. *Gian Bee Choo* and *Kee Cheong Keng* are cited in support of this contention. We now address these two cases more fully.

87 *Gian Bee Choo* and *Kee Cheong Keng* held that the marriages of convenience in question were void for breach of s 22 of the WC 2009 and s 13 of the WC 2020 respectively, read with s 105.

88 In *Gian Bee Choo*, the High Court judge found that the marriage in question had been entered into in 2007 for the purpose of assisting the wife to obtain permanent resident status, that gratification had been given, and the parties had not intended for the marriage to result in a “genuine marital relationship” (at [78]). Although the court accepted that s 57C of the Immigration Act (2020 Rev Ed) (“IA 2020”) and s 11A of the WC 2020 were only introduced in 2012 and 2016 respectively, the judge did not think that a public policy against sham marriages only existed when these provisions came into effect. He was of the view that a public policy against such marriages had always existed and that s 57C of the IA 2020 merely created a specific and targeted offence against such sham marriages (*Gian Bee Choo* at [104]). As pointed out earlier (at [82]), the judge was not referring to sham marriages in the broader sense but to marriages of convenience specifically (albeit contracted prior to 1 October 2016). He observed that, prior to the commencement of s 57C of the IA 2020, such sham marriages were criminalised, albeit indirectly, through two other statutory provisions – s 5(b)(i) of the PCA and s 57(1)(k) of the IA 2008; these provisions were used to prosecute offences arising out of *acts associated* with marriages of convenience (*Gian Bee Choo* at [109]–[113]). Further, he opined that such a marriage did not merely contravene public policy but corrupted the very sanctity of marriage as enshrined in s 46 of the Charter,

given that the fundamental purpose of such a marriage was to obtain an immigration benefit fraudulently (*Gian Bee Choo* at [115]).

89 Whilst accepting that the grounds on which a marriage may be rendered void under s 105 are exhaustive (*Gian Bee Choo* at [96]), the judge nevertheless held the marriage void on the basis that it had breached s 22 of the WC 2009, which is a ground listed in s 105. The judge held that the reference to a “valid marriage licence” in s 22 of the WC 2009 must be read as meaning a marriage licence issued by the Registrar of Marriages when he was correctly satisfied that all the requirements of s 17(2) have been met. Section 17(2)(d) of the WC 2009 in turn provided that the Registrar shall not issue a marriage licence until he has been satisfied by way of the parties’ statutory declaration that “there is no lawful impediment to the marriage” (*Gian Bee Choo* at [130]–[131]). The judge thus considered whether an intention to enter into a marriage of convenience constituted a lawful impediment to the proposed marriage (*Gian Bee Choo* at [132]). He held that such lawful impediments need not be expressly identified in the Charter, and that a lawful impediment arises where the sole purpose of the marriage was to assist one party to obtain an immigration advantage in exchange for gratification and the parties never had any intention to enter into a genuine marital relationship. The judge therefore found that the wrongful declaration that there was no lawful impediment to the proposed marriage had invalidated the marriage licence issued, and that the marriage was void for breach of s 22 read with s 105 of the WC 2009 (*Gian Bee Choo* at [137] and [146]).

90 In *Kee Cheong Keng*, another High Court judge similarly found that the marriage was one of convenience – the marriage was to allow the wife to stay in Singapore and eventually apply for permanent residence or citizenship and the arrangement offered the husband a significant monetary benefit at a time

when he was unemployed (*Kee Cheong Keng* at [8]). The judge held that as the marriage was solemnised before 1 October 2016, it could not be held void under s 105(aa) of the WC 2020 as it did not fall within the scope of s 11A(1). However, he cited *Gian Bee Choo* and agreed with its holding that it was against public policy to contract marriages of convenience even *before* the enactment of s 11A of the WC 2020. The judge stated that, according to s 105(a) read with s 13(a) of the WC 2020, a marriage solemnised in Singapore is void unless it was solemnised on the authority of a valid marriage licence. He found that the parties had submitted a false declaration at the time of their marriage by failing to declare that their marriage contravened penal laws such as s 57C(1) of the IA 2008. It appears from this analysis that the judge had held that the marriage was void on the ground that s 13(a) had been breached, as it was not solemnised on the authority of a valid marriage licence (*Kee Cheong Keng* at [9]).

91 From the foregoing, it is clear that the High Court in *Gian Bee Choo* and *Kee Cheong Keng* did not declare the marriages in question void on the basis of public policy as an independent ground. Instead, they held that the breach of criminal laws and the pre-existing policy against marriages of convenience, which predated the enactment of s 11A of the WC 2020, constituted a lawful impediment. This resulted in breaches of the former ss 17(2) and 22 of the WC 2009 or current ss 16(2) and 13 of the WC 2020 because of the false declarations by the parties that there was no lawful impediment to the marriage, which meant that the marriage licences had been issued on a wrongful basis and were thus invalid. The marriages were thus void under s 105 because the marriage licences were invalid.

92 We are of the view that the courts' reading of s 22 of the WC 2009 and s 13 of the WC 2020 in *Gian Bee Choo* and *Kee Cheong Keng* respectively is incorrect. We reiterate that s 105 of the Charter sets out exhaustively the

grounds on which a marriage may be rendered void. By taking a wide view of “lawful impediment” or “prevented from marrying by [the Charter] or any other law” which goes beyond the impediments imposed by the capacity provisions in s 105, s 22 of the WC 2009 and/or s 13 of the WC 2020 will effectively serve as a side door for admitting new substantive grounds to render a marriage void. This is inconsistent with the statutory regime on the formation of marriages which has been clearly prescribed in s 105 of the Charter. In *Gian Bee Choo* and *Kee Cheong Keng*, as there were no lawful impediments in entering into such marriages of convenience prior to 1 October 2016, there was no failure to declare such a lawful impediment under s 17(2) of the WC 2009 and/or s 16(2) of the WC 2020.

93 It is quite understandable that the courts in *Gian Bee Choo* and *Kee Cheong Keng* were troubled by the prospect of a “marriage” which forms a core element of a criminal offence being accorded recognition and validity in law. However, regardless of how compelling the public policy considerations against such marriages, the proper scope of that policy is ultimately a matter for Parliament to determine through the enactment of legislation. In this regard, the Parliamentary debates accompanying the introduction of s 11A of the WC 2020 are illuminating (Singapore Parl Debates; Vol 94, Sitting No 7; Page 70; [29 February 2016] (Tan Chuan-Jin, Minister for Social and Family Development)):

... Marriages are void only when at least one party is successfully charged and deemed guilty by the Courts under section 57C of the Immigration Act for entering into a marriage of convenience. Such cases would have been scrutinised through the judicial process. It is only **consistent that such marriages are consequentially and automatically void**, given that **the act of entering into such a marriage is an offence**.
[emphasis added in bold]

94 This extract from the Parliamentary debates suggests that Parliament intended s 11A of the WC 2020 to render void only marriages that constitute

the specific offence under s 57C of the IA 2020 or, where there is no conviction, satisfy the elements in s 11A(1), which reflect those of the offence under s 57C; other marriages entered into for improper motives or “sham” marriages that do not fall within the scope of s 57C of the IA 2020 are not targeted by s 11A of the WC 2020.

95 Section 11A of the WC 2020 clearly sets out the public policy *from* 1 October 2016. Nothing suggests that this was also the policy *before* 1 October 2016. This is further confirmed by the MSF’s response that s 11A of the WC 2020 “was not intended to have retrospective effect” and “does not purport to affect the validity of marriages of convenience which were solemnised before 1 October 2016”. In this regard, we agree with the Judge that “the scope of the policy in respect of the validity of marriages and its application in the context of the WC has been specified by the words of ss 11A and 105(aa) of the WC” (GD at [31]).

96 We further agree with the Judge that penal provisions and accompanying consequences, without more, would not have any effect on the validity of the marriage (GD at [31]). Indeed, whether the marriage itself is void is a separate policy question to be determined by Parliament. In *Gian Bee Choo*, the judge appeared to equate the prosecution of parties to marriages of convenience with a broader public policy that such marriages ought to be void. However, while Parliament may have intended to punish the parties under the relevant laws criminalising that conduct, this is distinct from whether, as a matter of public policy, the marriage should be valid or void. The High Court observed in *Toh Seok Kheng* at [14]:

14 While it might be thought legitimate to prevent an abuse of marriage, it is crucial that what amounts to actionable abuse, the measures to be taken against such abuse and whether such abuse, if it exists, impinges on the *validity* of the marriage are

issues which are not to be determined by judicial fiat. These issues are matters of public policy and are non-justiciable. [emphasis in original]

97 We would also reject any argument that this approach may incentivise parties to make false declarations to obtain a valid licence. The Charter already provides separate penalties for the making of such false declarations under s 37 of the WC 2020, which serve to deter such conduct notwithstanding that the marriage itself may remain valid.

98 For the reasons we have explained, we respectfully disagree with the reasoning in *Gian Bee Choo* and *Kee Cheong Keng*, and do not consider it good law.

Whether public policy constitutes an independent ground to declare the marriage void

99 Given our view that the grounds on which a marriage may be rendered void are exhaustively stated in s 105 of the Charter, and that s 11A of the WC 2020 does not apply to a marriage of convenience solemnised in 2011, the remaining question is whether public policy can be considered as an independent ground for declaring such a marriage void.

100 Holding such a marriage void for contravening public policy, rather than on one of the grounds enumerated in s 105, will grate against the guidance in *UKM v Attorney-General* [2019] 3 SLR 874 (“*UKM*”) at [115], which cautions that where socio-economic issues are governed by statute, courts should be very slow to reach decisions on the basis of public policy alone. Generally, where the courts have had regard to public policy, it has been in the context of statutory interpretation or as one factor in the exercise of statutory discretion, not as an independent basis for action outside the statutory scheme. The scope of public

policy as a ground for holding a marriage void is already defined by s 105 of the Charter. Accordingly, to declare void a marriage on grounds beyond those prescribed by Parliament would be to arrogate to the courts a power that Parliament has not conferred.

Conclusion

101 In the present case, considering the law to be applied, there is no basis for declaring the marriage void. We therefore dismiss the appeal and affirm the Judge’s findings and reasoning on the validity of the marriage in the present case. As her analysis on other matters was not a point of appeal before us, we say no more on that.

102 As the Appellant was not successful in his appeal, he is to bear his own costs.

Ang Cheng Hock
Justice of the Court of Appeal

Debbie Ong Siew Ling
Judge of the Appellate Division

Sundaresh Menon CJ (dissenting):

Introduction

103 I have had the advantage of reading the draft judgment of the majority, which I shall refer to as the “majority judgment”. I gratefully adopt the definitions used therein, its account of the background facts, the procedural history, and the Appellant’s arguments, save where I state otherwise. I also agree with the majority that:

- (a) the High Court had jurisdiction and power to entertain the Appellant’s application for a declaration that the marriage between the Respondent and the Deceased was void (see [42] of the majority judgment);
- (b) the Appellant possesses the standing to seek such declaratory relief (see [42] of the majority judgment); and
- (c) there is no need for this court to make any determination relating to the administration or distribution of the Deceased’s estate, given that this was not a ground of appeal before this court (see [43] of the majority judgment).

104 However, where I respectfully depart from the majority is on a narrow but important point, specifically, its conclusion that the marriage between the Deceased and the Respondent, solemnised in Singapore sometime in 2011 and entered into for an immigration advantage in exchange for gratification, cannot be declared void under the Charter. This marriage has been referred to as a “marriage of convenience” in the majority judgment (at [3(c)]) as it meets the criteria set out in s 11A of the WC 2020, notwithstanding that it was not solemnised on or after 1 October 2016 (which I refer to as “the relevant date”).

I agree with the majority that s 11A plainly does not operate to void the marriage in the present case as it does not have retrospective application (see [95] of the majority judgment).

105 I also agree with the majority that, since s 11A of the WC 2020 is not applicable in the present case, the question is whether a marriage of convenience solemnised in Singapore before the relevant date can be voided on any other ground under the Charter (see [1] of the majority judgment). The majority answers that question in the negative; in my judgment, however, that question must be answered in the affirmative as the parties to such a marriage applied for a marriage licence in order to obtain the status of marriage solely for an illegal purpose, and the facts giving rise to that purpose were such that the Registrar would not and ought not to have issued the licence had he or she been apprised of those facts. In other words, the marriage was not solemnised on the authority of a valid marriage licence (see s 13 of the WC 2020).

106 My conclusion rests entirely on the proper interpretation of the statutory framework governing the validity and avoidance of marriages under the Charter. I do not rely on public policy as a freestanding ground for concluding that the marriage in this case is void. I accept, as the majority does, that the grounds for voiding a marriage under s 105 of the WC 2020 are exhaustive (see *Tan Ah Thee* at [35]; and [46] of the majority judgment). However, one of those stated grounds is the absence of a *valid* marriage licence under s 13 of the WC 2020 (formerly s 22 of the WC 2009, at the time of the marriage in issue). The specific point on which the majority and I differ is over the scope and application of s 13 in rendering a marriage void. This gives rise to a related question as to what Parliament meant when it required, as one of the grounds for voiding a marriage, that a marriage be solemnised on the authority of a “valid marriage licence”.

107 For the reasons that follow, I would hold that where the parties obtained a marriage licence from the Registrar for a marriage solemnised in Singapore by concealing the fact that they were entering into that marriage solely for an illegal purpose, and where they failed to disclose the facts which would have revealed that they were prevented from entering into such a sham marriage, whether by the provisions of the Charter or of any other law, such a licence would not be a *valid* marriage licence. On this basis, I would hold that the marriage between the Respondent and the Deceased was void under the former s 105 read with s 22 of the WC 2009, because, in my view, it was not solemnised on the authority of a valid marriage licence. I would accordingly have allowed the appeal and granted a declaration that the marriage was void.

Factual background

108 The facts on which I proceed are substantially similar to those set out in the majority judgment at [8]–[16], and they may be stated briefly. The Deceased and the Respondent were married on 26 January 2011. The Deceased did not mention the marriage to his family members despite his close relationship with them. His family and friends were excluded from and completely unaware of the solemnisation of the marriage, and those named as witnesses in the marriage certificate were unknown to the Appellant and his family. The marriage brought about no discernible change in his living arrangements or conduct. He did not bring the Respondent home to live with him. Nor did he move out to live with her. When the Deceased became terminally ill and died within a year of the marriage, the Respondent provided no support, made no contact with his family and remained entirely absent. In addition, shortly before the marriage, the Deceased had been in financial difficulty and was harassed by loan sharks, but this ceased during the year of the marriage. The Appellant infers that the Deceased settled his debts using payments he received from the Respondent for

entering into the marriage. The Respondent was later found to have been deported from Singapore for immigration offences in 2011.

109 This factual background is based on the affidavit evidence of the Appellant. The Respondent did not enter an appearance either below or on appeal. The Judge was satisfied, based on the affidavit evidence and in the absence of any evidence to the contrary, that the marriage between the Respondent and the Deceased met the criteria of a marriage of convenience stipulated in s 11A of the WC 2020. Specifically, this was a finding that the purpose of the marriage was to enable one of the parties (in this case, the Respondent) to obtain an immigration advantage, and that gratification was given or received (in this case, received by the Deceased) as an inducement or reward for entering into the marriage. I see no basis for disturbing that factual finding by the Judge. I accordingly proceed on that basis.

110 There was no conviction in this case of an offence of entering into a marriage of convenience under s 57C(1) of the IA 2020, not least because that provision, like s 11A of the WC 2020, was not yet in force at the material time. While such a conviction in relation to a marriage celebrated after the relevant date would be conclusive of the fact that the marriage was void by virtue of s 11A(3) of the WC 2020, the absence of such a conviction is, in my judgment, not determinative of whether the marriage in issue was solemnised on the authority of a valid marriage licence under the statutory regime that was then in force.

The central issue in this appeal

111 In my judgment, the answer to the present appeal lies in first recognising that the intending parties to a marriage may seek to obtain a marriage licence

for various and sometimes different purposes, and with different expectations as to what this entails. In many instances, those purposes or expectations are of no concern or interest to the court. But in several limited circumstances, I consider it can be relevant, and in this appeal, I consider that it bears directly on the central issue that is presented.

112 It is common ground that, for a marriage solemnised in Singapore to be valid, it must be solemnised on the authority of a *valid marriage licence* issued by the Registrar (s 13(a) of the WC 2020). In my view, the validity of a marriage licence cannot be assessed in the abstract, or by reference only to whether a marriage licence was in fact issued by the Registrar. I say this because the law imposes preconditions to the grant of a licence, and it seems to me to be indisputable that a licence issued contrary to those preconditions would not be valid. This must be all the more so where the failure to meet those preconditions is the result of the parties having defrauded or misled the Registrar.

113 Turning to the situation we are presented with in this appeal, in my view, the validity of the licence is to be gauged also in light of the purpose for which the parties sought to obtain the licence. Broadly speaking, four situations may be identified:

- (a) The first is when the parties intend to enter into a “genuine marital relationship”. The term “genuine marital relationship” may seem subjective. Yet, it is a term found in the Charter (see s 11A(2) of the WC 2020; see also [161] below). Since Parliament has used that term, it follows that it must have a meaning, however difficult it may be to articulate it. For completeness, I note that Parliament has indicated that whether a “genuine marital relationship” exists is ultimately a question of fact that depends on all the relevant circumstances (see the

Explanatory Statement to the Immigration (Amendment) Bill 2012 (Bill No 16/2012)).

(b) The second is when the parties intend to enter into the legal relationship of marriage, but with unmatched motives or expectations or on terms that others may regard as unconventional, or as departing from what may be described as the conventional expectations of a genuine marital relationship. In such a case, there is no doubt that there is an intention to contract a valid marriage and to enter into a marital relationship, notwithstanding patent or latent differences of expectations or motives. In my view, most of the cases where a marriage has been impugned by a party but upheld by the court fall in this category (see [146]–[154] below).

(c) The third is when the parties intend to seek the status of marriage, not for the purpose or with the intent of entering into the legal relationship of marriage, but to gain the status of marriage for a wholly extraneous purpose, though it is one that is neither contrary to law nor to public policy.

(d) The fourth is when the parties intend to seek the status of marriage, not for the purpose or with the intention of entering into a legal relationship of marriage, but to gain the status of marriage for a wholly extraneous purpose that is either unlawful or contrary to public policy.

114 This appeal concerns only the fourth category, and even then, only a subset of it. That is why I consider that the central issue in this appeal is whether a marriage licence issued by the Registrar is valid when: (a) the parties have obtained the marriage licence without disclosing to the Registrar that their intention in seeking the licence had nothing whatsoever to do with being in *any*

conception of a marital relationship; and (b) they were seeking the status of marriage solely for an illegal purpose. This appeal does not concern the situation where the parties are acting for a purpose that is not illegal but is contrary to public policy. It also does not concern the validity of marriage licences obtained in the context of the three other categories. However, I will make some brief observations on those categories because they illuminate, by contrast, the narrow issue which does arise in this case, and also because the treatment of these various categories reveals a legal position that might warrant legislative consideration.

115 In the first category, the validity of the marriage licence is plainly unimpeachable. The parties seek it for the very purpose for which the statutory scheme under the Charter contemplates that it should be granted – namely, to enter into a genuine marital relationship.

116 For the second category, the validity of a marriage licence would subsist as long as the parties obtained it intending thereby to enter into the legal relationship of husband and wife. This coheres with the observation of Ormrod J in *Messina v Smith* [1971] 2 All ER 1046, which was affirmed by Lord Hailsham of St Marylebone LC in the decision of the House of Lords in *Vervaeke* at 148 (see also, *Ng Bee Hoon* at [49], cited with approval in *Kwong Sin Hwa* at [33]) and, indeed, cited by the majority (see [64] of the majority judgment):

... if the parties exchange consents to marry with due formality, intending to acquire the status of married persons, it is immaterial that they intend the marriage to take effect in some limited way or that one or both of them may have been mistaken about, or unaware of, some of the incidents of the status which they have created. To hold otherwise would impair the effect of the whole system of law regulating marriages in this country, and gravely diminish the value of the system of registration of marriages on which so much depends in a modern community.

117 In this connection, I accept that the law should understandably be reluctant to pronounce on what it considers to be an ideal or even a sufficient marital relationship. This is especially so since marital intimacy, motives, expectations and arrangements may present themselves in a variety of ways. The present appeal, however, is not concerned with a situation that falls into the second category. The evidence suggests that the Deceased and the Respondent did not intend to enter into the legal relationship of husband and wife *at all*. I emphasise that the issue, as I have framed it, does not require the court to judge the “quality” of the marriage in question because there never was to be, and there never was, *any* marital relationship at all. I elaborate on this at [146]–[154] below.

118 As for the third category, I express no view on whether a marriage licence would be valid where the parties seek the status of marriage solely to advance a wholly extraneous purpose that is neither contrary to law nor contrary to public policy. It may be that a marriage licence obtained in such circumstances could be challenged on the basis that the parties never intended to enter into the legal relationship of marriage (see [155]–[164] below). That, however, is a difficult question which does not arise in this appeal, and it would be inappropriate for me to express a concluded view on it though I have set out several observations in case they might be helpful.

119 I turn then to the statutory framework governing the issue which does arise in this appeal.

The statutory framework governing the validity and avoidance of marriages

120 In my judgment, the answer to the issue that I have framed lies in the proper construction of the statutory requirement that, for a marriage solemnised

in Singapore to be valid, it must be solemnised on the authority of a *valid* marriage licence. It is thus appropriate to begin the discussion by setting out the statutory framework governing the validity and avoidance of marriages under the Charter.

121 Section 105 of the WC 2020 provides that:

A marriage which takes place after 1 June 1981 is void on the following grounds only:

(a) that it is not a valid marriage by virtue of sections 3(4), 5, 9, 10, 11, 12 and 13;

(aa) where the marriage was solemnised on or after 1 October 2016, that it is not a valid marriage by virtue of section 11A.

122 I accept that the word “only” in s 105 means that it is not permissible to add to the grounds for avoidance of marriages under s 105. The converse is, however, equally important: the court should not construe the grounds that Parliament *has* expressly enacted in a way that deprives them of their intended operation.

123 Section 13 of the WC 2020 is one such ground, and it provides that:

A marriage solemnised in Singapore is void unless it is solemnised –

(a) on the authority of a valid marriage licence or a valid special marriage licence; and

(b) by the Registrar or a licensed solemniser.

At the time of the Deceased’s marriage to the Respondent, the corresponding provision was s 22 of the WC 2009. The wording of s 13 of the WC 2020 is substantially unchanged from that of s 22 of the WC 2009.

124 The conditions for the Registrar to issue a marriage licence may be found in s 18 of the WC 2020. Section 18(1)(a) provides that the Registrar must not issue a marriage licence unless the Registrar is satisfied that “the parties to the intended marriage are not prevented from marrying by [the Charter] or any other law”. In this connection, s 16(2)(a) of the WC 2020 requires each party to the intended marriage to declare whether the parties are “prevented from marrying by [the Charter] or any other law”. The equivalent provision in the WC 2009 – which applied at the time of the marriage between the Deceased and the Respondent – is s 17(2)(d), which states that the Registrar shall not issue a marriage licence until the Registrar has been satisfied by statutory declaration made by each of the parties to the proposed marriage “that there is no lawful impediment to the marriage”. Despite the difference in the wording of s 17(2)(d) of the WC 2009 and s 18(1)(a) of the WC 2020, the MSF has stated through the AGC in response to questions that we posed, that the reformulation from “no lawful impediment to the marriage” to “prevented from marrying by [the Charter] or any other law” was not intended to effect any substantive change in the law (see [35(a)] of the majority judgment). I will thus refer to the wording in s 18(1)(a) of the WC 2020 in the subsequent discussion.

125 In my view, the point is not whether s 13 of the WC 2020 can ever operate as a substantive ground on which a marriage may be declared void. There is no doubt that it can, given the express wording of s 105. This is also accepted by the majority (see [64] of the majority judgment). Where I differ from the majority is in relation to the majority’s view of the relationship between the requirement of a valid marriage licence under s 13 and the provisions governing the parties’ capacity to marry, which are separately prescribed in s 105. The majority’s analysis proceeds on the assumption that, in so far as the licensing process is concerned with substantive impediments to

marriage, its function is essentially to screen for the capacity requirements separately prescribed in s 105 (see [57] and [92] of the majority judgment). To be sure, s 13 may perform such a screening function. But, to limit its effect in relation to substantive impediments in this way seems to me to reduce it, in that respect, to a merely tautologous provision and that suggests that such a construction of the provision is wrong and should be rejected. On such a view, s 13 would, in so far as substantive impediments to marriage are concerned, only be relevant as an additional, and in my respectful view, wholly redundant check directed at whether the other *capacity* requirements set out in s 105 are fulfilled. I see no basis for concluding that this was the extent of the legislative purpose of s 13. And whether it does more depends, in the final analysis, on what Parliament meant when it required that the marriage be solemnised “on the authority of a valid marriage licence”.

126 To be fair, the majority also seems to accept that it would be wrong to confine the relevance of s 13 to this “screening” effect. The majority thus accepts that s 13 may operate as a substantive ground for declaring a marriage void under s 105, but then on the majority’s view, its scope in that regard is confined to defects concerning the *formal* validity of the marriage, such as where the parties marry without a licence or the licence ceases to have effect because the notice of marriage has expired or been cancelled (see [64] of the majority judgment). With the greatest respect, I do not consider this as adding *any* substantive weight to s 13, as I shall explain.

The meaning of a “valid marriage licence”

127 In my view, the use of the adjective “valid” must be given meaning since it imposes a qualification on the marriage licence in question. The majority’s view, it seems to me, goes no further, in substance, than saying that the parties

must have obtained a marriage licence which remains in force, regardless of how or why they did so (see [64] of the majority judgment). In my view, this wrongly ignores the substantive statutory conditions governing the grant of a marriage licence that are set out in s 18 of the WC 2020. As I have already noted, s 18(1) provides that the Registrar must not issue a marriage licence unless the Registrar is satisfied that certain prescribed conditions have been met. The mandatory terms in which s 18(1) is expressed indicate that these are *preconditions* for the lawful issuance of a marriage licence. One of these grounds is s 18(1)(a) which states that “the parties to the intended marriage are not prevented from marrying by [the Charter] or any other law”. It must follow in my view that where the facts are such that the Registrar must not or ought not to issue a marriage licence by virtue of any law in force in Singapore, any licence that is nevertheless issued should not properly be regarded as a valid marriage licence. On the majority’s interpretation, however, a licence issued in circumstances in which Parliament has expressly directed that it must not be issued would nevertheless be “valid” for the purposes of s 13. I find that untenable.

128 I consider that my view is essentially consonant with the approach taken in *Tan Ah Thee*. There, Prakash J found that the reference to a “valid marriage licence” must be read as meaning a marriage licence issued by the Registrar when the Registrar was *correctly satisfied* that all the requirements of the former s 17(2) of the WC 2009 had been met. She further observed that if the statutory declaration wrongly stated that there was no lawful impediment to the proposed marriage, that wrongful declaration would invalidate the marriage licence because it would have been issued on an incorrect basis, the Registrar’s satisfaction having been procured by a wrongful declaration (*Tan Ah Thee* at [45]).

129 It is true that the wrongful declarations considered in *Tan Ah Thee* concerned matters which, in substance, went to the parties' capacity to marry under the Charter. In *Valberg Kevin Christopher v Heran binte Abdul Rahman*, unreported (Originating Summons No 1274 of 1990) ("*Valberg*"), both parties were Muslim when they procured the issue of a marriage licence, while in *Lim Ying v Hiok Kian Ming Eric* [1991] 2 SLR(R) 525 ("*Lim Ying*"), both parties were found to be of the same sex for the purposes of the Charter (*Tan Ah Thee* at [44] and [47]). But that does not, in my view, detract from the reasoning in that case. At the time *Valberg* and *Lim Ying* were decided, the Charter did not yet expressly provide that such marriages were void under s 105 (then s 99) of the Charter. Nevertheless, Prakash J considered that those marriages could properly be regarded as void by reason of s 105 (then s 99) because they had not been solemnised pursuant to a valid marriage licence (*Tan Ah Thee* at [44]–[45]).

130 The significance of Prakash J's reasoning therefore lay in the legal consequence of the Registrar's satisfaction having been procured by a wrongful declaration. The proposition established by *Tan Ah Thee* is that the validity of a marriage licence depends upon the Registrar having been correctly satisfied that the statutory conditions governing its issue have been met, and that a licence issued where that satisfaction has been procured by a wrongful declaration is not a "valid marriage licence" for the purposes of s 105.

131 I agree with Prakash J's analysis. This flows from the very logic of calling something a *licence* to marry. A licence in a regulatory context connotes official authorisation to undertake an act that would otherwise not be permitted. The question therefore cannot simply be whether the parties to the intended marriage possessed a document purporting to be a marriage licence without any regard as to the circumstances in which it was obtained. In particular, this must

be the case where the Registrar issued the licence in circumstances where the Registrar had been intentionally defrauded by the parties in respect of the conditions governing its grant – this being precisely the situation covered at [114] above. The validity of the licence must rest on a factual premise that has a basis and not on a fraudulent representation. It would make a mockery of the marriage licensing regime if a party who declares the truth to the Registrar is refused a licence, while a party who suppresses the truth from the Registrar can obtain a licence that is thereafter treated as unimpeachable. Yet, this is the consequence of the majority's view, and I find myself unable to accept that.

132 My view in this regard is reinforced by the statutory context. Section 16(2)(a) of the WC 2020 requires parties applying for a marriage licence to each declare, amongst other things, whether the parties are prevented from marrying by the Charter or any other law. When s 18(1)(a) is read with s 16(2)(a), it seems to me to be the inescapable conclusion that the Registrar is to draw his or her satisfaction of the conditions for issuing a marriage licence in large part from the parties' declarations under s 16. The requirement that the parties' application for the licence must be supported by a statutory declaration underscores Parliament's expectation that it may be relied on by the Registrar as true on its face. But the view reflected in the majority judgment would lead to the conclusion that if the declaration under s 16 is false, while this might give rise to the possibility of prosecution under s 37 of the WC 2020 for intentionally making a false declaration, it would not affect the validity of a marriage licence that has been issued in reliance upon that false declaration. This seems to me to threaten the very legitimacy of the marriage licensing regime.

133 The existence of a penal consequence for making a false declaration is not purely a separate and distinct consequence that has no impact on the marriage licence issued pursuant to that declaration. Yet this is the result of the

majority's view (see [97] of the majority judgment). This cannot be correct because it divorces the whole purpose of requiring a statutory declaration when applying for a marriage licence, this being to verify the preconditions for the grant of that licence, from the licensing process itself. In effect, the result of the majority's interpretation is that the requirement of a statutory declaration was solely to create an offence that could be prosecuted. As much as it may be valuable to encourage truthful behaviour in this way, it seems to me to wholly miss the real point of the legislation when the falsity of the declaration is then found to have no consequence at all on the validity of the marriage licence issued in reliance upon the false declaration. In my view, it is plain from the fact that penal consequences are prescribed, that this militates against the conclusion that a marriage licence issued in reliance upon that false declaration is nonetheless valid and satisfies the statutory conditions governing its issuance. To put it starkly, the fact that the declaration is false must mean that the statutory conditions for the grant of the marriage licence are *not* met.

134 The majority also reasons that a false declaration – that the parties are not prevented from marrying by the Charter or any other law – cannot have the consequence of invalidating the marriage licence and the corresponding marriage because those who marry abroad would escape this consequence entirely (see [63] of the majority judgment). It is true that s 13 of the WC 2020 concerns the formal validity of a marriage and, accordingly, only applies to marriages solemnised in Singapore. Parliament prescribes particular formalities because they serve identifiable objectives within the system of law regulating marriages in Singapore. That such requirements are territorially confined, and may therefore be avoided by marrying overseas, is simply a consequence of the long-established principle that the formal validity of a marriage is governed by the law of the place of celebration. It simply does not follow that because the

formality requirements in s 13 do not apply to marriages outside Singapore, that the provision should be construed in a way that significantly diminishes, if not eradicates, its effect. For this reason, I am unable to accept the reasoning of the majority. The formal validity of a foreign marriage is necessarily governed by a different set of rules than that of a domestic marriage. It does not follow that the concept of a “valid marriage licence” should therefore be divorced from the statutory conditions governing its issuance.

135 I also highlight that, notwithstanding the ordinary conflict of laws rule that formal validity of a marriage is governed by the law of the place of celebration, s 108 of the WC 2020 allows provisions of the Charter concerning the formal validity of marriage to be applied to a foreign marriage where they operate as mandatory rules of Singapore law or engage sufficiently strong public policy considerations. Parliament itself therefore did not proceed on the basis that the provisions regulating formal validity are necessarily devoid of substantive legal effect.

136 I therefore do not agree with the majority that, unless there is a want of capacity under one of the other provisions listed in s 105, any defect, including a fraud, leading to the issuance of the marriage licence is incapable of affecting the validity of the marriage (see [57], [64] and [92] of the majority judgment). That proposition gives insufficient weight to the inclusion of s 13 itself as a ground in s 105 and to the mandatory language governing the grant of a marriage licence.

The meaning of “prevented from marrying by [the Charter] or any other law”

137 Perhaps the more difficult question is what it means to be “prevented from marrying by [the Charter] or any other law” under ss 16(2)(a) and 18(1)(a)

of the WC 2020. The Registrar must be satisfied that the parties are not so prevented before a marriage licence may be issued. As I have already noted, the majority construes this to refer only to the impediments imposed by the capacity provisions listed in s 105, and therefore concludes that there was no lawful impediment to entering into a marriage of convenience before 1 October 2016 (see [92] of the majority judgment).

138 With respect, I do not accept the majority’s interpretation. Among the difficulties with that interpretation is that it leaves s 18(1)(a) with no independent work to do. If the phrase “prevented from marrying by [the Charter] or any other law” were confined to the capacity provisions listed in s 105, it is difficult to see what substantive significance s 18(1)(a) would have as a condition governing the grant of a valid marriage licence. The absence of capacity would suffice in and of itself to render the marriage void under s 105, without regard to whether the Registrar did or did not issue a valid marriage licence. Conversely, where the parties possess the requisite capacity, there would, on the majority’s interpretation, be no independent impediment under s 18(1)(a) capable of affecting the validity of the marriage licence (see [64] of the majority judgment). The result is that compliance with s 18(1)(a), despite being expressed as a mandatory precondition to the issuance of a marriage licence, would have no independent bearing on the validity of the licence. That sits uneasily with Parliament’s express stipulation that the Registrar “must not” issue a marriage licence unless he or she is *satisfied* of that condition, and with the separate requirement in s 13 that the marriage be solemnised on the authority of a *valid* marriage licence.

139 There is a further textual difficulty with the majority’s interpretation. The current wording of ss 16(2)(a) and 18(1)(a) of the WC 2020 refers to the parties being “prevented from marrying by this Act or *any other law*”. While

this wording differs from s 17(2)(d) of the WC 2009, the MSF has stated that this was not intended to effect any substantive change. Yet, confining the phrase to the capacity provisions enumerated in s 105 would render Parliament's express reference to the parties being prevented from marrying by "any other law" wholly otiose. The court should prefer an interpretation that gives significance to every word in an enactment as it must be assumed that Parliament does not legislate in vain (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [38]).

140 In my view, the better reading is that "prevented from marrying by [the Charter] or any other law" in ss 16(2)(a) and 18(1)(a) of the WC 2020 is not confined to cases where the parties lack capacity to marry under the Charter. It extends, at least, to a case where the parties seek to obtain the status of marriage solely in order to use that status for an illegal purpose. This is not to say that *any* illegality associated with contracting a marriage necessarily constitutes an impediment to it. Rather, the illegality must bear upon the parties' acquisition and use of the status of marriage itself. A clear case would be where the law prohibits the very act of entering into the marriage in the circumstances in question.

141 That was the position here. At the time of the marriage between the Deceased and the Respondent, s 57C of the IA 2020 and s 11A of the WC 2020 were not yet in force. But the absence of those provisions did not mean that the conduct of entering into a marriage solely for an illegal purpose, as identified at [114] above, was lawful. As *Gian Bee Choo* explained, before the enactment of s 57C, acts associated with marriages of convenience were typically prosecuted under s 5(b)(i) of the PCA and s 57(1)(k) of the IA 2008. Section 5(b)(i) of the PCA would be directly engaged where gratification was given as an inducement or reward for entering into a sham marriage. Section 57(1)(k) of the IA 2008

would be engaged where false statements were made for the purpose of obtaining an immigration advantage, even without any gratification having been given (*Gian Bee Choo* at [109]–[113]).

142 The majority suggests that there is a distinction between the situation where the law imposes criminal liability for entering into a marriage and the situation where the law prohibits the acquisition of the status of marriage itself (see [96] of the majority judgment). With respect, I do not accept that distinction. In my view, the relevant question is whether the parties’ conduct of entering into a marriage in the circumstances before the court was prohibited by law. Where Parliament has made that very conduct a criminal offence, I find it impossible to conclude, as the majority does, that the marriage itself is nonetheless not prohibited by law. To reiterate a point I have already made, the fact that the prohibition is enforced through penal sanctions emphasises the fact that such conduct is legally prohibited.

143 The High Court’s observation in *Toh Seok Kheng* at [14] also does not assist the majority (see [96] of the majority judgment). I readily accept that the mere fact that Parliament has criminalised particular conduct does not, without more, render a marriage void. However, that is not the proposition I advance here. The invalidity of the marriage does not follow merely from the criminality of the conduct. It follows from the statutory scheme enacted by Parliament:

- (a) a marriage solemnised in Singapore is void unless solemnised on the authority of a valid marriage licence, by virtue of s 13(a) of the WC 2020;

(b) the Registrar must not issue such a licence unless satisfied that the parties are not prevented from marrying by the Charter or any other law, by virtue of s 18(1)(a) of the WC 2020; and

(c) the parties are required to declare whether they are prevented from marrying by the Charter or any other law, by virtue of s 16(2)(a) of the WC 2020.

Where the parties conceal facts which disclose any such impediment and thereby procure the marriage licence, the resulting invalidity that follows is the result of the operation of those very statutory provisions.

Section 11A does not compel a different conclusion

144 The majority also places weight on s 11A of the WC 2020 and on the fact that it applies only to marriages solemnised on or after 1 October 2016 (see [95] of the majority judgment). I agree that s 11A only operates prospectively. But I do not accept that this means that all marriages which were solemnised before 1 October 2016 that fall within the criteria set out in s 11A must necessarily be valid. A provision may be intended to have prospective effect yet leave untouched an existing basis for a marriage being void under another provision. In response to our queries, the MSF through the AGC advised that s 11A “does not purport to affect” marriages of convenience solemnised before 1 October 2016. With respect, this does not mean that such marriages are affirmatively valid; it means only that s 11A itself does not apply to them.

145 The majority also contends that the Parliamentary statement referred to at [93] of the majority judgment supports the conclusion that is reflected in the majority judgment. I disagree because that is directed at the *deeming effect* of a conviction under s 57C of the IA 2020 on a marriage. In essence, once the

offence under s 57C has been proved in criminal proceedings, the affected marriage will consequentially and automatically be void without the need for the matrimonial or any other court to consider afresh whether that was a marriage of convenience. That makes sense in my respectful view, but it says nothing about the distinct question before us, which is whether, before s 11A of the WC 2020 was enacted, a marriage solemnised in Singapore might nonetheless be void because it was not solemnised under the authority of a valid marriage licence.

The authorities

146 Having explained why the statutory framework compels me to conclude that the marriage in issue is void because it was not solemnised on the authority of a valid marriage licence, I turn to the authorities relied upon by the majority.

147 In my respectful view, *Kwong Sin Hwa*, *Tan Ah Thee* and *Toh Seok Kheng* do not point to a different conclusion. The central proposition established in those authorities, drawing ultimately from *Vervaeke* (see [116] above), is that the law abstains from prescribing the “proper” or acceptable motives for marriage and does not permit the parties’ private motives or mental reservations to undermine the validity of a marriage (see *Tan Ah Thee* at [56]; *Toh Seok Kheng* at [13]). Thus, where parties are free to marry, validly consent to enter into the status of marriage, and comply with the statutory formalities, the law will not ordinarily invalidate the marriage just because one or both of them intended that the marriage would operate in a manner that others might not regard as constituting a “genuine” marital relationship.

148 That proposition, however, is not the issue which I have identified. None of those authorities dealt with the question before this court: whether a marriage

licence remains valid where it had been obtained by parties who had no intention of entering into *any* sort of marital relationship, and who sought the status of marriage solely for an illegal purpose, and where the Registrar would not have issued the licence had the true facts been disclosed. Those cases proceeded on the footing that the parties *had obtained* a valid marriage licence. The only question was whether the parties' particular *motives* invalidated the marriage. The present case raises a different question. Here, the concern is not with whether the parties' motives for entering into the marriage were sufficiently genuine or worthy. On the contrary, it is the utter absence of *any* intention to enter into *any* conception of a marital relationship, in that the parties intended to marry *solely for an illegal purpose* that is relevant because it bears upon whether the declaration upon which the marriage licence was issued was false, and hence whether the licence itself was validly obtained.

149 The facts of the three authorities illustrate the distinction. *Kwong Sin Hwa* concerned the enforceability of a pre-nuptial agreement postponing cohabitation and consummation until after a customary ceremony. *Tan Ah Thee* concerned the contention that a marriage should be declared void because the defendant's predominant motive in entering into it was to revoke the deceased's earlier will. Neither case involved any allegation that the parties obtained the marriage licence by concealing that they sought the status of marriage solely for an unlawful purpose, or that the Registrar had been induced to issue the licence upon a false declaration.

150 *Toh Seok Kheng* comes closer to the present facts because the plaintiff alleged that the marriage had been entered into to secure an immigration advantage. Even there, however, the court did not find that any gratification had been given or received or that the parties had engaged in conduct attracting criminal liability. More fundamentally, the issue before the court was whether

the existence of a “sham marriage” constituted an additional ground upon which a marriage could be declared void outside s 105 of the Charter. It was in rejecting that argument that the court observed that the law abstains from prescribing the “proper” motives for marriage. The case did not concern the narrower question that has troubled me, which is the validity of a marriage licence obtained as a result of a fraud on the Registrar.

151 The same may be said of *Vervaeke*. Although the parties entered into the marriage for the purpose of enabling the wife to acquire British nationality and avoid deportation, and the husband was induced to participate by payment, the House of Lords proceeded on the footing that the parties were free to marry, had consented to the achievement of the married state and had observed the formalities required by law. The question was whether their ulterior purpose and private arrangements nevertheless rendered the marriage void. It was in that context that Lord Hailsham observed that there was “no room for mental reservations or private arrangements regarding the parties’ personal relationships” (at 149). Those observations do not address the issue before this court, and the concern that I have identified – whether the marriage licence or its equivalent had been invalidly obtained by reason of a false declaration or deception practised on the Registrar – does not appear to have been advanced in argument or considered by the House of Lords.

152 There is a further contextual distinction between *Vervaeke* and the present appeal which should not be overlooked. In *Vervaeke*, the challenge to the marriage was brought by one of the parties to the marriage. The House of Lords was therefore concerned with whether a party who had voluntarily entered into the marriage could subsequently rely upon the parties’ own undisclosed arrangements and ulterior purposes to impeach its validity. The present appeal, by contrast, is brought by a third party to the marriage. In my

view, there *may* be quite different considerations at play when considering a case like *Vervaeke* where a court might quite reasonably be concerned over allowing a party to rely on that party's own misdeed to avoid the marriage, and the present case where the challenge is brought by a third party who is directly and adversely affected by the marital status that was fraudulently obtained but played no part in that fraud. The wrong remains the same in both instances, but the identity of the party seeking relief *might* make a difference because of the general principle that one should not take advantage of one's own wrong.

153 The authorities which do address the issue I have identified are *Gian Bee Choo* and *Kee Cheong Keng*. Both cases concerned challenges to the validity of marriages alleged to have been entered into solely for the purpose of securing an immigration advantage in exchange for gratification. In each case, the court dealt with the question of whether the marriage had been solemnised on the authority of a valid marriage licence. In *Gian Bee Choo*, Tan Siong Thye J held that where the parties had obtained a marriage licence by falsely declaring that there was no lawful impediment to the proposed marriage, the licence would be invalid and the marriage would be void under s 105 read with s 22 of the WC 2009. The same analysis was subsequently adopted by Choo Han Teck J in *Kee Cheong Keng*, who held that the parties' false declaration that they were not prevented from marrying by the Charter or any other law undermined the validity of the marriage licence and rendered the marriage void under s 105(a) read with s 13(a) of the WC 2020.

154 In my respectful view, those decisions correctly identified the relevant question – whether the marriage in issue had been solemnised on the authority of a valid marriage licence in accordance with the Charter. Indeed, in *Gian Bee Choo*, Tan J expressly distinguished *Tan Ah Thee* on the basis that it did not consider whether the marriage licence had been procured by fraud or deception,

or whether the parties had contravened any laws in the process of obtaining the marriage licence and entering into the marriage (at [95]–[96]). For the reasons I have given, I respectfully agree with the reasoning in *Gian Bee Choo* and *Kee Cheong Keng*.

The intention to enter into the legal relationship of marriage

155 What I have said thus far is sufficient to dispose of the present appeal. I add the following observations because this appeal has exposed questions that may arise in future cases, and which may, as I have noted, warrant legislative attention. These observations are not necessary to my decision.

156 Marriage, though deeply personal in nature, is not purely a private contractual agreement that affects only the two individual parties to it. It also carries the character of a legal status with consequences that extend to the wider public (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at paras 1.010 to 1.012). The parties to a marriage are required by law to commit to an exclusive marital relationship (ss 5 and 11 of the Charter). The Charter imposes mutual obligations upon spouses, including the duty to cooperate in safeguarding the interests of the union (s 46 of the Charter). A marriage endures throughout the lives of the spouses unless it was void to begin with, terminated by death, dissolved by the court, or declared by the court to be null and void (s 7 of the Charter). These incidents of marriage reflect the law’s understanding that marriage is a legal institution carrying enduring rights and obligations.

157 The public character of marriage does not mean that the courts should concern themselves with the private reasons why people choose to marry or how people undertake their marital obligations as husband and wife. The authorities

have long cautioned against judicial inquiry into such matters (see [116]–[117] above). People marry for many different reasons: affection, family expectations, pregnancy, companionship, financial prudence, social respectability, housing eligibility, or more often than not, a combination of these. The law neither ranks these motives nor undertakes any qualitative assessment of whether they are sufficiently worthy or sincere to constitute a valid marriage. To do so would be inconsistent with the deeply personal nature of the decision to marry.

158 There is, however, an important distinction between the parties’ *motives* for marrying and their *intention to enter into the legal relationship of marriage*. The former concerns why they chose to marry. The latter concerns whether they intended to assume the legal status and relationship of husband and wife in *any* plausible sense. In my view, it is only the latter inquiry that may bear upon the validity of the marriage itself.

159 This distinction explains why the authorities have consistently declined to scrutinise the parties’ motives to enter into a marriage. Where parties genuinely intended to enter into the legal relationship of marriage, the validity of their marriage is not affected just because they married for unconventional reasons, or because they contemplated only a limited degree of cohabitation, intimacy or companionship. Such cases fall squarely within the principle articulated in *Vervaeke*, *Tan Ah Thee* and *Toh Seok Kheng*. But different considerations arise where the parties never intended to enter into the legal relationship of marriage at all, but sought the status of marriage only as the means of obtaining some collateral benefit. In such a case, the issue is no longer why the parties married, but whether they intended to marry at all. Put differently, can a marriage licence validly be obtained where the parties apply for it without *any* intention of taking each other as husband and wife (see s 23(2) of the WC 2020)?

160 At this time, without the benefit of full arguments, I find it difficult to see how a marriage licence could be validly obtained in such circumstances. Parties who never intended to enter into the legal relationship of marriage cannot meaningfully be said to have intended to undertake the rights and obligations that marriage creates. Their exchange of matrimonial vows would therefore amount to no more than what the court described in *Asser v Peermohamed* [1984] OJ No 3243 (at [18]) as “mere hocus-pocus without any sense and, therefore, without any legal effect”. Although the prescribed formalities of marriage would have been observed, those formalities would have been devoid of the intention that ascribes them with legal significance.

161 This understanding seems to be reinforced by the language employed in s 11A(2) of the WC 2020. That provision states that even a marriage of convenience within the meaning of s 11A(1) is *not void* if both parties reasonably believed that the marriage would result in a genuine marital relationship. Likewise, s 57C(4) of the IA 2020 provides a defence where the accused reasonably believed that the marriage of convenience would result in a genuine marital relationship. Both provisions proceed on the footing that what matters in the final analysis is not merely the formalities of marriage, but whether the parties intended to enter into the legal relationship of marriage such that it would result in a genuine marital relationship. Parliament therefore recognised that compliance with the prescribed formalities will not invariably be sufficient. If it were otherwise, the references in those provisions to a “genuine marital relationship” would serve little purpose, since every marriage of convenience would satisfy the formal requirements for a valid marriage ceremony. And even if the marriage was contracted for the specific purposes that have been set out in s 11A(1) of the WC 2020 and criminalised by s 57C(1)

of the IA 2020, yet, it would not be void *if* the parties reasonably believed it would result in a genuine marital relationship.

162 This conclusion is also consistent with the law's longstanding refusal to recognise arrangements that undermine the institution of marriage itself. Thus, in *Brodie*, a pre-nuptial agreement was held contrary to public policy because it enabled the husband to repudiate the marriage and evade the obligations that marriage entails (see *Kwong Sin Hwa* at [22]). It seems to me that the same concern may apply, with even greater force, where the parties never intended to enter into the legal relationship of marriage at all, but sought the status of marriage only and exclusively for some collateral purpose.

163 And, of course, this is not confined to marriages of convenience within the meaning of s 11A of the WC 2020. It seems to me to be capable of arising more generally whenever parties seek the status of marriage solely as the means of obtaining some collateral advantage. Thus, two persons may obtain a marriage licence solely to secure an immigration benefit for one of them, even though no gratification has been given or received. I find it difficult to accept at present that the law should treat a marriage as valid in the absence of gratification, but on the identical facts save with payment of gratification of a sum of, say, \$100, as invalid. That seems to me to be an unprincipled and disturbing outcome. Likewise, two persons may obtain a marriage licence solely to qualify for the purchase of a public housing flat, having agreed from the outset that the marriage will be dissolved once the flat has been acquired. If, in such cases, the parties never intended to enter into the legal relationship of marriage, but sought the status of marriage only as the means of obtaining some collateral benefit, the same question arises: is a marriage licence granted in ignorance of those facts one that has been validly obtained when it would never have been granted had the true facts been known?

164 I reiterate that these observations do not reflect a concluded view on whether the absence, without more, of an intention to enter into the legal relationship of marriage is itself sufficient to invalidate a marriage licence or the resulting marriage. That issue does not arise in the present appeal, which is confined to the narrower situation where the parties obtained a marriage licence solely to acquire the status of marriage for an illegal purpose. I have identified the broader issue discussed in this section of my judgment because the question of whether, and if so in what circumstances, the absence of such an intention might affect the validity of a marriage licence or the resulting marriage is a question that may be appropriate for legislative or further judicial consideration, and in the latter regard, is in any event best left for determination in a case in which it squarely arises and the court is assisted with the benefit of full arguments.

Conclusion

165 For these reasons, I would have allowed the appeal. I would have declared that the marriage solemnised on 26 January 2011 between the Deceased and the Respondent was void under s 105 of the WC 2009 because it was not solemnised on the authority of a valid marriage licence within the meaning of s 22 of the WC 2009.

Sundaresh Menon
Chief Justice

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