

Case Comment

**THE EXPANDED DEFINITION OF MATRIMONIAL  
ASSET TO GIVE EFFECT TO A SPOUSE'S INTENTION**

*CLC v CLB* [2023] 1 SLR 1260

[2023] SAL Prac 17

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**I. Introduction**

1 The definition of a matrimonial asset which is subject to division upon the grant of a divorce, judicial separation or nullity is encapsulated in s 112(10) of the Women's Charter 1961.<sup>1</sup> In essence, the statutory definition of a matrimonial asset is any asset acquired by one party or both parties to a marriage during the subsistence of a marriage. The matrimonial home also falls within the definition of a matrimonial asset. Under normal circumstances, assets acquired by a party prior to the marriage and assets acquired by gift or inheritance are not matrimonial assets, unless they have been transformed by the definition provided under s 112(10). A pre-marital asset may be transformed by ordinary use by the family of this asset or by substantial improvement of the asset owing to the effort of the other spouse or joint efforts of both spouses. A gift or inheritance may be transformed by the substantial improvement method. However, this provision may cause confusion in certain instances, particularly in relation to gifts and inheritances when the facts of the case may support different interpretations of the definition of a matrimonial asset. The recent Court of Appeal decision in *CLC v CLB*<sup>2</sup> has expanded this definition of a matrimonial asset,

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1 2020 Rev Ed.

2 [2023] 1 SLR 1260.

to give effect to a spouse's clear and unambiguous intention to transform or convert a non-matrimonial asset into a matrimonial asset even where the conditions in s 112(10) set out above are not met.

2 The Court of Appeal in *CLC v CLB* provided greater clarity on the ambiguity brought about by this statutory provision, as it granted leave to the wife in divorce proceedings to file an appeal to the Court of Appeal in respect of a decision of the Appellate Division of the High Court, to consider the following novel questions of law under s 112(10):<sup>3</sup>

(a) Does the statutory purpose and language of s 112(10) provide support in determining, with reference to the intention of the donee spouse, whether an asset acquired by the donee by way of gift or inheritance has lost its character as such and may therefore be regarded as a matrimonial asset (the "First Issue")?

(b) What is required to trace an asset, in particular moneys in a bank account, to an asset acquired by gift or inheritance? In particular, where such moneys have been co-mingled with funds from other sources, which party bears the burden of proving that the money that remains in the account, is traceable to the gift or inheritance in question (the "Second Issue")?

## II. Background facts

3 The parties were married in September 2003 and there are two children to the marriage. An interim judgment for divorce was granted in July 2019. Orders for the ancillary matters in relation to the division of assets were delivered on 23 March 2021 with full grounds of decision issued on 24 June 2021. The husband ("Husband"), being dissatisfied with the outcome of the ancillary matters, appealed to the Appellate Division of the High Court and an *ex tempore* judgment was delivered on 25 November 2021, wherein his appeal was allowed in part.

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3 *CLC v CLB* [2023] 1 SLR 1260 at [3] and [29].

4 Thereafter, the wife (“Wife”) filed an application for leave to appeal to the Court of Appeal in respect of a category of assets comprising the Husband’s bank and investment accounts (the “Disputed Assets”). According to the Husband, the source of funds for the Disputed Assets are monetary gifts from his late father, as well as inheritance from his late father’s estate (collectively, the “Inheritance Moneys”). Under s 112(10), gifts and inheritance acquired by one party that has not been substantially improved during the marriage by the other party or by the efforts of both parties to the marriage are specifically *excluded* from the definition of a matrimonial asset.<sup>4</sup> However, it is the Wife’s case that firstly, the Husband has not discharged the burden of proving that the Disputed Assets were in fact traceable to these gifts and inheritance; and secondly, that the Husband evinced a real and unambiguous intention to treat these gifts and inheritance as part of the family wealth and therefore they have lost their character as gifts and inheritance and should be treated as matrimonial assets subject to division.<sup>5</sup>

### **III. Holding of the Court of Appeal**

5 With respect to the First Issue, the Court of Appeal found that although s 112(10) does not expressly provide for the intention of the donee spouse to bring non-matrimonial assets into the matrimonial pool, that does not preclude the courts from giving effect to such intention. In other words, s 112(10) does not limit or constrain the right of a spouse to deal with his or her personal asset in any way he or she wishes to deal with it, including by bringing it into the family wealth.<sup>6</sup>

6 In coming to such a finding, the Court of Appeal took a purposive interpretation of s 112(10) and found that Parliament’s intention was to safeguard gifts and inheritance from third parties rather than gifts as between spouses (*ie*, inter-spousal gifts). It also found that Parliament’s intention was for the body

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4 *CLC v CLB* [2023] 1 SLR 1260 at [33]–[35].

5 *CLC v CLB* [2023] 1 SLR 1260 at [31] and [32].

6 *CLC v CLB* [2023] 1 SLR 1260 at [36].

of case built up over the years to serve as “a guide to judges in their decisions” on the interpretation of this provision.<sup>7</sup>

7 In analysing case law that pre-dates the amendments made to the definition of a matrimonial asset in the Women’s Charter,<sup>8</sup> resulting in the current definition encapsulated under s 112(10) of the Women’s Charter 1961,<sup>9</sup> the Court of Appeal found that the then-jurisprudence did not support a general principle that the court cannot take into account the intentions of spouses regarding their assets.

8 Whether or not the donee spouse actually had formed such a clear and unambiguous intention which should be given effect to, would ultimately depend on the facts of the case and is a question of fact that the court would have to make a finding on, based on the evidence before it. The principle was not confined to situations where there is a physical transformation of the asset coupled with an intention to bring the asset into the pool of matrimonial assets, but such intention could also be given effect to even where there is no physical transformation of the gift or inheritance. In this regard, the Court of Appeal had clarified the principles set out by Andrew Phang Boon Leong J (as he then was) in the case of *Chen Siew Hwee v Low Kee Guan*,<sup>10</sup> which was a case involving a physical transformation of the asset in question and the court had to determine whether that physical transformation was also coupled with a clear and unambiguous intention to bring the asset into the pool of matrimonial assets.<sup>11</sup>

9 The Court of Appeal even went further as to suggest that the statutory provision is broad enough to stand for the proposition that intention of the donee spouse should be given effect when it involves inter-spousal gifts. One example would be where a gift was solely acquired by a spouse’s efforts during the marriage but given to the other spouse as a mark of affection or for any other reason – the court ought to perhaps give effect to

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7 *CLC v CLB* [2023] 1 SLR 1260 at [42].

8 Cap 353, 1985 Rev Ed.

9 2020 Rev Ed.

10 [2006] 4 SLR(R) 605.

11 *CLC v CLB* [2023] 1 SLR 1260 at [64].

such an intention and therefore not include it as a matrimonial asset subject to division. This is akin to not being able to un-gift a gift. The Court of Appeal explained that the policy of the law should lean in favour of the intention of the parties in such a situation. The Court of Appeal left this question open as this was not an issue before the court in this case and this proposition appears to be at odds with current case authority.<sup>12</sup>

10 In respect of the Second Issue, the Court of Appeal found that the identifiability of an asset said to be acquired by gift or inheritance is one of evidence and the new asset should be traceable to the asset which constituted the original gift or inheritance. The evidential burden of proof clearly lies with the party who asserts. The Court of Appeal affirmed that the test should be whether the true nature of the gift remains intact, or in other words, the owner of the gifted asset would have to show that it originated from the generosity of a third party in order to prevent it from being divided upon divorce. The following general principles will apply:<sup>13</sup>

- (a) a party claiming that an asset has been acquired by gift or inheritance must adduce sufficient evidence to show linkage between a currently owned asset and an asset acquired by gift or inheritance;
- (b) equitable rules of tracing may guide the court in tracing an asset such as moneys in a bank account, but it is not meant to be overly complicated or burdensome;
- (c) the court is entitled to draw reasonable inferences from evidence that is less certain or precise in order to do justice between the parties;
- (d) the question of co-mingling of matrimonial assets and assets acquired by gift or inheritance is a question of identifiability of the latter; and
- (e) where an asset acquired by gift or inheritance has been dissipated or consumed, then it would naturally follow that it can no longer be traced.

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12 *CLC v CLB* [2023] 1 SLR 1260 at [50] and [51].

13 *CLC v CLB* [2023] 1 SLR 1260 at [71]–[77].

#### IV. Application to the facts

11 Having found on the applicable legal principles above, the Court of Appeal determined on the facts of this case that the Husband's Disputed Assets were largely traceable to the gifts and inheritance. This was because he only worked full-time in the first two years of marriage and for the remainder of the marriage, he was a stay-at-home investor. Most, if not all, of his present moneys would be attributable to the Inheritance Moneys.<sup>14</sup>

12 The Court of Appeal also found that in this case, the Husband had demonstrated a clear and unambiguous intention to treat the Disputed Assets as part of the matrimonial pool.<sup>15</sup> There was documentary evidence in the form of e-mails and WhatsApp messages the Husband sent to the Wife in 2007 and 2018 where the Husband referred to these assets (which included his gifts and inheritance) as "Our Net Worth" and "our liquid assets" and "our net wealth".<sup>16</sup> His correspondence with the Wife suggested that he had a clear and unambiguous intention to treat his gift and Inheritance Moneys as part of the family wealth and was encouraging the Wife to invest in time with the children instead as they had "more than enough".<sup>17</sup> The Husband also deposited these funds received as gifts and inheritance into a joint account he held with the Wife and this raised a rebuttal presumption that the Husband intended to share the said moneys with the Wife. The Court of Appeal did not accept the Husband's evidence that the moneys in the joint account was only to provide for the family if anything untoward were to happen to him, because if that was indeed the case, he could have provided for them in other ways such as through provisions in a will. The presumption was also supported by the various communications by the Husband to the Wife.

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14 *CLC v CLB* [2023] 1 SLR 1260 at [79]–[87].

15 *CLC v CLB* [2023] 1 SLR 1260 at [88].

16 *CLC v CLB* [2023] 1 SLR 1260 at [88]–[89].

17 *CLC v CLB* [2023] 1 SLR 1260 at [90].

## **V. Conclusion**

13 In this author's view, this decision is illuminating because it demonstrates that one cannot simply enforce the definition of a matrimonial asset under s 112(10) strictly without examining closely the facts of the case and how parties (especially the donee) have treated a particular asset during the marriage. This case also provides guidance on how parties should conduct their financial affairs during the marriage, should they wish to maintain clear distinctions across their various categories of assets. Then again, it is the author's view also that a marriage is an equal partnership and having parties conduct themselves in accordance with such clear rules and boundaries with respect to financial affairs may, at the end of the day, be arbitrary and unhelpful to a marriage.