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THERAPEUTIC JUSTICE VIEW OF JUST AND EQUITABLE PROPORTIONS OF DIVISION OF MATRIMONIAL ASSETS[1]

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I. Context

1 Division of matrimonial assets is the "most frequently invoked ancillary power in matrimonial proceedings".[2]

2 If we collate all the decisions and principles that the courts have developed over time in relation to what are the "just and equitable" proportions of division of matrimonial assets, we can see that it is a huge issue. It is not possible to cover every single decision and every aspect of this in a single paper of reasonable length, and therefore this paper focuses on some of the more common themes that would be of value to counsel when advising clients and when arguing cases before the courts.

II. Deferred community of property

3 The first question to be addressed is the jurisprudential basis for division, and the answer to this question is that matrimonial assets need to be divided because of their nature as community property owned by the spouses. Because such

1 A version of this paper was delivered by the author at the SUSS Family Law Seminar Series on 9 November 2023.
2 Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at p 881.

property is owned by them as a couple, upon divorce it needs to be divided between them.

4 Prof Leong Wai Kum has previously explained that the basis for division in Singapore law is that our concept of matrimonial property is based on the Scandinavian concept of deferred community of property,[3] and this view was accepted by the Court of Appeal in *Lock Yeng Fun v Chua Hock Chye*[4] ("*Lock Yeng Fun*") in 2007.

5 The concept of community of property means that property acquired during marriage is placed into a common pool to which both spouses have an equal entitlement.

6 However, the pure or pristine community of property model does create practical difficulties in dealing with property during the marriage.

7 The *deferred* community of property model, on the other hand, allows parties to deal with their property based entirely on property law concepts of legal and beneficial ownership during the marriage. However, upon divorce, the property acquired during marriage is treated as community property and the courts are then empowered to divide such property between the parties.

8 The concept of deferred community of property, quite apart from addressing the jurisprudential basis for division of matrimonial assets, also has significance in relation to therapeutic justice.

9 In a separation of property regime, assets are seen as "his" or "hers" and any adjustment of property rights upon divorce effectively means that one party's assets are being taken away from that party and given to the opposing party. Therefore, one party will suffer a loss while the other party gains something. In the context of a divorce, parties usually dislike each other and

3 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at para 15.005 *ff*.
4 [2007] 3 SLR(R) 520.

would be very against the idea of "giving" part of their assets to the other party.

10 On the other hand, in a community of property regime, there is, in relation to property acquired during marriage (and, in some jurisdictions, property acquired before marriage as well) no concept of "his" and "hers" but only "theirs".

11 Although the idea of "his" and "hers" persists during a marriage in the deferred community of property model, ultimately this is for convenience rather than jurisprudential reasons, and, upon divorce, the matrimonial assets are treated as "theirs" rather than "his" and "hers".

12 If parties to proceedings can be helped by counsel advising them to understand that the matrimonial assets to be divided are "their" assets rather than "his" or "hers", then this leads, intellectually, at least, even if not emotionally, to an understanding that such assets ought reasonably to be shared between the two of them.

13 Also, while many parties to proceedings will feel that it would be fair for assets to be shared between them in a highly unequal fashion, *eg*, 90:10 in their favour, they would feel very differently if asked if they would be willing to switch places with the other party and take the smaller share.

14 If we then add to this the philosophy that marriage is an equal co-operative relationship, then the idea that each former spouse, or equal co-operative partner in this equal co-operative relationship, should walk away from their partnership with more or less half of the material gains gathered over the course of their partnership, becomes rather more palatable.

15 In this regard, identification of what are actually the matrimonial assets that are to be divided is particularly important. In 1996, when giving evidence before the Select Committee considering the amendments to the Women's Charter that would

eventually lead to the enactment of s 112, Prof Leong Wai Kum had stated as follows:[5]

> I also would like to emphasise that what is being divided is actually the profits. I think there is a fair degree of confusion. People tend to think that a great deal more is available for division, but the law really only allows the court to divide up the profits that the parties have made during the course of the marriage. From that point of view, if you are looking at the gains of the marriage or gains of the matrimonial partnership, then division of gains must surely be more or less an equal division.

16 If matters were explained to clients from this perspective, it would help some clients at least to be more accepting of the idea of division.

17 Therefore, from a therapeutic justice perspective, this means that it is important for counsel to help clients to understand the idea of deferred community of property and the idea that matrimonial assets are assets that are not "his" and "hers" but "theirs".

18 Also, from a practical perspective, helping clients to understand this will help to manage their expectations.

19 If the order on division is more or less in line with, or at least not far from, what counsel has advised and also the client's expectations based on such advice, the client is unlikely to be overly unhappy with the result.

20 On the other hand, if the client's expectations are not managed well, the client will expect a very high percentage when the matrimonial assets are divided, and, when this fails to materialise, the client will obviously be unhappy, and unhappy clients mean arguments about bills, potentially demands for taxation of solicitor-client bills, and, in the worst-case scenario, complaints to the Law Society of Singapore.

5 *Report of the Select Committee on the Women's Charter (Amendment) Bill (Bill No 5/96)* (Parl 3 of 1996, 15 August 1996) at p C3.

III. The former section 106 of the Women's Charter

21 The modern law of division of matrimonial assets begins with the amendment of the Women's Charter in 1980 that introduced the former s 106 which specified that:

> (a) in relation to assets acquired by the parties' joint efforts, the court would incline towards quality of division;[6] and
>
> (b) in relation to assets acquired by the sole effort of one party, the court would divide the assets "in such proportions as the court thinks reasonable, but in any case the party by whose effort the assets were acquired shall receive a greater proportion".[7]

22 This provision was replaced by the current s 112 when the Women's Charter was amended in 1996.

23 Despite representations made to the Select Committee examining the amendment bill, Parliament did not retain the requirement to incline towards equality when enacting the current s 112.

24 The issue of whether division should incline towards equality is, however, a very interesting one.

25 Following the amendment of the Act, Kan Ting Chiu J held in *Lau Loon Seng v Sia Peck Eng*[8] that "it cannot be said that the principle of equal division is preserved in the just and equitable formulation".[9]

26 A similar position was taken by the Court of Appeal in *Lock Yeng Fun* where it was stated as follows:[10]

> We observe that until Parliament changes its mind with regard to s 112 of the Act and amends it accordingly, we would wish

6 Women's Charter (Cap 353, 1985 Rev Ed) s 106(2).
7 Women's Charter (Cap 353, 1985 Rev Ed) s 106(4).
8 [1999] 2 SLR(R) 688.
9 *Lau Loon Seng v Sia Peck Eng* [1999] 2 SLR(R) 688 at [19].
10 *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [57].

> to discourage the perpetuation of the proposition to the effect that equality of division is either the starting point or the norm in any given case, as this could induce in the judge concerned a state of mind that seeks to achieve equality as the norm as the end point, regardless of the actual facts and merits concerned.

27 However, from a jurisprudential standpoint, Prof Leong Wai Kum has argued that the concept of deferred community of property serves to correct the "inability of separation of property to properly credit non-financial efforts in marriage"[11] and "allows the court to temper the harshness of the general principles of property law … [and] [d]ividing their matrimonial assets as equally as possible allows both spouses to take back an equal share of the material gains of their marital partnership".[12]

28 In 2019, in *UYP v UYQ*[13], Ong J (as she then was) held as follows:[14]

> … inclining towards equality is not the same as a presumption of equal division, a norm of equal division, or a strict regime that each party shall be entitled to half the assets. Inclining towards equal division still allows the court to use its discretion to deviate from an exactly equal split, yet upholds the character of marriage and provides guidance to the court. Cases have their respective unique features and where these are of significance but are not exceptional within this context, inclining towards equality enables a just and equitable division. From Prof Leong's analysis, it appears that what is not inclining towards equality would be a division beyond the ratio of 60:40.

29 Although the appeal against Ong J's decision was allowed in relation to the percentages awarded, the Court of Appeal specifically did not come to a "definitive conclusion" in relation to the issue of "inclination towards equal division applied generally to long Dual-Income marriages".[15]

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11 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at p 527.
12 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at para 15.030.
13 [2020] 3 SLR 683.
14 *UYP v UYQ* [2020] 3 SLR 683 at [52].
15 *UYQ v UYP* [2020] SGCA 3 at [5].

30 Several months later, in *USB v USA*,[16] the Court of Appeal cited its decision in *UYP v UYQ*, but did not disapprove of Ong J's views.

31 Although the issue in *UYP v UYQ* concerned long dual income marriages, it does suggest a possible shift in the view of the courts towards the position advocated by Prof Leong.

32 Lastly, an interesting observation from recent empirical research[17] was that in about half of the cases decided using the *ANJ v ANK*[18] methodology,[19] division inclined towards equality in the sense mentioned above, *ie*, that the amounts awarded were in the 40% to 60% range, and over four-fifths of cases fell within the 30% to 70% range.

33 Therefore, the author would venture to suggest that the issue of inclining towards equality is one which we might see further developments on although it is difficult to predict the direction in which the law might head, and, as the saying goes, perhaps rather aptly in the context of a law paper, "the jury is still out on this issue".

34 The issues of division in long single income and long dual income marriages and the extent to which division in such cases inclines towards equality will be discussed below.

IV. *ANJ v ANK*

35 In July 2015, the Court of Appeal's decision in *ANJ v ANK* introduced the "structured approach" ("*ANJ* approach") for division of matrimonial assets.

16 [2020] 2 SLR 588.
17 This research was done for the author's PhD thesis and will, in due course, be published.
18 [2015] SGCA 34.
19 See para 36 below.

36 A concise summary of the steps in the structured approach was set out by the Court of Appeal in *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast*[20] as follows:[21]

> (a) Express as a ratio the parties' direct contributions relative to each other, having regard to the amount of financial contribution each party made towards the acquisition or improvement of the matrimonial assets;
>
> (b) Express as a second ratio the parties' indirect contributions relative to each other, having regard to both financial and non-financial contributions; and
>
> (c) Derive the parties' overall contributions relative to each other by taking an average of the two ratios above, keeping in mind that, depending on the circumstances of each case, the direct and indirect contributions may not be accorded equal weight and one of the two ratios may be accorded more significance than the other.

37 It is also important to note that, in respect of the indirect contributions, it was held by the Court of Appeal in *TNL v TNK*[22] that "[s]tep 2 should not be further broken down into two sub-steps such that separate ratios are assigned to indirect financial contributions, on the one hand, and non-financial contributions, on the other".[23]

38 In *ANJ v ANK*, the following points were made:

> (a) in cases where the direct financial contribution of the parties is not clear and "where the documentary evidence falls short of establishing exactly who made what contribution and/or the exact amount of monetary contribution made by each party, the court must make a 'rough and ready approximation' of the figures" and apply the "broad brush" approach;[24]
>
> (b) in respect of indirect contributions, the difficulty in trying to "ascribe a ratio in respect of the non-financial

20 [2015] SGCA 52.
21 *Twiss, Christopher James Hans v Twiss, Yvonne Prendergast* [2015] SGCA 52 at [17].
22 [2017] SGCA 15.
23 *TNL v TNK* [2017] SGCA 15 at [47].
24 *ANJ v ANK* [2015] SGCA 34 at [23].

or indirect financial contributions of the parties" was recognised, and the fact that "there is very little concrete evidence to be relied upon" was also acknowledged, and it was held that the broad brush approach should be applied and the "values to give to the indirect contributions of the parties is necessarily a matter of impression and judgment of the court";[25]

(c) in deciding on the relative weightage to be given to direct and indirect contributions, the court would consider the length of the marriage (indirect contributions "tend to feature more prominently in long marriages … [and] usually play a *de minimis* role in short, childless marriages"), the size of the pool of matrimonial assets (if the pool of assets available for division is "extraordinarily large and all of that was accrued by one party's exceptional efforts, direct contributions are likely to command greater weight as against indirect contributions"), and the extent and nature of indirect contributions made (for example, "engagement of a domestic helper naturally reduces the burden of homemaking and caregiving" and the weight accorded to indirect contributions may be reduced while more weight may be given to indirect contributions in the case of "homemakers who have painstakingly raised children to adulthood, especially where such efforts have entailed significant career sacrifices on their part");[26] and

(d) the court would make adjustments to the figures based on the various factors set out in s 112.[27]

39 It is particularly important to note that the Court of Appeal also held that "even in a home where the wife is a full-time homemaker, it would be an exceptional home where the husband renders no indirect contribution at all".[28] Therefore, when advising clients, although many clients may often have a

25 *ANJ v ANK* [2015] SGCA 34 at [24].
26 *ANJ v ANK* [2015] SGCA 34 at [27].
27 *ANJ v ANK* [2015] SGCA 34 at [28].
28 *ANJ v ANK* [2015] SGCA 34 at [24].

tendency to feel that they contributed very, very much and that the opposing party did almost nothing, it is important to manage such clients' expectations and advise them that it is unlikely that the court would accept figures at the extreme ends of the spectrum in relation to indirect contributions.

40 From a therapeutic justice viewpoint, managing clients' expectations may help them to be more willing to accept the results of division of matrimonial assets and thereby decrease the amount of acrimony in such cases.

41 Clients who are unhappy about the results of division may behave like many humans who feel that they have been unfairly treated, and they will try to find ways to retaliate against the other party. If such clients have interactions with each other over children and maintenance, they will have lots of opportunities to pick fights, and, in more extreme cases, this can go all the way to committal proceedings.

V. The broad brush approach

42 In *Lim Choon Lai v Chew Kim Heng*[29], the Court of Appeal held that "the court would adopt a broad-brush approach … and make a determination on the basis of what the court considers as a 'just and equitable' division".[30]

43 In *ANJ v ANK*,[31] it was emphasised that the broad brush approach "is in no way replaced",[32] and therefore, it is important to bear in mind that, at a certain point, mathematical precision will give way to the broad brush approach.

44 The manner in which the broad brush approach has been applied after *ANJ v ANK* is as follows:

29 [2001] 2 SLR(R) 260.
30 *Lim Choon Lai v Chew Kim Heng* [2001] 2 SLR(R) 260 at [14].
31 [2015] SGCA 34.
32 *ANJ v ANK* [2015] SGCA 34 at [25].

(a) In *VDZ v VEA*,[33] Ong J (as she then was) held as follows:[34]

> The documentary evidence which the parties tendered in respect of their direct financial contributions were either incomplete or inconclusive. This gap in evidence is not unusual, because parties in a functioning marriage do not keep records of their transactions with a view to building a case should a divorce occur. The court will make a rough and ready approximation of the figures, having regard to the available evidence. … Using a broad brush approach, I found that the ratio of parties' direct financial contributions was 60:40 in the Husband's favour.

(b) In *UYP v UYQ*, Ong J (as she then was) held as follows:[35]

> The 'broad brush' approach, which is the established approach to asset division, does not require nor encourage the meticulous particularisation of each party's respective contributions.

(c) In *UYP v UYQ*, Ong J (as she then was) also stated:[36]

> The court's discretion in s 112 is exercised in a broad brush manner and it would be impractical to delve into the minute details of properties sold long ago which were related to some of the eight properties held by the parties. The *ANJ v ANK* approach was never intended to apply in so calculative a manner. Tracing sources of funds through numerous properties bought and sold from the beginning of a 35-year marriage would grate against the broad brush approach.

(d) In *USB v USA*, the Court of Appeal held as follows:[37]

> … the broad-brush approach should be applied with particular vigour in assessing the parties' indirect contributions. This would serve the purpose of discouraging needless acrimony during the ancillary proceedings. Practically, this means that, in ascertaining the ratio of indirect contributions, the court should not

33 [2020] SGHCF 2.
34 *VDZ v VEA* [2020] SGHCF 2 at [62].
35 *UYP v UYQ* [2020] 3 SLR 683 at [45].
36 *UYP v UYQ* [2020] 3 SLR 683 at [93].
37 *USB v USA* [2020] 2 SLR 588 at [43].

> focus unduly on the minutiae of family life. Instead, the court should direct its attention to broad factual indicators when determining the ratio of parties' indirect contributions. These would include factors such as the length of the marriage, the number of children, and which party was the children's primary caregiver.

45 The importance and appropriateness of the broad brush approach was explained by Ong J (as she then was) in *UYP v UYQ* as follows:

> (a) It is impossible for the court to "examine the entire contributions and conduct of each spouse" over the entire marriage and therefore the broad-brush approach is "core to the exercise of discretion in s 112".[38]
>
> (b) The court's findings on parties' contributions "are necessarily impressionistic" and the court cannot "reach with mathematical specificity each party's contributions for the entire length of the marriage".[39]
>
> (c) "Allowing parties to be calculative over every sum they had contributed throughout their long years of marriage does not sit well with the philosophy of marriage nor with divorce proceedings that endeavour to support parties towards an amicable resolution and conclusion to this phase of their family life." [40]

46 The following points come through from the above:

> (a) It is an impossible task to ascertain the parties' contributions with absolute precision given that it is not possible for evidence of each and every little deed to be adduced by the parties.
>
> (b) Even if this was in some way possible, all that it would do would be to encourage parties to dredge up every single event in their marriage in order to show that they had contributed more and that the other party had contributed less.

38 *UYP v UYQ* [2020] 3 SLR 683 at [61].
39 *UYP v UYQ* [2020] 3 SLR 683 at [62].
40 *UYP v UYQ* [2020] 3 SLR 683 at [64].

(c) This would lead to more acrimony and make an amicable resolution of the parties' disputes impossible, and the end result would be a bad one for the parties and their children. As such, from the perspective of therapeutic justice, this must be avoided.

(d) Therefore, application of the broad brush approach is necessary.

47 Although the Court of Appeal allowed the appeal against Ong J's decision in respect of the percentages awarded, it is very important to note that a closer reading of the judgment discloses that the Court of Appeal was generally in agreement with the points made by Her Honour or, at the very least, did not disagree with these points.[41]

48 In many cases, there is a tendency to focus on the decision of the appellate court and ignore the decision of the first instance court. But this is one case where the first instance decision is of particular importance and should not be ignored.

49 In the light of the above, the author would suggest that what is done in some cases, for example, excessive and overly aggressive discovery and interrogatories applications to try to get information about assets down to the most minute of details is not in accord with how the broad brush approach is expected to apply under the *ANJ v ANK* methodology.

50 In fact, the author would even go as far as to suggest that the considerations above are such that the court should not only adopt a broad brush approach as a necessity but should also do so boldly and not be unduly conservative in doing so.

51 Based on the above, given both the broad brush approach and the Family Justice Courts' emphasis on therapeutic justice, the author would suggest that caution should be exercised in cases where clients insist on an overly aggressive approach to try to determine direct financial contributions to the very last cent as the courts might well not look with favour upon such an

41 See *UYQ v UYP* [2020] SGCA 3 at [1]–[4].

approach and there may be cost implications if such a path were to be pursued.

52 Also, from a therapeutic justice perspective, excessive and overly aggressive discovery and interrogatories applications are only going to add to the acrimony in a case and are often not particularly helpful to either party.

VI. *TNL v TNK*

53 In *TNL v TNK*, the Court of Appeal held that "the *ANJ* approach should not be applied to Single-Income Marriages".[42]

54 In addition, the Court of Appeal stated as follows:[43]

> In long Single-Income Marriages, the precedent cases show that our courts tend towards an equal division of the matrimonial assets. We are in general agreement with this approach.

55 A point that is very interesting to note is that the position in *TNL v TNK* appeared originally to be that the *ANJ* approach is not to be applied in *all* cases of single income-marriages and no distinction was made in respect of the length of the marriage in so far as the non-application of the *ANJ* approach is concerned, but this later evolved to be interpreted as being applicable to *long* single-income marriages.

56 This is clear from the following statement by the Court of Appeal in *TNL v TNK*:[44]

> 42 We have no doubt that the *ANJ* approach works well in what, for the sake of convenience, we shall refer to as 'Dual-Income Marriages', *ie*, marriages where both spouses are working and are therefore able to make both direct and indirect financial contributions to the household. This was in fact the type of marriage before this court in *ANJ* itself. In this regard, we affirm the continued applicability of the *ANJ* approach to Dual-Income Marriages.

42 *TNL v TNK* [2017] SGCA 15 at [46].
43 *TNL v TNK* [2017] SGCA 15 at [48].
44 [2017] SGCA 15 at [42], [43], [46] and [47].

> 43 The question that these appeals raise is whether the *ANJ* approach should apply to marriages such as the present where roles are divided along more traditional lines, *ie*, where one spouse is the sole income earner and the other plays the role of homemaker. We shall refer to these marriages as 'Single-Income Marriages'.
>
> …
>
> 46 … In this regard, we are of the view that the *ANJ* approach should not be applied to Single-Income Marriages. …
>
> 47 Additionally, we take this opportunity to clarify that even when the *ANJ* approach does apply (*ie*, in Dual-Income Marriage cases), …

57 However, subsequently, in *BPC v BPB*,[45] it was held by the Court of Appeal as follows:[46]

> Put another way, according to the existing framework laid out in both *ANJ v ANK* and *TNL v TNK*, one must first enquire whether the marriage is a long single-income or dual-income marriage. If it is the former, then the approach in *TNL v TNK* applies, and the court will generally tend towards equal division, except if the marriage involves an exceptionally large matrimonial asset pool, like in *Yeo Chong Lin*, when it will be treated as an exception to the norm of equal division. If it is the latter, then the *ANJ* Approach will apply, and a whole host of possible factors might ultimately lead the court to find that direct contributions ought to be given greater weight than indirect contributions.

58 This position was repeated in the more recent case of *TQU v TQT*[47] where the Court of Appeal stated as follows:[48]

> The structured approach was affirmed in *BPC v BPB and another appeal* [2019] 1 SLR 608 at [70]. To be clear, it may not be appropriate in every case. For example, in *TNL v TNK* at [44], we highlighted that the structured approach may be inappropriate for long single-income marriages, where the court tends towards equal division of matrimonial assets.

45 [2019] SGCA 3.
46 *BPC v BPB* [2019] SGCA 3 at [102].
47 [2020] SGCA 8.
48 *TQU v TQT* [2020] SGCA 8 at [32].

59 And a similar position was taken by the Court of Appeal in *USB v USA* where it was held as follows:[49]

> 36 … In *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 … we held that the structured approach does not apply to long single-income marriages.
>
> 37 In our judgment, the structured approach should continue to apply to short marriages.

VII. What is a "long" marriage?

60 Arising from the above, and this is a perennial question, what exactly constitutes a "long" marriage?

61 Many cases referring to "long" marriages have been those where the marriages have lasted for a period in the region of 30 years or more. In *BOR v BOS*,[50] the Court of Appeal stated as follows:[51]

> To give some context to the terms 'long' and 'short', *TNL v TNK* itself involved a marriage of some 35-years. The cases which the court referred to as relevant precedents involved marriages of between 26 to 30 years.

62 However, more recently, in *TOF v TOE*,[52] where the marriage lasted for 19 years,[53] the Court of Appeal held that the appropriate approach was that of *TNL v TNK* rather than *ANJ v ANK*.[54] It is also relevant to note that, in this case, the Court of Appeal had specifically interpreted the *TNL v TNK* approach as applying to long single-income marriage and had stated as follows:[55]

> Once the pool has been identified, the court decides what approach to adopt when dividing between the parties. Broadly, there are two:
>
> (a) for long, single income marriages (*ie*, long marriages where one spouse is the sole income earner

49 *USB v USA* [2020] 2 SLR 588 at [36] and [37].
50 [2018] SGCA 78.
51 *BOR v BOS* [2018] SGCA 78 at [111].
52 [2021] SGCA 80.
53 *TOF v TOE* [2021] SGCA 80 at [138].
54 *TOF v TOE* [2021] SGCA 80 at [138].
55 *TOF v TOE* [2021] SGCA 80 at [63].

> and the other plays the role of homemaker), we affirm that courts should generally tend toward – though they should by no means be restricted to – an equal division of the matrimonial assets: *TNL v TNK and another appeal and another matter* [2017] 1 SLR 609 … at [48].
>
> (b) for all other types of marriages, this court has endorsed the structured approach first articulated in *ANJ v ANK* [2015] 4 SLR 1043 at [22] …

63 The Court of Appeal then went on to state as follows:[56]

> As stated earlier, this was a single-income marriage spanning some 19 years. As we intimated at the hearing of the Husband's appeal before us, the appropriate approach to take for asset division is that adopted in *TNL* … rather than the *ANJ* approach. The *TNL* approach favours equal division of the pool of matrimonial assets. If we apply *TNL*, the Wife would be entitled to 50% of the total matrimonial assets of the parties …

64 In *AQS v AQR*,[57] the Court of Appeal stated the following in relation to length of marriage:[58]

> If one takes the date of effective breakdown to determine the length of the marriage, it was a ten year plus marriage, not entirely a short marriage. But neither could it be regarded as a long marriage.

65 While some caution needs to be exercised given that *AQS v AQR* was decided before *ANJ v ANK*, it is unlikely that anyone would quarrel with the assertion that a marriage of ten years does not qualify as a long marriage in so far as the position set out in *TNL v TNK* is concerned.

66 In *Shih Ching Chia James v Swee Tuan Kay*,[59] the Court of Appeal described the parties' marriage as "their long marriage of nearly 15 years",[60] but great caution must be exercised here as this case was decided many years before *ANJ v ANK* and it appears from the context that it was just a term used in passing rather

56 *TOF v TOE* [2021] SGCA 80 at [138].
57 [2012] SGCA 3.
58 *AQS v AQR* [2012] SGCA 3 at [38].
59 [2002] SGCA 2.
60 *Shih Ching Chia James v Swee Tuan Kay* [2002] SGCA 2 at [4].

than a specific determination that a 15-year marriage constitutes a long marriage.

67 Another helpful case, although not a Court of Appeal case, is *VIG v VIH*[61] where Tan Puay Boon JC stated:[62]

> The present marriage of 12 years was not short, but neither was it long.

68 Lastly, we also get a sense of the Court of Appeal's views from the decision in *BOR v BOS* where it was stated as follows:[63]

> 112 The marriage in the present case lasted about 11 and a half years, much shorter than the examples which the court discussed in *TNL v TNK*. Different considerations apply to such mid-length marriages. …
>
> 113 … It would appear from the examples discussed that what was meant by "moderately lengthy" was a period in the range of around 15–18 years.

69 Based on the decision of the Court of Appeal in *TOF v TOE*, it appears that there is a shift in the view of what constitutes a long marriage and division of matrimonial assets in a marriage of 19 years can fall to be determined based on *TNL v TNK*.

70 The question then is how far the definition of a "long" marriage extends beyond 19 years or if it actually does extend beyond 19 years.

71 Based on the cases discussed above, it would appear that the situation is now as follows:

> (a) marriages of 19 years or more can be considered to be long marriages;
>
> (b) marriages of 15 to 18 years can be considered to be "moderately lengthy"; and
>
> (c) marriages of 10 to 14 years can be considered to be "not short" but also not long, and perhaps a convenient

61 [2020] SGHCF 16.
62 *VIG v VIH* [2020] SGHCF 16 at [65].
63 *BOR v BOS* [2018] SGCA 78 at [112] and [113].

description, although not used in the cases above, might be "medium-length marriages".

72 In this regard, a relevant piece of data to note is that the median duration of marriages in divorce cases has remained at the 10 to 12 year range over the past two decades,[64] and this data is consistent with the classification of marriages of this length, at least in so far as divorces are concerned, as medium-length marriages.

73 The next question then would be what a "short" marriage is. It is clear from the above that a marriage of 10 years or more would not be considered a short marriage, but where does one draw the line?

74 In *Ong Boon Huat Samuel v Chan Mei Lan Kristine*[65] ("*Ong Boon Huat Samuel*"), where the Court of Appeal held that "[i]n a short and childless marriage, the division of matrimonial assets will usually be in accordance with the parties' direct financial contributions",[66] the marriage had lasted for three years.

75 In *G v R (No 2)*,[67] Lai Kew Chai J stated that the district judge had "noted it was a short marriage of 6 years"[68] and His Honour had not disagreed with this characterisation.

76 From the above, the author would suggest that marriages of six years or less might well be considered by the courts to be short marriages. But it does leave open the question about how to classify marriages of seven to nine years, and, unfortunately, only time will tell what the answer to this is.

77 From a therapeutic justice and also a practical perspective, the author would suggest that length of marriage is something of great importance to note as it has significant implications when advising clients. If a client expects to receive much more than

64 Department of Statistics Singapore, *Statistics on Marriages and Divorces: Reference Year 2022* (2022).
65 [2007] SGCA 19.
66 *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] SGCA 19 at [28].
67 [2003] SGHC 297.
68 *G v R (No 2)* [2003] SGHC 297 at [10].

50% but then gets only 50% because the case was found to be one to which *TNL v TNK* applied, a lawyer would potentially have a very unhappy client on his or her hands.

78 Clients develop expectations based on, not only their wishes and of course what their friends tell them and what they read on the Internet, but also on the basis of advice rendered by counsel, and if in the course of negotiation or mediation, a client feels that what is on the table is a reasonable offer, he or she is more likely to accept it. Similarly, if the client feels that the offer is too low, he or she is unlikely to accept it. The situation will be a bad one if a client turns down an offer during negotiation or mediation and then ends up with a less favourable order after the hearing. As such, advice given by counsel is critical.

VIII. Long dual income marriages

79 In *UBM v UBN*,[69] Debbie Ong JC (as she then was) held as follows:[70]

> If in long Single-Income Marriages, the precedent cases show that our courts inclined towards an equal division of the matrimonial assets, there is little reason not to also incline towards equality in long Dual-Income Marriages, in the light of the philosophy of marriage as an equal partnership. My observation is that trends in cases of long marriages with children, whether single-income or dual-income ones, also incline towards equal division.

80 In *UYP v UYQ*, Ong J (as she then was) held as follows:[71]

> In long single-income marriages and long dual-income marriages, inclining towards equality remains consistent with *Lock Yeng Fun*.

81 Although the appeal against Ong J's decision was allowed in relation to the percentages awarded, the Court of Appeal specifically did not come to a "definitive conclusion" in relation

69 [2017] SGHCF 13.
70 *UBM v UBN* [2017] SGHCF 13 at [66].
71 *UYP v UYQ* [2020] 3 SLR 683 at [52].

to the issue of "inclination towards equal division applied generally to long Dual-Income marriages".[72]

82 Therefore, whether or not the courts embrace this view or depart from this view in future is something that remains to be seen.

IX. When is it a single income or a dual income marriage?

83 Although it would be clear in many cases whether the marriage should be classified as a single income or a dual income marriage, some cases are, unfortunately, are not so clear.

84 In *VIG v VIH*, Tan JC held as follows:[73]

> Hence, it is not the case that as soon as one spouse works any amount of time that the marriage cannot be treated as a 'Single-Income Marriage' and that the structured approach in *ANJ* must apply. In my view, the present case falls within the scope of a 'Single-Income Marriage' even though the Wife had worked for slightly under half of the marriage. The most significant factor, in my view, is that the Wife was a homemaker in the period when the Husband was working in Company [X]. This same period saw a massive increase in the wealth of the family arising from that company, which dwarfed any contributions that the Wife had made financially to the marriage. Even though she had worked earlier, it is clear from the calculations put forward by both parties that between 96% and 99% of the direct financial contributions would have been made by the Husband, and the indirect financial contributions would also be tilted significantly in the Husband's favour. Taking a look at the balance of responsibilities and contributions between the Husband and the Wife in this particular case, it was artificial to treat this as a dual-income marriage, since the income of each was so disparate, the Wife's income being a small fraction of the Husband's income, and considering that the Wife had worked for only part of the marriage.

72 *UYQ v UYP* [2020] SGCA 3 at [5].
73 *VIG v VIH* [2020] SGHCF 16 at [63].

85 Tan JC also noted the following:

(a) The *TNL* approach "would apply to a case where one party has earned *significantly* more overall in such a way that the financial contribution of the other party becomes almost negligible" [emphasis in original].[74]

(b) In *TNL v TNK*, the Court of Appeal had stated (at [45]) that applying the *ANJ* structured approach in such cases:[75]

> … would almost inevitably result in some degree of artificiality: the court would either have to ward the non-working spouse a very high percentage in Step 2 (which may appear to disregard the working spouse's indirect financial contributions), or accord a very high weightage to Step 2 at Step 3. In some, if not most, cases, the court would have to do both.

(c) However:[76]

> … disagreements over whether *ANJ* or *TNL* should apply are not, in the final analysis, the most important issue, since the aim, regardless of the approach taken, is to arrive at a just and equitable division of assets. Regardless of which approach was used, I would not be surprised if the results were similar.

86 In *UBM v UBN*,[77] Ong JC (as she then was) held as follows:[78]

> 49 … I do not think the Court of Appeal intended to draw a thick black line separating cases where the main homemaker worked intermittently for a few years in the course of a long marriage from cases where the homemaker had not worked a single day, applying the structured approach in *ANJ v ANK* … only in the former situation while excluding it in the latter. …
>
> …
>
> 52 … [A] marriage can still be classified as a single-income one even if the homemaker spouse has worked for some time in a long marriage. In determining whether a spouse is a 'homemaker' and whether the marriage is a 'single-income'

74 *VIG v VIH* [2020] SGHCF 16 at [64].
75 *VIG v VIH* [2020] SGHCF 16 at [64].
76 *VIG v VIH* [2020] SGHCF 16 at [66].
77 [2017] SGHCF 13.
78 *UBM v UBN* [2017] SGHCF 13 at [49] and [52].

> one, what is called for is a qualitative assessment of the roles played by each spouse in the marriage relative to the other.

87 However, in *WQR v WQS*,[79] Andrew Ang SJ set out a different approach to answering this question and His Honour held as follows:[80]

> However, I am of the view that the better approach to the question whether a marriage ought to be considered single-income or dual-income is to focus on capacity to contribute rather than actual contributions.

88 The approach above was applied by Ang SJ as follows:[81]

> 29 I find that the Husband did indeed have some form of income which he could have contributed to the marriage. While he claimed that he did not draw any salary … it [is] difficult to accept such an assertion at face value. It is difficult to believe that a self-employed businessman could have gone unremunerated for more than 20 years …
>
> 30 In any event, even if the Husband truly received no remuneration whatsoever from [B] Pte Ltd or [E], he admits to having had 'two (2) major incomes in my adult working life', these being 'US Equity's investment mainly for capital gain', and a 'HK $ based portfolio' … These investment activities should be regarded as constituting at least part of his occupation and corresponding income, and the Husband ought therefore be considered as having been employed and drawing an income, making this a dual-income marriage in respect of which the *ANJ* structured approach is to be applied in the division of matrimonial assets.

89 The cases above are important as they illustrate that the phrases "single income" and "dual income" are not necessarily interpreted literally and in the same way as one might use these phrases in a general non-legal conversation.

79 [2023] SGHCF 41.
80 *WQR v WQS* [2023] SGHCF 41 at [26].
81 *WQR v WQS* [2023] SGHCF 41 at [29] and [30].

X. Short childless marriages

90 It was held by the Court of Appeal in *Ong Boon Huat Samuel* that:[82]

> In a short and childless marriage, the division of matrimonial assets will usually be in accordance with the parties' direct financial contributions as non-financial contributions will be minimal.

91 In *ANJ v ANK*, the Court of Appeal held, in relation to "circumstances that could shift the 'average ratio' in favour of one party", that one of the factors was length of marriage and stated as follows:[83]

> Indirect contributions in general tend to feature more prominently in long marriages … Conversely, indirect contributions usually play a *de minimis* role in short, childless marriages (*Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] 2 SLR(R) 729 at [28]).

92 Although the decision in *Ong Boon Huat Samuel* pre-dated *ANJ v ANK*, it was subsequently held by Ong JC (as she then was) in the post-*ANJ v ANK* case of *UBM v UBN*[84] that "[t]he introduction of the structured approach in *ANJ v ANK* did not wipe out the value of precedents pre-dating it", and citing *Ong Boon Huat Samuel*, Her Honour stated that "[g]enerally, in short Dual-Income Marriages, division proportions tend to reflect the parties' respective financial contributions".[85]

93 The author would therefore suggest that, in cases of short childless marriages, the courts will tend to divide the matrimonial assets along the lines set out in *Ong Boon Huat Samuel*.

94 The question then is how this might be done. There are two possibilities. This might be achieved by applying the methodology in *ANJ v ANK* and giving a very low weightage to indirect contributions or might, in time, in the same vein as

82 *Ong Boon Huat Samuel v Chan Mei Lan Kristine* [2007] SGCA 19 at [28].
83 *ANJ v ANK* [2015] SGCA 34 at [27(a)].
84 [2017] SGHCF 13.
85 *UBM v UBN* [2017] SGHCF 13 at [61] and [62].

TNL v TNK, be carved out as another exception where the *ANJ* structured approach does not apply.

95 The author would suggest that the first possibility is the more likely one to be adopted based on the decision of the Court of Appeal in *USB v USA*. In this case, after stating that "the structured approach should continue to apply to short marriages",[86] the Court of Appeal held as follows:[87]

> 38 A key characteristic of the structured approach in *ANJ v ANK* is that it deals fairly with the two types of contributions – direct and indirect – whilst giving the court a discretion to set the weightage in terms of the relative importance of the direct and indirect contributions. This ability to vary the weightage between direct and indirect contributions is especially useful in a short marriage.
>
> …
>
> 40 Generally, indirect contributions are less significant in short marriages, especially those without children. The court may take this into account by ascribing a higher weightage to direct contributions.

96 The Court of Appeal then went on to cite the decision in *ATE v ATD*[88] where the marriage lasted about five years and it was held that "the appropriate ratio between indirect contributions ought to be 75% and 25% respectively".[89]

97 Lastly, it should be noted that the Court of Appeal in *USB v USA* had expressed a different view in respect of short marriages *with* children and had stated as follows:[90]

> It should be reiterated that the court has a discretion to adjust the weightage of direct and indirect contributions in a short marriage – it is not compelled to arrive at an unequal weightage. There may well be good reasons for the court to retain equal weightage between direct and indirect contributions even in a short marriage, especially if there are children. Apart from short marriages, we add the important caveat that adjusting

86 *USB v USA* [2020] 2 SLR 588 at [37].
87 *USB v USA* [2020] 2 SLR 588 at [38] and [40].
88 [2016] SGCA 2.
89 *ATE v ATD* [2016] SGCA 2 at [21].
90 *USB v USA* [2020] 2 SLR 588 at [41].

the weightage of the direct and indirect contributions should be done as an exception.

XI. Equal or near-equal division of matrimonial assets

98 In *UYP v UYQ*, Ong J (as she then was) held as follows:[91]

> Inclining towards equal division still allows the court to use its discretion to deviate from an exactly equal split, yet upholds the character of marriage and provides guidance to the court. … [W]hat is not inclining towards equality would be a division beyond the ratio of 60:40.

99 The author would suggest that, in many cases, division such that each party gets somewhere between 40% and 60% of the matrimonial assets or a percentage very close to this is perhaps not as radical as might appear at first glance.

100 To begin with, cases involving long single income marriages will already tend towards equal division.

101 For cases where the *ANJ v ANK* methodology is applied, based on the discussion about single and dual income cases above, many such cases will not have extreme percentages in terms of direct financial contributions. If we take look at the following scenarios, we can see that a division in the 40% to 60% range for each party is fairly likely unless we start to go into the territory of extreme figures for indirect contributions or the weightage given to direct or indirect contributions, and these, by their very nature, ought to be unusual.

91 *UYP v UYQ* [2020] 3 SLR 683 at [52].

Direct financial contributions of 80 / 20

	Husband	Wife
Direct	80%	20%
Indirect	50%	50%
Division of matrimonial assets	65%	35%

	Husband	Wife
Direct	80%	20%
Indirect	40%	60%
Division of matrimonial assets	60%	40%

	Husband	Wife
Direct	80%	20%
Indirect	30%	70%
Division of matrimonial assets	55%	45%

Direct financial contributions of 70 / 30

	Husband	Wife
Direct	70%	30%
Indirect	50%	50%
Division of matrimonial assets	60%	40%

	Husband	Wife
Direct	70%	30%
Indirect	40%	60%
Division of matrimonial assets	55%	45%

	Husband	Wife
Direct	70%	30%
Indirect	30%	70%
Division of matrimonial assets	50%	50%

Direct financial contributions of 60 / 40

	Husband	Wife
Direct	60%	40%
Indirect	50%	50%
Division of matrimonial assets	55%	45%

	Husband	Wife
Direct	60%	40%
Indirect	40%	60%
Division of matrimonial assets	50%	50%

	Husband	Wife
Direct	60%	40%
Indirect	30%	70%
Division of matrimonial assets	45%	55%

Direct financial contributions of 50 / 50

	Husband	Wife
Direct	50%	50%
Indirect	50%	50%
Division of matrimonial assets	50%	50%

	Husband	Wife
Direct	50%	50%
Indirect	40%	60%
Division of matrimonial assets	45%	55%

	Husband	Wife
Direct	50%	50%
Indirect	30%	70%
Division of matrimonial assets	40%	60%

102 As can be seen from above, it would not be uncommon for the results of division to be within the 40% to 60% range, unless the percentages are somewhat extreme, and extreme percentages would tend to be uncommon.

103 In many cases where the direct contributions were much higher than 80% for one spouse and much lower than 20% for the other, the question is whether, in the light of the discussion above about single and dual income cases, these might be considered to be single-income marriages and fall to be decided based on *TNL v TNK* instead.

XII. Therapeutic justice

104 At the end of the day, the purpose of division of matrimonial assets is to allow both parties to separate the assets that belonged to them during the marriage and then move on with their lives.

105 While many parties may see it as an opportunity to gain something at the expense of the opposing party, especially in an acrimonious divorce, such an approach is one which loses sight of the purpose of the entire exercise which is essentially to allow the parties to move on.

106 Based on the doctrine of deferred community of property, if matrimonial assets are not divided, then these assets continue to be owned by the two parties after the divorce and they will not be able to move on with their lives.

107 As such, it is suggested that one approach for counsel to consider when advising their clients is to explain that division of matrimonial assets is not a battle in which one seeks victory in the form of getting as much as possible and causing the other side to lose as much as possible, but rather a practical means of untangling their assets and enabling them to move on with their lives.

108 The Chief Justice stated as follows recently:[92]

> Therapeutic justice is a conception of the law as a method of resolving family disputes that recognises that justice in this context must seek to help the parties to repair their broken relationships and look towards the future, rather than facilitating an adversarial mindset that is focused on winning and losing and settling old scores in a way that may engender further acrimony. … More generally, we have encouraged the use of alternative dispute resolution mechanisms such as mediation, which help to focus the parties' attention on their shared interests and on the way forward, instead of on a zero-sum allocation of fault for past hurts and wrongs.

109 Finally, it is important to remember that therapeutic justice is a "method" of resolving disputes. It is not a basis or methodology for division of matrimonial assets.

110 Matrimonial assets must be divided in accordance with the statutory provisions in s 112, *ie*, in proportions that are just and equitable.

111 Therapeutic justice is what we apply on the journey towards division in order to help the parties to move on and reduce acrimony. Therefore, a submission that "on the basis of therapeutic justice, in order to allow my client to move on, my client should get 90% of the matrimonial assets" is not an appropriate application of the concept of therapeutic justice. Such a division would certainly be desirable from this particular client's subjective viewpoint and, from his or her own perspective, certainly "justice". But it is far from desirable and far from just from the other party's perspective. And it is certainly in no way therapeutic, and it definitely will not achieve what therapeutic justice seeks to achieve.

92 Sundaresh Menon, Chief Justice, "The Role of the Courts in Our Society – Safeguarding Society", opening address at the Conversations with the Community (21 September 2023).

XIII. Concluding remarks

112 As mentioned above, at the end of the day, the purpose of division of matrimonial assets is to allow both parties to separate the assets that belonged to them during the marriage and then move on with their lives, and it is not meant to be a battleground to add to the acrimony which led to the divorce in the first place.

113 It is therefore suggested that, for counsel, the following points might be helpful in advising clients:

(a) Matrimonial assets are, based on the concept of deferred community of property, assets belonging to both spouses, and the idea of depriving the other spouse of a *fair* share of the matrimonial assets is simply a non-starter.

(b) Division of matrimonial assets is based on what would constitute just and equitable, or, in other words, fair, proportions. As such, in the absence of unusual facts in a case, a totally unbalanced division which is very, very heavily in favour of one party at the expense of the other party is unlikely, and a division that is in the region of equality in the sense of each party getting 40% to 60% or a figure not too far from this is a more likely outcome in the average and typical type of case.

(c) The courts will take a broad brush approach when dealing with division of matrimonial assets, and this means that an overly aggressive approach to discovery, interrogatories and affidavits just to prove who paid for minute amounts or to detail every minute contribution will be frowned upon and may even result in costs consequences.

(d) In the light of the above, an approach based on therapeutic justice and being fair to the other side and advising clients accordingly would result not only in a better outcome for the clients generally but is also more likely to be accurate when predicting the outcome of the division of matrimonial assets.

114 In conclusion, it is hoped that what has been discussed in this paper will help counsel in advising clients and arguing cases before the courts and, at the same time, manage clients' expectations and steer them towards an approach to their cases which achieves therapeutic justice.