

Case Note

PROPOSED IMPROVEMENTS TO THE DIVISION OF PARTIES' BENEFICIAL INTERESTS BEYOND THE WOMEN'S CHARTER

Chan Yuen Lan v See Fong Mun
[2014] 3 SLR 1048

In this case, the Singapore Court of Appeal had the opportunity to consider its approach towards ascertaining the parties' beneficial interests under the common law. It took the opportunity to revisit its earlier decision of *Lau Siew Kim v Teo Guan Chye Terence* [2008] 2 SLR(R) 108 and establish an approach for future cases. It is submitted that the Court of Appeal's approach could have gone further to first, establish the common intention constructive trust analysis as the starting point for ascertaining beneficial interests under the common law, second, reform the presumption of advancement and third, pave the way for a greater role to be played by non-financial contributions in ascertaining the parties' beneficial interests.

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I. Introduction

1 Presently, the division of assets (primarily the home) between cohabitants and married couples in Singapore are done under separate regimes. Upon a divorce, the court has the power to order a "just and equitable" division of the matrimonial assets under s 112(1) of the Women's Charter¹ ("the WC"). In most cases, the home falls within the definition of matrimonial property as per s 112(1) of the WC. The parties' interest in the home is then apportioned under s 112. However where cohabitants are unmarried and go their separate ways, this is done via common law. This was explicitly observed by V K Rajah JA in

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1 Cap 353, 2009 Rev Ed.

*Chan Yuen Lan v See Fong Mun*² (“*Chan Yuen Lan*”), also the latest case on the common law position in ascertaining the parties’ beneficial interests in property, dealing specifically with homes.³

2 In *Chan Yuen Lan*, Rajah JA declined to follow the majority approach in *Stack v Dowden*⁴ (“*Stack*”), on the basis that: (a) there would be an increased risk of litigation, (b) it would be difficult to identify which property falls within the domestic context and (c) it would be difficult for lawyers to advise their clients on the likelihood of a successful claim.⁵ He also revisited his previous decision in *Lau Siew Kim v Teo Guan Chye Terence*⁶ (“*Lau Siew Kim*”) on ascertaining beneficial interests under the common law and held that the resulting trust analysis was based on the lack-of-intention analysis proffered by Prof Robert Chambers.⁷

3 This note first seeks to comment on three issues arising from *Chan Yuen Lan*, (a) the use of the common intention constructive trust (“CICT”) analysis *versus* the use of the resulting trust analysis, (b) the continued application of the presumption of advancement (“POA”) in countering the presumption of resulting trust and (c) the role of non-financial contributions in the ascertainment of the parties’ beneficial interests. Next, it will be suggested that despite its flaws, the majority approach in *Stack* as qualified by *Jones v Kernott*⁸ (“*Jones*”) could still present a better approach as opposed to the *Chan Yuen Lan* approach. This is especially so because lifestyles beyond marital bonds are becoming increasingly tolerated or accepted and the common law will correspondingly be used increasingly to adjudicate between these parties going their separate ways.

II. Facts in *Chan Yuen Lan*

4 The parties to the litigation were Mr See Fong Mun (“Mr See”) and Mdm Chan Yuen Lan (“Mdm Chan”). They were married in 1957.⁹ During the course of the parties’ marriage, Mr See had an affair with a mistress¹⁰ and at the time of the appeal, he was still living with the mistress.¹¹

2 [2014] 3 SLR 1048.

3 The judgment also happened to be V K Rajah JA’s last judgment before he assumed the post of Attorney-General of Singapore.

4 [2007] 2 AC 432.

5 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [154].

6 [2008] 2 SLR(R) 108.

7 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [43].

8 [2012] AC 776.

9 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [6].

10 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [6].

11 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [6].

5 In late 1983, the parties bought a property at 24 Chancery Lane (“the Property”) for \$1.78m.¹² This was placed in Mdm Chan’s sole name¹³ and financed by \$290,000 from Mdm Chan, *inter alia*. With respect to the \$290,000, Mr See contended that this was an interest-free loan that was provided by Mdm Chan and he had repaid the loaned sum to her.¹⁴ He submitted that she had held the Property absolutely because at the time of purchase, she had wanted to hold a property in her name so she could boast to her friends about it.¹⁵ Mdm Chan however contended that it was agreed that she would be the absolute owner of the Property and the \$290,000 was her contribution towards the Property’s purchase price.¹⁶ The parties also disagreed on the applicability of the POA in respect of Mr See’s beneficial interest. Mdm Chan’s case was that the POA applied in her favour¹⁷ while Mr See’s case was that the POA did not apply because there was documentary evidence showing that his intention was otherwise.¹⁸

6 The arguments were significant because they had material bearings on the outcome of the case. If the \$290,000 was indeed repaid to Mdm Chan as alleged by Mr See, Mdm Chan would have no beneficial interest in the Property. If the POA applied in favour of Mdm Chan, Mr See’s beneficial interest in the Property would be advanced to Mdm Chan. In the High Court, the trial judge held that Mdm Chan’s \$290,000 contribution was a loan that had been repaid in full by Mr See¹⁹ while Mr See had successfully rebutted the POA because there was no convincing reason why he would give such a large house to Mdm Chan with whom he was married to just in name.²⁰ Lastly, the trial judge opined that the CICT analysis was a sounder solution than the resulting trust analysis where the common intentions of the parties had been proven.²¹ Left with next to nothing, Mdm Chan appealed.

III. Court of Appeal proceedings

7 Madam Chan’s case on appeal rested on two points: that the trial judge erred in assessing the credibility of the witnesses in assessing the Property’s beneficial ownership and that the trial judge had wrongly rebutted the POA.²² Mr See’s position was that the trial judge’s findings

12 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [13].

13 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [11].

14 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [25].

15 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [90].

16 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [26].

17 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [26].

18 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [25].

19 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [27(a)].

20 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [28(a)].

21 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [30(a)].

22 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [31].

on the \$290,000 and the POA was correct and therefore he (a) paid fully for the Property and (b) had every intention to retain his beneficial interest in it.²³ As such, the POA was rebutted and a resulting trust arose in his favour.

8 In its decision, the Court of Appeal (“CA”) held that the trial judge erred in respect of the \$290,000. It found that since it was undisputed that the \$290,000 initially belonged to Mdm Chan, the onus was on Mr See to prove that it was a loan.²⁴ Since insufficient evidence was provided by him, he had failed to prove his case and the \$290,000 was held to be Mdm Chan’s contribution to the Property’s purchase price.²⁵ Given this, there was a presumption that Mdm Chan held the remainder of the beneficial interest in the Property on a resulting trust for Mr See.²⁶ The question then was whether Mr See had intended to benefit Mdm Chan by his contributions to the Property’s purchase price.

9 On this second issue, the trial judge was upheld. The CA found that Mdm Chan had executed a power of attorney allowing Mr See and their son to “take charge of, manage and improve [her] property”.²⁷ If the Property was a gift to her, the CA was unconvinced why she allowed Mr See to exercise control over it.²⁸ Also, it was unconvincing why Mr See who was nearing retirement and who had just begun an affair at that time would make such a large gift to Mdm Chan, with whom his marriage existed merely in name.²⁹ Therefore Mr See had no intention to benefit Mdm Chan with his beneficial interest in the Property.

10 The above was sufficient to dispose of the appeal. However the CA’s exposé on the CICT and resulting trust analyses towards ascertaining the beneficial interests of the parties in such disputes, its retention of the POA and its rejection of non-financial contributions in ascertaining the parties’ beneficial interests were all highly significant. The CA took the opportunity to state *broadly* the future approach in ascertaining the beneficial interest in respect of property ownership which is as follows:

- (a) First, is there sufficient evidence of the parties’ respective financial contributions to the purchase price of the property? If yes, parties will be presumed to hold the beneficial interest in proportion to their respective contributions to the

23 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [32].

24 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [76].

25 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [77].

26 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [88].

27 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [17].

28 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [92].

29 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [92].

purchase price. If no, parties are presumed to hold the beneficial interest in the same manner as the legal interest.

(b) Whether the answer to (a) is yes or no, is there sufficient evidence of an express or inferred common intention that the parties should hold the beneficial interest in the property in a proportion that is different from their respective financial contributions? If yes, they will hold their interests in accordance with this common intention, which the court will not impute to them.

(c) If the answer to (a) and (b) is no, parties will hold the beneficial interest in the property in the same manner as the legal interest.

(d) If the answer to (a) is yes but to (b) is no, is there still sufficient evidence that the party who paid a larger part of the purchase price of the property intended to benefit the other party with the entire amount which he or she paid? If yes, X would be considered to make a gift to Y of that larger sum and Y would be entitled to the entire beneficial interest.

(e) If the answer to (d) is no, does the presumption of advancement still operate to rebut the presumption of resulting trust in (a)? If yes, then there will be no resulting trust on the facts where the property is registered in Y's sole name and the parties will hold the beneficial interest jointly if the property is jointly registered in their names. If no, the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.

(f) Regardless of the situation when the property was acquired, is there sufficient and compelling evidence of a later express or inferred common intention that the parties should hold the beneficial interest in a proportion different from the beneficial interest held at the time of acquisition of the property? If yes, the beneficial interest will be held according to this later common intention. If no, parties will hold the beneficial interest in one of the modes set out at (b) to (e).

IV. Comments

11 The above shows that *Chan Yuen Lan* differentiates the Singapore position from the UK position in three material respects: (a) the resulting trust analysis is the starting point as opposed to the CICT analysis, (b) the POA is retained and (c) non-financial contributions are not used in ascertaining the parties' beneficial interest. These three points will be discussed in turn.

A. CICT approach versus resulting trust approach

(1) CICT analysis should be preferred analysis over resulting trust analysis

12 The CA first embarked on an analysis of the UK common law position. It noted that in *Stack* and *Jones*, the UK had departed from the use of the resulting trust analysis in ascertaining the parties' beneficial interests and adopted the CICT analysis instead. This, in the CA's opinion, appeared to be the consequence of changing economic and social conditions in England, particularly the rise in property prices together with the dramatic increase in the number of unmarried couples living together over the past 50 years.³⁰ Due to unsuccessful attempts at legislative reform, the UK judiciary took it upon itself to account for these changes.³¹ Also, it was a growing view that the assumptions underlying the resulting trust analysis were no longer appropriate, particularly with respect to the POA, which would have tempered the harshness of the presumption of resulting trust.³² The CA however noted that the *Stack* and *Jones* however was not welcomed by everyone and had supporters and detractors disagreeing both on the basis of principle and pragmatism.³³

13 However, it is respectfully submitted that the CA could have addressed with greater detail the reasons why it decided to keep the resulting trust approach as the default analysis. Conceptually, the CA took the view that the UK position had developed in response to its changing economic and social landscape and reaffirmed their view in *Lau Siew Kim* that the POA still accorded with "the community's contemporary societal norms and expectations in particular situations".³⁴ It thus appears that whether or not the CICT analysis is to

30 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [127]; Robert Pearce, John Stevens & Warren Barr, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 5th Ed, 2010) at pp 327–328.

31 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [129]; Robert Pearce, John Stevens & Warren Barr, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 5th Ed, 2010) at p 328.

32 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [132].

33 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [134]–[138]. The proponents of the *Stack* and *Jones* approach include Kevin Gray and Susan Francis Gray in *Elements of Land Law* (Oxford University Press, 5th Ed, 2009) at para 7.3.72; Adam Doyle, "Jones v Kernott: Which Way to Rome?" (2012) 26(2) Tru LI 96 at 102; while its detractors include William Swadling, "The Common Intention Constructive Trust in the House of Lords: An Opportunity Missed" (2007) 123 LQR 511; Adrian Briggs, "Co-ownership and an Equitable *Non Sequitur*" (2012) 128 LQR 183; Martin Dixon, "Editor's Notebook: The Still Not Ended, Never-ending Story" [2012] Conv 83 and John Mee, "Jones v Kernott: Inferring and Imputing in Essex" [2012] Conv 167.

34 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [152]; *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [61].

be adopted as the prevailing analysis is dependent *to some extent* on the POA's relevance. It is suggested that this is perhaps due to the POA's role in rebutting the presumption of resulting trust which supports the use of the resulting trust analysis.³⁵ The relevance of the POA will be evaluated later on in this article, but it is suggested that if the POA is an outmoded concept based on outdated assumptions, better justifications could be given for the use of the resulting trust analysis as the default approach. It has also been noted that private law rights should not be encumbered by a state's moral judgment of different lifestyles, which takes place *implicitly* when one applies the POA.³⁶ Prof Tey Tsun Hang has commented that since the CICT analysis avoids such moral judgments and only seeks to ascertain the common intention of both parties, it neatly avoids moral judgements inherent in the application of the POA and is thus to be preferred.³⁷

14 Furthermore, at least one of the reasons given by the CA for the UK's approach is also present in the Singapore context – that of high property prices.³⁸ Public policy studies have also indicated that a majority of Singaporeans are of the opinion that cohabitation is an acceptable lifestyle and 49% indicated that they would themselves cohabit with their partners before marriage.³⁹ While the numbers of cohabitees presently have not reached the levels present in the UK, it is submitted that the possibility of a significant portion of society doing so in the future is a real one, especially with changes on the policy side making it easier for unmarried singles to purchase government-built apartments.⁴⁰

15 Therefore, it is humbly submitted that there is no conceptual objection to using the CICT analysis as the default analysis for ascertaining the parties' beneficial interests and in fact, *Chan Yuen Lan*

35 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [56] and [147].

36 John Mee, *The Property Rights of Cohabitees: An Analysis of Equity's Response in Five Common Law Jurisdictions* (Hart Publishing, 1999) at p 313.

37 Tey Tsun Hang, "Resulting Trusts in Singapore" (2011) 23 SAclJ 607 at para 89.

38 Tilak Abeysinghe, "Inflated Housing Prices Should Ease" *The Straits Times* (4 October 2012) at p A30; Tang Hang Wu, "Housing and Development Board Flats, Trust and Other Equitable Doctrines" (2012) 24 SAclJ 470 at 487. See also SingaporePropertyCycle.com.sg <<http://www.singaporepropertycycle.com.sg/market-trends/singapore-property-price-index/>> (accessed 28 August 2014) for the Private Residential Property Price Index which has surged from less than 50 in 1975 to above 200 in 2014.

39 National University of Singapore, Institute of Policy Studies, *IPS Perception of Policies in Singapore (POPS) Survey 6: Perceptions of Singles on Marriage and Having Children: Report* (June 2013) at para 5.1.3.

40 Rachel Chiang, "Budget 2013: Singles to be Allowed to Buy Flats Directly from HDB" *The Straits Times* (8 March 2013) <<http://www.straitstimes.com/the-big-story/budget-2013/story/budget-2013-singles-be-allowed-buy-flats-directly-hdb-20130308>> (accessed 7 July 2014).

took a step forward from *Lau Siew Kim* by allowing for the parties' common intentions to be ascertained regardless of whether there was sufficient evidence of the parties' financial contributions to the property's purchase. Since the *Chan Yuen Lan* approach seeks the parties' common intentions regardless of whether there is evidence as to their financial contributions,⁴¹ it makes sense for the CICT analysis to be the default analysis as opposed to the resulting trust analysis. This view is reinforced by the CA's holding that the resulting trust analysis is one which responds to a lack of intention as per Prof Robert Chambers⁴² and not the presumed common intention of the parties as *per* Lord Browne-Wilkinson in *Westdeutsche Landesbank Girozentrale v Islington London Borough Council*.⁴³ If the resulting trust analysis is one which responds to a party's lack of intention to benefit another, it is submitted that the CICT analysis should be the starting point and it is only if there is no common intention that can be ascertained that the resulting trust analysis will be used to respond to and allocate the beneficial interest where there is no common intention between the parties.⁴⁴

(2) *Absence of imputation of common intention means dichotomy between common law regime and marital regime*

16 Where the parties' common intention is concerned, the CA took care to emphasise that such intention can only be manifested expressly or impliedly.⁴⁵ No intention is to be imputed by the courts to the parties.⁴⁶

17 Such clarity is beneficial for the future. This is because courts have not always been very clear on the difference between implication and imputation.⁴⁷ In *Gissing v Gissing*,⁴⁸ Lord Pearson spoke of imputing

41 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [160(b)].

42 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [38]; Robert Chambers, *Resulting Trusts* (Clarendon Press, 1997).

43 [1996] AC 669 at 708–709; *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [43].

44 As was observed by the Court of Appeal in *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [158].

45 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [160(b)].

46 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [160(b)]. The importance of agreement is seen in Rebecca Lee, “*Stack v Dowden*: A Sequel” (2008) 124 LQR 209 at 212 where the author comments that to invoke the doctrine of constructive trust, an agreement between the parties is crucial.

47 Man Yip, “The Rules Applying to Unmarried Cohabitants’ Family Home: *Jones v Kernott*” (2012) 2 Conv 159 at 62; Adam Doyle, “*Jones v Kernott*: Which Way to Rome?” (2012) 26(2) Tru LI 96 at 102 where he observes that the demarcation point between the two is inherently unclear and the Bench in *Stack v Dowden* [2007] 2 AC 432 disagreed on the two concepts; see also Lord Neuberger, “The Conspirators, The Tax Man, The Bill of Rights and A Bit about the Lovers” (Chancery Bar Association Annual Lecture, 10 March 2008) at para 19.

48 [1971] AC 886 at 902.

of an intention via inferring from the parties' conduct and evidence. Over the years, the authorities have slowly made a clear distinction between the two concepts.⁴⁹ In *Chan Yuen Lan*, the CA affirmatively differentiated the two concepts and it is now trite that the former meant that a common intention existed between the parties while the latter meant that there was no common intention between the parties and the court was imputing to them an intention which it felt was most just.⁵⁰

18 The court's refusal to impute a common intention to the parties also means that a dichotomy remains between the marital regime and common law regime in Singapore. In the UK, *Jones* held that beneficial interests would be imputed in the absence of any common intention so that "each party [will be] entitled to a share which the court considers fair, having regard to the whole course of dealing between them in relation to the property".⁵¹ This sounds substantively similar to the court's role as stated in s 112(1) of the WC, which states that:

112. —(1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks *just and equitable*. [emphasis added]

19 Section 112(2) then goes on to provide a list of factors that is highly similar in substance to the factors taken into account in *Stack* and *Jones*.⁵² It is submitted that while the basis for asset division under the WC is one based on the "community of property" approach⁵³ *versus* the court imputing a common intention to the parties as per *Stack* and *Jones*, the practical outcome is highly similar since in both cases the court is in effect dividing the equitable interest in property between two parties on the basis of what it perceives to be just. Thus the CA in

49 *Stack v Dowden* [2007] 2 AC 432 at [125]–[127]; *Jones v Kernott* [2012] AC 776 at [61]; Man Yip, "The Rules Applying to Unmarried Cohabitants' Family Home: *Jones v Kernott*" (2012) 2 Conv 159 at 161.

50 Such a refusal is desirable as Man Yip, "The Rules Applying to Unmarried Cohabitants' Family Home: *Jones v Kernott*" (2012) 2 Conv 159 at 165, noted. Otherwise questions would arise as to the right of parties to appeal a trial judge's decision on the basis that he wrongly imputed an intention on the grounds that it is possible to infer one.

51 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [121(c)]; *Jones v Kernott* [2012] AC 776 at [31]–[64].

52 See s 112(2) of the Women's Charter (Cap 353, 2009 Rev Ed); Tan Yock Lin, "Matrimonial' Realty Under a Resulting Trust" [2011] Sing JLS 89 at 90.

53 Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 799–800. *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [82] observed that the "community of property" principle places particular emphasis on fairness to the homemaker spouse and the equality of spouses and this manifests itself in their property holdings when their marriage is terminated.

refusing to impute a common intention between the parties draws a dichotomy between the common law regime and marital regime – the marital regime allows the court to apportion matrimonial assets on a just and equitable basis while it can only infer an express or implied common intention between the parties under the common law regime. There is a possibility, however remote, that this might not lead to a just and equitable division of the equitable interest in the property, although in most cases it usually does.

20 In principle, the refusal to impute a common intention to the parties appears to be more coherent with the underlying justifications for the CICT analysis – to give effect to the parties’ informal agreement or common intentions and not grant the court power to impose on the parties what it deems just and equitable.⁵⁴ This position is also consistent with the policy aims of Singapore to promote the traditional family unit within the bonds of marriage.⁵⁵ Therefore the refusal to impute a common intention to the parties possibly might not lead to a just and equitable outcome, but it certainly coheres with the CA’s intentions to develop the law of equity of trusts in a manner that is consistent with precedent, principle, policy and pragmatism.⁵⁶

54 *Snell’s Equity* (John McGhee gen ed) (Sweet & Maxwell, 32nd Ed, 2010) at para 24-041; Robert Pearce, John Stevens & Warren Barr, *The Law of Trusts and Equitable Obligations* (Oxford University Press, 5th Ed, 2010) at p 337. Man Yip, “The Rules Applying to Unmarried Cohabitants’ Family Home: *Jones v Kernott*” (2012) 2 Conv 159 at 165, cautions against using the common intention constructive trust to address broader family law concerns.

55 Tang Hang Wu, “Housing and Development Board Flats, Trust and Other Equitable Doctrines” (2012) 24 SAclJ 470 at 472, observes that the pro-family stance adopted for many years has now been relaxed with singles above the age of 35 allowed to purchase flats on the Housing & Development Board resale market under the Single Singaporean Citizen Scheme. For LGBT lifestyles, see *Singapore Parliamentary Debates, Official Report* (23 October 2007) vol 83 at cols 2399–2400 (Lee Hsien Loong, Prime Minister and Minister for Finance) where the Prime Minister stated that “Singapore is basically a conservative society. The family is the basic building block of our society. It has been so and, by policy, we have reinforced this and we want to keep it so. And by ‘family’ in Singapore, we mean one man one woman, marrying, having children and bringing up children within that framework of a stable family unit”.

56 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [32], where it was held that the four primary perspectives that should guide the court in developing equitable principles are (a) precedent, (b) principle, (c) policy and (d) pragmatism. See also Gary Watt, *Trusts and Equity* (Oxford University Press, 2nd Ed, 2006) at pp 47–48.

B. *Reform of POA*

21 As a presumption, the POA is an instrument of last resort used when the actual intention of the parties cannot be ascertained.⁵⁷ In *Lau Siew Kim*, the POA was invoked because the husband had passed on and there was no way to ascertain his actual intentions. Since it was unrebutted, the deceased husband's beneficial interest in the property was advanced to his wife instead of it going to her step-sons.⁵⁸ It is submitted however that the CA could have taken the chance to relook the POA. This is important because parties have successfully relied on the POA in establishing their beneficial interests in the past and therefore the concept as a legal presumption has strong normative content.⁵⁹ Yet strong arguments have been made to suggest that there is no coherent basis for the POA⁶⁰ and it is suggested that the test for ascertaining its strength is based on a narrow understanding of the POA. Given that it acts as a counterbalance to the presumption of resulting trust under the resulting trust analysis, it is submitted that the basis, application and test for the strength of the POA should all be re-examined.

(1) *Basis for POA presently uncertain*

22 It is uncertain at present what is or are the bases for the POA. In *Lau Siew Kim* which was cited by *Chan Yuen Lan*, the CA held that the POA arises as a result of a pre-existing relationship between the parties where the transferor is regarded as *morally obliged* to provide for the person benefiting.⁶¹ Yet *Lau Siew Kim* cited Gibbs CJ in *Calverley v Green*⁶² where he held that POA "is raised when the parties' relationship is such that it is more probable than not that a beneficial interest was intended to be conferred, whether or not the purchasee owed the other a legal or moral duty of support",⁶³ showing that it could be based on the inherent underlying probabilities as well. Again in *Low Gim Siah v Low Geok Khim*⁶⁴ ("*Low Gim Siah*"), the CA previously held that the POA had lost its "robustness" in cases concerning joint contributions by married couples in acquiring the matrimonial home or properties

57 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [50]; *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [59]; *Neo Hui Ling v Ang Ah Sew* [2012] 2 SLR 831 at [25].

58 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [144]–[146].

59 See *Chin Shak Len v Lin Fah* [1962] MLJ 418 and *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [148].

60 Tey Tsun Hang, "Resulting Trusts in Singapore" (2011) 23 SAclJ 607 at para 65.

61 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [58].

62 (1984) 155 CLR 242.

63 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [78].

64 [2007] 1 SLR(R) 795.

acquired through joint savings,⁶⁵ possibly leading to an inference that the POA could be based in part on the state of dependency between parties.

23 It is therefore uncertain to what extent the POA is based on the moral obligation of one party to another. In fact, it has been commented that the POA might be based on several underlying reasons – a reflection of the parties’ common intentions, the greater possibility that the parties intended for the beneficial interest to be advanced than not, a moral duty to provide, a dependency relationship or the affection that flows from the nature of the relationship.⁶⁶ These factors may not always cohere – if the POA were based solely on the relationship of the parties, then the POA should accordingly apply in favour of a wife who is financially independent from her husband and is not in a position of dependency *vis-à-vis* her husband.⁶⁷ If it were based on certain recognised categories of relationships, then it is also uncertain whether the Legislature or the Judiciary is the driver of recognition for such relationships – the CA in *Lau Siew Kim* has seen fit to defer to legislative lead at least in the case of *de facto* relationships.⁶⁸ Yet if this were the case, it is curious why the POA does not apply from a child to a parent since it is arguably clear that it is the policy objective of the Legislature that adult children have a moral obligation to provide for their elderly parents.⁶⁹

24 On the above, it is submitted that the validity of these underlying bases could have been examined in greater detail in *Chan Yuen Lan*. On observation, the reason why there is a moral obligation that arises in the various categories could be due to either natural affection arising out of a natural relationship between the parties (the parent-to-child relationship comes to mind) or a state of dependency between the parties (parties who stand *in loco parentis* to each other). In the former, the reason for the POA’s application could be one based on an underlying policy reason to reinforce society’s desire of maintaining such relationships and in the latter, the reason could be due to one

65 *Low Gim Siah v Low Geok Khim* [2007] 1 SLR(R) 795 at [43].

66 Kelvin Low, “The Presumption of Advancement: A Renaissance?” (2007) 123 LQR 347 at 349; Tey Tsun Hang, “Resulting Trusts in Singapore” (2011) 23 SAclJ 607 at para 65; Tey Tsun Hang, “Singapore’s Muddled Presumption of Advancement” [2007] SingJLS 240 at 263.

67 Simone Wong, “The Iniquity of Equity: A Home-Sharer’s Tale” [2008] SingJLS 326 at 329 where the author observes that the legal marital status of women and their state of dependency are two different things altogether.

68 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [74].

69 See generally Maintenance of Parents Act (Cap 167B, 1996 Rev Ed); *Singapore Parliamentary Debates, Official Report* (10 March 2010) vol 86 at col 2981 (Dr Vivian Balakrishnan, Minister for Community Development, Youth and Sports) where the Minister commented that, “The [Maintenance of Parents Act] should reflect the centrality of filial piety in our society.”

party's assumption of responsibility for (at the very least) the financial well-being of the other. Whatever the case, it is respectfully submitted that at present, the basis or bases for the POA remains uncertain.

(2) *POA presently applied and expanded in unprincipled manner*

25 The CA also held that the POA must be updated with the passing of time.⁷⁰ Therefore the presumption was expanded to encompass parent-to-child relationships, regardless of the child's age and independence.⁷¹ However *ad hoc* expansion based on assumed social conditions and constructs is not a principled manner to develop the POA.

26 An example would be the operation of the POA between spouses. The present position is that while the POA operates from a husband to his wife, the converse is not true. The anomaly could be based on a paternalistic conception of the marital relationship – that the husband is the primary breadwinner of the family. However this goes against strong evidence pointing towards the erosion of such a notion.⁷² Societal conditions have changed vastly in Singapore over the past 30 to 40 years and it is noted that females have achieved great strides in education and the workplace, though it is acknowledged that gender gaps still persist. Statistics indicate that the female workforce with post-secondary qualifications doubled between 1975 to 1999⁷³ and the female labour force participation rate rose from 21.6% in 1965 to reach 58.1% in 2013.⁷⁴ In fact, Singapore was ranked number 12 in the world for economic participation and opportunity.⁷⁵ In the face of such massive changes in Singapore's societal make-up, the POA as it stands, at least in its operation between spouses, appears incoherent.

27 The CA in *Lau Siew Kim* also cautioned against a slavish adherence to the norms of different countries, specifically referring to

70 Kelvin Low, "Apparent Gifts: Re-examining the Equitable Presumption" (2008) 124 LQR 369 at 371.

71 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [68].

72 Simone Wong, "The Iniquity of Equity: A Home-Sharer's Tale" [2008] Sing JLS 326 at 329, observes that with increased female participation in the labour market, the traditional family structure is on the decline.

73 Pundarik Mukhopadhaya, "Changing Labour-Force Gender Composition and Male-Female Income Diversity in Singapore" (2001) 12 *Journal of Asian Economics* 547 at 552.

74 Pundarik Mukhopadhaya, "Changing Labour-Force Gender Composition and Male-Female Income Diversity in Singapore" (2001) 12 *Journal of Asian Economics* 547 at 553; Ministry of Manpower, "Singapore Workforce, 2013: Employment Rate Rose to New High, Accompanied By Stronger Real Income Growth" (29 November 2013) <<http://www.mom.gov.sg/newsroom/Pages/PressReleasesDetail.aspx?listid=535#sthash.eViMjoa9.dpuf>> (accessed 8 July 2014).

75 *The Global Gender Gap Report 2013* (World Economic Forum, 2013) at p 18.

the notion of the Oriental against the Occidental.⁷⁶ However it is respectfully submitted that this dichotomy is an artificial one and strong arguments have been made pointing to the Orient being a mere social construct – it has been argued by Prof Edward Said that the Orient was conceptualised as a western antithesis.⁷⁷ Besides this, there is further question as to whether there is anything significantly different between the social circumstances in Singapore *versus* the other countries – critics have questioned whether there is anything “Asian” about Asian Values⁷⁸ and Prof Amartya Sen has criticised the notion of Asian values as “not especially significant in any sense.”⁷⁹ It is therefore submitted that perhaps the real reasons for the POA might be based on underlying policy factors which the court considers desirable in upholding rather than any real differences in social values between the Orient and the Occident.⁸⁰ *A fortiori*, any *ad hoc* expansion or modification of the categories of relationships or situations to which the POA applies seems arbitrary and unjustified.

(3) *Strength of POA dependent on very narrow factors*

28 Third, the factors used in determining the strength of the POA reflects a narrow understanding of the POA’s basis. In *Lau Siew Kim* and *Chan Yuen Lan*, it was held that the strength of the POA is dependent on the nature and strength of the parties’ relationship. This has been criticised as arbitrary and practically difficult.⁸¹

29 If the strength of the POA is dependent on the nature and strength of the parties relationship, Prof Kelvin Low has pointed out that the two might point away from each other.⁸² Given the

76 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [61].

77 Edward W Said, *Orientalism* (Vintage Books, 1994); Leigh K Jenco, “Revisiting Asian Values” (2013) 74(2) *Journal of the History of Ideas* 237 at 239.

78 Seth Mydans & Wayne Arnold, “Lee Kuan Yew, Founder of Singapore, Changing with Times” *The New York Times* (29 August 2007) <http://www.nytimes.com/2007/08/29/world/asia/29iht-lee.1.7301669.html?pagewanted=all&_r=0> (accessed 8 July 2014). It is observed that even Lee himself has acknowledged the weakening of such values (if at all valid) in the younger generation.

79 Amartya Sen, “Human Rights and Asian Values” (Sixteenth Morgenthau Memorial Lecture on Ethics & Foreign Policy, Carnegie Council on Ethics and International Affairs, 1997) at p 30; see also Leigh K Jenco, “Revisiting Asian Values” (2013) 74(2) *Journal of the History of Ideas* 237 at 249–256, where the author comments that the “Asian Values” discourse is a response to Western ideas of modernity.

80 Tey Tsun Hang, “Resulting Trusts in Singapore” (2011) 23 SAclJ 607 at para 66.

81 Kelvin Low, “Apparent Gifts: Re-examining the Equitable Presumption” (2008) 124 LQR 369 at 371.

82 Kelvin Low, “Apparent Gifts: Re-examining the Equitable Presumption” (2008) 124 LQR 369 at 371.

cosmopolitan nature of Singapore,⁸³ it is also questioned whether the nature and strength of the relationship would definitively lead to the establishment of the POA – arguably a Singaporean Caucasian family with positive family relationships but originating from a culture without leaving inheritances to the next generation would not be a case in which the POA should operate, not to mention the effect of globalisation on cultural practices among the global diaspora.⁸⁴ Therefore ascertaining the nature and strength of the parties' relationship *ipso facto* is insufficient.

30 It is submitted that the CA in *Chan Yuen Lan* could have seized the opportunity to fashion a better test for ascertaining the strength of the POA, should it wish to retain it as a counterbalance to the presumption of resulting trust. A suggestion is that the strength of the POA should not depend on the nature and strength of the parties' relationship but rather, the degree of dependency between the parties in the relationship. This is even so for existing categories of relationships based on natural love and affection, since it is submitted that it is only when the parties are in a state of dependency that it would *prima facie* lead to a moral obligation on the part of one to provide for the other. This point perhaps could be addressed in the next suitable case that comes before the CA.

C. *Use of non-financial contributions in accounting for beneficial interest*

31 *Chan Yuen Lan* lastly differed from *Stack* in that non-financial contributions are unlikely to be taken into account in ascertaining the parties' beneficial interest. While not expressly stated, the CA made numerous references to the burgeoning litigation that might result as a consequence of adopting the *Stack* and *Jones* approach and commended Lord Neuberger's minority approach in *Stack*, which viewed non-financial contributions as the background in which the parties' beneficial interests are ascertained.⁸⁵ It is suggested that the tenor of the CA is clear – the factors listed by the majority in *Stack* are to be used in ascertaining background against which actions, discussions and statements were made.⁸⁶ This would have an impact, negligible or otherwise, on the extent of the parties' beneficial interest and is distinct from ascertaining

83 Singapore, National Population and Talent Division, "A Sustainable Population for a Dynamic Singapore: Population White Paper" (January 2013) at p 46 where statistics show that more than 25% of Singapore's population is comprised of foreigners.

84 Bahira Sherif Trask, "Locating Multiethnic Families in a Globalizing World" (2013) 62 *Interdisciplinary Journal of Applied Family Studies* 17 at 17–20.

85 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [153].

86 *Stack v Dowden* [2007] 2 AC 432 at [145].

the parties' common intention, which would go towards whether the parties had any beneficial interest.

32 It is suggested that in *Chan Yuen Lan* the CA was more concerned with the practicality of accounting non-financial contributions due to the uncertainty that it would generate and whether court resources would be excessively consumed in the process.⁸⁷ These concerns might have been overstated since the same risks of litigation could result from parties trying to prove or disprove the POA,⁸⁸ which arguably leads to more drastic results than them seeking to ascertain their beneficial interests under the *Stack* approach.⁸⁹ These difficulties are mostly practical in nature and conceptually, there does not appear to be a principled basis for the rejection of such contributions. One author observes that it disadvantages women⁹⁰ and given Parliament's intention to give greater leeway to tolerate alternative lifestyles which might not fall within the marital regime,⁹¹ the reluctance to allow non-financial contributions to go towards a party's beneficial interest in property could constrain the way in which cohabitants (heterosexual or homosexual) organise their lives. It might not lead to the policy objective of giving them space to lead their lives and contribute to society.⁹²

33 Even if there is uncertainty caused, it is suggested that these uncertainties are not something alien to the courts or practitioners. The same uncertainties also surround the just and equitable division of matrimonial assets under s 112 of the WC. Pre-s 112, the division of

87 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [152].

88 Ruth S Yeo, "The Presumptions of Resulting Trust and Advancement in Singapore: Unfairness to the Woman?" (2010) 24(2) *International Journal of Law, Policy and the Family* 123 at 133 and 143, comments that the fact-sensitive approach in *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 has the effect of making it uncertain.

89 Tey Tsun Hang, "Resulting Trusts in Singapore" (2011) 23 SAclJ 607 at para 76. It is also observed at para 78 that the resulting trust analysis is not all that free from litigation due to its uncertainty and might in fact lead to more litigation.

90 Ruth S Yeo, "The Presumptions of Resulting Trust and Advancement in Singapore: Unfairness to the Woman?" (2010) 24(2) *International Journal of Law, Policy and the Family* 123 at 131.

91 *Singapore Parliamentary Debates, Official Report* (23 October 2007) vol 83 at cols 2399–2400 (Lee Hsien Loong, Prime Minister and Minister for Finance) where the Prime Minister, while acknowledging that the mainstream of Singaporeans desired for the traditional family unit to be maintained as the basic unit of society, also acknowledged homosexuals as part of the society and who are entitled to their private lives. Therefore, they should be given space to live their lives and contribute to society.

92 David Hayton, *Underhill and Hayton: Law of Trusts and Trustees* (LexisNexis, 18th Ed, 2010) at para 30.10, comments that the resulting trust approach discriminates against women by focusing too narrowly on one type of contribution to the parties' relationship to the exclusion of other types.

matrimonial assets was done under the then s 55 of the Women's Charter,⁹³ a provision which did not enable the courts to vary property rights but only permitted the court to inquire what rights the parties had and give effect to them.⁹⁴ The rigidity of the then position was seen in *Pettitt v Pettitt* [1970] AC 777 where Lord Hodson stated:⁹⁵

I do not myself see how one can correct the imbalance which may be found to exist in property rights as between husband and wife without legislation.

34 It was to correct such perceived unfairness that what is now s 112 of the WC was enacted⁹⁶ so that the courts are now empowered to rectify any imbalances caused by a strict adherence to property rights when married couples divorce.⁹⁷ As noted above, s 112(2) requires the court to take into account a list of non-financial contributions made by the divorcing parties towards the marriage, which are factors highly similar to that given by Baroness Hale in her leading judgment in *Stack*. Therefore it is submitted that family cases could provide guidance to the courts in assessing the value of non-financial contributions and the extent to which they should affect the parties' beneficial interests, though one should be careful not to turn the common law approach into one which indirectly seeks to address familial issues.⁹⁸ Furthermore, if the CA's observation that in most of the cases non-financial contributions have not made much of a difference is true,⁹⁹ it is hoped that most parties would be sensible enough to weigh the benefits and costs of such litigation against the gains they can possibly obtain through a revaluation of their beneficial interests. In this light, the fear of uncertainty would then seem overstated.

V. *Stack* approach as better alternative

35 Having said the above, it is respectfully submitted that a modified version of the *Stack* approach still offers a better alternative

93 Cap 47, 1970 Rev Ed.

94 Chandrasegar Chidambaram, "The 'We' Dream is Over, the 'Yours' or 'Mine' Reality Begins" (1980) 22 Mal LR 293 at 293; *Tan Evelyn v Tan Lim Tai* [1971–1973] SLR(R) 771 at [19].

95 *Pettitt v Pettitt* [1970] AC 777 at 811.

96 This was via the Women's Charter (Amendment) Act 1980 (Act 26 of 1980).

97 Barry Crown, "Property Division on Dissolution of Marriage" (1988) 30 Mal LR 34 at 35; Leong Wai Kum, "A Turning Point in Singapore Family Law: Women's Charter (Amendment) Bill 1979" (1979) 21 Mal LR 327 at 341–343.

98 Man Yip, "The Rules Applying to Unmarried Cohabitants' Family Home: *Jones v Kernott*" (2012) 2 Conv 159 at 165, observes that in quantifying the parties' interests, the needs of children are a factor which goes only to quantification and no more. The common intention constructive trust is ill-equipped to deal with broad family law concerns.

99 *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [139].

than the *Chan Yuen Lan* approach. This is especially so given that most of the reasons provided by the CA in rejecting the *Stack* approach are pragmatic rather than based on principle. The CA could have adopted a modified approach in *Stack* so that it accords with principle and fairness while not compromising significantly on pragmatism. The following approach is suggested:

(a) First, ascertain whether a CICT can be found on the facts. In this regard, joint legal ownership should not lead to any presumptions as to joint beneficial ownership since, in Prof Adrian Briggs's words, it is a *non sequitur*.¹⁰⁰ If an express or implied common intention between the parties can be found as to their beneficial ownership at the time of acquisition or otherwise,¹⁰¹ the court proceeds to ascertain the quantum of the parties' beneficial interests.¹⁰² If no common intention is found, the court proceeds to apply the presumption of resulting trust.¹⁰³

(b) If the presumption of resulting trust is applied, the court should seek to find on the available evidence whether there is sufficient evidence that party X intended to advance his or her share of the beneficial interest to party Y. Should the party intend to rely on the POA, sufficient evidence should be adduced to establish a dependency relationship between both parties. The strength of the POA is then dependent on the degree of dependency between the parties.

(c) However if an express or implied common intention is found, the court will then ascertain the extent of this beneficial interest, having regard as a starting point to the respective

100 Adrian Briggs, "Co-ownership and an Equitable *Non Sequitur*" (2012) 128 LQR 183 at 183.

101 Man Yip, "The Rules Applying to Unmarried Cohabitants' Family Home: *Jones v Kernott*" (2012) 2 Conv 159 at 163, observes that there are only a few circumstances in which a change of common intention can be inferred and this promotes certainty and saves judicial time.

102 *Tan Thiam Loke v Woon Swee Kheng Christina* [1991] 2 SLR(R) 595 and *Tan Poh Soon v Phua Sin Yin* [1995] 2 SLR(R) 583 both applied the common intention constructive trust approach in ascertaining the beneficial interest of the wife. See also Tang Hang Wu, "Housing and Development Board Flats, Trust and Other Equitable Doctrines" (2012) 24 SAclJ 470 at 488–489.

103 This approach was also suggested in Tey Tsun Hang, "Resulting Trusts in Singapore" (2011) 23 SAclJ 607 at para 83 for private non-business arrangements. It is submitted here that such a narrow application is unwarranted.

financial contributions of the parties¹⁰⁴ and then taking into account their non-financial contributions using asset division cases under s 112 of the WC as precedent while being careful not to use the common law approach as an indirect way to carry out matrimonial asset division.¹⁰⁵

36 It is submitted that the proposed approach is one which is conceptually neater, more principled, tempers the fear of uncertainty and reduces the prospect that a flood of litigation would result. As a side note, Prof Tang Hang Wu has also noted its potential utility in aiding migrant brides who cannot legally own government flats and, as a result, are left with nothing when their Singaporean husbands pass away and bequeath their homes to their parents or siblings.¹⁰⁶

37 The application of the CICT analysis as a starting point also avoids the untidiness of moral judgment in the application of the resulting trust approach, which requires the application of the POA, necessitating moral judgment to some extent.¹⁰⁷ It would also fit better with Singapore's unique approach to property ownership, which treats property both as a home and a social safety net,¹⁰⁸ and the increasing

104 Graham Battersby, "Ownership of the Family Home: *Stack v Dowden* in the House of Lords" (2008) 20(2) *Child and Family Quarterly* 255 at 262 where it is observed that Lord Neuberger's approach should be commended for its certainty; see also *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048 at [153]. It is submitted that taking financial contributions as a starting point would give effect to such certainty and achieve the best of both the common intention constructive trust analysis and Lord Neuberger's minority approach in *Stack v Dowden* [2007] 2 AC 432. *Fowler v Barron* [2008] 2 FLR 831 at [51] noted that monetary contributions are still accounted for and can provide strong evidence to rebut the presumption of equal beneficial interests in joint ownership cases or establish the existence of a beneficial interest in sole ownership cases.

105 It must be cautioned though that the courts should be judicious in relying on family cases.

106 Tang Hang Wu, "Housing and Development Board Flats, Trust and Other Equitable Doctrines" (2012) 24 SAclJ 470 at 490–491; T Tan, "In Sickness & In Death; When Their Husbands Die, Foreign Brides Can Be Left Without Home, Money, or Even the Right to be in S'pore" *The Straits Times* (30 April 2011); Amanda Wei-Zhen Chong, "Migrant Brides in Singapore: Women Strategizing within Family, Market and State" (2014) 37 *Harvard Journal of Law & Gender* 331 at 372–373, also argues that exclusion of migrant brides from being joint owners of government-built flats in which 80% of the population reside in, limits their bargaining power against their husbands and against the State.

107 Tey Tsun Hang, "Resulting Trusts in Singapore" (2011) 23 SAclJ 607 at para 89.

108 Housing & Development Board website <<http://unpan1.un.org/intradoc/groups/public/documents/un/unpan030803.pdf&embedded=true>> (accessed on 20 March 2013) where in one of his speeches during the nation-building days, former Prime Minister Lee Kuan Yew said that "my primary occupation was to give every citizen a stake in the country and its future ... if every family owned its home, the country would be more stable ... I believe this sense of ownership was vital for our new society". See also Ministry of Manpower website <<http://www.mom.gov.sg/>

(cont'd on the next page)

diversity in her society,¹⁰⁹ notwithstanding concerns as to the uncertainty that might be caused.¹¹⁰

VI. Conclusion

38 *Chan Yuen Lan* is a case that has dealt comprehensively with the common law position in ascertaining the parties' beneficial interests in property. It has moved Singapore one step closer towards adopting the CICT analysis. However it is humbly submitted that the CA could have been bolder and more radical by (a) adopting the CICT analysis ahead of the resulting trust analysis, (b) reforming the POA and (c) allowing non-financial contributions to be accounted for in ascertaining the parties' beneficial interests. This would accord better with precedent, principle, policy and pragmatism, the principles by which the CA held it would develop the law of equity by.¹¹¹

employment-practices/employment-rights-conditions/cpf/Pages/default.aspx.> (accessed 9 July 2014).

109 Brian Bix, *Jurisprudence: Theory and Context* (Carolina Academic Press, 5th Ed, 2009) at pp 98–99. Bix comments that the best way and perhaps the only way to prove or disprove the existence of unique answers in all legal cases is to consider individual difficult cases and build an argument that a particular result is the unique, correct one or that no other alternatives are as good. See also Ronald Dworkin, "Pragmatism, Right Answers, and True Banality" in *Pragmatism in Law and Society* (Michael Brint & W Weaver eds)(Westview Press, 1991) at p 365. This approach is increasingly necessitated in an increasingly diverse society.

110 Andrew Dyson, "All's Fair in Love and Law: An Analysis of the Common Intention Constructive Trust" (2008) 4 CSLR 149 at 155 where the author acknowledges the mitigation of unfairness under the *Stack* approach but warns that it leaves a gaping hole in the legal integrity of the doctrine and is ultimately unsustainable. It is hoped that the proposed approach, which places primacy on financial contributions, will go some way towards resolving such uncertainty.

111 *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108 at [32].