Published on e-First 24 April 2020

16. FAMILY LAW

HO Wei Jing, Tricia
LLB (Singapore Management University);
Lecturer, School of Law, Singapore University of Social Sciences.

CHEN Siyuan
LLB (Hons) (National University of Singapore),
LLM (Harvard); Associate Professor,
School of Law, Singapore Management University.

16.1 Two salient trends emerge from the decisions issued by the Singapore courts in 2019. First, cases with international elements are featured increasingly, with the Court of Appeal adjudicating its first case on financial relief consequential on foreign divorces and the High Court releasing a decision on sham marriages to obtain an immigration advantage. It is evident that the law is evolving to cater to the needs of a changing community in Singapore. There is a recognition of the increase in the number of Singapore citizens working abroad and marrying non-Singaporeans, which has prompted certain legislative changes that seek to provide appropriate remedies and effectively deal with new situations that arise. Secondly, there have also been decisions by the Family Justice Courts on the division of matrimonial assets and in particular, the applicability of the structured approach set out in *ANJ v ANK*[1] ("*ANJ*") to long marriages. In connection with this, there have been judicial and academic pushes towards equal division in long marriages. This edition of the review will also cover cases involving child issues, maintenance, and procedure.

I. International aspects of family law

A. Financial relief consequential on foreign divorces

16.2 In 2019, the Court of Appeal issued its first decision on financial relief consequential to foreign divorces. Chapter 4A of Pt X of the Women's Charter[2] ("Chapter 4A") allows Singapore courts to make orders on financial ancillary matters that arise from divorces granted by foreign courts. Chapter 4A was enacted by the Women's Charter (Amendment) Act 2011[3] to fill an existing lacuna in the law. Previously, the Singapore

1 [2015] 4 SLR 1043.
2 Cap 353, 2009 Rev Ed.
3 Act 2 of 2011.

courts did not have the power under s 112 of the Women's Charter to make financial ancillary orders pursuant to foreign divorces.

16.3 In *UFN v UFM*[4] ("*UFN*"), the Court of Appeal commented on the need for the expanded power of the Singapore courts under Chapter 4A due to the increasing number of Singaporeans working and residing overseas and the increasing marriages between locals and foreigners. The Court of Appeal referred to the speech of the then Minister for Community Development, Youth and Sports, Dr Vivian Balakrishnan. Dr Balakrishnan had highlighted that Chapter 4A would help the groups of people who are made vulnerable by foreign divorces and who have a relevant connection to Singapore seek relief.[5]

16.4 The wife in *UFN* applied for leave of the court to obtain an order for financial relief under Chapter 4A to divide a property in the parties' joint names in Singapore. The wife had been granted a divorce by the Indonesian Supreme Court, and the husband was ordered to pay monthly maintenance for the children.[6] The husband had also been convicted of domestic physical violence against the wife and the children, with the West Jakarta High Court sentencing him to an imprisonment term of four years and six months. At the time of the decision, the husband had not served his sentence.[7]

16.5 The Court of Appeal provided useful clarification on the operation of the provisions in Chapter 4A. It granted leave to the wife to apply for division of the jointly owned property in Singapore, and held that applications for financial relief under Chapter 4A comprise two stages. The first stage requires the applicant to obtain leave of the court. After leave is granted, the applicant may then proceed to the second stage, where he is able to make a substantive application for financial relief.[8]

16.6 Under the provisions of the Women's Charter, an applicant for leave would have to show that there was a foreign divorce, annulment or judicial separation recognised as valid in Singapore under s 121B of the Women's Charter. The applicant must also show that the Singapore court has jurisdiction over the matter under s 121C, and that there is "substantial ground for the making of an application" under s 121D(2). The Court of Appeal made clear that "substantial ground" is established if it would *prima facie* be appropriate for the Singapore court to grant

4 [2019] 2 SLR 650 at [1].
5 *UFN v UFM* [2019] 2 SLR 650 at [1].
6 *UFN v UFM* [2019] 2 SLR 650 at [5]–[6].
7 *UFN v UFM* [2019] 2 SLR 650 at [4].
8 *UFN v UFM* [2019] 2 SLR 650 at [17].

relief, having regard to the factors set out in s 121F and bearing in mind the purpose of the leave mechanism.[9]

16.7 A view expressed by the Court of Appeal was that the first stage involving the application of leave ought to be heard on an *ex parte* basis as opposed to *inter partes*. At the time of the hearing, the Family Justice Rules 2014[10] ("Family Justice Rules") stipulated that unless the court otherwise directs, the originating summons for leave and the supporting affidavit must be served on the defendant at least five clear days before the date of the case conference or hearing.[11] This would lead to a defendant mounting two rounds of possibly duplicative arguments at both the leave and substantive hearing stages relating to matters of foreign matrimonial proceedings, jurisdiction and the factors set out in s 121F of the Women's Charter on whether Singapore is an appropriate forum for the application for financial relief.[12] Such a process would invariably add to both the parties' and Judiciary's cost and time in resolving an application for financial relief under Chapter 4A.[13] The Parliament has since responded to the suggestions by the Court of Appeal in *UFN*. By way of the Family Justice (Amendment No 3) Rules 2019[14] that came into force on 29 November 2019, the procedure for the seeking of leave at the first stage of Chapter 4A proceedings has been amended to an *ex parte* one.

16.8 At the stage of the initial application for leave, an applicant must make proper and candid disclosure, establish that the jurisdictional hurdles are crossed, and show that there is substantial ground for the making of the application. The approach put forward by the Court of Appeal strikes an appropriate balance between according fairness to both parties on the one hand and, on the other hand, ensuring that applications are dealt with expeditiously.[15]

16.9 Previously, in *Harjit Kaur d/o Kulwant Singh v Saroop Singh a/l Amar Singh*,[16] Debbie Ong JC (as she then was) had expounded on the purpose of the leave mechanism to serve as a filter to sieve out unmeritorious cases. The leave mechanism was to be considered in light of the objective of Chapter 4A to alleviate injustice where one or both parties are sufficiently connected to Singapore, yet had no real opportunity

9 *UFN v UFM* [2019] 2 SLR 650 at [34].
10 S 813/2014.
11 Family Justice Rules 2014 (S 813/2014) r 40(5).
12 *UFN v UFM* [2019] 2 SLR 650 at [29].
13 *UFN v UFM* [2019] 2 SLR 650 at [26] and [29].
14 S 778/2019.
15 *UFN v UFM* [2019] 2 SLR 650 at [25]–[26].
16 [2015] 4 SLR 1216.

to pursue financial relief in foreign matrimonial proceedings, or where no or inadequate provision had been provided by the foreign court.[17]

16.10 Bearing this in mind, the court must consider the factors in s 121F of the Women's Charter and determine whether *prima facie*, Singapore is an appropriate forum for the application.[18] The threshold is not meant to be a high one, which is clear from the manner in which the factors in s 121F were applied by the Court of Appeal in *UFN*[19] in granting the wife leave to apply for financial relief. In finding that it is *prima facie* appropriate for a Singapore court to grant the applicant financial relief in *UFN*, the Court of Appeal placed due weight on the fact that the property that was the subject of the application was in Singapore and that the parties had a real connection to Singapore. The parties and the children were permanent residents of Singapore, and the family had been living in the property for several years.[20]

16.11 The Court of Appeal also considered the extent to which the Indonesian divorce order was fair and practical and the wife's reasons for not obtaining foreign relief. It was found that the emphasis ought to be on the applicant's reasons for not applying for or exhausting foreign remedies before applying to the Singapore courts under Chapter 4A. The degree of scrutiny on these reasons would vary according to the parties' connection to the jurisdiction in which the applicant seeks relief.[21] This formulation is a sensible one, as the more connected an applicant is to Singapore, the less likely that he or she will pursue financial relief in a foreign court and bear the risk of enforcement of the foreign court order in Singapore.

16.12 Once leave has been granted, the applicant may proceed to the second stage of the Chapter 4A proceedings and apply for substantive financial relief. Before making an order for financial relief, the Singapore court will have to analyse the factors in s 121F in detail, and consider whether it would be appropriate for the Singapore court to grant the relief.[22] At this stage, the defendant is entitled to make substantive arguments on the full merits of the case.[23]

17 *Harjit Kaur d/o Kulwant Singh v Saroop Singh a/l Amar Singh* [2015] 4 SLR 1216 at [17].
18 *UFN v UFM* [2019] 2 SLR 650 at [32].
19 See para 16.3 above.
20 *UFN v UFM* [2019] 2 SLR 650 at [44]–[45].
21 *UFN v UFM* [2019] 2 SLR 650 at [49].
22 *UFN v UFM* [2019] 2 SLR 650 at [33]–[34].
23 *UFN v UFM* [2019] 2 SLR 650 at [34].

16.13 Under s 121G of the Women's Charter, the Singapore courts "may make any one or more of the orders which it could have made under s 112, 113, or 127(1) in the like manner as if a decree of divorce, nullity or judicial separation in respect of the marriage had been granted in Singapore". The objective of Chapter 4A is to mitigate disadvantage and not to give an extra advantage.[24] However, it is conceivable that there may be litigants who attempt to use any perceived or concrete differences in the various family law regimes to gain a jurisdictional advantage in the financial aspects of matrimonial proceedings. For example, one may envisage a situation where the parties are domiciled in the UK but have a connection to Singapore. Given the distinctive approaches towards the treatment of prenuptial agreements in these jurisdictions, a party may adopt a litigation strategy of obtaining a divorce in the English Courts yet seek an order for division of matrimonial assets from the Singapore courts.[25]

16.14 Section 121F(2)(*f*) of the Women's Charter is especially relevant with regard to minimising such strategic treatment of Chapter 4A by parties that are connected to more than one jurisdiction. It states that the court shall have regard to:

> … any right which the applicant has, or has had, to apply for financial relief from the other party to the marriage under the law of any foreign country and if the applicant has omitted to exercise that right, the reason for that omission.

This factor is a critical safeguard against forum shopping. It requires the Singapore courts to consider circumstances such as the powers of the

24 *UFN v UFM* [2019] 2 SLR 650 at [48].

25 In the landmark decision of *Radmacher v Granatino* [2010] UKSC 42, it was held (at [75]) that:

> [T]he Court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implication unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.

Such treatment of prenuptial agreements by the English courts is distinct from the regime for division of matrimonial assets in Singapore. In Singapore, division is governed by s 112 of the Women's Charter (Cap 353, 2009 Rev Ed). In *TQ v TR* [2009] 2 SLR(R) 961, the Court of Appeal held (at [77]) that:

> [T]he courts are to consider, as part of all the circumstances of the case, the prenuptial agreement in arriving at a just and equitable division of the matrimonial assets that are available for distribution between the parties. *However*, it is pertinent to note that it follows that the prenuptial agreement *cannot* be enforced *in and of itself*. It bears reiterating that its terms constitute one of the factors that the court should take into account in arriving at its decision as the proportions in which the matrimonial assets concerned are to be distributed. [emphasis in original]

foreign court to grant relief, the orders made thereunder and the reason why such orders or no orders were made.[26]

16.15 Where a foreign court has not made any order for financial relief, it is important to assess if the reason is due to the litigant positioning to obtain financial relief in a forum that has more favourable law. This would not justify leave being granted. There have been cases where the English courts have given this consideration such significant weight that it outweighed other considerations arising under the "substantial ground" analysis.[27]

16.16 Where a foreign court has made an order for financial relief, due respect must be given to the rules of comity between courts of competent jurisdictions. The Singapore courts must be cautious not to make any order that will allow a party to have a second bite of the cherry.[28] It would appear that once a foreign court has made an order for financial relief, the Singapore courts may be less inclined to interfere with a competent court seised of the matter, which has made enforceable orders, which is capable of enforcing them and has dealt with the matter on a reasonably careful assessment of all the features.[29]

16.17 It follows that in such cases, it would be relatively more challenging for an applicant to show that there is an inadequacy of provision that would justify granting the financial relief sought from the Singapore courts. One way of minimising exposure and protecting potential respondents from applicants who are attempting to take a second bite of the cherry would be for a respondent to show that any relevant financial issues had been canvassed before the foreign courts or that any foreign financial orders already take into account assets found in Singapore.

B. Sham marriages

16.18 The increase in marriages between Singaporeans and non-Singaporeans has also led to the need to enact s 11A of the

26 *Harjit Kaur d/o Kulwant Singh v Saroop Singh a/l Amar Singh* [2015] 4 SLR 1216 at [18].

27 *Harjit Kaur d/o Kulwant Singh v Saroop Singh a/l Amar Singh* [2015] 4 SLR 1216 at [21].

28 *Harjit Kaur d/o Kulwant Singh v Saroop Singh a/l Amar Singh* [2015] 4 SLR 1216 at [22].

29 *Harjit Kaur d/o Kulwant Singh v Saroop Singh a/l Amar Singh* [2015] 4 SLR 1216 at [22].

Women's Charter.[30] Section 11A deals with "immigration-advantage sham marriages", which are essentially marriages of convenience for the purpose of assisting a party to the marriage to obtain an immigration advantage.[31] Such immigration-advantage sham marriages go against the institution of marriage, the public policy of encouraging strong marriages and families in Singapore's society and also immigration policy. The parties to an immigration-advantage sham marriage do not intend to form a community of life with each other and are instead exploiting the marriage for the foreign party to obtain Singapore citizenship.

16.19 To address this concern, s 57C(1) of the Immigration Act[32] was enacted in 2012 to criminalise immigration-advantage sham marriages. Four years later, s 11A of the Women's Charter came into force on 1 October 2016 to make sham marriages for obtaining an immigration advantage void. Previously, sham marriages were found by the Singapore courts to be valid against the then prevailing legislative backdrop that a marriage for improper motives is not a ground under s 105 of the Women's Charter that renders a marriage void.[33] These findings had implications on how the benefits that would typically flow from a marital relationship in areas such as the nomination of Central Provident Fund ("CPF") moneys, intestate succession, and insurance proceeds ought to be dealt with.

16.20 In *Gian Bee Choo v Meng Xian Hui*[34] ("*Gian Bee Choo*"), the High Court considered the validity of an immigration-advantage sham marriage under s 11A of the Women's Charter. The plaintiffs, who were the siblings of the deceased, claimed that the deceased entered into a sham marriage with the defendant, a citizen of the People's Republic of China. The plaintiffs sought declarations that the marriage was a sham marriage or marriage of convenience and that the deceased's CPF moneys and all his other assets are to be distributed among the deceased's immediate family according to the prevailing law and to the exclusion of the defendant.[35]

16.21 Tan Siong Thye J departed from previous High Court cases and held that the immigration-advantage sham marriage in *Gian Bee Choo*

30 *Singapore Parliamentary Debates, Official Report* (29 February 2016) vol 94 "Second Reading Bills: Women's Charter (Amendment) Bill" (Tan Chuan-Jin, Minister for Social and Family Development).
31 *Gian Bee Choo v Meng Xian Hui* [2019] 5 SLR 812 at [4].
32 Cap 133, 2008 Rev Ed.
33 Debbie Ong, *International Issues in Family Law in Singapore* (Academy Publishing, 2014) at paras 1.27–1.28.
34 [2019] 5 SLR 812.
35 *Gian Bee Choo v Meng Xian Hui* [2019] 5 SLR 812 at [2].

was void, even though it involved a marriage that was entered into in 2007 before s 11A of the Women's Charter was enacted.[36] In doing so, he found that there was an existing general public policy against immigration-advantage sham marriages that applied even prior to the enactment of s 11A.[37]

16.22 Previously, in *Tan Ah Thee v Lim Soo Foong*,[38] Judith Prakash J (as she then was) had found that:[39]

> [T]he defendant's reasons for entering into the marriage, even if they can be proved, are irrelevant in considering whether the marriage is valid or not … this argument of a sham marriage is obviously unsustainable.

16.23 Subsequently, in *Toh Seok Kheng v Huang Huiqun*,[40] Prakash J drew a distinction between general and specific public policies in relation to immigration-advantage sham marriages. She adopted a narrow view towards public policy against immigration-advantage sham marriages. The plaintiff in that case cited case law relating to convictions for corruption for entering into sham marriages to obtain an immigration advantage. Prakash J observed that:[41]

> [T]hose cases did not hold that contracting such a 'sham marriage' in itself offends against general public policy and, *a fortiori*, nor did they hold that it rendered the marriages in question void. The tenor of those cases was that when parties used their validly constituted marital status to obtain something available only to authentically married couples, they might be in breach of *specific* laws which uphold *specific* public policies, which in those cases were immigration policies. [emphasis in original]

16.24 Finally, in *Soon Ah See v Diao Yanmei*,[42] Edmund Leow JC (as he then was) also adopted a narrow view towards public policy against immigration-advantage sham marriages. This resulted in an outcome where the marriage was found to be valid despite a lack of genuine marital relationship. However, the valid marriage was not found to be a "marriage" that Parliament envisioned would revoke previous CPF nominations under s 25(5)(*a*) of the Central Provident Fund Act.[43]

36 *Gian Bee Choo v Meng Xian Hui* [2019] 5 SLR 812 at [169]–[170].
37 *Gian Bee Choo v Meng Xian Hui* [2019] 5 SLR 812 at [101] and [104].
38 [2009] 3 SLR(R) 957.
39 *Tan Ah Thee v Lim Soo Foong* [2009] 3 SLR(R) 957 at [58].
40 [2011] 1 SLR 737.
41 *Toh Seok Kheng v Huang Huiqun* [2011] 1 SLR 737 at [16].
42 [2016] 5 SLR 693 at [48]–[49].
43 Cap 36, 2013 Rev Ed.

16.25 In *Gian Bee Choo*,[44] Tan J relied on three main grounds to establish that immigration-advantage sham marriages that took place even before the enactment of s 11A of the Women's Charter were void. First, he observed that there existed provisions under the Prevention of Corruption Act[45] and the Immigration Act[46] that criminalised immigration-advantage sham marriages prior to the enactment of s 11 of the Women's Charter on 1 October 2016.[47] Secondly, an immigration-advantage sham marriage goes against the very sanctity of marriage. Marriage, as set out in s 46(1) of the Women's Charter, is meant to be a union between husband and wife where they are "mutually bound to co-operate with each other in safeguarding the interests of the union".[48] Thirdly, an immigration-advantage sham marriage constitutes a lawful impediment to a proposed marriage under ss 22 and 17(2)(*d*) of the Women's Charter. The sole purpose of the marriage is to assist one party to obtain citizenship in exchange for gratification, and the parties never had any intention to enter into a genuine marital relationship.[49]

16.26 To be clear, any divergence on the validity of immigration-advantage sham marriages is likely to be largely academic post 1 October 2016 when s 11A of the Women's Charter was enacted. That being said, it is foreseeable that there may be residual cases involving immigration-advantage sham marriages that were entered into prior to 2016. Singapore has placed a longstanding emphasis on the importance of family obligations and marriage,[50] and immigration-advantage sham marriages are a far cry from the rights and duties of a husband and wife that are enshrined in the Women's Charter.

16.27 Tan J's broad approach towards voiding immigration-advantage sham marriages on the basis of general public policy provides a means to invalidate earlier immigration-advantage sham marriages. It also highlights the tension between doing justice and the letter of the law.[51] But what remains to be judicially explicated is an elaboration on any specific legal doctrine providing for the invalidation of sham marriages on the

44 See para 16.20 above.
45 Cap 241, 1993 Rev Ed.
46 Cap 133, 2008 Rev Ed.
47 *Gian Bee Choo v Meng Xian Hui* [2019] 5 SLR 812 at [104].
48 *Gian Bee Choo v Meng Xian Hui* [2019] 5 SLR 812 at [115]–[116].
49 *Gian Bee Choo v Meng Xian Hui* [2019] 5 SLR 812 at [137].
50 *Singapore Parliamentary Debates, Official Report* (29 February 2016) vol 94 "Second Reading Bills: Women's Charter (Amendment) Bill" (Tan Chuan-Jin, Minister for Social and Family Development).
51 It is clear from the Court of Appeal's stance in *UDA v UDB* [2018] 1 SLR 1015 that the divorce court ought not to override the clear words of a statute in relation to determining an intervener's claim, and is governed by the legal constraints put in place by the statutory regime.

basis of a general public policy (and not existing laws). An expansive reading with regard to the "lawful impediment" requirement set out in s 17(2)(*d*) of the Women's Charter[52] was also applied in *Gian Bee Choo*.[53] It remains to be seen whether subsequent cases will adopt the narrow or broad approach towards the validity of immigration-advantage sham marriages entered into prior to 2016.

II. Division of matrimonial assets

16.28 In 2015, *ANJ*[54] introduced a structured approach towards the division of matrimonial assets. The *ANJ* structured approach promoted a greater degree of certainty and allowed the parties to a divorce to have a clearer indication of the division outcome. While the *ANJ* approach aimed at according sufficient recognition to indirect contributions,[55] applying it in a purely scientific manner may risk the non-working spouse being doubly disadvantaged due to financial contributions being taken into account at the first two stages of the formulation.[56] To address this, the Court of Appeal held in *TNL v TNK*[57] ("*TNL*") that the *ANJ* approach should not be applied in long single-income marriages. Recently, the Court of Appeal and the Family Division of the High Court further considered the applicability of the *ANJ* structured approach in long and short dual-income marriages.

A. Applicability of the ANJ structured approach in long dual-income marriages

16.29 Since the decisions in *ANJ* and *TNL*, a careful assessment has to be made as to whether the *ANJ* structured approach or the *TNL* approach applies. The Court of Appeal held in *BPC v BPB*[58] that in dividing a pool of matrimonial assets, the court should first enquire whether the marriage is a long single-income or dual-income marriage. If the marriage is a long single-income marriage, the approach in *TNL* will apply and the court will generally tend towards equal division, except if the marriage involves an exceptionally large matrimonial asset pool that will be treated as an exception to the norm of equal division. If the marriage is a long dual-income marriage, the *ANJ* approach applies.

52 See also s 32(2)(a) of the UK Marriage Act 1949 (c 76).
53 *Gian Bee Choo v Meng Xian Hui* [2019] 5 SLR 812 at [137].
54 See para 16.1 above.
55 *UYP v UYQ* [2019] SGHCF 16 at [58].
56 *TNL v TNK* [2017] 1 SLR 609 at [44].
57 [2017] 1 SLR 609 at [46].
58 [2019] 1 SLR 608 at [102].

16.30 In *UYP v UYQ*[59] ("*UYP*"), Debbie Ong J commented extensively on the division approach for long dual-income marriages. While the *ANJ* approach continues to apply for this category of marriages, Ong J found that applying the steps in *ANJ* in a rigid manner to long dual-income marriages, but not long single-income marriages, could lead to unfairness. A wife who contributed solely to homemaking would generally be awarded an equal split of the matrimonial assets under the *TNL* approach. On the other hand, a wife who juggled her career and homemaking efforts but earned significantly less than her husband would likely obtain a lower share of assets under the *ANJ* approach. For long marriages in general, Ong J observed that there was little reason why a full-time homemaker should generally be in a better position than a spouse who both worked and cared for the family but brought far less income into the marriage than the other spouse.[60]

16.31 The issue that Ong J highlighted underscores the importance of approaching the division exercise with broad strokes. Section 112 of the Women's Charter was enacted in response to the concept of marriage being an equal partnership of efforts. It equally recognises the contributions of both spouses whether he or she concentrates on the economics or homemaking role. When the marriage breaks down, these contributions are translated into economic assets in the distribution by the court exercising its discretion under s 112 in broad strokes.[61]

16.32 Moreover, it is clear that the *ANJ* approach was not intended to be applied in a rigid manner. To apply the *ANJ* approach in a purely scientific manner without taking into account the nuances of each marriage may result in an outcome that is neither just nor equitable. The Court of Appeal in *ANJ* thus held that:[62]

> [B]y the very nature of matrimonial disputes, each case presents a unique set of facts and we do not propose to say that these principles are necessarily exhaustive, nor do we expect them to be hard and fast rules that must immutably be applied even to cases of exceptional facts.

16.33 An analysis of the previous case law would show that the courts have tended towards equal division in long marriages, regardless of whether they are single or dual-income marriages.[63] The length of a marriage has generally been a weighty factor in terms of division.[64]

59 [2019] SGHCF 16.
60 *UYP v UYQ* [2019] SGHCF 16 at [53].
61 *UYP v UYQ* [2019] SGHCF 16 at [44] and [45].
62 *ANJ v ANK* [2015] 4 SLR 1043 at [30].
63 *UYP v UYQ* [2019] SGHCF 16 at [48].
64 *BPC v BPB* [2019] 1 SLR 608 at [49].

Previously, in *Loh Swee Peng v Chan Kui Kok*,[65] the High Court had observed that the longevity of the emotional, parental, social and economic bond between the spouses is a very weighty factor that overshadows all others in that case dealing with a 42-year long marriage.[66] The High Court also recognised that the reconstruction process for the parties' direct and indirect contributions over decades is not perfect, and that the length of the marriage is a factor that would point towards equal division being the just and equitable outcome.[67]

16.34 In *UYP*,[68] Ong J advocated an approach where for both categories of long marriages, the courts would incline towards equal division yet retain a discretion to deviate from an exactly equal split.[69] The discretion allows a court to weigh the various factors of the case and arrive at a just and equitable division that does not go beyond the ratio of 60:40.[70] The *ANJ*[71] approach would continue to be a useful guide for long dual-income marriages, with the court bearing in mind that the steps are not immutable, the inclination towards equality in long marriages and ultimately the broad brush which the court should use to assess the parties' respective contributions.[72]

16.35 Ong J applied the approach expounded above to the facts in *UYP*. Using the *ANJ* formulation, Ong J arrived at an average ratio of 67.5:32.5 in favour of the wife. She then considered it just and equitable to adjust the ratio and divide the matrimonial assets in the proportion of 60:40 in favour of the wife. It was held that this final award reflected the contributions of both parties to the marriage and was in line with broad trends in past cases with similar factual matrices. The court also commented that the wife obtained an immeasurable gain of being close to the parties' two adult sons and having their loving support.[73]

16.36 The approach towards the division of long dual-income marriages in *UYP* is a principled and sensible one. It enshrines the longstanding ideology of marriage as an equal co-operative partnership of efforts and is consistent with the holdings of the Court of Appeal in *ANJ* and *TNL*.[74] Naturally, in a long marriage, a party's role and contributions would have

65 [2015] 3 SLR 1.
66 *Loh Swee Peng v Chan Kui Kok* [2015] 3 SLR 1 at [33].
67 *Loh Swee Peng v Chan Kui Kok* [2015] 3 SLR 1 at [33].
68 See para 16.28 above.
69 *UYP v UYQ* [2019] SGHCF 16 at [52].
70 *UYP v UYQ* [2019] SGHCF 16 at [52].
71 See para 16.1 above.
72 *UYP v UYQ* [2019] SGHCF 16 at [45].
73 *UYP v UYQ* [2019] SGHCF 16 at [103]–[109].
74 See para 16.28 above. *UYP v UYQ* [2019] SGHCF 16 at [43]–[44].

inevitably affected the role and contributions of the other party. Fullest recognition should be given to the married partners' different roles and efforts, and a fair division order should reflect this.[75]

16.37 The emphasis on the broad-brush approach and equal division in *UYP* will hopefully minimise acrimony between the parties, as there would generally be less need to quantify each and every marital contribution in court. The clarity that the *UYP* approach provides on the range of division to expect may also promote settlement between the parties, where there is a consensus on the likely outcome of the case if it were to proceed on a contested basis.

16.38 With this backdrop on the development of the law on the division of matrimonial assets, it will be helpful to review other decisions issued by the Family Division of the High Court in 2019 to evaluate how the court has been achieving just and equitable outcomes in cases which involved dual-income marriages.

16.39 In *UTQ v UTR*[76] ("*UTQ*"), Tan Puay Boon JC applied the *ANJ* approach in a long dual-income marriage of 31 years with three children. The wife in *UTQ* worked throughout the marriage. She earned an income of $5,697.20 per month as a research assistant. The husband also worked throughout the marriage. He earned an income of $20,179.75 per month holding a senior position in a telecommunications company.

16.40 To mitigate any unfairness that may befall a working mother who earns significantly less than her husband under the *ANJ* approach, Tan JC struck a balance by awarding the wife a generous percentage of indirect contributions at the second stage of the *ANJ* formulation. In *ANJ*, the Court of Appeal had held that in most homes where both the spouses are working full time, it is more likely that the wife will render greater indirect contributions in the absence of concrete evidence to the contrary.[77]

16.41 While Tan JC acknowledged that the husband contributed to the majority of the household expenses and the costs of the parties' other properties, he found that the wife made a significant indirect contribution by singlehandedly managing both her full-time job and the care of the children when the husband pursued his master's degree abroad.[78] In light of this, Tan JC awarded a higher indirect contribution ratio of 70% to the

75 *UYP v UYQ* [2019] SGHCF 16 at [45].
76 *UTQ v UTR* [2019] SGHCF 13 at [1]–[2].
77 *ANJ v ANK* [2015] 4 SLR 1043 at [24].
78 *UTQ v UTR* [2019] SGHCF 13 at [37]–[38] and [44].

wife at the second stage of the *ANJ* approach.[79] Taking into account the direct contribution ratio of 70:30 favouring the husband at the first stage of the *ANJ* approach, the overall average ratio awarded at the third stage of the *ANJ* approach resulted in an equal split.[80]

16.42 Tan JC made clear that the court also has the discretion to calibrate the average ratio in favour of one party, if it is just and equitable to do so at the third stage of the *ANJ* approach. The Court of Appeal had held in *ANJ* that there are certain circumstances that could shift the average ratio when attributing the appropriate weight to the parties' collective direct contributions as against their indirect contributions. One of these circumstances is the length of the marriage, for indirect contributions tend to feature more prominently in long marriages with children.[81] However, Tan JC declined to do so as he had already duly recognised the wife's significant indirect contribution by giving it a higher percentage at the second stage of the *ANJ* approach.[82]

B. Applicability of the ANJ structured approach in short dual-income marriages

16.43 In *UQP v UQQ*[83] ("*UQP*"), the High Court considered the applicability of the *ANJ* approach in a dual-income marriage of slightly over four years with a child. The only issue before the court in *UQP* was whether the husband was entitled to 18% of the matrimonial flat which the wife and her father paid for entirely.[84] Choo Han Teck J held that the case before him was an unusual one, and that the *ANJ* approach should not be applied.[85]

16.44 The matrimonial flat was purchased by the wife and her father six years and seven months before the marriage. It was undisputed that the husband did not contribute financially to the flat.[86] The High Court held that the husband should not be entitled to any share in the flat for two broad reasons. First, the husband could not show how his indirect contributions in the form of caring for the child and being the family's chauffeur enabled the wife to earn the money to acquire the flat.[87] Secondly, the husband did not contribute towards the acquisition of the

79 *UTQ v UTR* [2019] SGHCF 13 at [40].
80 *UTQ v UTR* [2019] SGHCF 13 at [45].
81 *ANJ v ANK* [2015] 4 SLR 1043 at [27].
82 *UTQ v UTR* [2019] SGHCF 13 at [44].
83 [2019] 4 SLR 1415.
84 *UQP v UQQ* [2019] 4 SLR 1415 at [1] and [3].
85 *UQP v UQQ* [2019] 4 SLR 1415 at [11].
86 *UQP v UQQ* [2019] 4 SLR 1415 at [3] and [6].
87 *UQP v UQQ* [2019] 4 SLR 1415 at [12].

flat at all. Applying the *ANJ* approach in such a situation would result in an average ratio seemingly granting the husband credit for an acquisition that he played no financial role in.[88]

16.45 The length of the marriage is a significant factor in the division of matrimonial assets exercise.[89] It is widely acknowledged that short marriages involve different considerations from longer marriages.[90] The parties to a short marriage generally have less indirect contributions than the parties in a long marriage who have co-operated over an enduring period of time in aspects such as providing mutual emotional, parental and economic support. In the context of the very short marriage in *UQP*, this may provide a basis to contend that it is unjust for the husband's *de minimis* indirect contributions to translate into an economic "share" of the matrimonial flat.

16.46 The prevailing approach towards division in short dual-income marriages with a child may be found in *ATE v ATD*.[91] There, the Court of Appeal had applied the *ANJ*[92] approach in a broad-brush manner. On the other hand, Choo J adopted a purely broad-brush approach in *UQP*[93] and did not utilise the *ANJ* approach. Nonetheless, it can be seen that both approaches may lead to the same just and equitable outcome in that the husband was not granted a share in the matrimonial flat.[94]

16.47 In light of the above, it is clear that a court has various ways of exercising its discretion to arrive at a just and equitable division of the matrimonial assets in dual-income marriages. The courts have considered the following: (a) applying the *ANJ* approach in a broad brush manner; (b) duly recognising a working mother's indirect contributions by awarding her a high percentage at stage two of the *ANJ* approach; (c) adjusting the ratio of direct contributions as against indirect contributions at stage three of the *ANJ* approach; and (d) applying a purely broad-brush approach. It is likely that the Court of Appeal will be providing clarity on which approach is generally preferred to achieve a just outcome in the near future.[95]

88 *UQP v UQQ* [2019] 4 SLR 1415 at [13]–[14].
89 *ANJ v ANK* [2015] 4 SLR 1043 at [27].
90 *ACY v ACZ* [2014] 2 SLR 1320 at [29].
91 [2016] SGCA 2 at [17].
92 See para 16.1 above.
93 See para 16.43 above.
94 *UQP v UQQ* [2019] 4 SLR 1415 at [10].
95 The Court of Appeal released a decision in *UYQ v UYP* [2020] SGCA 3 on the division of matrimonial assets in long dual-income marriages. This case will be addressed in the Ann Rev for 2020.

C. Characterisation of matrimonial assets

16.48 For the first time, the Court of Appeal dealt with the issue of whether a lottery winning received during the marriage could be characterised as a matrimonial asset, and how the court should attribute the winnings for the purpose of determining the parties' respective contributions to the matrimonial pool. In *BOI v BOJ*[96] ("*BOI*"), the Court of Appeal held that a lottery winning is a matrimonial asset under s 112(10) of the Women's Charter and that there ought to be presumption in relation to contributions arising from lottery winnings.

16.49 In that case, the wife appealed against the division of matrimonial assets order and contended, *inter alia*, that the lottery win of $1.25m should be attributed to her.[97] The lottery winnings were accrued during the marriage in 2002 and deposited into the parties' joint bank account to repay the mortgage for the matrimonial home.[98] Under s 112(10), a "matrimonial asset" is an asset acquired during the marriage, with the exceptions of a gift or inheritance. The Court of Appeal held that the lottery winnings did not fall into the exception as the ticket itself had to be purchased and did not constitute pure windfalls like gifts or inheritance. The winnings only appeared to be a windfall because of the disproportionality between the price paid for the lottery tickets and the amount of winnings.[99]

16.50 The division of matrimonial assets under the Women's Charter is founded on the prevailing ideology of marriage as an equal co-operative partnership of efforts.[100] In a marriage, spouses share both their good and bad fortunes. There is little reason why lottery winnings that accrued as a result of one party's effort and using matrimonial funds should be treated any differently.[101] Lottery winnings may then be viewed as being for the parties' mutual benefit.[102]

16.51 As for the question of how the lottery winnings should be attributed between the parties, the Court of Appeal held that the intention which the lottery ticket is purchased is more important than the source of funds.[103] Lottery winnings are of a *sui generis* nature. They are generally realised as a matter of luck and not by a party's labour. The winnings are

96 [2019] 2 SLR 114 at [18] and [29].
97 *BOI v BOJ* [2019] 2 SLR 114 at [4].
98 *BOI v BOJ* [2019] 2 SLR 114 at [22].
99 *BOI v BOJ* [2019] 2 SLR 114 at [9]–[10].
100 *NK v NL* [2007] 3 SLR(R) 743 at [20].
101 *UMU v UMT* [2019] 3 SLR 504 at [11].
102 *BOI v BOJ* [2019] 2 SLR 114 at [12]–[13].
103 *BOI v BOJ* [2019] 2 SLR 114 at [20].

also radically disproportionate to the amount paid for the lottery ticket in the first place. These characteristics of lottery tickets shift the focus away from the source of funds to the intention of the party who purchased the winning lottery ticket.[104] There would thus be a presumption that both parties contributed equally to the pool of matrimonial assets unless the party who purchased the winning lottery ticket can show that this was done with a view to only benefit himself or herself, and not the family as a whole.[105]

16.52 This approach is consistent with the concept that marriage is an equal co-operative partnership of efforts, and that the parties should share their good fortune during marriage. It also allows a party who had the intention of purely benefiting himself to adduce evidence to rebut the presumption such that the financial contribution will be attributed solely to him or her. The husband's intention in *BOI*[106] was clearly to benefit the family, and the Court of Appeal held that the contributions with respect to the 2002 lottery winnings should be attributed to each spouse equally.[107]

16.53 Notably, the Court of Appeal did not apply the presumption to the parties' other significant lottery winnings that occurred between 2010 and 2013.[108] The court examined the intention of the parties at the time these tickets were purchased. It found that these tickets were purchased after the parties separated in 2004 and close to the date at which the interim judgment of divorce was granted in February 2014. This led to the conclusion that the parties did not intend for these winnings to benefit the family as a whole, and are instead for each of themselves.[109] It would appear that in cases that are less clear cut, the analysis ought to focus on a party's intention in purchasing the lottery ticket when it comes to determining how the winnings should be apportioned between the parties. This fact-centric exercise provides the court with flexibility as to specifying different proportions of contributions.

16.54 In *UEQ v UEP*[110] ("*UEQ*"), the Court of Appeal delineated the scope of a party's contributions to gifts under s 112(10) of the Women's Charter. *UEQ* involved the issue of whether contributions by the non-recipient party to the asset before it was gifted to the recipient can be taken into account for the gift to be considered a matrimonial asset.

104 *BOI v BOJ* [2019] 2 SLR 114 at [25].
105 *BOI v BOJ* [2019] 2 SLR 114 at [29].
106 See para 16.48 above.
107 *BOI v BOJ* [2019] 2 SLR 114 at [22] and [36].
108 *BOI v BOJ* [2019] 2 SLR 114 at [37].
109 *BOI v BOJ* [2019] 2 SLR 114 at [37].
110 [2019] 2 SLR 463 at [12].

The Court of Appeal clarified that substantive improvement by the non-recipient party to the asset before it was gifted to the recipient party should not be taken into account to transform a gift into a matrimonial asset under s 112(10) of the Women's Charter.[111]

16.55 The husband in *UEQ* worked in his family business, a supermarket chain. He had a total of 80,000 shares in the supermarket that were gifted by his father. Of these, 20,000 shares were gifted before the marriage in 1999, and 60,000 were gifted to the husband during the marriage in November 2012.[112] The wife had substantively worked in the supermarket until November 2012. She played a fairly important role in the day-to-day administrative running of the supermarket.[113]

16.56 Section 112(10) of the Women's Charter states that a gift or inheritance has to be substantially improved during the marriage by the other party or by both parties to the marriage for it to be considered a matrimonial asset. When determining whether the gifted shares were to be classified as matrimonial assets, the Court of Appeal treated the 20,000 shares differently from the 60,000 shares due to the timing in which they were acquired by the husband.

16.57 With regard to the first 20,000 shares that were gifted to the husband before the marriage, the Court of Appeal found that there was a direct causal connection between the wife's efforts in the supermarket and the increase in the value of the shares from 1999 to 2012. This "substantial improvement" justified the finding that the gifted shares were transformed by the wife's efforts during the marriage into matrimonial assets. Importantly, the wife's efforts were aimed at contributing to an asset that already belonged to the husband.[114]

16.58 Different considerations attached to the 60,000 shares that were gifted to the husband at about the same time that the wife stopped working at the supermarket. The underlying intention behind s 112(10) of the Women's Charter suggests that the non-recipient party's efforts towards the gift and the extent to which the contributions improved the value of the gift are key factors that will transform a gift into a matrimonial asset. Here, the wife's efforts were made prior to the gift of the 60,000 shares and therefore did not "substantially improve" the matrimonial asset *after* it was gifted to the husband.

111 *UEQ v UEP* [2019] 2 SLR 463 at [18].
112 *UEQ v UEP* [2019] 2 SLR 463 at [5]–[7].
113 *UEQ v UEP* [2019] 2 SLR 463 at [8]–[9].
114 *UEQ v UEP* [2019] 2 SLR 463 at [10].

16.59 Previously, in *Chen Siew Hwee v Low Kee Guan*,[115] Andrew Phang Boon Leong J (as he then was) had held that the rationale underlying the qualifying words in s 112(10) of the Women's Charter "centres on the recognition of the donor's intention as well as the concomitant need to prevent unwarranted windfalls accruing to the other party to the marriage".[116] The nature of the qualifying words serves to exclude gifts to either party during the marriage, as it is assumed that if a donor wanted to benefit both the parties, he or she would have made this intention clear.

16.60 However, in situations where the non-recipient party contributes to the gift and "substantially improves" it with the knowledge that it belongs to the recipient party, fairness would warrant that the non-recipient party obtains a share of the gift. The qualifying words in s 112(10) of the Women's Charter carve out this exception and duly recognise the non-recipient party's effort during the marriage. It naturally follows that any substantial improvement of the gift would have to take place after the gift is acquired. Any effort put in by the non-recipient party or both the parties after the gift has been received would show that the asset in question is regarded as being part of the communal pool of assets to be grown. This joint attitude of the parties towards the gifted asset ought to be given paramount weight, as held by the Court of Appeal in *UEQ*.[117]

16.61 Given that the wife's contributions to the supermarket stopped at about the same time the 60,000 shares were gifted, it would be a stretch to say that her past contributions to the supermarket had any subsequent impact on "substantially improving" the 60,000 shares. The lack of a "substantial improvement" by the wife would call for the donor's intention to be respected in this situation.[118] It was found to be telling that the husband's father chose to gift the 60,000 shares solely to the husband, despite the marriage and knowing that the wife had previously contributed to the supermarket. While it is arguable that the wife's past contributions resulted in the 60,000 shares attaining a higher value as at 2012, these past contributions were made without the intention of benefiting the husband or the parties' communal pool of matrimonial assets. The wife's past contributions were in fact improving a third party's assets that she would not have known would be eventually gifted to the husband.[119]

115 [2006] 4 SLR(R) 605.
116 *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [32].
117 *UEQ v UEP* [2019] 2 SLR 463 at [17].
118 *UEQ v UEP* [2019] 2 SLR 463 at [15].
119 *UEQ v UEP* [2019] 2 SLR 463 at [16]–[17].

16.62 In light of the above, the 60,000 shares gifted to the husband around the time the wife stopped working at the supermarket were found not to be matrimonial assets. The views expounded by the Court of Appeal in *UEQ* provide appropriate guidance for characterising potential classes of assets and determining whether they are indeed matrimonial assets to be divided. It appears that the first step would be to determine whether the asset is a windfall similar to that of a gift and inheritance which are to be excluded, and if not, to analyse the relevant party's efforts and intentions when dealing with the asset during the marriage.

III. Child welfare

16.63 In 2019, the Singapore courts continued to adopt a child-centric approach towards the issues of access and relocation. Recent decisions show that importance is placed on the child's views, which is in line with legislative sentiment to give children a voice in proceedings directly concerning their wellbeing. In *UDG v UDF*,[120] the Court of Appeal varied an ancillary matters order relating to overnight and overseas access on the basis that the child is mature enough to decide what she wants.[121]

16.64 In that case, the mother and the child relocated to Illinois in 2012, whereas the husband continued to reside in Singapore. The husband appealed against part of the High Court's ancillary matters order, amongst others, that his overnight and overseas access to the child required both the parties' agreement after they had consulted with the child, whether individually or together. The ancillary matters order stipulated that in relation to overseas access, the child was at liberty to consult with her therapist, with the husband paying for such consultation, if any. The wife could also accompany the child on her trips to Singapore, if the wife consulted with the child and considered this in the child's best interests. In this event, the parties were to bear the wife's reasonable travel, accommodation and living expenses equally.[122]

16.65 The Court of Appeal emphasised that for issues relating to children, the lodestar principle is that the court must have regard to the welfare and best interests of the child. In having regard to the child's best interest, the Court of Appeal reaffirmed the notion that the best interest of the child is best served by her having the widest possible latitude to bond with both her parents.[123] With these principles in mind, the Court of Appeal also considered the child's wishes in arriving at the decision

120 [2019] SGCA 24.
121 *UDG v UDF* [2019] SGCA 24 at [11].
122 *UDG v UDF* [2019] SGCA 24 at [6].
123 *UDG v UDF* [2019] SGCA 24 at [8].

to vary the orders such that overnight and overseas access were subject to the child's agreement on timing and conditions. The wife's agreement would no longer be necessary for the access to take place.[124]

16.66 At the time of the appeal hearing, the child was 16 years old. The Court of Appeal found that the child was able to make her own decisions and consult with her therapist on these decisions, with the husband paying for the costs of such consultations. It took into account the fact that even when the child was 14 years old, she was capable of expressing her wishes during an interview with Foo Tuat Yien JC and deciding for herself whether she wished to come to Singapore for vacation in the summer of 2017, and making major decisions on her education. There was also nothing in the evidence that demonstrated that it would be detrimental for the child to spend more time with the husband, and/or that on the whole, the child herself did not wish to spend more time with the husband.[125]

16.67 In *TOE v TOF*,[126] the High Court also placed significant weight on the child's wishes in declining to grant the husband leave to relocate to the UK.[127] The husband was a UK citizen, and the mother a South Korean citizen. The husband was working as a "quant" in a foreign trading company until 2012, while the wife had been a homemaker since the marriage in 2000.[128] In allowing the husband to relocate to the UK with the child, the Family Court appeared to have relied on the report of the child representative.[129]

16.68 On appeal, the High Court judge conducted an interview with the child, who was then nine years old. The court took the child's wishes into account when deciding that relocation would not be in the child's best interests.[130] It found that the child was very clear on his own long-term plan to remain in Singapore until he reached 17 years of age. He would thereafter consider relocating to the UK. The judge also considered the acrimony in the divorce proceedings and concluded that to allow the relocation would be in the husband's interests but not the child's.[131] The parties' conduct may generally be found to be a relevant factor when determining a child's welfare. It may perhaps be the case that allowing the

124 *UDG v UDF* [2019] SGCA 24 at [11].
125 *UDG v UDF* [2019] SGCA 24 at [8]–[9].
126 [2019] SGHCF 19.
127 *TOE v TOF* [2019] SGHCF 19 at [6].
128 *TOE v TOF* [2019] SGHCF 19 at [1].
129 *TOE v TOF* [2019] SGHCF 19 at [4]. See also *UXH v UXI* [2019] SGHCF 24 at [10]–[11].
130 *TOE v TOF* [2019] SGHCF 19 at [6].
131 *TOE v TOF* [2019] SGHCF 19 at [7]–[8].

child to relocate with the husband may lead to an undesirable situation where the husband's bitterness prevents him from facilitating contact between the child and the wife.

16.69 It is evident from these cases that the Singapore courts focused on the child's wishes in determining what would be in the child's best interests. In the adversarial litigation system in Singapore, it may be hard to ascertain the children's wishes based on the parties' evidence alone. Allowing children to have a voice by way of judicial interviews paves the way for better protection of the children in divorces, and gives them a say in decisions that directly affect their daily lives and well-being. Mitigating the risks and limitations of judicial interviews requires adequate safeguards to be put in place. It is critical that the judges in the Family Justice Court be appropriately trained and exercise their powers under the judge-led approach to create a safe environment for the children to express their genuine views.[132]

16.70 The cases above also show that even after a divorce, the parties' parental responsibilities do not cease. Section 46(1) of the Women's Charter mutually binds parties to a marriage to co-operate with each other to care and provide for the children. Previously, the Court of Appeal in *CX v CY*[133] had established the principle that it is crucial that the courts recognise and promote joint parenting so that both parents can continue to have a direct involvement in the child's life.[134] It is important that this concept of joint parental responsibility is reflected in court orders and encouraged at all stages of the divorce process, to ensure that children have opportunities to build meaningful relationships with both their parents. It is clear that the court will only depart from this principle in exceptional cases.

IV. Child maintenance

16.71 The legal requirement of "reasonableness" of the parties' conduct in relation to child maintenance was delineated by the High Court in *UHA v UHB*[135] ("*UHA*"). *UHA* involved a mother's application for child maintenance against the father. The parents were not married and lived in

132 See also *AZB v AZC* [2016] SGHCF 1, where the High Court observed (at [20]) that:

> [J]udicial conversations with children are very useful, and the way forward must be to equip judges with the necessary skills, provide an environment most conducive to an effective process and eliminate or reduce as many of the risks as possible.

133 [2005] 3 SLR(R) 690.

134 *CX v CY* [2005] 3 SLR(R) 690 at [26].

135 [2019] SGHCF 12.

separate countries for over two years before the total breakdown of their relationship.[136] They were cross-appealing against a maintenance order made by the District Judge against the father.[137] The High Court observed that the court's power to make a maintenance order is circumscribed by the statutory regime set out in s 69(2) of the Women's Charter.[138] The court would have to first determine what "reasonable maintenance" is on the facts of the case. Thereafter, the court would have to determine whether the father had provided, or had neglected or refused to pay such reasonable maintenance.[139]

16.72 The High Court affirmed that the parties' exact legal obligations to provide reasonable maintenance for their children may differ depending on their means and capabilities. In doing so, it upheld the District Judge's approach towards the "reasonableness" of the maintenance quantum. The District Judge had calculated the proportions of both parties' incomes and relied on that to calculate their share of contributions to the child's expenses.[140] Notwithstanding that, the High Court adopted a broader concept of "reasonableness" and found that the mother had failed to show due proof that the father had neglected or refused to provide reasonable maintenance for the child. It clarified that "reasonableness" in s 69(2) of the Women's Charter may be considered in various ways, and had to be dependent on all the facts and circumstances of the case.[141]

16.73 First, there may be specific items of expense that are less common and reasonable. Objections to paying such expenses may not amount to a refusal to provide reasonable maintenance. Secondly, requests for expenses beyond the usual necessities have to be reasonably communicated and information provided to the non-paying parent. Thirdly, the mode of provision of maintenance had to be reasonable. It was made clear that the touchstone for the conduct of the parties is "reasonableness".[142]

16.74 The High Court found that the father could not be faulted for any failure to pay reasonable child maintenance, as the mother had conducted herself unreasonably. She did not communicate the child's needs and expenses to the father and could not tender evidence of any requests for payment. In light of this, the court held that the mother failed to prove that the father had neglected or refused to provide reasonable

136 *UHA v UHB* [2019] SGHCF 12 at [69].
137 *UHA v UHB* [2019] SGHCF 12 at [1].
138 *UHA v UHB* [2019] SGHCF 12 at [43].
139 *UHA v UHB* [2019] SGHCF 12 at [29].
140 *UHA v UHB* [2019] SGHCF 12 at [36].
141 *UHA v UHB* [2019] SGHCF 12 at [45].
142 *UHA v UHB* [2019] SGHCF 12 at [46]–[50] and [58].

maintenance for the child, and rescinded the maintenance order granted by the District Judge.[143] The High Court also observed that the court's jurisdiction and powers are prescribed by the law, and that a maintenance order could not be granted on the sole basis of the "best interests of the child" if the statutory requirement in s 69(2) had not been met.[144]

16.75 *UHA* usefully clarifies the legal obligations placed on a party when applying for child maintenance and the standard of "reasonableness" to be expected of an applicant's conduct. *UHA* involved a father who appeared willing to contribute reasonable child maintenance even without a court order in force, which perhaps justified the minimal court intervention in that particular case.[145] While *UHA* undoubtedly had a unique factual matrix, the court's clarifications on "reasonableness" remain helpful when dealing with child maintenance applications.

V. Procedural aspects of family law

A. Committal proceedings

16.76 In *URU v URV*[146] ("*URU*"), the High Court had an opportunity to clarify the law on whether a party requires leave of the court to endorse a penal notice on a copy of a court order to be served on the other party sought to be committed.[147] The High Court held that leave was not required to endorse a penal notice pursuant to r 696(4) of the Family Justice Rules.[148]

16.77 The wife in *URU* applied for leave of the court to commence committal proceedings against the husband. The husband had failed to comply with a consent order requiring him to pay a sum of money into the child of the marriage's bank account by a specific date. The Family Court was of the view that the wife's solicitors required leave to endorse the penal notice on the consent order as a prerequisite to the commencement of committal proceedings. This is distinct from a situation where an enforcing party applies to have a penal notice inserted in a court order by a court.[149]

143 *UHA v UHB* [2019] SGHCF 12 at [58]–[59] and [69]–[70].
144 *UHA v UHB* [2019] SGHCF 12 at [71]–[72].
145 *UHA v UHB* [2019] SGHCF 12 at [75].
146 [2019] 3 SLR 1045.
147 *URU v URV* [2019] 3 SLR 1045 at [1].
148 *URU v URV* [2019] 3 SLR 1045 at [15].
149 *URU v URV* [2019] 3 SLR 1045 at [24]–[25].

16.78 The High Court observed that the Family Justice Rules sets out a two-stage process for the committal of a non-complying party. At the first stage, the applicant applies for leave of the court to apply for committal under r 759.[150] If leave is granted, the applicant may then proceed to the second stage and apply for committal under r 760.[151] The appeal in *URU* involved the first stage on leave, with the High Court elaborating on the statutory and policy reasons which supported the view that leave is not required for the enforcing party to endorse a penal notice on an order of court.

16.79 Rule 696(4) of the Family Justice Rules governs the service of a copy of an order endorsed with a penal notice as a prerequisite to enforcement by committal.[152] It does not contain any requirement for leave to be obtained. Further, r 696(4) is positioned amongst rules that set out steps for an enforcing party to execute without any court sanction being required. The High Court found that these factors strongly suggest that leave of the court was not required.

16.80 While the High Court also embarked on an analysis that considered the extent of leave requirements found in practice directions, case law, and that the court has an inherent power to prevent injustice or an abuse of process under r 958 of the Family Justice Rules,[153] it was observed that these factors generally supported the view that leave of the court is not required.[154]

16.81 Policy considerations weigh in favour of finding that leave is not required for an enforcing party to endorse a penal notice on an order of court. Successful litigants are entitled to have orders or judgments complied with, whereas unsuccessful litigants should respect the gravity of court orders.[155] The penal notice merely reminds the parties that there are consequences of execution that flow from the non-compliance of court orders, which is something that they should have already been aware of.[156]

---

150 This may be done on an *ex parte* or *inter partes* basis depending on the specific type of procedure adopted, as set out in r 759 of the Family Justice Rules 2014 (S 813/2014).

151 *URU v URV* [2019] 3 SLR 1045 at [4].

152 Family Justice Rules 2014 (S 813/2014) r 696(4).

153 Rule 958 of the Family Justice Rules 2014 (S 813/2014) governs the court's inherent powers. In areas that directly concern a court's processes, the court can engage its inherent powers to control its own processes, as stated in *URU v URV* [2019] 3 SLR 1045 at [18]. See also Chen Siyuan *et al*, *Family Procedure in Singapore* (LexisNexis, 2018).

154 *URU v URV* [2019] 3 SLR 1045 at [14]–[20] and [42].

155 *URU v URV* [2019] 3 SLR 1045 at [38].

156 *URU v URV* [2019] 3 SLR 1045 at [40].

16.82 The High Court acknowledged that there could be a risk of abuse if litigants wielded the empty threat of committal against each other. However, such a risk is mitigated by the procedural safeguards arising from committal being a two-staged process and a non-complying party may avail himself of the appropriate legal remedy of varying, setting aside, staying or discharging the order.[157]

16.83 After dealing with the procedural issue above, the High Court granted the wife leave to apply for committal proceedings. It exercised its discretion under r 696(7) to cure the procedural irregularity of the wife not serving on the husband a copy of the order endorsed with the penal notice, prior to the expiration of the time limited for him to make payment under the order.[158] *URU* involved a consent order that was recorded as a result of the husband's consent. This would mean that the husband had knowledge of the contents of the order and his legal obligations under it.[159]

16.84 The High Court's clarification on the endorsement of penal notices on orders of court is a timely one. It was noted in *URU* that confusion in this aspect may have arisen due to different practices: certain practitioners endorse penal notices on orders of court on their own accord, while others apply to court to insert penal notices in orders. The High Court's holding in *URU* is also consistent with the earlier High Court case of *UNE v UNF*.[160] In the context of hearing an application for leave to endorse a penal notice on an order of court, the High Court in that case held that the application was unnecessary and that leave of the court was not required.[161] These latest cases provide practical guidance for family law litigants who intend to take out committal proceedings as a means of enforcing monetary judgments or orders moving forward.

B. Joinder application

16.85 In *TWD v UQE*,[162] the High Court demonstrated how the judge-led approach may be exercised in procedural cases under the Family

157 *URU v URV* [2019] 3 SLR 1045 at [39].

158 As a prerequisite to commencing committal proceedings, r 696(2)(*b*) of the Family Justice Rules 2014 (S 814/2014) requires the enforcing party to serve a copy of the order on the non-enforcing party prior to the expiry of the time which the latter is required to do the relevant act in the order. Pursuant to r 696(7) of the Family Justice Rules 2014, the court may exercise its discretion to dispense with service of the order if it think it just to do so.

159 *URU v URV* [2019] 3 SLR 1045 at [43].

160 [2018] SGHCF 15.

161 *UNE v UNF* [2018] SGHCF 15 at [11].

162 [2019] 3 SLR 662.

Justice Rules. That case dealt with the novel issue of whether an alleged tortfeasor ought to be joined as a party to an application for a deputy to be appointed for a person who suffered brain injury, on the basis that he lacks capacity in relation to his personal welfare and property and affairs under the Mental Capacity Act[163] ("MCA").

16.86 In arriving at its decision to disallow the joinder, the High Court considered the operation of r 178(2) of the Family Justice Rules. Rule 178(2) states that "the Court may order that a person be joined as a party, if the Court considers that it is desirable to do so". The High Court held that the court has a broad discretion to order that a person be joined as a party to proceedings under the MCA, and that the advantages of the joinder must simply outweigh its disadvantages to determine whether the joinder is "desirable".[164]

16.87 The High Court weighed the advantages of relevant evidence being adduced by the tortfeasor if the joinder application were allowed, against the disadvantages of increased delay and expense, the tortfeasor having access to private and confidential information about the injured party, and increased acrimony in the proceedings to appoint a deputy.[165] It eventually held that it was undesirable to grant the joinder, as there were other mechanisms which allow for the advantages of the joinder to be achieved.[166]

16.88 Rules 22(3)(*b*) and 22(3)(*g*) of the Family Justice Rules allow the court to exercise its discretion under the judge-led approach to permit the adduction of relevant evidence and the calling of witnesses with a view to assisting in the resolution or disposal of the matter. The High Court endorsed a procedural approach where the tortfeasor may write to the court to bring the relevant evidence to the court's attention, with the applicants to a deputy application having an opportunity to respond. Based on the correspondence, the court may then decide on the relevance of the evidence and introduce the evidence by its own motion and make other consequential orders.[167]

16.89 In light of the above, the High Court lay down a general principle that "joinder of the (alleged) tortfeasor would generally not be 'desirable' and should generally not be permitted under r 178(2) of the FJR".[168] It is encouraging that the High Court has utilised the judge-led approach

163 Cap 177A, 2010 Rev Ed.
164 *TWD v UQE* [2019] 3 SLR 662 at [56].
165 *TWD v UQE* [2019] 3 SLR 662 at [57]–[61].
166 *TWD v UQE* [2019] 3 SLR 662 at [63]–[65].
167 *TWD v UQE* [2019] 3 SLR 662 at [81].
168 *TWD v UQE* [2019] 3 SLR 662 at [80].

in a manner that ensures a just and expeditious disposal of the matter. Doing so undoubtedly minimises acrimony between the parties, and the unnecessary prolonging of proceedings that may compromise the best interests of the relevant party. That being said, it is not inconceivable that joinder applications may be allowed in cases with exceptional facts that warrant the alleged tortfeasor an opportunity to examine the veracity of the evidence by way of cross-examination or make oral submissions outside of the procedure outlined above.