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25. MUSLIM LAW

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I. Introduction

25.1 2023 built on its predecessor as another momentous year for the Muslim law space. Back in 2022, the first dedicated textbook on the applicability and practice of Muslim family law in Singapore was published.[1] As highlighted by Justice Valerie Thean in her keynote address at the book launch then, "there has been no equivalent textbook touching on this area of practice in Singapore since Ahmad Ibrahim's[2] textbook on Islamic Law in Malaya in 1965".[3] Barely a year later, in November 2023, the Syariah Court celebrated its 65th anniversary with the launch of a commemorative book themed "Rooted in Tradition, Ready for Tomorrow". The book documented the great strides made by an integral institution to the Muslim community in Singapore and reaffirmed the Syariah Court's commitment to upholding Islamic principles and values as it evolves to meet the changing needs of the institution and the community.[4]

1 Ahmad Nizam Abbas, Istyana Putri Ibrahim & Maryam Hasanah Rozlan, *Muslim Family Law in Singapore* (Academy Publishing, 2022).

2 Tan Sri Datuk Professor Ahmad Ibrahim was Singapore's first Attorney-General. "He was a key player in the merger talks between Singapore and Malaysia in the early 1960s … [and] drafted the Administration of Muslim Law Act of 1966, which revamped the Syariah Court's jurisdiction and led to the establishment of the Islamic Religious Council of Singapore (MUIS)." Vernon Cornelius, "Tan Sri Datuk Professor Ahmad Ibrahim" *Singapore Infopedia, National* Library *Board, Singapore* (2017) <www.nlb.gov.sg/main/article-detail?cmsuuid=aa60d648-d989-4a4b-96fa-5f983d90b6fc> (accessed 14 February 2024).

3 Justice Valerie Thean, "Keynote address at Practice and Procedure in the Administration of Muslim Family Law" (18 October 2022).

4 Mdm Guy Ghazali, Senior President of the Syariah Court, "Opening Speech at the Syariah Court's 65th Anniversary Event" (24 November 2023). Mdm Guy became the first female Senior President of the Syariah Court in 2020.

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25.2 The Appeal Board[5] ("Board") also had its fair share of notable events recently. It was only in 2022, almost 15 years after women were first appointed to the Board in 2008,[6] that the Board saw three-man panel hearings chaired by women.

25.3 The foregoing provides a quick snapshot of how our Muslim law landscape has matured over the course of its modest history. This could not have been achieved without the admirable contributions of many stakeholders within the ecosystem. This includes the Syariah Court and the Board, two institutions entrusted with the privilege and responsibility of shaping the jurisprudential development of Muslim law here in Singapore through their practices, processes and, most notably, their judgments.

25.4 In doing so, they are in "constant negotiation and renegotiation" with the substantive and procedural laws of both the Muslim law and civil law systems in Singapore.[7] This unique interrelationship is best demonstrated through the similarities in the legislative language of ss 52(7) and 52(8) of the Administration of Muslim Law Act 1966[8] ("AMLA") and ss 112(1) and 112(2) of the Women's Charter 1961[9] ("WC") when dealing with the division of matrimonial assets. Given their analogous relationship, it comes as no surprise that the decisions emanating from the Syariah Court and the Board draw inspiration from their civil law sister while being mindful of their principal objective of interpreting and applying the law in a manner which is not inconsistent with Syariah law principles.[10] For matters unique to Muslim law (*ie*, *faraid*, *talak*, *hantaran belanja*, *etc*), the Board did not shy away from charting its own unique path.[11] This illustrates the continuous endeavour of these institutions to refine the state of our local Muslim law jurisprudence.

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5 Which hears appeals against decisions of the Presidents of the Syariah Court (see s 55 of the Administration of Muslim Law Act 1966 (2020 Rev Ed)).

6 Three women were appointed to the Appeal Board in 2008. Prior to that, all members appointed to the board were male (Nur Asyiqin Mohamed Salleh, "Muis' new board of appeal to start their two-year term" *The Straits Times* (19 January 2016) <www.straitstimes.com/singapore/muis-new-board-of-appeal-to-start-their-two-year-term> (accessed 14 February 2024).

7 Ahmad Nizam Abbas, Istyana Putri Ibrahim & Maryam Hasanah Rozlan, "Recent Developments in Muslim Law Practice in Singapore" *Singapore Law Gazette* (March 2019).

8 2020 Rev Ed.

9 2020 Rev Ed.

10 *DZ v EA* (2021) 8 SSAR 241 at [80].

11 See, for instance, Syariah Appeal No 5/2021. A commentary on the said decision can also be seen in the 2021 edition of the SAL Annual Review (Mohamed Faizal Mohamed Abdul Kadir SC, "Muslim Law" (2021) 22 SAL Ann Rev 702 at paras 24.27 to 24.37).

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25.5 This edition's review of the five written decisions issued by the Board in 2023 highlights this ongoing effort. First, Syariah Appeal No 21/2021 ("*Appeal 21/21*") deals with, amongst other things, the issue of *hantaran belanja* and the evidential threshold to be applied under the Evidence Act 1893.[12] The next case, Syariah Appeal No 37/2021 ("*Appeal 37/21*"), deals with the variation of an ancillary order relating to the matrimonial property. The third case is Syariah Appeal No 18/2022 ("*Appeal 18/22*"), which addresses an application to stay proceedings in the Syariah Court on the basis of *forum non conveniens*. The last two cases are Syariah Appeal No 44/2021 ("*Appeal 44/21*") and Syariah Appeal No 13/2022 ("*Appeal 13/22*"), which build upon and clarify the existing jurisprudence relating to the division of matrimonial assets. *Appeal 44/21* also clarifies the Board's powers under s 55(5) of the AMLA relating to the remission of a matter back to the Syariah Court.

II. Burden of proof

A. Syariah Appeal No 21/2021 – Where did the **hantaran** *go?*

25.6 *Appeal 21/21* concerns cross appeals by the husband and wife against the orders of the learned President dealing with the ancillary matters. The specific orders relevant for the purposes of this review are: (a) the President's order that the husband pay the wife *hantaran* of $500 per month for ten months (*ie*, $5,000) with effect from the completion of his *mutaah* payments; and (b) the President's order granting sole care and control of the child of the marriage to the wife.

25.7 As regards the first issue, the crux of the husband's case on appeal was that he had already paid *hantaran* (*ie*, he had paid for the marriage expenses).[13] The wife, on the other hand, claimed that she was not paid the $5,000. On the second issue of care and control, the husband's case was that the President had erred by not considering Islamic principles when arriving at her decision.[14] In support of his case, the husband claimed that the wife did not lead an Islamic lifestyle and that the child could be raised as a non-Muslim. The husband also relied on several Malaysian authorities in support of his proposition.[15]

12 2020 Rev Ed. Section 42(1) of the Administration of Muslim Law Act 1966 (2020 Rev Ed) provides that "[t]he Court is to have regard to the law of evidence for the time being in force in Singapore, and is to be guided by the principles thereof, but is not obliged to apply the same strictly".

13 Syariah Appeal No 21/2021 at [7].

14 Syariah Appeal No 21/2021 at [14].

15 Syariah Appeal No 21/2021 at [14].

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25.8 The Board allowed the husband's appeal on the first issue of *hantaran* (or *hantaran belanja*[16]). In doing so, the Board noted that the issue to be decided was not whether there was an obligation on the husband to pay the wife such marriage expenses *per se*, but rather, whether it was in fact paid.[17] Here, the wife's specific contention was that she did not receive such payment and that it was the husband who bore the burden to show that he had made such payment. The Board disagreed with the wife, and highlighted s 104 of the Evidence Act 1983.[18] On that basis, the Board found that the wife bore the evidential burden of proving that *hantaran belanja* was not paid to her, and that there was "no preponderance of evidence to show that the [h]usband failed to pay".[19]

25.9 On the second issue, the Board referred to s 52(3)(*c*) of the AMLA[20] and found that there was no prescriptive wording in legislation on how custodial matters were to be decided, save that the court is to "make such orders as it thinks fit". Notwithstanding the absence of prescriptive language,[21] the Board noted the endorsement of the welfare principle in its earlier decision of *Zaini bin Ibrahim v Rafidah bte A Rahman*[22] and expressly stated that "to apply the principle of the welfare of the child, is to apply Muslim law".[23] On the facts of the case, the Board rejected the husband's arguments and affirmed the President's factual findings in support of her decision to award sole care and control to the wife.[24] The Board found that the Malaysian authorities relied on by the husband had no persuasive value, particularly since those authorities were based on

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16 Also known as marriage expenses (see s 52(3)(*a*) of the Administration of Muslim Law Act 1966 (2020 Rev Ed)).

17 Syariah Appeal No 21/2021 at [10]. The President found that this obligation arises from statute (*ie*, s 52(3)(*a*) of the Administration of Muslim Law Act 1966 (2020 Rev Ed)) as well as it being part of the marriage contract (at [10] of the judgment).

18 Section 104 of the Evidence Act 1983 (2020 Rev Ed) provides that:

> **On whom burden of proof lies**
> 104. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

19 Syariah Appeal No 21/2021 at [12].

20 Which reads as follows:

> (3) The Court may, at any stage of the proceedings for divorce or nullity of marriage or after making a decree or order for divorce or nullity of marriage, or after any divorce has been registered under section 102 before 1 March 2009, on the application of any party, make such orders as it thinks fit with respect to —
> …
> (*c*) the custody, maintenance and education of the minor children of the parties;
> …

21 Syariah Appeal No 21/2021 at [17].

22 (2007) 3 SSAR 135, which in turn referred to the Court of Appeal decision of *CX v CY* [2005] 3 SLR(R) 690.

23 Syariah Appeal No 21/2021 at [22].

24 Syariah Appeal No 21/2021 at [23].

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specific requirements prescribed in their state legislation,[25] none of which were applicable in Singapore.

25.10 Several observations can be made from the Board's decision in *Appeal 21/21*. While at first blush it might appear that the Board's decision on the first issue of *hantaran* stands for the proposition that the wife bears the burden of establishing the whereabouts of the *hantaran*, and consequently whether the appeal was allowed or dismissed, it is submitted that this would not be the correct approach to take given the starting point that it was the husband's appeal against the President's decision on that issue. One way to rationalise the Board's decision would be a deeper appreciation of the interplay of burden of proof in ss 103 and 104 of the Evidence Act 1893[26] which has been the subject of prior commentary.[27] Section 103 provides that a person who wishes to seek judgment must prove the existence of the facts which he/she asserts. This comprises an assertion of the existence of a certain set of facts, and subsequently proof of the same.[28] That is the legal burden of proof which the applicant (in this case the husband) will need to discharge. This *legal* burden of proof does not shift.[29] Section 103 is then expressed in its "negative form"[30] in s 104, in that the burden lies on the person who would fail if no evidence were provided on the existence of those facts.

25.11 When viewed in that light, it is suggested that a purposive reading of the Board's decision[31] would indicate that there was *prima facie* evidence to show that the husband had discharged his duty of paying *hantaran*. Practically speaking, this would likely have been during the solemnisation and/or the signing of the marriage certificate, which provides for the provision and/or value of the *hantaran*.[32] It is in response to that case that the wife had put up a *specific defence* (*ie*, she never received it) to explain this initial state of affairs (known as the "second form of defence"[33]). By doing so, the obligation to discharge that burden

25 Syariah Appeal No 21/2021 at [17] to [18].
26 2020 Rev Ed.
27 Peter Gabriel, "Burden of Proof and Standard of Proof in Civil Litigation" (2013) 25 SAcLJ 130.
28 Peter Gabriel, "Burden of Proof and Standard of Proof in Civil Litigation" (2013) 25 SAcLJ 130 at para 17.
29 *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA, Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 at [30].
30 Peter Gabriel, "Burden of Proof and Standard of Proof in Civil Litigation" (2013) 25 SAcLJ 130 at para 17.
31 Syariah Appeal No 21/2021 at [11] and [12].
32 It is also submitted that that is the most likely scenario because of the specific value of the *hantaran* as $5,000.
33 Peter Gabriel, "Burden of Proof and Standard of Proof in Civil Litigation" (2013) 25 SAcLJ 130 at para 13.

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fell on the wife. This is where s 104 of the Evidence Act 1893 kicks in, with the Board then finding that the wife had failed to provide any "counter" evidence to show that the husband had not paid the *hantaran*.

25.12 On that basis, it is further suggested that even if the wife had failed to discharge her burden, the appeal may not have been allowed if the husband did not discharge his burden of proving the existence of his case (*ie*, that he had paid the *hantaran*). The upshot of the foregoing is that it would be useful for practitioners to appreciate *when* their inability to prove the existence of a set of facts may result in a judgment that is unfavourable to them. They may not be able to prove something, but it might not necessarily mean that they "lose" the case.

25.13 On the second issue of the Board's comments on the welfare principle, the Board's observations serve as a useful reminder on the *extent* to which civil law authorities dealing with child issues can or ought to be adopted as part of our Muslim law jurisprudence. It is worth noting that the Board *first* referred to its earlier decision of *Zaini bin Ibrahim v Rafidah bte A Rahman* to establish the applicability of the welfare principle as being part of Muslim law. In that case, the Board had previously referred to the Court of Appeal's decision in *CX v CY*,[34] where the Board considered the Court of Appeal's "reasoning" of the welfare principle, and thereafter affirmed and adopted it as part of our Muslim law.[35] This underscores the earlier observations made on how the Syariah Court and the Board develop local Muslim law jurisprudence.

III. Variation of final ancillary orders

A. Syariah Appeal No 37/2021 – The very high standard to vary

25.14 In *Appeal 37/21*, the Syariah Court ordered that the matrimonial property be sold in the open market, with the net proceeds divided equally between the appellant-husband and the respondent-wife. The Syariah Court order also made similar provisions for the parties' other Singapore and overseas properties. Notably, the Syariah Court order contained what is commonly referred to as an "empowerment clause".[36] Such a clause allows the Syariah Court to sign certain prescribed documents on behalf of a defaulting party in the event the defaulting party fails to execute or endorse such documents dealing with the disposition of a property. In

34 [2005] 3 SLR(R) 690.
35 *Zaini bin Ibrahim v Rafidah bte A Rahman* (2007) 3 SSAR 135 at [29].
36 In its Grounds of Decision, the Board used the phrase "proxy clause" (see Syariah Appeal No 37/2021 at [3]).

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that case, the empowerment clause allowed the Syariah Court to sign the relevant documents on the defaulting party's behalf for the sale of the matrimonial property.

25.15 Notwithstanding the presence of the empowerment clause, there is no dispute that the matrimonial property remained unsold for an extended period of more than two years. Against that backdrop, the wife filed various variation applications, including an application to vary the original order such that the net proceeds for the sale of the matrimonial property be paid to her solely, whilst the net proceeds for the sale of parties' overseas properties be paid to the husband. In support of her application, the wife contended that she had incurred rental costs of $116,000 for a replacement residence between the time of the original order and her variation application. After hearing parties' respective submissions, the Syariah Court granted the wife's application to the extent that a sum of $52,000 first be deducted from the net sale proceeds and paid to the wife, with the remaining amount to be divided equally between parties. Effectively, the Syariah Court allowed her to claw back $52,000 before dividing the balance net proceeds equally between parties.

25.16 On appeal, the Board allowed the husband's appeal and reversed the Syariah Court's decision. In arriving at its decision, the Board referred to s 52(6) AMLA which deals with variations of ancillary orders.[37] The Board observed that whilst the provision was worded relatively broadly, the grounds of variation were "relatively narrow".[38] In this connection, the Board referred to its earlier decision in *DD v DF*[39] to underscore the paramount importance of finality and certainty in court orders, which in turn demands an "exacting threshold" of unworkability before any variation be made.[40] The Board reasoned that establishing such a threshold would disincentivise dissatisfied litigants from inundating the system by filing multiple variation applications at the slightest change in circumstance.[41] Separately, in assessing whether such an exacting threshold would be satisfied, the Board recapitulated its observations in *AL v AK*,[42] highlighting that the change in circumstance must be so

37 Section 52(6) of the Administration of Muslim Law Act 1966 (2020 Rev Ed) reads as follows:

> (6) The Court may, on the application of any interested person, vary or rescind any order made under this section where it is satisfied that the order was based on any misrepresentation or mistake of fact or where there has been any material change in the circumstances, or for other good cause being shown to the satisfaction of the Court.

38 Syariah Appeal No 37/2021 at [10].

39 (2020) 8 SSAR 95.

40 Syariah Appeal No 37/2021 at [1].

41 Syariah Appeal No 37/2021 at [11].

42 (2014) 6 SSAR 343.

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acute such that to implement the order as originally made, in the light of the new circumstance(s), would be to implement something radically different from what was originally intended.[43]

25.17 Against that backdrop, the Board held that the mere fact of a delay in the disposal of the matrimonial property could not, by itself, amount to a fact which rendered the original order unworkable. The Board observed that the possibility of a delay in the disposal of the matrimonial property was not unforeseeable (*ie*, within reasonable contemplation). It was precisely because such an event was foreseeable that the empowerment clause was included.[44] Put another way, the situation which the wife was relying on to seek a variation had been *specifically addressed* in the Syariah Court's original orders. It is worth noting at this juncture that the Board made no findings as to whether the wife had attempted to invoke the empowerment clause in the original order.[45]

25.18 Two observations arise from this decision. First, as noted above, the Board declined to make any finding as to who was culpable for the delay in the sale of the matrimonial property. Whilst the Board had rightly characterised the issue of whether a delay *simpliciter* constituted a material change of circumstance warranting curial intervention, the answer to that question must necessarily take into consideration the structure and intent of the original order, and in that context, parties' conduct in executing (or failing to execute) the order. The outcome of that analysis would naturally establish parties' obligations and responsibilities and consequently, assign some form of liability to one party. Establishing responsibility and liability ensures accountability and is a useful yardstick in determining whether the circumstance complained of in support of a variation is one which is borne out by design or omission or one borne out by circumstance. This is especially so when the Board had made express reference to the inclusion of the "empowerment clause". It is submitted that the necessary inference is that, since the clause was part of the original order and the wife did not appear to have invoked it, she could not now come to court seeking relief for something which was a consequence of her own action (or inaction). The Board's more explicit observations in this regard would have provided some guidance on the applicability and/or extent of the concept of self-inducement applicable in civil law matrimonial decisions dealing with variations.

25.19 The next observation relates to the Board's comments on the implementation of s 52(6) AMLA. The Board highlighted how the

43 Syariah Appeal No 37/2021 at [11].
44 Syariah Appeal No 37/2021 at [13].
45 Syariah Appeal No 37/2021 at [14].

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Syariah Court had justified its decision in partially granting the wife's application by relying on s 52(7) AMLA.[46] In this regard, given that the original order concerned the division of the matrimonial assets, the Syariah Court found it appropriate to import the threshold of "just and equitable" in s 57(7) AMLA for the purposes of determining a variation under s 52(6) AMLA.[47]

25.20 In rejecting the Syariah Court's approach, the Board highlighted that while the general notion of "just and equitable" was "superficially seductive",[48] the Syariah Court fell into error by conflating, on one hand, first-instance orders on division (captured under ss 52(3)(*d*), 52(7), and 52(8) AMLA), and on the other, the variation of such orders (contained solely in s 52(6) AMLA). By mischaracterising the architecture of these provisions, the Syariah Court had imported a concept which was not found in the legislative language of s 52(6) AMLA and did not give voice to the fundamental requirements under s 52(6) AMLA.[49]

25.21 *Appeal 37/21* provides useful guidance on interpreting the legislative language of s 52(6) AMLA, both in terms of the threshold to satisfy in order to justify curial intervention of court orders, as well as how the provision fits within the broader architecture of s 52 AMLA.

IV. Stay of proceedings

A. Syariah Appeal No 18/2022 – Singapore may be your destination of choice, but it is not the appropriate choice of forum

25.22 *Appeal 18/22* concerned a Syariah Court order staying Singapore divorce proceedings in favour of proceedings in India. In that case, both parties were born in India. The marriage was contracted in India in 2014. When parties contracted their marriage, the husband was apparently still married to his first wife ("Wife 1"). Additionally, the parties' marriage was entered into without the consent of the wife's father or Wife 1.

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46 Section 52(7) of the Administration of Muslim Law Act 1966 (2020 Rev Ed) reads as follows:

> (7) In making any order under subsection (3)(*d*), the Court has power to order the disposition or division between the parties of any property or the sale of any such property and the division between the parties of the proceeds of such sale in such proportions as the Court thinks just and equitable.

47 Syariah Appeal No 37/2021 at [13].

48 Syariah Appeal No 37/2021 at [13].

49 Syariah Appeal No 37/2021 at [13].

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25.23 After the parties contracted their marriage, the husband moved to Australia alone after being granted permanent residency status, without the wife. He subsequently relocated from Australia to Singapore, again without the wife.

25.24 Sometime in 2015, the husband returned to India to meet with the wife to discuss ending their marriage. Between November 2018 to February 2019, the husband sent the wife a number of letters purportedly pronouncing *talak* against the wife. The wife responded by saying that she did not accept the *talak*.

25.25 In October 2019, the wife commenced maintenance proceedings in Singapore in the Family Justice Courts as well as commenced proceedings in India for restitution of conjugal rights. In August 2020, the husband commenced divorce proceedings in the Syariah Court and proceeded to serve the Syariah Court papers on the wife. After being served with the divorce documents, the wife applied to stay the Syariah Court proceedings.

25.26 In granting the wife's stay application, the Syariah Court first observed that the marriage was solemnised without the consent of the wife's parents, and that the determination of that issue would differ between jurisdictions. In this connection, the Syariah Court found that the marriage was contracted in India, the witnesses to the marriage were in India, and the wife's specific relief for resumption of conjugal rights was not a specific matter which the Singapore courts were able to deal with. Accordingly, the Syariah Court held that India was the forum with the closest and most real connection to the issues arising in the parties' matrimonial dispute.

25.27 On appeal, the Board affirmed the Syariah Court's findings and dismissed the husband's appeal. The Board agreed with the Syariah Court that India was the forum with the closet and most real connection to the parties' dispute.[50] The Board found, amongst other things, that save for the wife's Singapore citizenship, neither party was resident in Singapore. The Board also found that the parties had no children, no matrimonial properties in Singapore and, more importantly, the *talak* was pronounced in India.[51] All these factors pointed towards India being the more appropriate forum to litigate parties' dispute. Insofar as the husband tried to rely on the fact that the wife commenced maintenance proceedings in Singapore, the Board did not find this to be a significant factor because at the material time, the husband was in Singapore. It made sense for

50 Syariah Appeal No 18/2022 at [21].
51 Syariah Appeal No 18/2022 at [21].

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the wife to pursue maintenance proceedings in a jurisdiction which the husband chose to be located in, in part for enforcement reasons.[52]

25.28 Whilst not expressly mentioned in its decision, *Appeal 18/22* essentially reaffirms and applies the civil principles in *Spiliada Maritime Corporation v Cansulex*[53] which have been adopted by the civil courts in Singapore to determine if a stay application should be granted on the basis of *forum non conveniens* – that is, Singapore is not clearly and distinctly the more appropriate forum to litigate parties' dispute.[54]

V. Ancillary matters

A. Syariah Appeal No 44/2021 – To remit or not to remit?

25.29 In this case, the Syariah Court had made the following ancillary orders:

(a) First, on the division of the matrimonial home, the Syariah Court ordered that the matrimonial property be sold and that the net sale proceeds be divided equally between the appellant-husband and the respondent-wife.

(b) Second, on the division of parties' Central Provident Fund ("CPF") moneys, the Syariah Court separately ordered that the husband make a transfer of $40,000 from his CPF Ordinary Account to the wife's commensurate account.

(c) Third, as regards *mutaah*, the Syariah Court assessed the daily rate to be $2.80, amounting to a total sum of $30,000 based on the length of the marriage.

25.30 The husband appealed against the Syariah Court's orders relating to the transfer of $40,000 from his CPF moneys to the wife and *mutaah*. The husband did not appeal the orders relating to the division of the matrimonial home. On appeal, the Board dismissed the husband's appeal against the *mutaah* order, but ordered that the issue of the division of the CPF moneys be remitted back to the Syariah Court.

52 Syariah Appeal No 18/2022 at [22].
53 [1987] AC 460.
54 *Spiliada Maritime Corporation v Cansulex* [1987] AC 460 at 477. See also Ahmad Nizam Abbas, Istyana Putri Ibrahim & Maryam Hasanah Rozlan, *Muslim Family Law in Singapore* (Academy Publishing, 2022) at paras 2.40 to 2.49 on the discussion of other stay applications.

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25.31 For the purposes of this review, specific consideration is given to the Board's findings in respect of the division of parties' CPF moneys. On this issue, the Board first observed that the President had adopted what is commonly known as the "classification methodology"[55] of division,[56] treating the matrimonial property and CPF moneys as separate and distinct classes of matrimonial assets, with each to be ascribed different ratios of division. On the matrimonial home, by ordering an equal division of the net sale proceeds, the President had effectively arrived at a 50:50 ratio of division between the husband and the wife.[57]

25.32 The President arrived at the outcome of a transfer of $40,000 from the husband's CPF account to the wife's CPF account through three steps. First, she adopted the "difference approach"[58] when assessing the amount subject to division.[59] Second, in calculating the difference, she had included the CPF refunds parties would have received from the sale of the matrimonial property.[60] Third, based on a calculated difference of $141,098, the $40,000 the President ordered to be transferred essentially amounted to a ratio of division of 72:28 in the husband's favour (*ie*, because he had more CPF moneys than the wife overall, the President allocated 28% of the sum of $141,098 to be transferred to the wife).

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55 As highlighted by the Court of Appeal in *NK v NL* [2007] 3 SLR(R) 743. As noted above, adopting this methodology essentially means to treat certain classes of assets as separate and distinct from each other for the purposes of the division exercise. This will ultimately amount to different division ratios between each class of matrimonial assets.

56 Syariah Appeal No 44/2021 at [26(a)].

57 Syariah Appeal No 44/2021 at [26(b)].

58 This approach essentially involves only apportioning the difference between the total amount of each party's CPF moneys. In Syariah Appeal No 44/2021, the husband had more moneys as compared with what the wife had in her account. Two other approaches have been adopted in the Syariah Court, namely the "One-Party approach" (which only involves apportioning the husband's total CPF moneys), and the "Two-Party approach" (which involves apportioning both the husband's and wife's total CPF moneys). For further commentary on these approaches, see Ahmad Nizam Abbas, Istyana Putri Ibrahim & Maryam Hasanah Rozlan, *Muslim Family Law in Singapore* (Academy Publishing, 2022) at paras 5.142 to 5.149. It is submitted that generally, the "Two-Party approach" ought to be the default approach, as it properly reflects parties' collective accumulation of the asset over the course of the marriage, all of which should be subject to division. For clarity, this assumes that the entire pool of parties' CPF moneys is liable for division. There are situations in which certain portions of parties' CPF moneys do not form part of the pool of matrimonial assets. An example of such a situation can be seen in Syariah Appeal No 8/2021.

59 Syariah Appeal No 44/2021 at [26(c)].

60 Syariah Appeal No 44/2021 at [45].

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25.33 On appeal, the Board stated its reservations on the use of classification methodology,[61] the difference approach,[62] and the President's decision to include parties' CPF refunds from the sale of the matrimonial property when calculating the difference between the husband's and wife's CPF moneys.[63] However, given that these matters were not specific issues forming the scope of the husband's appeal, the Board did not make any specific findings or orders in this regard. The focus of the husband's appeal on the CPF moneys related specifically to the President's assessment of 72:28 in the husband's favour as the division ratio of the CPF moneys.

25.34 The Board was unable to ascertain the reasoning or methodology adopted by the President in arriving at the ratio of 72:28.[64] Whilst the Board accepted that the "classification methodology" was used, the approach[65] used to calculate the division ratios must be the same between the different assets.[66] That said, because there was no explanation as to how the President arrived at the outcome of 50:50 division for the matrimonial home (because neither party appealed against that part of the President's order, which likely resulted in the President not providing her grounds for that decision), the Board was unable to determine where the President had erred (if at all) when calculating the 72:28 figure for the CPF moneys, and how to appropriately intervene. In the absence of more information, the Board had no straw to make the bricks of any decision on this issue.[67]

25.35 It is in this context that the Board discussed s 55(5) AMLA. Section 55(5) provides as follows:

> On any appeal, and Appeal Board may confirm, reverse or vary the decision of the Court, exercise any such powers as the Court could have exercised, make such order as the Court ought to have made **or order a retrial**, or award costs as if it thinks fit. [emphasis added]

61 Syariah Appeal No 44/2021 at [26(a)].
62 Syariah Appeal No 44/2021 at [26(c)].
63 Syariah Appeal No 44/2021 at [45]. The Board made reference to an earlier decision by the Syariah Court in *DR v DS* (2021) 8 SSAR 191 where to take into account CPF refunds from the disposal of the matrimonial property would amount to double counting as those moneys had already been considered in the division of the matrimonial property.
64 Syariah Appeal No 44/2021 at [43].
65 *Ie*, either the "structured approach" highlighted in the Court of Appeal decision in *ANJ v ANK* [2015] 4 SLR 1043 (which was endorsed by the Appeal Board in *inter alia*, *DZ v EA* (2021) 8 SSAR 241), or the long single-income marriage approach highlighted in the Court of Appeal decision in *TNL v TNK* [2017] 1 SLR 609.
66 Syariah Appeal No 44/2021 at [45].
67 Syariah Appeal No 44/2021 at [47].

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25.36 In its review of the few cases touching on the issue of remission,[68] what the Board was able to distil was that the court will adopt a commonsense approach in assessing the fact and extent of the complained defect in the Syariah Court's decision and/or reasoning on the issues, and how it may be cured.[69] Further, the Board laid out a two-step approach in dealing with the issue of remission:

(a) First, to ascertain the nature and extent of the defect and/or deficiency of the order (including the reasoning adopted).

(b) Second, to determine whether such defect may be rectified by the Board, or whether the circumstances of that specific case warrant the matter to be remitted back to the Syariah Court, so as to allow the Syariah Court to "make good" the identified deficiencies.[70]

25.37 Whilst laying down this structure, the Board nevertheless cautioned that it would usually only be in exceptional circumstances where the Board would remit a matter back to the Syariah Court. As best as possible, the Board would adopt a commonsensical and practical approach in ensuring that there is finality in resolving the issues in dispute between parties.[71]

25.38 On the facts of *Appeal 14/21*, the Board found that there was a dearth of material to fully appreciate the basis on which the President arrived at the 28% figure for the wife. At the same time, the Board noted that to set aside the order would leave an unjustifiable void without any real recourse.[72] Accordingly, the Board ordered that the issue on the calculation of the 28% for the CPF moneys be remitted back to the President for determination.

B. Syariah Appeal No 13/2022 – Calculating indirect contributions: one step or two steps?

25.39 *Appeal 13/22* deals with specific issues arising in the application of the "structured approach" to division. To recap, the "structured

68 Syariah Appeal No 44/2021 at [49] to [52].
69 Syariah Appeal No 44/2021 at [51].
70 Syariah Appeal No 44/2021 at [53(b)].
71 Syariah Appeal No 44/2021 at [54].
72 This is because s 56A of the Administration of Muslim Law Act 1966 (2020 Rev Ed) provides that any decision of the Appeal Board is final, and that such decision cannot be "challenged, appealed against, reviewed, quashed or called into question in any court …".

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approach" as espoused in *ANJ v ANK*[73] requires a court to engage in the following steps:[74]

(a) First, express as a ratio the parties' direct contributions relative to each other, having regard to the amount of financial contribution each party made towards the acquisition or improvement of their matrimonial assets.

(b) Second, express as a second ratio the parties' indirect contributions relative to each other, having regard to both financial and non-financial contributions.

(c) Third, derive the parties' overall contributions related to each other by taking an average of the two ratios above. Depending on the circumstances of the case, the direct and indirect contributions may not be accorded equal weight and one of the two ratios may be accorded more significance than the other.

25.40 *Appeal 13/22* touches on the second and third steps of the structured approach. In that case, the Syariah Court ordered that the matrimonial home be divided in proportions of 60:40 in favour of the husband. As to the parties' CPF moneys, the President reached a calculation of 55:45 in favour of the husband. In doing so, it was clear that the President had applied the structured approach.

25.41 In reviewing the President's calculations,[75] the Board noted that the President had first broken down the calculation of parties' indirect contribution into two sub-steps (*ie*, taking the average of the ratio of indirect financial contribution *and* indirect non-financial contribution).[76] Next, the Board highlighted that after arriving at the average ratio (in that case, 61.5:38.5 in the husband's favour),[77] the President subsequently adjusted the final proportions to 60:40 (*ie*, the Syariah Court awarded the wife a 1.5% uplift). The reason provided by the President for this uplift was that the child would be returned to the wife's care.[78]

25.42 On appeal, the Board rejected the President's approach of breaking the calculation of indirect contributions into two sub-steps. In

73 [2015] 4 SLR 1043. As affirmed in the Appeal Board decisions of *CY v CZ* (2020) 8 SSAR 38 (although in that case the Board did not apply the methodology on the facts of that case) and *DZ v EA* (2021) 8 SSAR 241.
74 See *Law and Practice of Family Law in Singapore* (Valerie Thean JC ed) (Sweet & Maxwell Asia, 2nd Edition, 2016) at para 11.2.65.
75 Syariah Appeal No 13/2022 at [15].
76 Syariah Appeal No 13/2022 at [15] and [16].
77 Syariah Appeal No 13/2022 at [16].
78 Syariah Appeal No 13/2022 at [15].

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doing so, the Board referred to the comments in *TNL v TNK*[79] ("*TNL*") which expressly rejected this two-step approach in calculating parties' indirect contributions.[80] In *TNL*, the Court of Appeal explained that in relation to indirect contributions, because of the wide-ranging nature of such contributions (*ie*, parenting, husbandry, homemaking), no mathematical formula or analytical tool would be capable of capturing or accommodating the diverse and myriad set of factual scenarios of how parties divided their responsibilities in the domestic sphere.[81] The value given to indirect contributions would therefore necessarily be a matter of impression.[82] Following on from the comments made in *TNL*, the Board explained that creating a further step would unnecessarily create another area of skirmish between parties, which would further escalate the dispute and cause parties to nitpick on each other.[83]

25.43 As regards the subsequent uplift of 1.5% after calculating parties' average ratios, the Board similarly rejected such an adjustment. The Board referred back to *ANJ* to highlight that the purpose of the adjustment mechanism in the third step was to attribute the appropriate weight to parties' collective direct contributions against indirect contributions.[84] The Board also referred to the Court of Appeal decision of *TOT v TOU*[85] and noted that considerations which ordinarily fell within the parameters of s 112 of the Women's Charter 1961 (which is *in pari materia* with s 52(8) AMLA) should form part of the matrix of consideration for the first and second steps of the structured approach. It should not form a further and separate basis for any adjustment of the calculated ratio thereafter.[86] In *Appeal 13/22*, the Board found that the President's reason for the uplift (*ie*, the wife's continued care of the child) was a factor which was provided for in s 52(8)(*d*) of AMLA and should have been dealt with at the second step of the structured approach.

25.44 Whilst the Board took issues with the manner in which the President sought to include a new sub-step when calculating indirect contributions and the 1.5% adjustment, it was nevertheless not minded to disturb the President's final figures. The Board explained that the net effect of the President's two errors balanced each other such that had the structured approach been applied correctly, the final outcome would have been equal to (or manifestly similar to) the current figures calculated by

79 [2017] 1 SLR 609.
80 Syariah Appeal No 13/2022 at [49(a)].
81 *TNL v TNK* [2017] 1 SLR 609 at [47].
82 *TNL v TNK* [2017] 1 SLR 609 at [47].
83 Syariah Appeal No 13/2022 at [49(b)].
84 Syariah Appeal No 13/2022 at [49(c)].
85 [2021] SGHA(A) 9; see extract in Syariah Appeal No 13/2022 at [49(d)].
86 Syariah Appeal No 13/2022 at [49(e)].

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the President.[87] The Board also took cognisance of the relative novelty of these issues (in part given that there were no other Board decisions dealing with this point), but made it clear that in future cases, even if the effects of such error were *de minimis*, this could warrant the Board's intervention.[88]

25.45 Another noteworthy issue in *Appeal 13/22* is the President's orders in implementing the final ratio of division. To recap, the eventual ratio of division calculated by the President was 40:60 in the husband's favour. The President had specifically assessed that the sale of the matrimonial property would lead to a positive sale (*ie*, there would be net proceeds after making the necessary deductions, which would necessarily include moneys which had to be allocated for the parties' CPF refunds). In a positive sale, what commonly occurs is that the ratio of division would be applied to the net sale proceeds after the requisite CPF refunds had been made. In other words, there would be no further redistribution of the CPF refunds between parties after the completion of the sale.

25.46 In *Appeal 13/22*, the President ordered that the wife be allocated 40% of the total amount of CPF refunds to be made to the parties. This meant that the wife would have received her refunds, and any shortfall of the 40% would have to be drawn from the husband's share of the refunds. The net effect of this order, since there was a positive sale, would be the division of the balance proceeds as per the ratio calculated by the President, and additionally, in respect of the moneys which formed the parties' CPF refunds (including accrued interest), the wife would be further allocated 40% of those amounts.

25.47 In support of her position, the wife relied on the Syariah Court decision in Originating Summons No 57729, which in turn referred to the High Court decision of *AXW v AXX*.[89] In that case, the High Court coined the terms "Partial Division" (where the ratio of division was only applied to the sums after CPF refunds) and "Effective Division" (where the ratio of division is applied on the entire net sale proceed before CPF refunds),[90] to highlight that depending on when the ratio was applied, it may lead to an *actual* proportion of division that differs from what was ordered. Whilst making these observations, the High Court did not make any specific pronouncement on which approach ought to be applied as a default position.

87 Syariah Appeal No 13/2022 at [53].
88 Syariah Appeal No 13/2022 at [53].
89 [2012] 3 SLR 900.
90 *AXW v AXX* [2012] 3 SLR 900 at [8].

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25.48 Whilst the Board similarly did not make any pronouncements on whether the default methodology should be partial division or effective division, the Board observed that whichever approach was adopted, specific consideration must be given to the various components of parties' contributions.[91] In relation to CPF moneys, for the purposes of assessing parties' direct contributions, it is fairly commonplace that only the principal amounts are to be considered.[92] However, when it comes to refunds, the amounts to be refunded include both the principal sum as well as accrued interest. It is suggested that it was in that context that the Board cautioned against simply applying a blanket redistribution of CPF refunds. This is particularly so given the President's earlier findings that there would be a positive sale, and that there was no indication of there being insufficient funds to cater for the parties' respective refunds, or that refunds would amount to an unequal or disproportionate division that materially departed from the assessed ratio of division. Such a recalibration of CPF refunds was applied in *DX v DY*,[93] where it was assessed that there would not have been sufficient moneys after the division of the matrimonial property for each party to make the requisite refunds into their respective CPF accounts.[94]

VI. Concluding remarks

25.49 It has been suggested that legal developments in Syariah law appear to be slowly but surely taking place.[95] Indeed, change is afoot and it is submitted that the decisions which have emanated from the Syariah Court and the Board in recent times reflect the continuing endeavour to build and develop our local Muslim law jurisprudence. In areas where civil law principles have been assimilated, the above decisions seek to provide clarity on the extent of such assimilation. On issues unique to the Muslim law space, the Board has taken the opportunity to provide more clarity and guidance.

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91 Syariah Appeal No 13/2022 at [57].

92 See, for instance, *WAS v WAT* [2022] SGHCF 7 and *UZR v UZS* [2019] SGHCF 38. However, see also *Sim Kim Heng Andrew v Wee Siew Gee* [2013] SGHC 271, where the High Court noted (at [63]) that whether or not accrued interest on payments from CPF are to be taken into account in determining the percentage contribution a party has made towards the purchase of a matrimonial asset is a matter of discretion for the trial judge dependent highly on the circumstances of the case.

93 (2021) 8 SSAR 228.

94 See Ahmad Nizam Abbas, Istyana Putri Ibrahim & Maryam Hasanah Rozlan, *Muslim Family Law in Singapore* (Academy Publishing, 2022) at paras 5.230 to 5.232.

95 See Ahmad Nizam Abbas, Istyana Putri Ibrahim & Maryam Hasanah Rozlan, *Muslim Family Law in Singapore* (Academy Publishing, 2022) at para 1.116.

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25.50 Through this continuing endeavour, it is submitted that the notion of reaching a stage where we can reasonably look to ourselves as the first (and in some situations perhaps the only) point of reference for answers is no longer aspirational, but a reality that is blooming right in front of us. Borrowing the theme of the Syariah Court's 65th anniversary book, these continuing developments give great hope that our local Muslim law jurisprudence is, indeed, ready for tomorrow.

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