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17. FAMILY LAW

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17.1 The main changes to family law in Singapore in 2023 were in respect of the law of matrimonial assets, which is the focus of this review. In *identifying* matrimonial assets, the Court of Appeal in *CLC v CLB*[1] ("*CLC*") crucially clarified that spousal intentions are a way of transforming gifts and inheritance into matrimonial assets to be included in the pool. The legal principles laid down in *CLC* were applied in subsequent Appellate Division of the High Court ("Appellate Division") and General Division of the High Court (Family Division) ("HCF") cases analysed below. In *dividing* matrimonial assets, other HCF cases underscored that, with the various ways of applying what is known as the *TNL* approach, it would be preferable to focus on the first principles laid down in the seminal cases of *ANJ v ANK*[2] and *TNL v TNK*.[3] These seminal cases demonstrate that there is a need to avoid doubly disadvantaging the homemaker-spouse such that non-financial contributions may fairly be recognised in the division exercise and the resulting split. The review this year also covers key cases involving child maintenance and child orders.

I. Division of matrimonial assets

17.2 In 2023, the Court of Appeal took the opportunity to lay down principles relating to assets acquired by gift and inheritance and how they may be incorporated into the family estate, thus forming part of the matrimonial pool. In the area of division of matrimonial assets, the scope of application of the approach in *TNL v TNK*[4] (the "*TNL* Approach")

1 [2023] 1 SLR 1260.
2 [2015] 4 SLR 1043.
3 [2017] 1 SLR 609.
4 [2017] 1 SLR 609 at [44] and [46].

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remains uncertain.[5] The *TNL* Approach entails the court generally inclining towards equal division in long single-income marriages[6] to avoid "doubly disadvantaging" the spouse who took on the qualitative role of homemaking and child caring during the marriage.[7] While the *TNL* Approach is readily applied by the HCF in cases where the spouses' qualitative roles are distributed along conventional lines (that is, one spouse being the main breadwinner and the other spouse being the main homemaker and caregiver), a key case adjudicated by the HCF shows how just outcomes may be achieved in marriages that do not neatly fall into such a mould.

A. Characterisation of matrimonial assets

17.3 In *CLC*, the Court of Appeal expounded on legal principles on the conversion of gifts and inheritance into matrimonial assets, in particular whether to give effect to a donee spouse's intention. Given the importance of *CLC* to the law, the decision merits a detailed analysis. *CLC* also provides the overarching framework for the subsequent cases, *WFE v WFF*[8] ("*WFE*"), *CVC v CVB*[9] ("*CVC*") and *WQP v WQQ*[10] ("*WQP*"), that are covered below.

17.4 The wife in *CLC* appealed against the decision of the Appellate Division to exclude certain disputed assets (the "Disputed Assets") from the matrimonial pool, on the basis that the Disputed Assets were numerically traceable to monetary gifts and inheritance that the husband had received from his father (the "Gifted Moneys"[11]).[12] The Appellate Division found that the Disputed Assets had not lost their character as gifts and/or inheritance, as co-mingling these assets with matrimonial

5 The cases in 2021 revealed two different versions of the *TNL v TNK* [2017] 1 SLR 609 approach: (a) where a single-income marriage is found on the facts (regardless of its length), the court broadly analyses the trends in precedent cases and key factors such as the length of the marriage, the size of the matrimonial pool, the roles each party carried out in the marriage and whether children were raised, to arrive at a just and equitable ratio for division; or (b) generally inclining towards equal division where a *long* single-income marriage is found on the facts, while applying the "Structured Approach" in *ANJ v ANK* [2015] 4 SLR 1043 in less lengthy single-income marriages (see Ho Wei Jing, Tricia, "Family Law" (2021) 22 SAL Ann Rev 479 at paras 17.54–17.66).

6 *TOF v TOE* [2021] 2 SLR 976 at [138].

7 *TNL v TNK* [2017] 1 SLR 609 at [42]–[46].

8 [2023] 1 SLR 1524. See below at paras 17.36–17.46.

9 [2023] SGHC(A) 28. See below at paras 17.47–17.49 and 17.55.

10 [2023] SGHCF 49. See below at paras 17.50–17.55.

11 Otherwise referred to as "Inheritance Moneys" by the Appellate Division in *CLB v CLC* [2022] 1 SLR 658.

12 *CLC v CLB* [2023] 1 SLR 1260 at [24]–[25].

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funds did not have the legal effect of transforming the Disputed Assets into matrimonial assets.[13]

17.5 By contrary, the Court of Appeal allowed the wife's appeal and included the Disputed Assets in the matrimonial pool.[14] In so doing, it held that property law principles involving the donee spouse's intention when dealing with gifts and inheritance were not precluded from consideration by virtue of s 112(10) of the Women's Charter 1961.[15] These property law principles could be relevant when determining if such assets are transformed into matrimonial assets (for example, by co-mingling with matrimonial funds).[16] In *obiter dictum*, the Court of Appeal also clarified the law on interspousal gifts, and appeared to suggest that the analysis of spousal intentions ought to be determinative in such cases as well.[17]

17.6 At the outset, the Court of Appeal identified the main legal issues in *CLC* as: (a) whether the statutory purpose and language of s 112(10) of the Women's Charter 1961 support the consideration of the intention of the donee spouse in determining whether a gift or inheritance has lost its character and is transformed into a matrimonial asset; and (b) how assets such as money in a bank account may be traced to an asset acquired by gift or inheritance, and which party should bear the burden of proving that the money is traceable to the gift or inheritance when it has been co-mingled with funds from other sources.[18]

17.7 With respect to the first legal issue, s 112(10) does not expressly provide for the intention of the donee spouse to act as a means of converting non-matrimonial assets into matrimonial assets. The section, however, does not explicitly *exclude* the right of a spouse to deal with his personal assets, including the right to bring them into the family estate. In accordance with s 9A of the Interpretation Act 1965,[19] the Court of Appeal noted that the context of s 112(10) provides for the "division of assets relating to marriage".[20] The text further stated that an asset acquired

13 *CLC v CLB* [2023] 1 SLR 1260 at [28].
14 *CLC v CLB* [2023] 1 SLR 1260 at [97].
15 2020 Rev Ed.
16 *CLC v CLB* [2023] 1 SLR 1260 at [64].
17 *CLC v CLB* [2023] 1 SLR 1260 at [51]–[54].
18 *CLC v CLB* [2023] 1 SLR 1260 at [29].
19 2020 Rev Ed, which directs the court to prefer an interpretation that advances the objects and purposes underlying that law. This involves ascertaining possible interpretations of the text with regard to its context within the written law as a whole, ascertaining the legislative purpose of the statute and lastly, comparing the possible interpretations of the text against the purpose of the statute with a preference for the interpretation which furthers the purpose of the written text.
20 *CLC v CLB* [2023] 1 SLR 1260 at [40].

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by gift or inheritance by one party at any time is not a matrimonial asset, unless it has been substantially improved during the marriage by the other party or both parties to the marriage (the "Exclusion Clause").[21] Matrimonial homes are an exception to the Exclusion Clause, in that gifted or inherited matrimonial homes may be considered matrimonial assets without being substantially improved. In summary, s 112(10) contemplates two ways in which an asset acquired by gift or inheritance may be included in the matrimonial pool: (a) by substantial improvement; or (b) by use as a matrimonial home.[22] These methods sufficiently connect the asset to the time of the marriage and the parties' personal efforts during the marriage. The text was thus unclear as to whether the intention of a donee spouse was an additional way of bringing a gift or inheritance into the matrimonial pool.[23]

17.8 Turning then to the relevant parliamentary material, the Court of Appeal observed that Parliament's concern over excluding gifts and inheritance from the matrimonial pool was to safeguard these assets from third-party spouses who were not meant to benefit from the donor's gifts and inheritance, rather than with spousal gifts *inter se*.[24] During the Third Reading of the Women's Charter (Amendment Bill) in 1996,[25] Parliament affirmed the then-current state of the law.[26] The law at that time included two notable cases dealing with the transformation of gifts or inheritance into matrimonial assets: *Hoong Khai Soon v Cheng Kwee Eng*[27] ("*Hoong Khai Soon*") and *Yeo Gim Tong Michael v Tianzon Lolita*[28] ("*Yeo Gim Tong Michael*").

17.9 *Hoong Khai Soon* stood for the proposition that where a gifted property had been allowed to be used as a matrimonial home for periods and was thus closely connected with the family, its original nature as a gift ceased to be important. The gift could then be considered a matrimonial asset liable for division.[29] In *Yeo Gim Tong Michael*, the court dealt with the issue of interspousal gifts and held that such gifts should be examined on the basis of their origin – whether the gift was acquired by the spouse's personal effort during the marriage, or originated from a third-party. The court in *Yeo Gim Tong Michael* found that the former would be

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21 *CLC v CLB* [2023] 1 SLR 1260 at [37].
22 *CLC v CLB* [2023] 1 SLR 1260 at [40].
23 *CLC v CLB* [2023] 1 SLR 1260 at [40].
24 *CLC v CLB* [2023] 1 SLR 1260 at [41].
25 Singapore Parl Debates; Vol 66, Sitting No 6; Col 527; 27 August 1996 (Abdullah Tarmugi, Minister for Community Development).
26 *CLC v CLB* [2023] 1 SLR 1260 at [42].
27 [1993] 1 SLR(R) 823.
28 [1996] 1 SLR(R) 633.
29 *CLC v CLB* [2023] 1 SLR 1260 at [43].

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a matrimonial asset liable for division, whereas the latter would not.[30] Specifically, the court cited *Wang Shih Huah Karen v Wong King Cheung Kevin*[31] ("*Wang Shih Huah Karen*") and stated that whatever the spousal intentions were at the time the gift was made, upon divorce, the criteria under s 106 of the Women's Charter[32] for the division of matrimonial assets did not take into account the spouses' intentions.[33]

17.10 According to *CLC*, *Yeo Gim Tong Michael* and *Wang Shih Huah Karen* were consistent with a general principle that a court can consider the intentions of spouses when dealing with their assets during marriage. First, unlike s 106 of the Women's Charter, the current s 112(2) of the Women's Charter 1961 provides a list of non-exhaustive factors for the court to have regard to in exercising its discretion to arrive at a "just and equitable" division. This thus enlarged the scope of considerations that the ancillary matters court could take into account.[34]

17.11 Secondly, the context in which spousal intentions were discussed in *Wang Shih Huah Karen* related to legal ownership, and not spousal intentions to treat the gift as a matrimonial asset during the marriage. Given that marriage is an equal co-operative partnership of efforts, spousal intentions formed after the acquisition of the gift could transform it into a matrimonial asset.[35]

17.12 Thirdly, relying on the observation in *USB v USA*[36] ("*USB*"), the court held that the ownership of assets falling outside the definition of matrimonial assets in s 112(10) would have to be determined with reference to general property law principles. It followed that where a spouse acquires a gift from a third party outside the definition of matrimonial assets, and subsequently re-gifts that property to the other spouse, the court can give effect to that re-gift. The re-gift demonstrates an intention by the donee spouse to divest himself of the gift, in favour of the other spouse. Likewise, the court can give effect to an intention by the donee spouse to bring a gift from a third-party into the family estate, by incorporating it into the matrimonial pool for division.[37]

30 *CLC v CLB* [2023] 1 SLR 1260 at [45].
31 [1992] 2 SLR(R) 172.
32 Cap 353, 1985 Rev Ed.
33 *CLC v CLB* [2023] 1 SLR 1260 at [44].
34 *CLC v CLB* [2023] 1 SLR 1260 at [47].
35 *CLC v CLB* [2023] 1 SLR 1260 at [48].
36 [2020] 2 SLR 588.
37 *CLC v CLB* [2023] 1 SLR 1260 at [49].

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17.13 According to the court, the policy of law in the area of interspousal gifts should favour the intention of the parties.[38] The text in the Exclusion Clause was found to be broad enough to include inter-spousal gifts. If a donee spouse intended to divest himself of all interest in an asset in favour of the other spouse, the asset ought to be excluded from the matrimonial pool in favour of the recipient spouse. Regardless of whether the gift was acquired by the gifting spouse's own efforts during the marriage or originated from a third party, where there are clear intentions to treat it as a gift to the recipient spouse or as a matrimonial asset, spousal intentions ought to be given effect to.[39]

17.14 While noting that its observations appeared at odds with the post-1997 case of *Wan Lai Cheng v Quek Seow Kee*[40] ("*Wan Lai Cheng*") on interspousal gifts, the Court of Appeal reiterated that it is the spouse's intention regarding the third-party gift that would determine its status as a matrimonial asset. Depending on the donee spouse's intention, a third-party gift could be: (a) a gift to the donee spouse and excluded from the matrimonial pool; (b) re-gifted to the other spouse and excluded from the matrimonial pool; or (c) incorporated into the family estate, thus losing its character as a gift and becoming a matrimonial asset liable for division.[41]

17.15 Brief mention was also made of the legal conundrums regarding the approach to interspousal gifts adopted in *Wan Lai Cheng* and *Yeo Gim Tong Michael*. Both cases distinguished the status of the interspousal gift based on the origin of the gift.[42] If the interspousal gift was acquired during marriage by the efforts of a spouse (that is, "pure inter-spousal gifts"), it would be included in the matrimonial pool. Conversely, if the interspousal gift originated from a third party but was subsequently re-gifted by the donee spouse to the recipient spouse (that is, "inter-spousal re-gifts"), it would remain as a gift under the Exclusion Clause and excluded from the matrimonial pool if the other spouse or both spouses did not substantially improve it during the marriage. However, it was unclear who the "other spouse" should be for purposes of the Exclusion Clause. That led to the majority in *Wan Lai Cheng* finding that inter-spousal re-gifts could not be substantially improved, and therefore amounted to gifts to be excluded from the matrimonial pool.[43]

38 *CLC v CLB* [2023] 1 SLR 1260 at [50].
39 *CLC v CLB* [2023] 1 SLR 1260 at [50].
40 [2012] 4 SLR 405.
41 *CLC v CLB* [2023] 1 SLR 1260 at [51].
42 *CLC v CLB* [2023] 1 SLR 1260 at [52].
43 *CLC v CLB* [2023] 1 SLR 1260 at [53].

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17.16 Further observations were made in *obiter* regarding the issue of inter-spousal re-gifts of pre-marital assets in *CLS v CLT*[44] ("*CLS*"). The Appellate Division in *CLS* had applied the approach in *Wai Leng Cheng* and found that the inter-spousal re-gifts of pre-marital assets originated from non-matrimonial assets and remained as such unless transformed. Further, the Appellate Division held that inter-spousal re-gifts of pre-marital assets were not assets acquired by the effort of either spouse during the marriage. They did not reflect the material gains of the marital partnership, which the division exercise is concerned with identifying. Therefore, the Appellate Division excluded those gifts from the matrimonial pool.[45]

17.17 In light of the approach in *CLC* giving effect to spousal intention in the treatment of gifts during marriage, the Court of Appeal in *CLC* emphasised that it is ultimately a question of fact as to what the donee spouse intended to do with his asset that was originally acquired by gift or inheritance.[46] It reiterated the caution in *Wan Lai Cheng*, against being too ready to treat a transfer of assets between spouses as gifting. Transfers of assets between spouses may appear in form to be gifts, but may not be so in substance. Such transfers may take place for myriad reasons, including convenience, expediency, financial liability, business/tax planning, illness, old age, *etc*; the transfers may not constitute permanent renunciations by the gifting spouse of the beneficial interest in those assets. However, where the transferor spouse clearly intends to permanently renounce his beneficial interest in the asset transferred (that is, a true inter-spousal gift in form and in substance), the transferor spouse may be estopped from claiming a share in that gift as part of the division exercise.[47]

17.18 It follows that a transfer could evince an intention of the transferor spouse to completely divest his sole interest in the asset, by gifting it to the recipient spouse or by incorporating it into the family estate as a matrimonial asset. Due to the potentially significant legal consequences that ensue upon a finding of intention, the Court of Appeal highlighted that the donee spouse's intention not to retain any interest in the third-party gift or inheritance have to manifest in a "clear and unequivocal" manner.[48] The court would also consider the transferor spouse's explanation as to the intention behind the transfer, and the recipient spouse's true intentions demonstrated by how the transferred asset was dealt with during the marriage.[49]

44 [2022] 2 SLR 1043.
45 *CLC v CLB* [2023] 1 SLR 1260 at [54].
46 *CLC v CLB* [2023] 1 SLR 1260 at [56].
47 *CLC v CLB* [2023] 1 SLR 1260 at [55] and [56].
48 *CLC v CLB* [2023] 1 SLR 1260 at [56].
49 *CLC v CLB* [2023] 1 SLR 1260 at [57].

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17.19 The Court of Appeal then analysed *Chen Siew Hwee v Low Kee Guan*[50] ("*Chen Siew Hwee*") with regard to a spouse's intention in dealing with gifted assets. Due to a court-ordered liquidation of the companies that the husband in *Chen Siew Hwee* held pre-marital gifted shares in, the husband converted those shares into new assets.[51] The new assets were excluded from the matrimonial pool because they were traceable to the pre-marital gifted shares. The husband had at no time indicated in a clear and ambiguous fashion that the shares (in their original or present forms) had ceased to be gifts and had formed part of the matrimonial pool instead.[52]

17.20 Based on *Chen Siew Hwee*, the Court of Appeal in *CLC* observed that the first step, when examining if an asset acquired by gift or inheritance retained its character, is an evidential one: whether the new asset is traceable to the asset that constituted the original gift. It is only when the new asset has been shown to be traceable, will the court undertake an investigation into the intention of the spouse who received the original gift. Where the original gift has been physically converted into a new asset, the crux of the inquiry would be whether the donee spouse intended the new asset to retain the nature of the original gift, or if the donee spouse had formed a real and ambiguous intention that the new asset should constitute part of the pool of matrimonial assets.[53] The analysis of the donee spouse's intention would likewise apply if the original asset acquired by gift or inheritance had not been physically transformed.[54]

17.21 The donee spouse's intention could be ascertained from the conduct and correspondence of the spouses. For instance, it would be relevant that the other spouse was registered as a joint tenant of the property or joint account holder of the bank account in which the asset is held.[55] In *AAE v AAF*,[56] the court found that the husband's act of registering his wife as a joint tenant of a property that had been purchased from the sale proceeds of a gifted asset strongly evinced his intention for it to be part of the matrimonial pool. In *TQU v TQT*,[57] the court found that the husband's act of giving the wife a 10% share in a company (that was funded by gifted shares) whose profits funded a property acquired

50 [2006] 4 SLR(R) 605.
51 *CLC v CLB* [2023] 1 SLR 1260 at [59].
52 *CLC v CLB* [2023] 1 SLR 1260 at [61].
53 *CLC v CLB* [2023] 1 SLR 1260 at [62].
54 *CLC v CLB* [2023] 1 SLR 1260 at [63].
55 *CLC v CLB* [2023] 1 SLR 1260 at [63].
56 [2009] 3 SLR(R) 827.
57 [2020] SGCA 8.

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in his sole name, demonstrated the husband's intention to utilise the property for and on behalf of the family.[58]

17.22 In concluding the first legal issue, the Court of Appeal thus held that ordinary property law principles were not inconsistent with s 112(10) and allowed the court to give effect to a donee spouse's intentions to transform an asset acquired by gift or inheritance into a matrimonial asset.[59]

17.23 As for the second legal issue on tracing assets to third-party gifts or inheritance, the Court of Appeal reiterated that this was an evidentiary question: whether the new asset could be traceable to the asset which constituted the original gift. This would have to be resolved by the allocation of the burden of proof. In line with *USB*, the spouse claiming that an asset is not a matrimonial asset bears the burden of proving this on a balance of probabilities. Conversely, where an asset is *prima facie* not a matrimonial asset, the spouse claiming that the asset is a matrimonial asset has the burden of showing how it was transformed.[60]

17.24 As to the relevant test, the Court of Appeal affirmed the continued applicability of the legal test set out in *Lee Yong Chuan Edwin v Tan Soan Lian*:[61] whether the true nature of a gift remains intact.[62] Drawing from case authorities in other jurisdictions, it observed that first, a party claiming that an asset had been acquired by gift or inheritance must adduce sufficient evidence to show the link between the currently owned asset and the original asset. Where money in a bank account is concerned, the donee spouse may produce evidence on the source of contributions into the account and the use of the withdrawals.[63] Detailed accounting records that allow for the money to be traced may result in certain sums being excluded for not having lost their original character.[64] Secondly, the donee spouse would have to show sufficient linkage between the current property and the original property, with each "link in the chain" established.[65] Thirdly, the court may draw reasonable inferences from less certain or precise evidence to do justice between the parties.[66] Fourthly, co-mingling of matrimonial funds and assets acquired by gift or inheritance in a bank account would not necessarily result in a loss of

58 *CLC v CLB* [2023] 1 SLR 1260 at [63].
59 *CLC v CLB* [2023] 1 SLR 1260 at [64].
60 *CLC v CLB* [2023] 1 SLR 1260 at [65].
61 [2000] 3 SLR(R) 867.
62 *CLC v CLB* [2023] 1 SLR 1260 at [69].
63 *CLC v CLB* [2023] 1 SLR 1260 at [72].
64 *CLC v CLB* [2023] 1 SLR 1260 at [72] and [73].
65 *CLC v CLB* [2023] 1 SLR 1260 at [74].
66 *CLC v CLB* [2023] 1 SLR 1260 at [75].

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character. It would depend on whether tracing allows the assets acquired by gift or inheritance to be identified, and not the use to which the funds are put.[67] Finally, assets acquired by gift or inheritance will naturally not be traceable where they have been expended.[68]

17.25 Applying the abovementioned legal principles on tracing in the present case, the Court of Appeal found that it was likely that the Disputed Assets were derived from the Inheritance Moneys.[69] This was despite the husband not being able to provide evidence to show the precise links that captured the movement of money between the Inheritance Moneys and the Disputed Assets.[70] The Disputed Assets (that amounted to $3,801,862.53)[71] together with the husband's other investments that were funded using the Inheritance Moneys (the "Husband's Other Investments") (that amounted to $1,335,030.03)[72] added up to a sum of $5,789,270.17.[73] This sum was sufficiently similar to the amount of Inheritance Moneys (that amounted to $5,024,886,35),[74] after taking into account bank interest rates and returns on investments over the years.[75]

17.26 The husband claimed in his affidavits that the sources of the Disputed Assets were: (a) the husband's inheritance from his father's Australian will (the "Australian Inheritance"); (b) money from the winding up of company [G] Inc (the "[G] Money"); and (c) money from the sale of shares of the company [H] Sdn Bhd (the "[H] Money").[76] However, the husband was unable to provide documentary evidence showing the movement of the Inheritance Moneys.[77] He was unable to show precisely when the six Australian accounts forming the Disputed Assets were set up,[78] how the Australian Inheritance was co-mingled with funds in the Disputed Assets,[79] how the [G] Money went into the Disputed Assets,[80] and how the [H] Money, which was directly deposited in the parties' UOB joint bank account and subsequently removed by the husband, were used to acquire the Disputed Assets.[81] Notwithstanding this, the

67 *CLC v CLB* [2023] 1 SLR 1260 at [76].
68 *CLC v CLB* [2023] 1 SLR 1260 at [77].
69 *CLC v CLB* [2023] 1 SLR 1260 at [78].
70 *CLC v CLB* [2023] 1 SLR 1260 at [78].
71 *CLC v CLB* [2023] 1 SLR 1260 at [5].
72 *CLC v CLB* [2023] 1 SLR 1260 at [25].
73 *CLC v CLB* [2023] 1 SLR 1260 at [87].
74 *CLC v CLB* [2023] 1 SLR 1260 at [6].
75 *CLC v CLB* [2023] 1 SLR 1260 at [25].
76 *CLC v CLB* [2023] 1 SLR 1260 at [6].
77 *CLC v CLB* [2023] 1 SLR 1260 at [80].
78 *CLC v CLB* [2023] 1 SLR 1260 at [80].
79 *CLC v CLB* [2023] 1 SLR 1260 at [81].
80 *CLC v CLB* [2023] 1 SLR 1260 at [82].
81 *CLC v CLB* [2023] 1 SLR 1260 at [83].

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Court of Appeal noted that the husband was primarily a stay-at-home investor whose income during the marriage was derived from various accounts traceable to the Inheritance Moneys and the Disputed Assets.[82]

17.27 The wife's case was that the funds in the Disputed Assets were mixed with the husband's investments during the marriage and the UOB joint bank account. However, the Court of Appeal noted that both the husband's investments and the funds in the UOB joint account were substantially derived from the Inheritance Moneys. This was not seriously disputed by the wife.[83] As far as tracing was concerned, the wife also did not dispute that the Inheritance Moneys had flowed into, *inter alia*, the UOB joint bank account and the Disputed Assets. The wife's key contention was that the moneys in the Disputed Assets and an Australian bank account which the husband claimed was a pre-marital asset ("ANZ-55") were treated and dealt with as part of the family estate.[84]

17.28 Turning to the application of the legal principles on the donee spouse's intention in dealing with assets acquired by gift or inheritance during the marriage, the Court of Appeal found that the husband did demonstrate a clear and unambiguous intention to treat the Disputed Assets and ANZ-55 as part of the matrimonial pool.[85] The husband's intentions were evinced by his numerous correspondences with the wife during the marriage referring to his assets acquired by gifts or inheritance as part of the family estate,[86] and the fact that he had placed some of the Inheritance Moneys into the UOB joint bank account.[87] In this regard, the Court of Appeal held that a rebuttable presumption arises when a spouse places money derived from non-matrimonial assets into a joint account with the other spouse that both of them can access without restriction. It is presumed that the transferor spouse intends to share the moneys with the other spouse, unless the transferor spouse can explain the reason for the arrangement and rebut the presumption.[88]

17.29 Rather than intending to share the moneys, the husband in *CLC* alleged that he had deposited the Inheritance Moneys into the UOB joint bank account only to provide for the family if anything untoward were to happen to him. The Court of Appeal rejected his explanation and opined that such a concern could have been addressed by making a will. The presumption that the husband intended to share the moneys with the

82 *CLC v CLB* [2023] 1 SLR 1260 at [79].
83 *CLC v CLB* [2023] 1 SLR 1260 at [85].
84 *CLC v CLB* [2023] 1 SLR 1260 at [87].
85 *CLC v CLB* [2023] 1 SLR 1260 at [88].
86 *CLC v CLB* [2023] 1 SLR 1260 at [88]–[90].
87 *CLC v CLB* [2023] 1 SLR 1260 at [91].
88 *CLC v CLB* [2023] 1 SLR 1260 at [92].

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wife was also supported by his numerous correspondences with the wife that consistently referred to their total wealth.[89] The husband's further actions of leaving a substantial amount of the [H] Money in the UOB joint bank account until 2018, when the marriage broke down (despite intermittently withdrawing certain sums to acquire the Husband's Other Investments), reinforced the Court of Appeal's findings with regard to the husband's intentions to share the moneys.[90]

17.30 As part of his case, the husband claimed that he had a pre-marital bank account ("DBS-3") that was used as a conduit from which he could draw on his assets derived from the Inheritance Moneys, to apply towards the family's expenses and his personal expenses. However, the Court of Appeal found that the husband was unable to provide evidence to support his claim. To the contrary, the husband's use of DBS-3 was consistent with his treatment of his assets as part of the family estate in his correspondences. Money from DBS-3 was used for the benefit of the family, including paying for the purchase and renovation works of the parties' Singapore properties that were in the wife's sole name.[91] The husband had similarly applied funds in ANZ-55 (that were derived from his and the children's shares of the Australian Inheritance) towards the family's expenses when they visited Perth annually. While such use would not suffice to transform a pre-marital asset into a matrimonial asset under the ordinary usage or enjoyment limb in s 112(10)(*a*)(i) of the Women's Charter 1961, the manner in which the husband expended the moneys in ANZ-55 was consistent with the husband's intention that the Inheritance Moneys were incorporated into the family estate.[92] A further instance of the husband treating his assets as part of the family estate was when he pooled his resources together with the wife to purchase the second property in Singapore in her name.[93]

17.31 In light of the above, the Court of Appeal concluded that the husband had clearly and unambiguously treated the Inheritance Moneys, which were now in the form of the Disputed Assets and ANZ-55, as part of the family estate. Accordingly, the bank accounts and investment portfolios making up the Disputed Assets and ANZ-55 were included in the pool of matrimonial assets for division. Given that neither party had appealed against the exclusion of the Husband's Other Assets from the matrimonial pool, the Court of Appeal did not adjust the Appellate Division's decision in respect of those.[94] For completeness, the Court

89 *CLC v CLB* [2023] 1 SLR 1260 at [92].
90 *CLC v CLB* [2023] 1 SLR 1260 at [93].
91 *CLC v CLB* [2023] 1 SLR 1260 at [94].
92 *CLC v CLB* [2023] 1 SLR 1260 at [95].
93 *CLC v CLB* [2023] 1 SLR 1260 at [96].
94 *CLC v CLB* [2023] 1 SLR 1260 at [97].

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of Appeal affirmed the HCF's calculation of the average ratio based on the structured approach to division set out in *ANJ* (the "*ANJ* Structured Approach"). It held that the total pool of matrimonial assets valued at $12,670,096.88 was to be divided equally between the parties.[95]

17.32 *CLC* is a seminal decision in the area of characterisation of matrimonial assets. The rare family law case adjudicated by the Court of Appeal clarified the law on assets acquired by gifts and inheritance, and when these would be transformed into part of the matrimonial pool. The Court of Appeal's emphasis on the intentions of the parties in dealing with gifted or inherited assets during the marriage may be applied to a broad range of scenarios in connection with identifying matrimonial assets: (a) the incorporation of third-party gifts or inheritance into the family estate thereby transforming them into matrimonial assets; (b) the ringfencing of third-party gifts or inheritance so that they continue to retain their original nature as non-matrimonial assets; (c) the status of pure inter-spousal gifts acquired by a spouse's efforts during the marriage; and (d) the status of inter-spousal re-gifts originally acquired from a third-party by way of gift or inheritance.[96]

17.33 Specifically, *CLC* also made clear that co-mingling has both evidentiary and legal effects. For evidentiary and tracing purposes, co-mingling non-matrimonial assets acquired by gift or inheritance with matrimonial assets (without proper accounting or record keeping) may result in the non-matrimonial assets being no longer separately identifiable from the matrimonial assets.[97] In such a situation, the court may find that the co-mingled assets are part of the matrimonial pool and liable for division.[98] As for the *legal* effect of co-mingling, co-mingling non-matrimonial assets acquired by gift or inheritance in a joint bank account that the other spouse has independent access to presumes that the transferor spouse may have intended to incorporate these assets into the family estate.[99] In *CLC*, this intention was further supported by the husband's conduct during the marriage, such as consistently referring to assets acquired by gift or inheritance as part of the family's total wealth in correspondences with the wife, using these assets to acquire property in the wife's name, and applying these assets toward the family's expenses.[100] As a result of the husband's clear and unambiguous intention to treat

95 *CLC v CLB* [2023] 1 SLR 1260 at [98].
96 *CLC v CLB* [2023] 1 SLR 1260 at [50] and [51].
97 *CLC v CLB* [2023] 1 SLR 1260 at [71]–[76].
98 *CLC v CLB* [2023] 1 SLR 1260 at [72].
99 *CLC v CLB* [2023] 1 SLR 1260 at [92].
100 *CLC v CLB* [2023] 1 SLR 1260 at [92]–[97].

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these assets as part of the family estate, they were found to form part of the matrimonial pool.[101]

17.34 Although the facts of *CLC* solely concerned the husband co-mingling his assets acquired by gifts and inheritance and applying them for the family's benefit, the Court of Appeal coherently analysed the relevant cases on spousal intentions in the context of interspousal gifts. This is a welcome development that provides the required guidance from the apex court to an area that was inherently complicated. Apart from the statutorily enshrined limbs of substantial improvement and use as a matrimonial home set out in s 112(10), giving legal effect to spousal intentions provides an additional way to transform gifted or inherited assets and include at least a part of the asset into the pool of matrimonial assets.[102] Such an approach moves away from a rigid application of s 112(10). It is likely to compensate for certain difficulties that may arise in interpreting and/or applying the existing limbs, thereby promoting just and equitable outcomes.

17.35 Generally, the move to give legal effect to spousal intentions when dealing with assets during the marriage is consistent with the ideology of marriage as an equal co-operative partnership of different efforts, where spouses pool their resources for the good of the marriage and family as a whole. The courts have readily applied the legal principles that the Court of Appeal laid down in *CLC*, as seen in the cases outlined below.

17.36 In *WFE*, the Appellate Division applied the principles in *CLC* in the context of the *ANJ* Structured Approach. The first issue on tracing related to whether holdings amounting to $3,007,166.98 in the wife's Central Depository Account ("CDP Account") could be traced to the wife's inheritance moneys.[103] The second was whether the HCF correctly determined the parties' direct contributions to their matrimonial home at Toh Tuck Walk (the "Toh Tuck Property")[104] in light of the finding that some of the purchase moneys originated from the wife's inheritance.[105]

17.37 With regard to the tracing of the holdings in the wife's CDP Account, the Appellate Division held that the wife failed to satisfy her burden of proving that the original source of the shares were her inheritance moneys.[106] As canvassed above,[107] the *CLC* approach requires

101 *CLC v CLB* [2023] 1 SLR 1260 at [97].
102 *CLC v CLB* [2023] 1 SLR 1260 at [40], [49] and [64].
103 *WFE v WFF* [2023] 1 SLR 1524 at [6] and [17].
104 *WFE v WFF* [2023] 1 SLR 1524 at [7] and [8].
105 *WFE v WFF* [2023] 1 SLR 1524 at [40]–[42].
106 *WFE v WFF* [2023] 1 SLR 1524 at [17].
107 See para 17.24 above.

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the party claiming that an asset is acquired by inheritance to adduce sufficient evidence to show the linkage between the original asset and the currently owned asset. In the case of moneys in a bank account, this would include providing evidence on the sources of contribution.[108] The wife in *WFE* claimed that she had invested the full sum of her inheritance into holdings in her CDP Account,[109] and tried to bolster her case on appeal by adducing documents that purportedly showed sales proceeds from inherited properties that also contributed to the holdings.[110] The Appellate Division noted that the wife's reliance on the latest documents was surprisingly belated given that they would have significantly strengthened her case. In any event, there were unaccounted gaps in the wife's case, and no evidence that the wife purchased the holdings in her CDP Account using inheritance moneys.[111]

17.38 The Appellate Division also rejected the wife's argument that her income alone could not have accumulated holdings in the value of $3,007,166.98 in her CDP Account.[112] It reasoned that other factors such as investment growth could also affect the value of holdings in the CDP Account.[113] Further, the wife's reasons as to her limited earnings were unpersuasive.[114] She had demonstrated robust earning capacity during the period of marriage when numerous share purchases were made.[115] The Appellate Division differentiated the wife's earning capacity from that of the husband in *CLC* who had only worked in a full-time job for about two years in the marriage, and largely relied on his inheritance and gifts to earn income during the marriage.[116] The Appellate Division concluded this issue by observing that while the court may draw reasonable inferences from evidence that is less precise to do justice to the parties, there was no basis to suggest that the court should prefer the inference that the wife's inheritance moneys went towards her holdings in the CDP Account, over the inference that the inheritance moneys were expended for other purposes such as meeting her or the family's needs, or acquiring other assets.[117]

17.39 As for the issue of the parties' direct financial contributions towards the Toh Tuck Property, the Appellate Division analysed the

108 *WFE v WFF* [2023] 1 SLR 1524 at [20].
109 *WFE v WFF* [2023] 1 SLR 1524 at [20].
110 *WFE v WFF* [2023] 1 SLR 1524 at [4].
111 *WFE v WFF* [2023] 1 SLR 1524 at [20] and [21].
112 *WFE v WFF* [2023] 1 SLR 1524 at [22].
113 *WFE v WFF* [2023] 1 SLR 1524 at [23].
114 *WFE v WFF* [2023] 1 SLR 1524 at [24].
115 *WFE v WFF* [2023] 1 SLR 1524 at [25].
116 *WFE v WFF* [2023] 1 SLR 1524 at [25].
117 *WFE v WFF* [2023] 1 SLR 1524 at [26].

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four sources of funds that went towards acquisition of the property for the sum of $3,200,000 in 2012: (a) $220,000 from the sales proceeds of a property at Novena Lodge in the wife's sole name (the "Novena Lodge Proceeds"); (b) $2,031,353.86 from a Merrill Lynch joint account in the name of the parties (the "Merrill Lynch Funds"); (c) $580,156.92 from the sales proceeds of the parties' previous home at Pulasan Road; and (d) $259,665 from the parties' joint bank account for renovation of the Toh Tuck Property.[118] Of particular relevance were the Merrill Lynch Funds and the Novena Lodge Proceeds, that the HCF attributed to both parties equally as their direct financial contributions. This attribution was a result of the wife's intention to share funds with the husband that she had financially accumulated during the marriage.[119]

17.40 It was undisputed that the Merrill Lynch Funds originated from shares that the wife inherited from her late father.[120] Tracing-wise, the shares were transferred to the parties' joint Merrill Lynch account and kept there for eight years.[121] They were then liquidated, and the proceeds were transferred to the parties' joint bank account ending 0925. Shortly after, the proceeds were applied to the purchase of the Toh Tuck Property.[122]

17.41 The Appellate Division held that the Merrill Lynch Funds ought to have been credited to the wife solely in terms of her direct financial contributions, instead of to both parties equally.[123] The HCF credited the Merrill Lynch Funds equally to both parties as their direct financial contributions, based on the wife's intention to share the funds with the husband evinced by the transfers of the funds into the parties' joint accounts.[124] However, the Appellate Division noted that the wife's intention to share the Merrill Lynch funds (that originated as her inheritance) was only relevant when *identifying* matrimonial assets and determining if the Merrill Lynch Funds were part of the matrimonial pool.[125] This is distinct from determining a party's direct financial contributions towards specific matrimonial assets when *dividing* the matrimonial assets.[126] The Appellate Division made clear that the notion of sharing does not feature when determining the parties' direct financial contributions under the *ANJ* Structured Approach.[127] The Merrill Lynch Funds originated from

118 *WFE v WFF* [2023] 1 SLR 1524 at [7].
119 *WFE v WFF* [2023] 1 SLR 1524 at [41].
120 *WFE v WFF* [2023] 1 SLR 1524 at [40] and [42].
121 *WFE v WFF* [2023] 1 SLR 1524 at [43].
122 *WFE v WFF* [2023] 1 SLR 1524 at [40].
123 *WFE v WFF* [2023] 1 SLR 1524 at [44].
124 *WFE v WFF* [2023] 1 SLR 1524 at [41].
125 *WFE v WFF* [2023] 1 SLR 1524 at [44] and [48].
126 *WFE v WFF* [2023] 1 SLR 1524 at [44].
127 *WFE v WFF* [2023] 1 SLR 1524 at [48].

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the wife, and should thus be fully attributed to her as part of her direct financial contributions.

17.42 In the present case, the Merrill Lynch Funds were utilised to purchase the Toh Tuck Property; the parties were not arguing to exclude a portion of the equity of the Toh Tuck Property from the matrimonial pool as a result of it being traceable to the Merrill Lynch Funds stemming from the wife's inheritance. In other words, the legal issue of whether the Merrill Lynch Funds and/or part of the Toh Tuck Property were to be characterised as matrimonial assets and included in the matrimonial pool did not arise, and the wife's intention to share the Merrill Lynch Funds with the husband was therefore not relevant.[128]

17.43 In this connection, the Appellate Division drew a clear distinction between sharing and gifting. It cited *CLC*, where the Court of Appeal held that "clear and unambiguous" spousal intentions relating to third-party gifts or inheritance could give rise to different legal effects (as above).[129] It is only where the donee spouse has the intention of *sharing* a third-party gift with the other spouse or the family, would there be the legal effect of that gift being included in the matrimonial pool and liable for division.[130] In line with *CLC*, gifting the third-party gift to the other spouse may result in the gift being excluded from the pool of matrimonial assets under the Exclusion Clause.

17.44 In view of the vastly different legal effects that could ensue, it would be necessary to distinguish a donee spouse's intention to *gift* the third-party gift to the other spouse, and the donee spouse's intention to *share* the third-party gift with the other spouse or family.[131] Unlike *CLC*, the wife in *WFE* applied the Merrill Lynch Funds towards the Toh Tuck Property, which was a matrimonial asset. The facts of *WFE* suggest that the wife intended to share (and not gift) the Merrill Lynch Funds with the husband. The Appellate Division reiterated that the wife's intention to share the funds would not affect the finding that she alone was to be fully credited for the direct financial contributions in respect of the Merrill Lynch Funds being applied towards purchase of the Toh Tuck Property.[132]

17.45 The issue of the parties' direct financial contributions towards the Novena Lodge Proceeds also involved the court applying legal principles laid down in *CLC*. The Novena Lodge Proceeds originated from the sale

128 *WFE v WFF* [2023] 1 SLR 1524 at [44].
129 See para 17.14 above.
130 *WFE v WFF* [2023] 1 SLR 1524 at [45].
131 *WFE v WFF* [2023] 1 SLR 1524 at [46].
132 *WFE v WFF* [2023] 1 SLR 1524 at [47].

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of a property at Novena Lodge that had been purchased by the wife in her sole name one year before the marriage, and that was sold 14 years later. The wife transferred the Novena Lodge Proceeds from her personal bank account to the parties' joint bank account ending 0925 shortly before the purchase and renovation of the Toh Tuck Property.[133] The HCF similarly attributed the direct financial contributions for the Novena Lodge Proceeds equally between the parties, on the basis that the wife intended to share the proceeds with the husband. It reasoned that the wife's act of transferring the Novena Lodge Proceeds into the parties' joint account led to a rebuttable presumption that the wife intended to share the proceeds, and thus attributed equal direct contributions to the parties in accordance with each party's beneficial ownership of the proceeds.[134]

17.46 It would appear that the HCF was attempting to apply the rebuttable presumption in *CLC*, where it was held that the transfer of non-matrimonial assets into a joint account that could be separately operated by each spouse would lead to a rebuttable presumption that the transferor spouse intended to share the moneys with the other spouse.[135] The legal effect of establishing such an intention would be that the shared moneys would form part of the matrimonial pool. The Appellate Division clarified that this is distinct from the rebuttable presumption having the effect of the shared moneys *belonging* to both the spouses equally. *Sharing* the moneys with the other spouse is not tantamount to *gifting* the moneys to the other spouse, in which case the gift would be excluded from the matrimonial pool. The Appellate Division reiterated that spousal intentions were relevant at the stage of *identifying* non-matrimonial assets that ought to be included as part of the matrimonial pool, and not at the stage of *dividing* matrimonial assets, which would involve attributing the parties' direct financial contributions to the assets.[136] In the present case, it was undisputed that the Novena Lodge Proceeds, having been used to acquire the Toh Tuck Property (that is, a matrimonial asset), were part of the matrimonial pool. It was clear that the wife had solely contributed to the Novena Lodge Proceeds, and therefore the direct financial contributions towards the Novena Lodge proceeds ought to be fully credited to her.[137]

17.47 In *CVC*, the Appellate Division had another opportunity to consider the legal principles in *CLC* on spousal intentions to share non-matrimonial assets in the context of determining the parties' direct

133 *WFE v WFF* [2023] 1 SLR 1524 at [51].
134 *WFE v WFF* [2023] 1 SLR 1524 at [52].
135 *WFE v WFF* [2023] 1 SLR 1524 at [53] and [54].
136 *WFE v WFF* [2023] 1 SLR 1524 at [55].
137 *WFE v WFF* [2023] 1 SLR 1524 at [56].

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financial contributions.[138] This question arose in relation to a transfer of $400,000 that the husband had made to the wife in April 2008 (the "2008 Transfer"), part of which was found to have been applied by the wife towards the purchase of a property at Bishan (the "Bishan Payment"). In the proceedings, the wife took the position that the husband's transfer to her was a gift,[139] whereas the husband argued that it was a loan.[140] The HCF accepted that the transfer was a loan, and attributed the Bishan Payment to the husband as his direct financial contributions towards the property.[141] After assessing the evidence, the Appellate Division was satisfied that the Bishan Payment could be traced to the 2008 Transfer.[142] It then proceeded to consider the nature of the 2008 Transfer by analysing the intentions of the spouses.

17.48 The Appellate Division noted that inter-spousal transfers may be made for myriad purposes, as observed in *CLC*. In particular, there was a crucial distinction between pure gifts (divesting oneself of all interest in the asset), and mere transfers made for other reasons such as convenience, or with an intention to share the enjoyment of the moneys with the other spouse.[143] In the present case, the husband made the 2008 Transfer with the intention of *sharing* the funds with the wife.[144] At the early stage of the couple's marriage, it was reasonable to expect that the parties would be willing to apply their joint efforts in building up their marriage partnership to grow their marital assets. At that time, the wife was pregnant with their first child and the husband had recently received substantial funds from the sale of his family's property in December 2007.[145] There was no contemporaneous evidence to suggest that the husband had indeed treated the 2008 Transfer as a loan, sought repayment, or referred to the transferred sum as a loan in communications.[146]

138 For completeness, the Appellate Division in *CVC v CVB* [2023] SGHC(A) 28 also clarified the law on the repayment of Central Provident Fund ("CPF") moneys to the parties' respective CPF accounts pursuant to proceeds of sale at [105]–[107]. It held that there were two possible approaches for the CPF moneys to be repaid: "(1) *before* dividing the sales proceeds, or (2) *after* dividing the proceeds and payments are made from each party's share of the proceeds" [emphasis in original]. The key focus is on the substantive result obtained, as the total value of moneys repaid to the parties' CPF accounts must accurately reflect the split under the final division ratio of the case.

139 *CVC v CVB* [2023] SGHC(A) 28 at [63].

140 *CVC v CVB* [2023] SGHC(A) 28 at [60]–[62].

141 *CVC v CVB* [2023] SGHC(A) 28 at [60]–[62].

142 *CVC v CVB* [2023] SGHC(A) 28 at [70].

143 *CVC v CVB* [2023] SGHC(A) 28 at [72] and [73].

144 *CVC v CVB* [2023] SGHC(A) 28 at [77].

145 *CVC v CVB* [2023] SGHC(A) 28 at [76].

146 *CVC v CVB* [2023] SGHC(A) 28 at [76].

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17.49 In fact, the evidence showed that the husband made the 2008 Transfer with the intention that the wife would invest the $400,000 sum. Returns from those investments would then be used to finance properties in the parties' joint names. That was broadly consistent with the wife's evidence on the timing of the withdrawal of the moneys (that is, one day before the exercise of the offer to purchase for the property at Bishan). The wife had also utilised the moneys on the children, the household and other related expenses. In light of this, the Appellate Division found that both spouses regarded the $400,000 sum as moneys to be applied towards acquiring joint assets and various family-related expenses.[147] In conclusion, the Appellate Division held that the husband intended to share the $400,000 sum with the wife and/or family,[148] and that the Bishan Payment made by the wife would be attributed as his direct financial contributions to the property at Bishan.[149]

17.50 In addition to the Appellate Division, the HCF had a relevant opportunity to consider the application of the legal principles in *CLC*.[150] In *WQP*, the HCF dealt with the issue of whether a portion of a property in Los Angeles, California in both the parties' names (the "LA Apartment") and a portion of the balance in the husband's bank accounts in Hong Kong (the "HK Accounts") could be attributed to pre-marital funds and therefore excluded from the matrimonial pool. The husband relied on the tracing principles laid down in *CLC* to argue that sufficiently detailed accounting may show that the pre-marital assets had retained their character, thereby leading to the alleged exclusion of the current assets that originated from the pre-marital assets.[151]

17.51 In accordance with the *CLC* principles, the husband had to fulfil his burden of proof by providing sufficient evidence to show a linkage between the pre-marital assets and the LA Apartment.[152] The HCF first

147 *CVC v CVB* [2023] SGHC(A) 28 at [77].
148 *CVC v CVB* [2023] SGHC(A) 28 at [78].
149 *CVC v CVB* [2023] SGHC(A) 28 at [79].
150 See also *VXM v VXN* [2023] SGHCF 39 at [32]–[34]. The General Division of the High Court (Family Division) ("HCF") held that interspousal gifts of luxury items from the husband to the wife during the marriage are matrimonial assets, and should not be excluded from the matrimonial pool. Even though the luxury items were for women, the HCF was of the view that that did not necessarily mean that the husband had a "clear and unequivocal" intention to divest his interests in the assets, as per the legal principles laid down in *CLC v CLB* [2023] 1 SLR 1260. The HCF observed that allowing divestment on such a basis would be setting the bar too low in finding that a spousal gift was a complete divestment of the donor's interest in the asset. It further observed that there had to be other evidence that supported the donor spouse's "clear and unequivocal" intention to divest his interests.
151 *WQP v WQQ* [2023] SGHCF 49 at [30].
152 *WQP v WQQ* [2023] SGHCF 49 at [32].

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noted that the co-mingling that occurred on the facts of *CLC* was the co-mingling of matrimonial funds with non-matrimonial assets *acquired by gifts and inheritance*, and not *pre-marital* assets like in the present case. It then noted that the husband had not produced any authorities or compelling reasons for why legal principles applied to gifted or inherited assets should similarly apply to pre-marital assets. Assuming that the legal effect of co-mingling pre-marital assets were to be disregarded, case law disclosed an additional evidentiary aspect whereby co-mingled pre-marital assets may no longer be separately identifiable. This would make it difficult to ascertain with certainty which moneys were disbursed from a bank account containing both types of assets.[153]

17.52 The HCF pointed out that even if it were assumed that the husband's position in respect of legal principles relating to co-mingled gifts and inheritance applied to co-mingled pre-marital assets as well, the husband's tracing methodology was fundamentally unreliable.[154] The husband's argument in respect of his HK Accounts was that he had a total amount of $7,590,759.62 attributed to pre-marital moneys and an amount of $1,245,512.00 attributable to his employment after the marriage. He then took the ratio of these amounts (that is, 7,590,759.62:1,245,512.00, which could be simplified to 84:14), and broadly applied this ratio to argue that only 14% of the HK Accounts and 14% of the LA Apartment that he claimed was fully purchased in cash from the HK Accounts, should be regarded as matrimonial assets and added to the matrimonial pool.[155]

17.53 The HCF rejected the husband's methodology. It noted that the husband's methodology was premised on the amount of pre-marital income being a specific fraction of the total deposits in the HK Accounts from the date of the marriage (that is, 5 May 2010) to the present. In order to prove the accuracy of his ratio, the husband would have to prove that the two sums relied on for pre-marital funds and matrimonial funds were exhaustive of all incoming deposits from the date of the marriage to the present. The HCF found that the husband's evidence was insufficient as he had only provided bank statements from 2010 alone, and statements showing outflows from the HK Accounts for specific property and share transactions associated with his narrative.[156]

17.54 As the husband had failed to produce bank statements from the period of 2011 onwards, the HCF held that the husband failed to show on a balance of probabilities that the alleged pre-marital sum of

153 *WQP v WQQ* [2023] SGHCF 49 at [33].
154 *WQP v WQQ* [2023] SGHCF 49 at [34].
155 *WQP v WQQ* [2023] SGHCF 49 at [28] and [29].
156 *WQP v WQQ* [2023] SGHCF 49 at [34].

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$7,590,759.62 represented 86% of all incoming funds that had ever entered the HK Accounts. In light of this, the HCF held that all the funds in the HK Accounts should be included in the matrimonial pool.[157] There was supplementary evidence that the husband treated outgoings from the HK Accounts as routinely constituting contributions towards the marriage and family expenses, which further supplemented the finding that the co-mingled funds had been incorporated into the pool of matrimonial assets.[158] Likewise with the LA Apartment, there was no basis to accept that 14% of its value should be excluded from the matrimonial pool. The LA Apartment was registered in the parties' joint names, which indicated a *prima facie* intention to incorporate moneys applied towards its purchase into the family estate.[159]

17.55 Overall, the Court of Appeal's approach in *CLC* involving the analysis of spousal intentions when identifying matrimonial assets strikes a suitable balance between fairness and principle. It introduces a degree of flexibility that allows the court to realistically take into account the myriad ways in which spouses deal with non-matrimonial assets during the marriage, and upholds the spirit of co-operation and sharing that often features in marriages. It remains an open question whether the Court of Appeal's spousal intentions analysis may apply to transform pre-marital assets, in addition to gifted or inherited assets. Both pre-marital assets and gifts or inheritance lack certain connections to the marriage that quintessential matrimonial assets possess (that is, acquired by either or both *spouses' efforts* made *during* the marriage).[160] On the one hand, pre-marital assets are acquired by a spouse's personal efforts, but these efforts were made before the marriage. On the other hand, gifts and inheritance may be acquired during the marriage, but through neither of the spouses' efforts.[161] It is arguable that the donee/acquiring spouse's intentions may sufficiently connect both types of non-matrimonial assets to the marriage, such that at least a part of the asset is transformed into a matrimonial asset.[162] Purposively applying the spousal intentions analysis to pre-marital assets also promotes internal

157 *WQP v WQQ* [2023] SGHCF 49 at [34].
158 *WQP v WQQ* [2023] SGHCF 49 at [35].
159 *WQP v WQQ* [2023] SGHCF 49 at [36] and [37].
160 *CLC v CLB* [2023] 1 SLR 1260 at [40]. Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at para 16.041.
161 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at paras 16.042, 16.099 and 16.100.
162 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at paras 16.102–16.104.

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consistency within the transformation limbs encapsulated in s 112(10) of the Women's Charter 1961.[163]

B. Division of matrimonial assets

17.56 Cases adjudicated by the HCF in 2023 illustrate how the *TNL* Approach is presently applied by the courts. The courts have generally adopted the observations in *TOF v TOE*[164] ("*TOF*") on the *TNL* Approach, where the Court of Appeal stated that division in *long* single-income marriages should generally tend towards equal division.[165] The Court of Appeal also appeared to suggest that the 19-year single-income marriage in *TOF* was a long one.[166] In the spirit of both *TOF* and *TNL*, the courts strove to place financial and non-financial contributions to the marriage on as equal a footing as possible, bearing in mind the exception where the matrimonial pools are exceptionally large and amassed by a single spouse's efforts.

17.57 In *WPN v WPO*[167] ("*WPN*"), the HCF applied the *TNL* Approach in a 30-year marriage with two children. The wife was a homemaker for most of the marriage, and the husband had been working throughout.[168] The parties distributed their roles along traditional lines, with the husband being the primary breadwinner and the wife being the primary caregiver of the children.[169] Both parties agreed that the *ANJ* Structured Approach should not apply[170] in dividing the matrimonial pool that amounted to $31,259,918.62.[171]

17.58 The wife relied on the *TNL* Approach mentioned in *TOF* and the case of *UKA v UKB*[172] (with a matrimonial pool of $34,326,426 that was

163 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at paras 16.106–16.114.
164 [2021] 2 SLR 976.
165 *TOF v TOE* [2021] 2 SLR 976 at [63]. Do note that the Appellate Division in *DBA v DBB* [2024] 1 SLR 459 made certain clarifications in respect of the *TNL v TNK* [2017] 1 SLR 609 approach. It mentioned at [20] that: "While *TNL* had held at [48] that in '*long* Single-Income Marriages, the precedent cases show that our courts tend towards an equal division of the matrimonial assets', there is no immutable rule requiring that each party in a long single-income marriage should receive a 50% share. The trends in precedent cases as well as the specific facts of each case must be considered." [emphasis in original]
166 *TOF v TOE* [2021] 2 SLR 976 at [138].
167 [2023] SGHCF 38.
168 *WPN v WPO* [2023] SGHCF 38 at [3].
169 *WPN v WPO* [2023] SGHCF 38 at [82].
170 *WPN v WPO* [2023] SGHCF 38 at [82].
171 *WPN v WPO* [2023] SGHCF 38 at [80].
172 [2018] 4 SLR 779.

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equally split) to argue that she ought to be awarded equal division in the present long single-income marriage.[173] On the other hand, the husband referred to the classification methodology applied in *TNC v TND*,[174] arguing for the pool of matrimonial assets to be segregated into those acquired prior to the marriage breaking down in 2010 and those acquired after. He contended that the massive increase in matrimonial assets after 2010 was due solely to his efforts, and that a higher percentage of this group of assets should be attributed to him.[175]

17.59 The HCF assessed the evidence and held that the marriage had not broken down in 2010, in accordance with the legal principles in *Oh Choon v Lee Siew Lin*[176] ("*Oh Choon*"). The Court of Appeal in *Oh Choon* observed that continued involvement and provision was suggestive of a continuous (albeit clearly attenuated) relationship between the parties throughout. In light of this, there was no *evidential* basis for the husband's proposed segregation of the assets in *WPN*.[177] Further, even if the marriage did break down in 2010, the wife's continued indirect contributions in the forms of homemaking and caretaking allowed the husband to focus on amassing assets after 2010, and should not be minimised.[178]

17.60 As for the *legal* basis of the husband's proposed segregation, the HCF referred to *TOF* and acknowledged that the appropriate approach to adopt for asset division in long single-income marriages was to tend towards equal division.[179] The HCF noted that the husband's proposed segregation of assets was based on the *ANJ* Structured Approach and would greatly disadvantage the wife.[180] Under the *ANJ* Approach, he would be accorded almost all of the direct financial contributions and a sizeable proportion of the indirect financial contributions as a result of being the sole breadwinner. This would militate against the *TNL* Approach that aimed to recognise non-financial contributions on an equal footing as financial contributions, as both roles were fundamental to the marital partnership.[181]

17.61 In light of the above, the HCF applied the *TNL* Approach and considered the contributions that the parties made to the marriage. While the HCF earlier acknowledged the observations made in *TOF*, it

173 *WPN v WPO* [2023] SGHCF 38 at [84].
174 [2016] 3 SLR 1172.
175 *WPN v WPO* [2023] SGHCF 38 at [87].
176 [2014] 1 SLR 629.
177 *WPN v WPO* [2023] SGHCF 38 at [95].
178 *WPN v WPO* [2023] SGHCF 38 at [96].
179 *WPN v WPO* [2023] SGHCF 38 at [99].
180 *WPN v WPO* [2023] SGHCF 38 at [100] and [101].
181 *WPN v WPO* [2023] SGHCF 38 at [101] and [102].

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cautioned that those observations were based on a general position and that the applicable ratio of division should still be determined pursuant to the facts of each case.[182] In the present case, the husband had made most of the financial contributions to the matrimonial assets, whereas the wife had made most of the non-financial contributions to the family. Taking a broad-brush approach and according equal weightage to financial and non-financial contributions, the HCF held that equal division would be just and equitable on the facts.[183]

17.62 The HCF then proceeded to consider whether to deviate from equal division on the basis that the matrimonial pool was sizeable and amassed by the husband's sole efforts, similar to the situation in *Yeo Chong Lin v Tay Ang Choon Nancy*[184] ("*Yeo Chong Lin*"). The HCF held that the matrimonial pool of $31.3m in the present case was sizeable, but remained distinguishable from the exceptionally large pool of $69m in *Yeo Chong Lin*. It followed that the size of the pool in *WPN* did not provide a sufficient basis to depart from the general tendency towards equal division in long single-income cases.

17.63 The HCF similarly strove to give due recognition to the homemaker wife's efforts in *WOS v WOT*[185] ("*WOS*"). There, it applied the *TNL* Approach in a 20-year marriage where the wife was a homemaker and caretaker of the child, and the husband worked as a businessman throughout the marriage.[186] The parties lived separately during the second half of the marriage, which led to the husband contending that the operative date for division of the matrimonial assets ought to be the date of separation, instead of the date that interim judgment ("IJ") was granted. The difference in the operative date for division was significant, as the value of the assets varied between $20m and $3m depending on which date was applicable.[187]

17.64 As a starting point, the HCF referred to *ARY v ARX*,[188] where the Court of Appeal held that the IJ date should be the default operative date for identifying assets to be included in the matrimonial pool. This is because of the legal significance of the IJ that puts an end to the marriage contract, and indicates that the parties no longer intend to jointly accumulate assets as a married partnership.[189] Therefore, if an

182 *WPN v WPO* [2023] SGHCF 38 at [103].
183 *WPN v WPO* [2023] SGHCF 38 at [104].
184 [2011] 2 SLR 1157.
185 [2023] SGHCF 36.
186 *WOS v WOT* [2023] SGHCF 36 at [1].
187 *WOS v WOT* [2023] SGHCF 36 at [2].
188 [2016] 2 SLR 686.
189 *WOS v WOT* [2023] SGHCF 36 at [3].

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operative date prior to the IJ date were to be considered, it would have to be one that shows that the parties had a mutual intention to "put an end to their marriage contract" and "no longer … participate in the joint accumulation of matrimonial assets".[190]

17.65 Taking into account the evidence, the HCF held that the husband had not shown that the marriage had ended on the date of alleged separation.[191] In fact, the circumstances surrounding the husband leaving the matrimonial home showed that he was hopeful that the marriage would improve.[192] Citing *Oh Choon*, the HCF noted that the date that a party leaves the matrimonial home will not, without more, be accepted as a sign that the marriage ended on that date.[193] Parties could have separated for reasons other than the mutual end of the marriage. For instance, one party may require space to find new breath and revive the marriage, or may be unilaterally hoping for the marital relationship to improve.[194] In the present case, the evidence also showed that the husband had continued with the responsibility of caring for the wife and child even up to a decade after leaving the matrimonial home.[195] In light of this, the HCF held that the default position of the operative date being the IJ date was applicable.[196]

17.66 As for the ratio for division, the HCF found that the 20-year marriage was a long single-income one that justified the application of the *TNL* Approach.[197] It rejected the husband's position that the court's assessment of the parties' contributions should be limited to the first half of the marriage (that is, prior to him leaving the matrimonial home). The husband's position overlooked the wife's role as the sole caregiver of the child during the second half of the marriage, and would be unfair and inequitable to the wife who had been a homemaker throughout the marriage.[198] In light of this, the HCF held that it would be just and equitable to award an equal share of the matrimonial assets to each party as a starting point.[199] The HCF then considered whether the equal ratio for division should be adjusted in favour of the husband to account for his sole effort in building up an exceptionally large matrimonial pool. It found that the matrimonial pool of $20,055,159.88 in the present case

190 *WOS v WOT* [2023] SGHCF 36 at [3] and [10].
191 *WOS v WOT* [2023] SGHCF 36 at [7].
192 *WOS v WOT* [2023] SGHCF 36 at [9].
193 *WOS v WOT* [2023] SGHCF 36 at [8].
194 *WOS v WOT* [2023] SGHCF 36 at [10].
195 *WOS v WOT* [2023] SGHCF 36 at [11].
196 *WOS v WOT* [2023] SGHCF 36 at [12].
197 *WOS v WOT* [2023] SGHCF 36 at [44].
198 *WOS v WOT* [2023] SGHCF 36 at [44].
199 *WOS v WOT* [2023] SGHCF 36 at [45].

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was sufficiently large for such an adjustment to be made, and adjusted the division ratio to 60:40, in favour of the husband.[200]

17.67 As a general observation, it would appear that the division approach mentioned in *TOF*, where the Court of Appeal stated that "courts should generally tend toward – though they should by no means be restricted to – an equal division of the matrimonial assets" in *long* single-income marriages, had a significant impact on the manner in which divorcing parties put forth their cases on division. Given that the Court of Appeal made these observations in the context of a 19-year long marriage (shorter than the illustrations of long single-income marriages of at least 26 years in *TNL*[201]),[202] it became crucial to determine what would be considered a "long" single-income marriage in which the *TNL* Approach should be applied. Based on *WOS*, it would appear that a single-income marriage of 20 years in length would suffice. Another key determinant would be whether a marriage of such length or more should be classified as a single- or dual-income one. In this connection, cases dealing with how single- and dual-income marriages should be classified have emerged in the HCF.[203]

17.68 The most prominent case in 2023 on the distinction between a single- and dual-income marriage is *WQR v WQS*[204] ("*WQR*"). *WQR* involved a 29-year marriage with two children.[205] The wife worked in a bank for over 20 years and drew a gross monthly income of approximately $30,000, with other renumeration in the forms of shares and dividends from the bank.[206] The husband was self-employed and ran a software development business under company [E] until he retired in 2020.[207]

17.69 Preliminarily, the HCF dealt with the husband's allegations in respect of certain disputed matrimonial assets in the wife's name. The husband claimed that there existed an agreement between him and the wife's father to the effect that the husband transferred his 50% stake in company [B] to the wife's father, in exchange for her father transferring shares in companies [D] and [C] Singapore to her as consideration (the

200 *WOS v WOT* [2023] SGHCF 36 at [46].
201 *TNL v TNK* [2017] 1 SLR 609 at [48]–[52].
202 *TOF v TOE* [2021] 2 SLR 976 at [63(a)] and [138].
203 Apart from *WQR v WQS* [2023] SGHCF 41 that is analysed in detail in this chapter, *DBB v DBA* [2023] SGHCF 40 also involved the classification of a marriage as single- or dual-income one when determining which division approach to apply. The Appellate Division has since released *DBA v DBB* [2024] 1 SLR 459, which touched on the classification of single- and dual-income marriages.
204 [2023] SGHCF 41.
205 *WQR v WQS* [2023] SGHCF 41 at [4].
206 *WQR v WQS* [2023] SGHCF 41 at [2].
207 *WQR v WQS* [2023] SGHCF 41 at [3].

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"[B] Agreement").[208] However, the HCF rejected the husband's claim that the [B] Agreement existed. Not only was there a lack of documentary or direct evidence showing the existence of the [B] Agreement,[209] but the husband also undermined his credibility due to his tendency to misconstrue the wife's statements in a manner that he thought supported his case.[210] In light of this, the HCF held that the shares in companies [D] and [C] Singapore were simply gifts by the father to the wife.[211]

17.70 When considering the appropriate analytical approach to apply for division, the HCF first examined whether the marriage in *WQR* was a single- or dual-income one. Notably, the HCF observed that this distinction was significant due to the different division approaches that would apply.[212] It held that where a marriage is determined to be dual income, the appropriate approach for division would be the *ANJ* Structured Approach. On the other hand, where the marriage is a single-income one, the *ANJ* Structured Approach should not apply pursuant to *TNL*.[213]

17.71 Under the *ANJ* Structured Approach, financial contributions are given recognition at both the first and second steps when determining the ratios of the parties' direct financial contributions and indirect contributions. As a result, the working spouse may be accorded a substantial percentage under the second step due to his indirect financial contributions to the marriage. This is despite the working spouse having made little or no indirect non-financial contributions to the marriage. Such a situation unduly favours the working spouse as he can achieve substantial percentages for both his direct and indirect contributions, and causes the non-working spouse to be doubly disadvantaged. In order to ameliorate the unfairness and recognise the non-working spouse's indirect non-financial contributions, the court generally tends toward equal division in long single-income marriages, while paying heed to precedent cases and retaining the discretion to deviate from an exactly equal split.[214]

17.72 On the facts of *WQR*, the wife held full-time employment and drew a regular salary throughout the marriage. However, it was less clear whether the husband should be considered as having been employed for purposes of determining if the marriage was a single- or dual-income

208 *WQR v WQS* [2023] SGHCF 41 at [7] and [8].
209 *WQR v WQS* [2023] SGHCF 41 at [9] and [11].
210 *WQR v WQS* [2023] SGHCF 41 at [12]–[17].
211 *WQR v WQS* [2023] SGHCF 41 at [20].
212 *WQR v WQS* [2023] SGHCF 41 at [22].
213 *WQR v WQS* [2023] SGHCF 41 at [23].
214 *WQR v WQS* [2023] SGHCF 41 at [23].

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one. The HCF observed that case law suggested that the classification turned on a qualitative assessment of the roles played by each spouse in the marriage relative to each other. It interpreted the relevant case law as placing a focus on the parties' respective contributions to the marriage and the family in assessing the qualitative roles of the spouses.[215]

17.73 The wife's position was that she effectively raised and financially supported the two children alone. This included singlehandedly bearing the costs of the marriage ceremony, her pregnancies, the purchase and renovation of the parties' matrimonial home, the daily upkeep of the family and her daughters' education, allowances and family holidays. The wife further claimed that although she and her father provided financial support for several of the husband's business ventures, he would keep any earnings for himself and spend it on his mistress instead of the family. The HCF found that the husband explicitly conceded the wife's allegations in some instances, and did not seem to seriously contest the remainder.[216]

17.74 The husband's general position was that he was self-employed most of the marriage, and did not draw any salary from his companies as he was the *de facto* owner. In terms of his indirect financial contributions, he only clearly claimed to have made certain travel-related bookings for the family's overseas trips. The HCF noted that he did not seem to contest that the wife paid his credit card bills.[217] While the husband did claim that his indirect financial contributions comprised of dividends from shares in company [D] and/or company [C] Malaysia, these were not to be attributed to him as the court found that they were not transferred to the wife pursuant to the alleged [B] Agreement.[218]

17.75 In light of the above, the HCF concluded that the wife was the only spouse supporting the family financially.[219] Based on a qualitative assessment of the parties' contributions to the marriage, such a finding would weigh in favour of considering the marriage a single-income one.[220] However, the HCF was of the view that it would be more appropriate to focus on the parties' *capacities* to contribute, rather than *actual* contributions, in determining whether the marriage was a single- or dual-income one.[221] It referred to *TNL*, where the Court of Appeal defined dual-income marriages as "marriages where both spouses are working and are therefore ***able*** to make both direct and indirect financial

215 *WQR v WQS* [2023] SGHCF 41 at [24].
216 *WQR v WQS* [2023] SGHCF 41 at [24].
217 *WQR v WQS* [2023] SGHCF 41 at [25].
218 *WQR v WQS* [2023] SGHCF 41 at [25].
219 *WQR v WQS* [2023] SGHCF 41 at [25].
220 *WQR v WQS* [2023] SGHCF 41 at [25].
221 *WQR v WQS* [2023] SGHCF 41 at [26].

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contributions to the household" [emphasis in original].[222] The HCF interpreted that passage as placing a focus on whether the parties are drawing an income and therefore *able* to make financial contributions towards the family, rather than whether they *actually* contributed that income towards the family.[223]

17.76 The HCF was of the view that an earning capacity-based approach would prevent a spouse from being able to benefit from a more favourable division methodology by declining to contribute his income towards the family and rendering himself a "non-working spouse".[224] To allow such advantage to be taken would not be just and equitable, and therefore inconsistent with the spirit of *TNL*. The HCF then cited *UBM v UBN*[225] ("*UBM*"), where it emphasised that the court should not split hairs over a homemaker who had not worked at all and one that had worked intermittently in the course of a long marriage. To do so and apply the *ANJ* Structured Approach where the homemaker worked intermittently may result in a situation where the full-time homemaker may be placed in a much better position (under the *TNL* Approach) than a homemaker who had worked but brought in far less income than the main breadwinner (under the *ANJ* Structured Approach).[226] The HCF in *WQR* relied on the observations in *UBM* and commented that the court should eschew any approach that may place a spouse who can but declines to financially contribute to the family, in a better position than one who can and does in fact so contribute.[227]

17.77 In applying the earning capacity-based approach that focused on the parties' *capacities* for financial contributions rather than their *actual* financial contributions, the HCF found that the husband did in fact have some form of income that he could have contributed to the marriage, thereby establishing his earning capacity. The HCF did not accept that the husband did not draw any salary, as it was difficult to believe that a self-employed businessman could have gone unremunerated for more than 20 years when he claimed to have been awarded large contracts. The husband had also managed to afford two Malaysian properties that had a combined purchase price of slightly less than RM1,000,000, just under RM100,000 on maintenance and renovation works in respect of a condominium over slightly more than a year, and monthly expenses of approximately $1,200 per month on average.[228] The HCF further noted

222 *TNL v TNK* [2017] 1 SLR 609 at [42].
223 *WQR v WQS* [2023] SGHCF 41 at [27].
224 *WQR v WQS* [2023] SGHCF 41 at [27].
225 [2017] 4 SLR 921.
226 *WQR v WQS* [2023] SGHCF 41 at [27].
227 *WQR v WQS* [2023] SGHCF 41 at [28].
228 *WQR v WQS* [2023] SGHCF 41 at [29].

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that the husband had conceded to having other investment-based income streams, which bolstered the finding that the marriage was a dual-income one that warranted the application of the *ANJ* Structured Approach.[229]

17.78 The HCF then proceeded to apply the classification methodology to each asset or class thereof, given the circumstances of each asset and the parties' agreement that each asset ought to be considered separately from the others.[230] In doing so, it had to first determine the parties' indirect contributions ratio, as that would have to be applied consistently across each asset class.[231]

17.79 The HCF reiterated that the evidence painted a picture of a marriage where the husband had made very few indirect financial contributions to the marriage, if any at all. It also appeared that the same was true of his indirect non-financial contributions. The wife claimed that the husband would rarely, if ever, accompany her to the obstetrician, was absent at their daughters' deliveries, had no interest in choosing the daughters' names, took no part in their daily care as he was always in Malaysia, and would not attend any parent-teacher meetings. She further claimed that he contributed little if anything to the daily chores and upkeep of the home, and was frequently abusive and unfaithful such that on the rare occasions when he was in Singapore rather than in Malaysia with his mistress, the wife and the daughters were in "constant fear" of him.[232]

17.80 The HCF observed that the true state of affairs was probably more nuanced than the wife claimed. There were several pieces of evidence that suggested that the husband had made genuine and relevant indirect contributions to the marriage. For instance, he produced evidence that showed he had at least some part in co-ordinating the maintenance and upkeep of the matrimonial home and the couple's private properties (though the wife also provided evidence of her making similar contributions in these aspects). The husband also appeared to have brought the children swimming on at least several occasions, was involved in the planning, reservation and execution of several overseas family trips and had engaged the children in discussions on current affairs.[233]

17.81 In total, the HCF was still largely inclined to accept the essence of the wife's version of events, as the husband did not adequately address

229 *WQR v WQS* [2023] SGHCF 41 at [30].
230 *WQR v WQS* [2023] SGHCF 41 at [32].
231 *WQR v WQS* [2023] SGHCF 41 at [33].
232 *WQR v WQS* [2023] SGHCF 41 at [34].
233 *WQR v WQS* [2023] SGHCF 41 at [35].

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her allegations.[234] In particular, he had no substantive responses to her allegations that she was the main caregiver of the children despite holding a full-time job and his lack thereof,[235] he had numerous affairs which resulted in him spending most of his time and money in Malaysia,[236] and his abusive behaviour towards the wife on numerous occasions.[237] In light of this, the HCF found that the husband's indirect non-financial contributions to the marriage were minimal[238] and assigned a ratio of 80:20 (in favour of the wife) for the parties' indirect contributions.[239]

17.82 Interestingly, the HCF acknowledged that such an extreme ratio may appear at odds with the trend towards equal division in long marriages (whether single- or dual-income) and the underlying philosophy of marriage as an equal partnership. However, it was of the view that such a ratio was justified in *WQR* based on precedent cases. The HCF discussed *WGE v WGF*[240] ("*WGE*"), a recent case where the court conducted a comprehensive survey of cases where the ratio of indirect contributions was heavily weighted towards one spouse.

17.83 The HCF in *WGE* assigned a ratio of 70:30 (in favour of the wife) for the parties' indirect contributions. The wife in *WGE* took care of the child and the household without the help of a domestic helper or family members, while the husband was often traveling for work. Although the husband in *WGE* did spend some time with the child, that did not mean that he was an involved father. The HCF in *WGE* observed that where the wife had borne the bulk of the responsibility for the children, courts have tended to attribute the wife a percentage of indirect contributions far greater than 50%, even where the husband was the sole breadwinner.[241] In support of its conclusion, the HCF in *WGE* considered numerous other cases where wives who were primary caretakers were awarded percentages ranging from 60% to 80% for their indirect contributions. The HCF in the present case underscored that in all the cases surveyed, the husband was the spouse who was contributing financially to the upkeep of the family.[242]

17.84 Based on the precedents reviewed in *WGE*, the HCF was of the view that the wife in the present case ought to be awarded a similarly

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234 *WQR v WQS* [2023] SGHCF 41 at [36].
235 *WQR v WQS* [2023] SGHCF 41 at [37].
236 *WQR v WQS* [2023] SGHCF 41 at [38].
237 *WQR v WQS* [2023] SGHCF 41 at [39] and [40].
238 *WQR v WQS* [2023] SGHCF 41 at [36].
239 *WQR v WQS* [2023] SGHCF 41 at [41].
240 [2023] SGHCF 26.
241 *WQR v WQS* [2023] SGHCF 41 at [43].
242 *WQR v WQS* [2023] SGHCF 41 at [44].

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favourable attribution of indirect contributions. Here, the wife had borne the bulk of the responsibility of caring for the children, providing for the family and had suffered due to the husband's numerous affairs and domineering nature.[243] It held that the present case was an exceptional case where the evidence clearly showed that one party made the vast majority of both financial and non-financial contributions to the marriage, despite the philosophy of marriage as an equal partnership of different efforts. In light of this, it was justifiable to deviate from the tendency towards equality that was generally observed in long marriages.[244] In fact, the HCF held that assessing the husband's indirect contributions at 20% was arguably generous, given that the husbands in the precedent cases had made some indirect financial contributions to the marriage, unlike him.[245]

17.85 The HCF then addressed certain disputed assets and how they should be dealt with against the backdrop of the parties' marriage dynamics. The evidentiary backdrop disclosed that the parties did not treat their marriage as a mutually supportive partnership, where spouses would be expected to share both the costs and fruits of any solo economic enterprise supported by the other.[246] It held that the wife's shares in companies [D], [C] Malaysia and [C] Singapore were gifts to the wife by her father, and excluded the shares from the matrimonial pool.[247] Likewise, the wife's accounts that were funded with dividends from the wife's gifted shares in company [D] were excluded as well.[248] With regard to the matrimonial home and two condominium units that the HCF found were matrimonial assets, it assessed the parties' direct financial contributions ratio for the individual matrimonial assets and applied the *ANJ* Structured Approach to reach a final division ratio of 90.6:9.4 in favour of the wife (after awarding an uplift of 1% in favour of the wife due to an adverse inference drawn against the husband[249]).[250]

17.86 While *WQR* appears to introduce a novel approach towards distinguishing single- and dual-income marriages, the earning-capacity based approach may just be another way to ensure that a just and equitable division outcome is arrived at. Another perspective to analyse *WQR* from is that while the marriage in *WQR* is arguably a single-income one based on a qualitative assessment of the spouses' roles (or lack thereof in the husband's case), it is not a case where the *TNL* Approach should apply

243 *WQR v WQS* [2023] SGHCF 41 at [44].
244 *WQR v WQS* [2023] SGHCF 41 at [45].
245 *WQR v WQS* [2023] SGHCF 41 at [45].
246 *WQR v WQS* [2023] SGHCF 41 at [48]–[58].
247 *WQR v WQS* [2023] SGHCF 41 at [69]–[71].
248 *WQR v WQS* [2023] SGHCF 41 at [72].
249 *WQR v WQS* [2023] SGHCF 41 at [73]–[82].
250 *WQR v WQS* [2023] SGHCF 41 at [60]–[68], [83] and [84].

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because the rationale behind not applying the *ANJ* Structured Approach did not arise in the factual matrix of *WQR*. In *WQR*, there was no primary homemaker or caregiver spouse that would be "doubly disadvantaged" by the application of the *ANJ* Structured Approach. In fact, applying the *ANJ* Structured Approach resulted in the wife's extensive financial and caregiving efforts being recognised and given effect to in the division. *WQR* demonstrates the challenge when it comes to classifying marriages as single- or dual-income ones, especially in less clear-cut situations. Grey areas include marriages where the qualitative roles between the spouses are difficult to determine. For instance, where a spouse worked on a part-time/*ad hoc* basis throughout the marriage but did not appear to be particularly involved at home.[251]

17.87 As a general guideline, a principled way forward would be to consider whether the rationale in *TNL* behind not applying the *ANJ* Structured Approach applies in the specific factual matrix of the case. If there is no homemaker or caregiver spouse that would be "doubly disadvantaged" by financial contributions being taken into consideration at steps one and two of the *ANJ* Structured Approach, it is arguable that the *TNL* Approach need not apply. A key characteristic of the *ANJ* Structured Approach is that it gives recognition to a spouse's financial and non-financial contributions to the marriage.[252] In situations where the facts suggest that a single spouse made most of the financial contributions and also contributed significantly at home, the case trends suggest that the court will likely reason that the *ANJ* Structured Approach ought to apply to ensure that those contributions are fully credited in the final division ratio.

II. Child maintenance

17.88 The past year also brought about a seminal decision in the area of child maintenance, in the form of *WBU v WBT*[253] ("*WBU*") delivered by the HCF. *WBU* involved an appeal by the mother against a district judge's ("DJ") order that a child's reasonable maintenance of $3,450 be apportioned 70:30 between the mother and father respectively. In particular, the mother argued that the child's reasonable expenses should have been increased to $9,575 with the father bearing 34% of this sum; and that in the alternative the $3,450 figure should be split equally amongst the parties.[254]

251 See *DBB v DBA* [2023] SGHCF 40 at [69]–[71].
252 *USB v USA* [2020] 2 SLR 588 at [38].
253 *WBU v WBT* [2023] SGHCF 3.
254 *WBU v WBT* [2023] SGHCF 3 at [5]–[7].

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17.89 In respect of the first point on *quantification* of the child's reasonable expenses, the judge noted that the fact that certain items had been paid for during the marriage did not automatically render them reasonable expenses for the purposes of maintenance. What was required instead was a demonstration of reasonableness of projected expenditure, taking into account all relevant circumstances such as the child's standard of living and the parents' financial means and resources as well as the impact on circumstances caused by the marital breakdown.[255] This translated into an avoidance of an "overly mathematical approach" that heavily relied on receipts. Instead, what should be preferred is for parties to draw up a "budget" identifying broad categories of the child's estimated needs and a corresponding sum for each proposed category.[256] Two further points are, in the court's own words, to be noted in relation to this budgetary approach.[257] First, that the budget instils accountability for the parties' continuing roles as co-parents, serving as a "baseline financial framework" for expenses for the child. Second, the court will not be overly prescriptive in determining how the moneys are allocated to each category. This, alongside the entire categorical nature of the budgetary framework, is a fundamental parenting matter that is not appropriately dealt with in court.

17.90 Applying the budgetary approach on the facts, the judge affirmed the DJ's finding in respect of most of the contested categories (which included food and groceries, books/"edutainment"/crafts/toys, medical and enrichment).[258] In respect of the child's share of housing related expenses and caregiver allowance, however, the judge found that the DJ had not allocated a sum for accommodation expenses. An adjustment was therefore necessary as the mother had contributed both for residence and caregiver allowance within her extended family.[259] Again eschewing a strict insistence on counting the precise quantum in favour of a broad-brush approach, the judge increased the child's reasonable monthly expenses to $4,000 instead.[260]

17.91 On the second issue of *apportionment* of the child's reasonable expenses, the mother argued that the starting point for maintenance should be equal apportionment, relying on *TBC v TBD*[261] ("*TBC*"). In the judge's view, however, *TBC* did not represent a general proposition that equal apportionment was the starting point; instead, *TBC* was decided

255 *WBU v WBT* [2023] SGHCF 3 at [9].
256 *WBU v WBT* [2023] SGHCF 3 at [10].
257 *WBU v WBT* [2023] SGHCF 3 at [11].
258 *WBU v WBT* [2023] SGHCF 3 at [13]–[23].
259 *WBU v WBT* [2023] SGHCF 3 at [24]–[30].
260 *WBU v WBT* [2023] SGHCF 3 at [30]–[31].
261 [2015] 4 SLR 59.

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on its own facts where, in that case, there was no indication that equal apportionment for maintenance would place unequal burdens on the parties *despite* a difference in financial means.[262]

17.92 In particular, the judge emphasised that while parents had *equal parental responsibility*, this did not translate into an *equal division of duties* in a strictly mathematical or numerical sense.[263] Drawing on the borrowed principle of common but differentiated responsibilities (citing the Court of Appeal's judgment in *AUA v ATZ*[264]), the judge underscored that each spouse contributes in different aspects towards the marriage – *vis-à-vis* both financial and non-financial obligations, according to their individual capabilities. On the facts, having regard to the respective parties' annual income, the judge adjusted the apportionment to 65:35 between the mother and father respectively.[265]

17.93 *WBU* represents a pivot towards a highly flexible approach undertaken by the court on all aspects regarding child maintenance. This much is seen from the constant theme of an aversion towards a strictly mathematical approach, but also from the clarification in respect of financial capacity to provide maintenance for the child (at the stage of apportionment). The court should not consider income alone, but the circumstances in the round, including savings, inheritance or assets received after the division of matrimonial assets.[266] These circumstances could point to a capability to provide maintenance, even where that parent does not have any income. On the whole, the approach in *WBU* re-emphasises the interpretation as regards *TBC*, namely, that the focus would be on whether equal apportionment places unequal burdens on the parties, and if so, equal maintenance would be unjust. Where the respective parties can comfortably afford to pay for maintenance (that is, there is no *undue* financial burden on a single party), it may certainly be the case that the court will apportion maintenance equally despite a supposed difference in the parties' incomes.

17.94 It should also be of interest to litigants and lawyers to see how the supplemental financial considerations mentioned in *WBU* would impact on the subsequent decisions on apportionment. This did not arise either on the facts, or the hypothetical example, of *WBU* – both of which purely considered the respective earnings of the parties. In a later decision of *WLE v WLF*[267] ("*WLE*"), the court had the opportunity to

262 *WBU v WBT* [2023] SGHCF 3 at [34].
263 *WBU v WBT* [2023] SGHCF 3 at [35].
264 [2016] 4 SLR 674.
265 *WBU v WBT* [2023] SGHCF 3 at [40]–[43].
266 *WBU v WBT* [2023] SGHCF 3 at [39].
267 [2023] SGHCF 14.

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apply the principles laid down in *WBU*. The husband there, who had care and control of the two children,[268] had sought equal contribution for the children's monthly expenses of $3,711.66 and $2,646.43 (from March 2023) while the wife had argued that it was sufficient for her to contribute $400 per child.

17.95 As a starting point, the judge emphasised the need for reasonableness, in the sense of not indulging in luxuries. Further, in line with the flexible approach against a heavy reliance on receipts in *WBU*, the judge noted that maintenance was "not a corporate reimbursement scheme where every item of expenditure is proved and claimed by the parent who has care and control".[269] While not making explicit reference to the budgetary approach in *WBU*, the judge in *WLE* adopted the same approach by focusing on general categories of expenses. Several categories were disallowed for various reasons, for instance that the daughter had graduated from pre-university education and thus did not need to incur any further tuition expenses. Interestingly, the husband's claim for the daughter's university admissions (amounting to $26,782) was disallowed on the basis that it was a unilateral decision by the husband to indulge the daughter as part of his parenting style.[270]

17.96 Turning to apportionment, the judge in *WLE* began by citing heavily from *WBU* in rejecting the husband's insistence on equal division as a starting point (relying again on *TBC*).[271] In this instance, the wife's income based on her 2020 assessment averaged $7,048 while the husband's income based on his 2021 assessment averaged $4,222.38 a month. It was also on this basis that the husband sought an equal apportionment, arguing that the parties were of relatively equal earning capacity.[272] The judge, however, noted that what is relevant for apportionment is not one's *last earned income*, but one's earning *capacity*. Based on the assessment for previous years from 2018 to 2020, the husband's assessable income far outstripped that of the wife. Further, the judge noted that these income figures did not account for his expansive investment portfolio, which was an income stream that had to be considered.

17.97 In the circumstances, the wife was ordered to contribute $900 for the daughter's living expenses. The supplemental financial considerations applied by the judge in *WLE* appears to be a facet of the general consideration guarding against the placement of unequal or undue

268 *WLE v WLF* [2023] SGHCF 14 at [1].
269 *WLE v WLF* [2023] SGHCF 14 at [43].
270 *WLE v WLF* [2023] SGHCF 14 at [45].
271 *WLE v WLF* [2023] SGHCF 14 at [46].
272 *WLE v WLF* [2023] SGHCF 14 at [47].

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burden on a single party. Where one party has a greater earning capacity, the amount of maintenance payable naturally would be of considerably lesser impact on their finances.

17.98 No order of maintenance was made in respect of the son as he was above the age of 21 and had been receiving an allowance for his National Service.[273] The final issue concerned the costs of tertiary education, on which the husband argued that the wife should bear half regardless of the university. The wife argued that it was reasonable that she bear half the expenses of local tertiary education.[274] The husband, on the other hand, believed that studying "Sports Management" in the US was in the son's best interests, a matter that the wife disagreed with. In the view of the judge, these were matters that were up to the parenting approaches of the individual parents, and that again the court was not the appropriate forum to endorse one over the other. As such, it was held that local tertiary fees – a matter that both parents agreed on – was a reasonable expense.

III. Orders relating to children

17.99 In *CSW v CSX*[275] ("*CSW*"), the Appellate Division was faced with an appeal from a wife against the decision of the judge below in the General Division of the High Court that found the wife guilty of contempt of court. The husband had commenced committal proceedings against the wife for failing to comply with orders on care and control of, and access arrangements for, the children. The appeal against the judge's decision was on all grounds including as to costs.

17.100 In the ancillary matters hearing in 2014, joint custody of the children was granted, with sole care and control to the husband and liberal access to the wife. It appears from the judgment that parties had complied with the orders (for more than six years) up till early 2021,[276] when the wife began making multiple complaints of abuse of the children by the husband and/or domestic helpers associated with him. This resulted in the involvement of Child Protective Services. [277] In May 2021, the wife failed to return the children to the husband after her access ended, and despite the involvement of police, the children did not return home with the husband. The wife thereafter sought a variation of the care

273 *WLE v WLF* [2023] SGHCF 14 at [50].
274 *WLE v WLF* [2023] SGHCF 14 at [51]–[53].
275 [2023] SGHC(A) 23.
276 *CSW v CSX* [2023] SGHC(A) 23 at [4]–[7].
277 *CSW v CSX* [2023] SGHC(A) 23 at [8]–[11].

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and control order, that was ultimately unsuccessful and dismissed by the Appellate Division.[278]

17.101 On the same day of the hearing, the husband attempted to pick the children up at the wife's residence but was unable to do so. For slightly over four months thereafter, the children still did not return home with the husband. At a hearing on 20 October 2021, the judge made specific orders for the wife to return the children to the husband. The wife still refused to comply with the orders and the husband sought and obtained leave to commence committal proceedings against the wife.[279] On 29 April 2022, the judge found the wife in contempt and sentenced her to one-week imprisonment.[280] This, however, was suspended on condition of the wife returning the children to the husband and complying with the court orders on care and control and access thereafter. The wife was also ordered to pay the husband costs of $20,000 plus disbursements of $1,500 for the committal proceedings. Interestingly, the wife managed to duly return the children to the husband's residence the day after the committal proceedings.

17.102 On appeal, the Appellate Division first dealt with the wife's argument (repeated from proceedings below) that the ancillary orders required the husband to "pick up" the children and that she could not be faulted should the children refuse to return home with him.[281] Finding this interpretation "untenable", the Appellate Division also noted that the interpretation was raised about six and a half years after the order was made during which time the parties had complied with them "with little difficulty". Ultimately, the court held that the wife's interpretation was really a "desperate attempt to justify her conduct" and that there was no ambiguity in the orders.[282] Further, it was found that the wife's failure to return the children was nothing short of intentional due to her active role in influencing the children not to return to the husband,[283] and that the judge had been correct in finding her guilty of contempt.

17.103 The wife made a further argument based on therapeutic justice ("TJ") at the appeal – that the judge had erred in not implementing measures to facilitate TJ that she had sought. These measures included for the court to interview the children, for them to receive counselling and to be assessed by a psychologist. In her view, the judge's decision resulted in the children's voices not being heard, which could have supported her

278 *CSW v CSX* [2023] SGHC(A) 23 at [12]–[17].
279 *CSW v CSX* [2023] SGHC(A) 23 at [18]–[22].
280 *CSW v CSX* [2023] SGHC(A) 23 at [23]–[31].
281 *CSW v CSX* [2023] SGHC(A) 23 at [48]–[57].
282 *CSW v CSX* [2023] SGHC(A) 23 at [53]–[58].
283 *CSW v CSX* [2023] SGHC(A) 23 at [64].

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case. This, in her submission, was an independent ground warranting the overturning of the judge's decision.[284]

17.104 The wife's TJ-based argument, however, was resoundingly rejected by the court. The Appellate Division observed that the wife had misused the concept of TJ and proceeded in a manner that reflected a clear disregard for the objectives of a TJ approach.[285] She had, amongst others, involved the machinery of the state in a parental disagreement that ought to have been settled between parents, made various appeals to a minister, and utilised personal protection order proceedings that involved the children giving evidence in court and being cross-examined. Her conduct in influencing the children was "contrary to the very conduct required in a TJ system that should support the family in its journey of healing and moving forward".[286] Importantly, the court observed that committal proceedings were not the appropriate proceedings to ask for children to be interviewed. Having disregarded the court's orders, the wife could not "brandish the concept of TJ as an excuse or justification for her breaches".[287] With this stern admonishment, the court also upheld the sentence and costs awarded by the judge below.

17.105 Overall, *CSW* reflects the view of TJ as a broad, overarching, lens through which the entire family justice system is shaped. As the court noted, TJ "[extends] far beyond merely hearing the voice of the child or sending the children for counselling".[288] Indeed, the decision in *CSW* was viewed by the court as a cautionary one – that TJ "ought not to be misused in misguided attempts to contravene court orders".[289] This underscores the point that has been repeatedly emphasised for the past several years: that TJ, as a concept, should certainly not be weaponised. It must also be practised in substance, and the reference to TJ in form by the brandishing of mere words bereft of (or inconsistent with) the underlying concept, will be met with disapprobation from the court. *CSW*'s firm stance against unnecessarily adversarial and/or aggressive approaches (along with the consistent breach of court orders) follows the trend of cases covered in

284 *CSW v CSX* [2023] SGHC(A) 23 at [80]–[81].
285 *CSW v CSX* [2023] SGHC(A) 23 at [83]–[84].
286 *CSW v CSX* [2023] SGHC(A) 23 at [83]–[84].
287 *CSW v CSX* [2023] SGHC(A) 23 at [85].
288 *CSW v CSX* [2023] SGHC(A) 23 at [82].
289 *CSW v CSX* [2023] SGHC(A) 23 at [99].

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previous editions of this Annual Review,[290] including *UKS v UKR*[291] and *WAA v VZZ*.[292]

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290 See Tricia Ho & Aaron Yoong, "Family Law" (2022) 23 SAL Ann Rev 490 at paras 17.18–17.24.
291 [2022] SGHCF 21.
292 [2022] SGHCF 19.

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