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DEFINITION OF PROPERTY AS MATRIMONIAL ASSET THROUGH THE LENS OF THERAPEUTIC JUSTICE[1]

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The Family Justice Courts' power to divide property between divorcing spouses under s 112 of the Women's Charter 1961 (2020 Rev Ed) is exercisable only over property fulfilling the definition of matrimonial asset. Using the lens of therapeutic justice which the Family Justice Courts adopted, this paper discusses whether the major decisions are consistent with this view that parties should be prepared to accept fair enough decisions which have a better chance to heal their family rift so they can continue their joint co-operative parenting. The paper is organised into (a) the family justice system and therapeutic justice in Singapore; (b) the purpose of the definition of matrimonial asset in s 112(10); (c) the Court of Appeal's categories of matrimonial assets supplemented, where necessary, by the five purposeful steps of analysis; and (d) advice to family law practitioners.

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I. The family justice system and therapeutic justice in Singapore

A. Formal adoption of philosophy based in substantive legal demands since 1961

1 It is axiomatic that Singapore overtly and formally adopted the family justice system through Parliament's enactment of the Family Justice Act in 2014. This implemented the *Recommendations*

1 A version of this paper was delivered by the author at the SUSS Family Law Seminar Series on 9 November 2023.

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of the Committee for Family Justice.[2] The Family Division of the High Court ("SGHCF") was created so a hierarchy of Family Justice Courts ("FJCs") became established. Almost all family proceedings originate at the Family Court ("SGFC") that had been established in 1995[3] at the State Courts level and appeals, as of right, go to the SGHCF. With the Family Justice Act 2014[4] in place, the Family Justice Courts Practice Directions and Family Justice Rules 2014 ("FJR 2014")[5] were released.

2 In 2018, the author had submitted (in her first article on the family justice system)[6] several propositions that still hold up to today:

(a) that the family justice system pursues two complementary core objectives, *viz*, one, family proceedings (especially divorce applications) should be disposed of justly, expeditiously and inexpensively and, two, parties in family proceedings (especially divorcing spouses) should always assure the continued well-being of any child of the marriage;[7]

(b) that its formal adoption in 2014 should not mask the fact that the SGFC, since its establishment in 1995, has been innovating with many of the procedures that continue today;[8]

2 The Committee for Family Justice was helmed by several legal luminaries and released its report on 4 July 2014.

3 Upon the establishment of the SGFC, a series of Supreme Court of Judicature (Transfer of Matrimonial, Divorce and Guardianship of Infants Proceedings to District Court) orders transferred family proceedings that used to originate in different courts, including at the High Court, to the SGFC.

4 Act 27 of 2014.

5 The FJC added rules to what were already fairly massive documents. By 2023 the FJR 2014 had grown to comprise 1,000 Rules. After the Rules of Court were updated in 2021, it was inevitable that the FJR 2014 needed the same. The draft new Family Justice (General) Rules were released in August 2023 and are expected to be operational from the first quarter of 2024.

6 Leong Wai Kum, "From Substantive Law Towards Family Justice for the Child in Divorce Proceedings in Singapore" (2018) 30 SAcLJ 587.

7 Leong Wai Kum, "From Substantive Law Towards Family Justice for the Child in Divorce Proceedings in Singapore" (2018) 30 SAcLJ 587 at paras 15–24.

8 Leong Wai Kum, "From Substantive Law Towards Family Justice for the Child in Divorce Proceedings in Singapore" (2018) 30 SAcLJ 587 at paras 25–26.

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(c) that closer examination reveals that overt adoption of the family justice system in 2014 was grounded in the substantive demands that were already within the Women's Charter from its very enactment as the State of Singapore Ordinance 18 of 1961;[9] and

(d) that the two complementary core objectives of the family justice system flow naturally from the two substantive demands under s 46 of the Women's Charter, *viz*, spouses must regard their marriage as their equal co-operative partnership for mutual benefit,[10] and spouses, in their capacity as parents, must discharge parental responsibility jointly and co-operatively.[11]

3 From this perspective, the family justice system in Singapore is unique although similar developments have taken place at around 2014 in other common law jurisdictions.

4 Singapore's family justice system is not only procedural rules imposed upon family proceedings. Rather, our family justice system is rooted in and flows from substantive law.

5 There truly is synergy between demands in substantive law and procedural law. This synergy creates a superior eco-system where each works in tandem with the other.

6 Together with the amalgamation of social sciences into resources easily available to parties contemplating divorce, Singapore's family justice system is, as the Committee for Family Justice rightly claimed, *viz*, "a seamless synergy of substantive law, procedural law, institutions, agencies and the courts all assisting the expeditious and amicable resolution of family problems".[12]

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9 Leong Wai Kum, "From Substantive Law Towards Family Justice for the Child in Divorce Proceedings in Singapore" (2018) 30 SAcLJ 587 at para 37.

10 Leong Wai Kum, "From Substantive Law Towards Family Justice for the Child in Divorce Proceedings in Singapore" (2018) 30 SAcLJ 587 at paras 38–52.

11 Leong Wai Kum, "From Substantive Law Towards Family Justice for the Child in Divorce Proceedings in Singapore" (2018) 30 SAcLJ 587 at paras 53–73.

12 *Recommendations of the Committee for Family Justice* (4 July 2014) at p 5 (Executive Summary of the Recommendations), adopting the words of the

(cont'd on the next page)

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7 All of these propositions have been repeated.[13]

8 It is the synergy of substantive law and procedural law within the family justice system that allows the system to work so well in Singapore that enhancements came in 2023 as will be referenced shortly.

B. Therapeutic justice and professional conduct rules

9 The FJC adopted therapeutic justice ("TJ") in 2020.[14]

10 TJ may be appreciated as the family justice system philosophy from the perspective of the courts and family law practitioners.[15] The FJC from 2020 overtly dispenses justice that aims to heal the family rift rather than run the risk of exacerbating it. Judgments and orders will be fair enough but assessed to be beneficial to all members of the family in the longer run. Parties will need to be guided by their legal advisors to expect such resolution. Over the longer term, parties will come to appreciate how the judgments and orders made did, in fact, serve all members of the family better.

11 To protect family law practitioners who discharge their more enlightened roles, the Legal Profession (Professional Conduct) Rules 2015 were amended in 2018.

12 The new r 15A "Representing client in family proceedings" protects the practitioner who guides her clients towards more reasonable conduct of her litigation and greater use of the more amicable means of resolution of the dispute. The new r 15B "Conflict of interest in family proceedings" references the possible new roles of a legal practitioner as "child representative" or "parenting coordinator".

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author's response to the Committee's call to members of the public for comments on their draft report.

13 Leong Wai Kum & Debbie Ong, "Family Justice in Divorce Proceedings in Singapore for Spouses and Their Children" [2020] JMJ Special Issue 165.

14 See Debbie Ong, "Today is a New Day" (21 May 2020) at the Family Justice Courts Workplan.

15 See Yarni Loi & Suzanne Chin "Therapeutic Justice – What it Means for the Family Justice System in Singapore" (2021) 59(3) FCR 423.

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C. *2023 enhancements go beyond the adversarial/inquisitorial theories of civil litigation*

13 The right way to conduct and resolve family proceedings was enhanced in 2023.

14 The Family Justice Reform Act 2023[16] bestows further powers upon judges in FJCs, including those in the SGFC. The most striking may be the new s 11B of the Family Justice Act 2014. This allows the judge, where it is adjudged necessary, to make orders (including orders of a substantive nature) even though neither applicant nor respondent applied for them. The new ss 11A and 11C bestow new powers to the judge to control the conduct of the family proceedings.

15 The new powers prepared the way for new rules regulating the conduct of family proceedings. The draft Family Justice (General) Rules regulating family proceedings were released in August 2023 and are expected to be operational from first quarter 2024.

16 It has become accepted comment that the procedural law created upon the enactment of the Family Justice Act 2014[17] tweaks the most abrasive aspects of the common law adversarial system of civil litigation and introduces some aspects of the civil law inquisitorial system.[18]

17 The author suggests that, with the 2023 enhancements, the family justice system and TJ in Singapore have transcended the adversarial/inquisitorial divide within theories of civil litigation.

18 The better way to appreciate our eco-system is to go back to the substantive legal demands in s 46 of the Women's Charter 1961.[19] Whatever needs to be put in place to ensure that both

16 Act 18 of 2023.
17 Act 27 of 2014.
18 See, *eg*, Leong Wai Kum & Debbie Ong, "Family Justice in Divorce Proceedings in Singapore for Spouses and Their Children" [2020] JMJ Special Issue 165 at paras 5–19.
19 2020 Rev Ed.

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legal demands are fulfilled by parties in family proceedings will be done.

19 The author suggests a new perspective.

(a) Family law in Singapore took a brilliant leap of faith by the addition of s 46 (modelled upon an article in the Swiss Civil Code) to the Women's Charter in 1961.[20]

(b) Developments of the Women's Charter's underlying philosophy of caring for every member of the family led to the establishment of the customised SGFC in 1995, the formal adoption of the family justice system in 2014 and TJ in 2020.

(c) The 2023 enhancements are, in some respects, unprecedented within any system of civil litigation.

(d) The only justification of these enhancements are the two core legal demands by the Women's Charter 1961[21] under s 46.

(e) The circle is complete. In 2014 we looked to s 46 of the Women's Charter, to provide substantive bases for our procedural law. From 2023 we turn to s 46, again, to justify the enhancements in our unique eco-system where substantive law is integrated with the procedures that operationalise it.

20 Singapore family law and practice are in an exciting new phase. We should all anticipate that the current eco-system will gain momentum so that further enhancements are possible.

21 Family practitioners are to guide their clients to look towards a happier future for themselves and their children. Divorce should be no worse than the re-organisation of the family members' living arrangements and the fair re-allocation of their financial resources. Spouses must learn to accept decisions from the FJC that aim to heal their rift. Your client should be able to

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20 See the concerted research traced in Leong Wai Kum, "Fifty Years and More of the Women's Charter of Singapore" [2008] Sing JLS 1 at 12–14.

21 2020 Rev Ed.

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look back with some pride at how she conducted herself during family proceedings. She was guided not to fight tooth and nail in the hope of getting just a tad extra. When the dust and fury of divorce litigation settles, your client should be able to hold her head up when discussing how she behaved with her children. Help your clients act reasonably as this will stand them in good stead down the road.

D. Resolution of application for order of division of matrimonial assets involves two substantive issues: does each property sought to be divided fulfil the definition of matrimonial asset and what proportions of division are just and equitable

22 An application for an order of division of matrimonial assets is complex in requiring methodical resolution of a series of legal issues.[22]

23 Among these only two issues are substantive in character for which resolution there has developed a huge reservoir of principles and precedents. One, each property sought to be divided must be determined to be or have become "matrimonial asset", generally, by the time of the award of interim judgment[23] as the power bestowed by the Women's Charter 1961[24] under s 112(1) is exercisable only over property that is "matrimonial asset". The definition of "matrimonial asset" is provided in s 112(10) of the Women's Charter 1961.[25] Two, once the court determines the pool of matrimonial assets, s 112(1) of the Women's Charter 1961[26]

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22 Chao Hick Tin JA in *ATT v ATS* [2012] 2 SLR 859 at [15] cautioned:

> Ordinarily, in this exercise, the first step is to delineate what exactly constitutes the pool of matrimonial assets. … Once this is done, the value of the pool should then be assessed … The court will then consider all the circumstances of the case … and thereby determine what is the just and equitable proportion. … [I]t may then proceed to ascertain the most expedient means of physically executing the division … [I]t would be desirable for the court to bear these steps in mind as it goes through the exercise of making a just and equitable division.

23 See, *eg*, *BPC v BPB* [2019] 1 SLR 608 at [23].

24 2020 Rev Ed.

25 2020 Rev Ed.

26 2020 Rev Ed.

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requires the court to order "just and equitable" proportions of division of this pool between the soon-to-be former spouses.

24 Each of these two substantive issues is affected by the family justice system and TJ as legal practitioners should guide their clients to accept resolution that will not cause further rift between the spouses. The FJC takes every opportunity to advise parties to refrain from making arguments or recalling facts that are tangential and not useful to the court's deliberations.[27]

25 This paper discusses the leading precedents on the definition of matrimonial assets by s 112(10) of the Women's Charter 1961[28] and suggests which are commendable for advancing the philosophy of the family justice system and TJ. Those which do not can possibly be reviewed accordingly.

II. The purpose of the definition of matrimonial asset under section 112(10) of the Women's Charter 1961

26 It is important to acknowledge that there are many variations in how spouses acquire and handle property (real and personal) over the course of their marriage so that a perfect definition might not be achievable. We can only do the best we can with the definition we have.[29]

27 Section 112(10) provides:[30]

> In this section, 'matrimonial asset' means —
>
> (*a*) any asset acquired before the marriage by one party or both parties to the marriage —

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27 See, *eg*, *UYP v UYQ* [2020] 3 SLR 683.
28 2020 Rev Ed.
29 The FJC has set up panels of financial experts to assist in the resolution of applications for orders of division of matrimonial assets. While financial expertise should always be resorted to whenever appropriate it will be obvious from the discussion in this paper that many legal issues can only be resolved using legal principles and precedents. Financial experts offer excellent advice on financial values of properties but will be unable to resolve legal issues.
30 The shortcomings of this provision have been discussed (see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at paras 16.029–16.038) and so are not repeated in this paper.

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(i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes; or

(ii) which has been substantially improved during the marriage by the other party or by both parties to the marriage; and

(*b*) any other asset of any nature acquired during the marriage by the other party or by both parties to the marriage;

but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

28 How should we use the definition to serve the purpose of its enactment, as s 9A of the Interpretation Act 1965[31] enjoins all of us?

29 What indeed is the purpose of identifying property as matrimonial asset and thus rendering it subject to the court's power to divide? In 2000 the author observed:[32]

> The 1996 change to the simpler section 112, designed to build on the developments thus far, should be read purposively. … [A]bandoning the distinction among matrimonial assets depending on whether both spouses financially contributed to their purchase or only one did … leaves the family law view of both spouses having made equal contribution to the acquisition of property whether by financial or non-financial contribution or a combination thereof. When the marriage unfortunately ends in divorce, a just and equitable division of the gains should generally be an equal division.

31 2020 Rev Ed.
32 Leong Wai Kum, "The Just and Equitable Division of Gains Between Equal Former Partners in Marriage" [2000] Sing JLS 208 at 239.

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By 2013, the author observed:[33]

> [A]t the conclusion of the identification and valuation of properties that are matrimonial assets, the court arrives at exactly, no more and no less than, the net material gains that the spouses accumulated by their exertion of effort over the subsistence of their marriage. Careful and accurate identification of matrimonial assets is highly significant as it identifies exactly how much the former spouses' marital partnership made which remains unused and thus available for division at the termination of their partnership.

30 In 2019 Judith Prakash JA, as she then was, accepted this characterisation of matrimonial assets as the material gains of the marital partnership in the Court of Appeal ("SGCA") in *BPC v BPB*.[34] Upon repeating *Lock Yeng Fun v Chua Hock Chye*'s[35] endorsement of "deferred community of property" as the underlying concept of our law of division of matrimonial assets,[36] Prakash JA further reasoned thus:[37]

> The practical effect of adopting this conception of matrimonial assets has been described in Leong Wai Kum, *Elements in Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) in the following terms …
>
>> [17.063] Matrimonial assets are the gains of the marital partnership between the former equal marital partners who have both contributed their different personal efforts to enrich their marital partnership. It is mistaken to view the common directive to the court as to achieve the just and equitable division of property that has been acquired by the spouse who, as the main or only bread-winner, paid for the property. The correct view is that division of matrimonial assets is the division of surplus property, money or other financial resources acquired by both spouses' co-operative efforts during the course of their marriage whatever form their respective efforts may have assumed.

33 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 2nd Ed, 2013) at pp 603–604.
34 [2019] 1 SLR 608.
35 [2007] 3 SLR(R) 520.
36 *BPC v BPB* [2019] 1 SLR 608 at [50], quoting from *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 at [40].
37 *BPC v BPB* [2019] 1 SLR 608 at [51].

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31 The purpose of fulfilling the definition is to ensure that the court's power to divide is exercised only over the material gains of the marital partnership and nothing else. Interpreting the words within s 112(10) of the Women's Charter 1961[38] is for this purpose. It is no mere linguistic exercise.

32 Where there is any ambiguity this should be resolved to ensure that all material gains of the marital partnership become included in the pool of matrimonial assets. Simply attributing some meaning to each word or term is to miss the point of the exercise. It behoves the family law practitioner to assist the FJC so that the entire swath of material gains becomes included as matrimonial asset.

33 It follows from this that, of an individual piece of property, it may well be that only one portion of it is truly material gain. This portion is thus matrimonial asset while the remaining portion is the separate property of the owner-spouse.

34 It will be discussed below that matrimonial asset comprises all property including portions of property that, on a fair assessment, are the material gains of the marital partnership.

35 At the end of the resolution of the first substantive issue, the FJC reaches a comprehensive view of the property and wealth accumulated over the duration of the marital partnership. This is the pool of matrimonial assets subject to the court's power to divide.

36 The SGCA's adoption of the purpose of the identification of property as matrimonial asset to become subject to the power to divide is a development consistent with TJ. Accepting that a property is liable to be divided for being part of the material gains of the spouses will lead to decisions that heal rather than exacerbate the family rift.

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III. Court of Appeal's categories of matrimonial assets supplemented by the five purposeful steps of analysis

A. Academic suggestion of the five purposeful steps of analysis

37 In *Elements of Family Law in Singapore*,[39] the author consolidated her earlier proposals that a complete analysis of all properties to decide if they are considered matrimonial assets under s 112(10) of the Women's Charter 1961[40] requires five purposeful steps of analysis (the "Five Purposeful Steps of Analysis"):[41]

> 1. Begin by identifying property that is quintessential matrimonial asset as this should lead the analysis; followed by
>
> 2. Giving sensitive treatment to the property that was matrimonial home to favour its inclusion; followed by
>
> 3. Asking of all other property, *ie* property acquired before the start of the marriage or property acquired by gift, inheritance or any windfall without exertion of personal effort, whether it, or a portion of it had, over the course of the marital partnership acquired the connections possessed by quintessential matrimonial asset; accepting that
>
> 4. Included in the 3rd purposeful step is the possibility of discounting the portion that did not possess the connection(s) so that the balance possesses the close connection(s) equivalent of quintessential matrimonial asset; and
>
> 5. Finally, accepting that the idea of discounting a portion can be applied, if there were good reason to do so, even, of quintessential matrimonial asset and/or the matrimonial home in order to arrive at the balance that truly represents the material gains of the marital partnership.

The author continues to believe that these five sequential steps provide comprehensive analysis to ensure that what is included

39 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018).
40 2020 Rev Ed.
41 Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at para 16.040, building upon what was proposed from 2001 in Leong Wai Kum, "Family Law" in *Halsbury's Laws of Singapore* vol 11 (LexisNexis, 2001) at para 130.806 (The Quintessential Matrimonial Asset) and in earlier editions of *Elements of Family Law in Singapore*.

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in the pool of matrimonial assets are only the material gains of the spouses over the duration of their marital partnership.

38 The Five Purposeful Steps of Analysis start with the most appropriate group of property, *viz*, quintessential matrimonial assets despite the fact that s 112(10) refers to this property only within its sub-s (*b*). Starting at the most appropriate place within comprehensive analysis provides a greater chance of optimal resolution. A critical component of the five sequential steps is the consideration that the inclusion of property in the pool of matrimonial assets need not proceed on an "all or nothing" basis. Indeed, especially of property that is not a quintessential matrimonial asset, it is possible that only a portion of it should be included as part of the material gains.

39 The SGHCF had begun accepting parts of the Five Purposeful Steps of Analysis[42] but this shall not be elaborated as the SGCA decided on a slightly different approach.

B. SGCA's interpretation of the matrimonial asset definition led to the categories of matrimonial assets

40 In 2020 the SGCA propounded its categories of matrimonial assets ("Categories of Matrimonial Assets") from the interpretation of s 112(10) in *USB v USA*.[43]

41 The SGCA's Categories of Matrimonial Assets represent a major development. This was the first time the SGCA followed up upon its decision that the definition serves a particular purpose so that a purposive interpretation of s 112(10) is principled. Up until *USB v USA*, the SGCA had largely interpreted the definition literally.

42 The SGCA's Categories of Matrimonial Assets are principled and sound.

42 See Debbie Ong JC (as she then was) in *TNC v TND* [2016] 3 SLR 1172 and Debbie Ong J (as she then was) in *TXW v TXX* [2017] 4 SLR 799. See also Aedit Abdullah J follow Ong J's lead in *UJF v UJG* [2018] SGHCF 1.
43 [2020] 2 SLR 588.

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43 This paper adopts the SGCA's Categories of Matrimonial Assets as the categorisation is largely consistent with the academic suggestion of the Five Purposeful Steps of Analysis. With respect, some pointers from the Five Purposeful Steps of Analysis can possibly supplement some parts of the Categories.

44 In *USB v USA*, Prakash JA (as she then was), propounded on behalf of the SGCA:[44]

> In this regard, at the end of a marriage, the assets that the parties own may be placed in up to four different categories. Section 112 of the [Women's Charter] contemplates that assets in at least three categories may be subject to the court's powers of division. The classes of assets that the parties may possess are:
>
> (a) 'Quintessential matrimonial assets' (to use a term first adopted by Justice Debbie Ong in *TNC v TND* [2016] 3 SLR 1172 at [40]): these are assets which either spouse derived from income earned during the marriage by applying their own money, and the matrimonial home, whenever and however acquired. The entire value of these assets assessed as at the ancillary matters date (generally) will go into the pool.
>
> (b) 'Transformed matrimonial assets': we use this term to denote assets which were acquired before the marriage by one spouse (or, more rarely, by both spouses), but which have been substantially improved during the marriage by the other spouse or by both spouses, or which were ordinarily used or enjoyed by both parties or their children while residing together for purposes such as shelter, transport, household use, *etc*. Once transformed, the whole asset goes into the pool but if there is no transformation then, subject to (c) below, any asset acquired before the marriage even if acquired by both parties would be dealt with in accordance with general principles of property law.
>
> (c) 'Pre-marriage assets': these are assets that either spouse acquired before the marriage and which the other spouse does not thereafter improve substantially or which are not used for family purposes. These stay out of the pool unless … they are partially paid for during the marriage by the owning spouse with income

44 *USB v USA* [2020] 2 SLR 588 at [19].

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that would have been a quintessential matrimonial asset had it been saved up rather than expended on the pre-marriage asset. Then, the proportion of the value of the asset that was acquired during the marriage should go into the pool.

(d) 'Gifts and inherited assets': these assets whenever acquired by either spouse are not part of the pool unless transformed by substantial improvement or use as the matrimonial home. If transformed they should be treated in the same way as other transformed assets.

45 Prakash JA's decision, in effect, leads to the following three Categories of Matrimonial Assets:[45]

(a) Category (a): quintessential matrimonial asset including the matrimonial home;

(b) Category (b) with (c): transformed pre-marital asset or the portion that is transformed; and

(c) Category (b) with (d): transformed gift or inheritance or the portion that is transformed.

Unless transformed, the pre-marital asset and gift or inheritance remain excluded from the pool of matrimonial assets.

46 The author suggests, with respect, that the SGCA Categories of Matrimonial Assets can easily be correlated with the Five Purposeful Steps of Analysis. Indeed, the SGCA Categories, at junctures, can possibly be supplemented with insights provided by the Five Purposeful Steps of Analysis. The inclusion of the "matrimonial home, whenever and however acquired" within Category (a) though, needs further consideration.

47 Before that, it is of note that the SGCA followed this up by providing further insight into the therapeutic resolution of an application for an order of division of matrimonial assets. This is regarding who bears the burden of proof within each Category.

45 Each of the SGCA's three Categories is discussed below.

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C. Burden of proof in determining matrimonial assets

48 In general, all parties' assets will be treated as matrimonial assets unless a party is able to prove that any particular asset was either not acquired during the marriage or was acquired through gift or inheritance.

49 The SGCA followed up its purposive interpretation of the definition to lead to the Categories of Matrimonial Assets with providing what amounts to the default rule of proof.

50 In *USB v USA*, Prakash JA repeated the purpose of identifying the material gains of the marital partnership[46] and proceeded to address the argument that, especially in long marriages, her decision on the Categories of Matrimonial Assets leaves evidential difficulty. Who, the applicant or the respondent, is to prove what within the Categories? The judge offered observations of the burden of proof:[47]

> 31 … When a marriage is dissolved, in general all the parties' assets will be treated as matrimonial assets unless a party is able to prove that any particular asset was either not acquired during the marriage or was acquired through gift or inheritance and is therefore not a matrimonial asset. The party who asserts that an asset is not a matrimonial asset or that only a part of its value should be included in the pool bears the burden of proving this on the balance of probabilities. This rule obviates many difficulties that may arise in the court's fact-finding exercise and is consistent with the general approach to legal burdens in civil matters.
>
> 32 Conversely, we might add, where an asset is *prima facie* not a matrimonial asset, the burden would lie on the party asserting that it is a matrimonial asset to show how it was transformed.

This is useful observation to family law practitioners.

51 Debbie Ong JAD in the Singapore High Court (Appellate Division) ("SGHC(A)") affirmed Prakash JA's observations. Ong JAD proceeded to apply the rule of the burden of proof and

46 *USB v USA* [2020] 2 SLR 588 at [27].
47 *USB v USA* [2020] 2 SLR 588 at [31]–[32].

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extended it to appeals from lower courts' decisions. In *WFE v WFF*,[48] the SGHCF had included the wife's personal Central Depository Account (started before marriage and into which she claimed to have deposited securities acquired from inheritance money) within the pool of matrimonial assets. The wife appealed to the SGHC(A) on this decision among others. Ong JAD applied the rule on burden of proof to her and decided that the wife had failed to satisfy the SGHC(A) that the inclusion was wrong.[49]

52 *WFE v WFF* should be noted for turning Prakash JA's observation into *ratio decidendi* as well as extending the rule on burden of proof to an appellant. On principle this means that, once the FJC decides that a property which is not a quintessential matrimonial asset has transformed into matrimonial asset, it is the appellant who must prove to the contrary. It is not the beneficiary of the lower court's decision who must satisfy the appeal court that the lower court's decision was correct.

53 The rule on burden of proof may be thought to lead to the following propositions:

> (a) Of property bearing the two connections of quintessential matrimonial asset,[50] it will be included unless a spouse offers credible argument and proof why it should not be included.
>
> (b) Of property that does not bear these two connections, a spouse seeking its inclusion must offer credible argument and proof why it transformed into matrimonial asset by the time of the interim judgment using the arguments offered in the definition or some argument that is acceptable to the court.
>
> (c) Once the FJC decides that any property is matrimonial asset, it is the spouse who, on appeal, wants to argue against the inclusion who must offer credible argument and proof why the lower court's decision should be overturned.

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48 [2023] 1 SLR 1524.
49 *WFE v WFF* [2023] 1 SLR 1524 at [16].
50 See para 57 below on the two connections of quintessential matrimonial asset.

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This insight on the burden of fulfilling the requirements of the definition accords with TJ in smoothening the resolution of the issue at first instance and, even, on appeal.

D. SGCA Category (a): Quintessential matrimonial assets

54 As Prakash JA noted, the term "quintessential matrimonial asset" was first adopted by Ong J (as she then was) in the SGHCF in 2016.

55 The author coined this term in 1997[51] and has been using it since. The term accurately characterises property that bears two significant connections with the spouses' exertions of personal effort during their marital partnership in a way that no other term can.

56 It is immaterial that the definition by the Women's Charter 1961[52] under s 112(10) refers to such property only in its sub-s (*b*).[53] Property that is "any … asset of any nature acquired during the marriage by one party or by both parties to the marriage" should, in a better definition, appear before "any asset acquired before the marriage".

57 Property that fulfils s 112(10)(*b*), without considering the lines excluding gift or inheritance, possesses two significant connections with the spouses' exertions of personal effort during their marital partnership. It is these two connections that render

51 "[A]n asset acquired during marriage is the quintessential matrimonial asset": Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at p 931.
52 2020 Rev Ed.
53 The author had proposed to the *Select Committee of Parliament on the Women's Charter (Amendment) Bill No. 5/96*, see its report *Parl 3 of 1996*, presented to Parliament on 15 August 1996, at pp B29–B30, that the proposed provision should be re-written to begin with the matrimonial home and then an asset acquired by either party or both parties during their marriage. This proposal was not adopted by the *Select Committee*.

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the property part of the material gains of the marital partnership. The two connections are:

(a) the property is acquired by the exertion of one or both spouses' personal effort using their own money in its purchase; and

(b) the property is acquired during the subsistence of the marriage.

58 Property bearing the two connections to be quintessential matrimonial asset relates perfectly with the character of marriage as the spouses' equal co-operative partnership of different efforts for their mutual benefit.[54] Such property should be divided between them upon the dissolution of their marriage so that biases that sank in from the different roles each performed during marriage do not necessarily impoverish the spouse who performed the home-maker and child-carer role. Each spouse should emerge from the marital partnership with a fair share of the material gains.

59 In the first significant decision[55] made under s 106 of the former Women's Charter,[56] even of the predecessor provision that differentiated property acquired by one spouse's sole effort expended during marriage from property acquired by both spouses' efforts expended during marriage and which proceeded to provide ostensibly different directives regarding their division, L P Thean J was ready to include both groups within the pool of property liable to the power to divide:[57]

> Counsel for the [husband] suggested that only [the matrimonial home] was a matrimonial asset and that the others were not. I am unable to agree. In my opinion, all these assets were acquired during the marriage, and came within s 106 for division between the [spouses].

54 See s 46(*a*) of the Women's Charter 1961 (2020 Rev Ed), Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at p 356 and Leong Wai Kum "The Just and Equitable Division of Gains Between Equal Former Partners in Marriage" [2000] Sing LJS 208 at 224–225.

55 *Koo Shirley v Mok Kong Chua Kenneth* [1989] 1 SLR(R) 244.

56 Women's Charter (Cap 47, 1970 Rev Ed) as amended by Act 26 of 1980.

57 *Koo Shirley v Mok Kong Chua Kenneth* [1989] 1 SLR(R) 244 at [16].

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60 By Thean J's interpretation, even of the predecessor provision, the matrimonial home was acquired by the joint efforts of husband and wife and should be divided by the considerations offered in the former s 106(2) of the Women's Charter. Three other properties, *viz*, another apartment, the husband's membership of Serangoon Gardens Country Club and the husband's bank balances which were acquired solely by the husband's personal effort during the marriage were also included as property liable to be divided *albeit* under the former s 106(4).

61 The four pieces of property possessed the two connections of quintessential matrimonial asset and Thean J rightly divided all of them[58] "in the … manner, which [he] considered as fair and reasonable".

62 It ought not surprise that quintessential matrimonial asset bearing the two significant connections to the spouses' exertion of personal efforts during the subsistence of their marital partnership have been included within the pool of matrimonial assets from the first significant decision under this power to divide bestowed by Parliament in 1980.

63 It ought not surprise, too, that quintessential matrimonial asset under s 112(10)(*b*) of the Women's Charter 1961[59] does not require any argument to support its inclusion in the pool of matrimonial assets. It is included as of right. One would be hard put to suggest any connection with the marriage that is more persuasive than the two significant connections possessed by quintessential matrimonial asset at its acquisition.

64 Indeed, property fulfilling the character of quintessential matrimonial asset will most likely be agreed by the spouses as included in the pool of matrimonial assets. It follows from the default burden of proof that it is the burden of the spouse who argues against the inclusion of property possessing both significant connections, or who argues that it is only a portion of

58 *Koo Shirley v Mok Kong Chua Kenneth* [1989] 1 SLR(R) 244 at [25].
59 2020 Rev Ed.

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it that should be included as matrimonial asset, who must prove this satisfactorily to the court.

65 It should be pointed out that the second connection, *viz*, that the property was acquired during the subsistence of the marital relationship, can be understood in two ways.

66 "Acquisition" of property in Singapore is often a protracted exercise. Title is conveyed but the spouse holding the legal title continues to service a sizeable mortgage for a significant number of years. This second connection is clearly fulfilled where conveyance of legal title occurs after the solemnisation of marriage. It is quite possible, however, for the conveyance of legal title to have preceded the solemnisation of marriage while most of the mortgage payments are made during the subsistence of marriage. Here, one can take a technical understanding by which the conveyance of legal title constitutes the acquisition of property.

67 The author suggests, however, that TJ favours adopting a real beneficial understanding of acquisition of property. By this, despite legal title having been conveyed before marriage, it is possible for the property or at least the portion of the property where mortgage payments were made during marriage to constitute quintessential matrimonial asset.

68 In other words, the second connection raises the question: When was the property really acquired by one or both spouses in the sense that the spouse(s), not the bank, beneficially owns the property? Were the answer to this to be "largely during the subsistence of marriage" it will, together with the first connection, identify a portion of the property as quintessential matrimonial asset.

69 The only reported decision where a property ostensibly possessed the two significant connections of quintessential matrimonial asset and yet the owner-spouse successfully argued against its inclusion was the most unusual *Ong Boon Huat Samuel v*

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Chan Mei Lan Kristine.[60] The husband proved, and the SGCA was satisfied, that the wife had vociferously and repeatedly warned the husband against investing in the property after their marriage had deteriorated. The husband went ahead and, ironically for the wife, this was the investment that garnered profit so that she asked for the husband's equity in it to be included as matrimonial asset. The SGCA kept this "solo venture" by the husband in these most unusual circumstances out of the pool of matrimonial assets. A similar set of circumstances is quite unlikely to arise again.

E. SGCA Category (a): "matrimonial home, whenever and however acquired" can be reconsidered

70 The author suggests, with respect, that this part of Prakash JA's observation should be re-considered.

71 It is not optimal interpretation to include the matrimonial home as quintessential matrimonial asset "whenever and however acquired". Such blanket inclusion goes too far.

72 This is the part of the SGCA's Categories that could be supplemented by the second step of the Five Purposeful Steps of Analysis.

73 The matrimonial home is clearly unique among all properties owned by one or both spouses.

74 The author has since 2001 noted that the matrimonial home is the "cradle of the family".[61] It is where the spouses lived out their co-operative marital partnership and, if there is a child as is often the case, it is also where the child was jointly and co-operatively brought up by the spouses. The "cradle of the family" characterisation is accepted by the Singapore courts from 2006.[62]

60 [2007] 2 SLR(R) 729.
61 See *Halsbury's Laws of Singapore* vol 11 (LexisNexis, 2001) at paras 130.166 and 130.788.
62 See Andrew Phang J in *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [33].

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75 The fact that in almost all cases the matrimonial home would have been acquired by both spouses' exertion of personal effort during the marital partnership, however, should not lull us towards the view that it must always be so.

76 Where the acquisition of the matrimonial home lacks either of the two significant connections that a quintessential matrimonial asset must possess at its acquisition, this should not be overlooked.

77 How should such matrimonial home, lacking one of the two significant connections, be treated for the purpose of deciding whether it is to be included among matrimonial assets?

78 What this unique property deserves is (as the second step of the Five Purposeful Steps of Analysis encourages) sensitive consideration to favour its inclusion. When it was acquired and how it was acquired should not be ignored, but sensitive consideration may allow its inclusion nevertheless; or it may allow a portion of the current value of the matrimonial home to be included as matrimonial asset. The SGHCF has, in three decisions, demonstrated such sensitive consideration to favour the inclusion of a portion of the matrimonial home, leaving out the balance to be excluded from the pool of matrimonial assets.

79 In *TNC v TND*,[63] the husband acquired the Bayshore property before marriage but this property served as the spouses' matrimonial home for some 15 months in their 12-year-long marriage, raising one son. Debbie Ong JC (as she then was), in the SGHCF included this pre-marital property as matrimonial asset for having fulfilled s 112(10)(*a*)(i) (although in "Group B" as non-quintessential matrimonial asset). At the wife's appeal to the SGCA[64] the husband argued that the pre-marital property should not be included. The SGCA upheld the SGHCF's decision upon noting that Ong JC had already, under the classification methodology, separated "Group B" from "Group A" (quintessential matrimonial assets). At the end of the appeal the SGCA reduced

63 [2016] 3 SLR 1172.
64 *TND v TNC* [2017] SGCA 34.

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the total value of the pool a tad (although the reduced pool of matrimonial assets still amounted to a whopping $32.5m) and increased the wife's proportion a tad to 33.6%.

80 Ong JC (as she then was) followed this up with her decision in *TXW v TXX*.[65] The spouses were married for 22 years although without child. The property 1C Mayfield was acquired by the husband before marriage but it served as their matrimonial home for 12 years, although the spouses had moved out of it before the origination of the application for divorce. The husband argued that it ceased to be their matrimonial home and ought not to be included. Ong JC rejected the argument. She took a sensitive view of the facts and decided that at least $\frac{12}{22}$ portion of the current value of the property is matrimonial asset. Prakash JA in *TND v TNC*[66] approved of Ong JC's approach and described it as "both principled and flexible".[67]

81 Aedit Abdullah J in *UJF v UJG*[68] followed Ong JC's lead to include the entire current value of the matrimonial home as matrimonial asset. The property at Park Villas had been acquired before the solemnisation of marriage which lasted merely four years before the divorce although the parties cohabited for ten years before marriage. The judge considered the matrimonial home sensitively and held that it fulfilled s 112(10)(*a*)(i) of the Women's Charter.

82 It should be noted that "matrimonial home" is not a technical legal term. It simply refers to the property where the spouses resided and lived out their marital partnership. It should, therefore, be possible for the same property to be matrimonial home to more than one family where relatives co-live. Conversely, it is possible for well-resourced families to have more than one matrimonial home. It is, simply, that most families will only have one property that they reside in as their matrimonial home.

65 [2017] 4 SLR 799.
66 [2017] SGCA 34.
67 *TND v TNC* [2017] SGCA 34 at [35].
68 [2018] SGHCF 1 at [58].

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83 In this regard it is suggested, with respect, that the SGHC(A) could have decided *VOD v VOC*[69] differently. The SGHC(A) decided that the husband's one-third ownership of a large property (where his mother and brother each owned one-third of the property) and where the husband, his wife and son lived for the 33 months of marital cohabitation (after which the wife left with her son) was not their matrimonial home. The spouses never lived anywhere else during their admittedly short marital partnership. They only lived in this property together with the husband's parents. Woo Bih Li JAD regarded the property as the husband's parents' matrimonial home and was not inclined to regard it as also having been the spouses' matrimonial home.

84 With respect, the author suggests that the husband's one-third share of the current value of the property can be regarded as the spouses' matrimonial home. Their marital partnership was extremely brief and, therefore, according to the Five Purposeful Steps of Analysis, a significant portion of their matrimonial home's net current value can be discounted and retained by the husband alone. Sensitive consideration of their matrimonial home could possibly include a portion of its current value (33 months relative to the number of months from husband's acquisition of his one-third share) as matrimonial asset.

85 In any case it is noteworthy that Prakash JA in *USB v USA*[70] accepted that the matrimonial home is unique as property of the family. Perhaps it goes a tad far to ignore how or when it was acquired, but it surely deserves sensitive consideration to favour inclusion of the entire net current value or a portion as matrimonial asset.

69 [2022] SGHC(A) 6.
70 [2020] 2 SLR 588 at [19].

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F. SGCA Category (b) with (c): Pre-marriage asset transformed into matrimonial asset or part of pre-marriage asset transformed into matrimonial asset

86 Prakash JA for the SGCA in *USB v USA*[71] chose to categorise the two types of property that are non-quintessential matrimonial asset, *viz*, one, pre-marital asset and, two, asset acquired by gift or inheritance, separately for the purpose of deciding whether each or a portion of each transformed into matrimonial asset. The arguments for transformation are provided by s 112(10)(*a*) of the Women's Charter 1961[72] and the closing lines of s 112(10)(*b*) which are often referred to as "the Exclusion Clause". There may also be arguments added to these by way of precedents.

87 With respect, the author suggests that these two types of property, both of which share the characteristic of being non-quintessential matrimonial asset, are similar for the purpose of deciding whether they should be included in the pool of matrimonial assets. Each type lacks one of the two significant connections that characterise quintessential matrimonial asset at their acquisition. The pre-marital asset lacks the connection of having been acquired during the subsistence of the marital partnership (although we ought to be alert to the point already made that "acquired" can possibly refer to the real payments towards its purchase rather than the technical conveyance of legal title). The gift or inheritance lacks the connection of being acquired by the spouses' exertion of personal effort.

88 From this perspective, the third step of the Five Purposeful Steps of Analysis possibly offers the more principled approach of analysing both types of property in a largely similar way. The same question can be asked of pre-marital asset and gift or inheritance: Did it, over the subsistence of the marital partnership, gain connection(s) which compensates for the one connection it lacked at acquisition? Using such analysis, it will be possible to identify whether the whole of the current value of each type of property or a portion of it, *viz*, the portion that gained

71 [2020] 2 SLR 588 at [19].
72 2020 Rev Ed.

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connection that compensates for what was lacking at acquisition, should rightly be included in the pool of matrimonial assets. The whole of the current value of such property or the portion of it has become part of the material gains of the marital partnership as, over the course of the marriage, it gained connections akin to the two significant connections possessed by quintessential matrimonial asset at acquisition.

89 Each of the SGCA's Categories will be discussed separately, beginning with pre-marital asset.

90 Pre-marital asset transforms into matrimonial asset, by the arguments offered in ss 112(10)(*a*)(i) and 112(10)(*a*)(ii) of the Women's Charter 1961,[73] where it was "ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes", or where it "has been substantially improved during the marriage by the other party or by both parties to the marriage". It should not be forgotten that Prakash JA in *USB v USA*[74] also observed that it may be proven that a portion of the pre-marital asset, only, becomes so transformed and, were it so, then it is only this portion that should be included as matrimonial asset.

91 The year after the definition became enacted, the author suggested that the alternative arguments of transformation within the definition are weak for being internally inconsistent.[75]

92 The FJC appears, however, content to apply these arguments without the need to rationalise them by equalising them somewhat.

93 *USB v USA* applied this Category. The marriage lasted only five and a half years, but the parties cohabited for 12 years before they married. They did not have a child, but the wife had two

73 2020 Rev Ed.
74 [2020] 2 SLR 588 at [19].
75 See Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at p 920 and now see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at paras 16.108–16.147.

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children from an earlier marriage and the two children were brought up by the parties. The wife was incredibly successful as senior marketing director of a major real estate agency. Despite the husband having been a lawyer before he retired his holding of property paled against that of his wife. At divorce the wife owned 17 properties worth a staggering value.

94 At the SGHCF application for an order of division, the wife had consented to the inclusion of eight properties of current net value of $7,625,437.70 as matrimonial asset so this was available for division.

95 The wife only argued that nine properties of which she was conveyed legal title before solemnisation of marriage (although she continued to service mortgages attached to them during their five-and-a-half-year marriage) should remain her separate property. The husband argued for their inclusion. The judge at the SGHCF disagreed with the wife and included portions of each property based upon the connection built up from her servicing of the mortgages, *etc*, during marriage. Given the wife's equity in these pre-marital assets, the judge decided that the current net value of the portions of these nine properties that transformed into matrimonial asset was only $2,435,221.70.

96 On the cross-appeal by both spouses, the SGCA rejected the wife's argument that including even portions of the nine pre-marital assets was wrong. Prakash JA upheld the judge's inclusion of the portions of the pre-marital assets that had fulfilled the definition:[76]

> 54 … We reject the Wife's argument that the court should exclude the Disputed Properties [*ie*, the nine pre-marital assets] entirely from the pool on the ground that they had been acquired prior to the marriage as legal title was acquired at the time. We have already explained the significance of payment of mortgage loans during the marriage. It is undisputed that the Wife continued to pay off the mortgage loans on the Disputed Properties during the marriage, and that is sufficient to bring the MP [*ie*, matrimonial pool (see [5])] values of the Disputed Properties within the pool. The MP values of the Disputed

76 *USB v USA* [2020] 2 SLR 588 at [54] and [67].

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> Properties (*ie*, a percentage of their equitable or beneficial interests) were 'acquired' during the marriage.
>
> …
>
> 67 … [W]e do not disturb the Judge's decision to include a prorated portion of the values of the Disputed Properties.

97 By adding $2,435,221.70 to the $7,625,437.70 and deducting $433,900.60 which was found to be liabilities attached to the acquisitions, the total current net value of the pool of matrimonial assets was $9,626,759.63.

98 Although Prakash JA had not used the verb "discounting" (preferring instead simply "a percentage of their equitable or beneficial interests" or "prorated portion"), it should be noted that the effect is similar. To reach the true material gains of the marital partnership requires the FJC to look carefully for the portion that gained the two significant connections with the marital partnership leaving out the balance.

99 *USB v USA* is a sound application of the SGCA's Category (b) with (c).

100 The SGCA did not have to contend with the alternative argument offered in the definition to transform pre-marital asset or a portion of it into matrimonial asset, *viz*, that it was substantially improved by the other party or both parties to the marriage, as the husband did not try to prove this. The author discusses this argument below with regard to gift or inheritance.

G. SGCA Category (b) with (d): Transformed gift or inherited asset to be treated in the same way as other transformed assets

101 Prakash JA in *USB v USA*[77] did observe that property acquired as gift or inheritance can, if it fulfils the two arguments offered in the Exclusion Clause (in s 112(10)(*b*) of the Women's Charter 1961)[78] also transform into matrimonial asset. The two

77 [2020] 2 SLR 588 at [19].
78 2020 Rev Ed.

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arguments of transformation are, one, that the property served as matrimonial home and, two, that the property was substantially improved during the marriage by the other party or both parties.

102 The judge did not elaborate on this observation as there was no such property among the 17 pieces of real estate the wife owned at the time of divorce. It should follow from the rest of the judge's observation that it need not always be the entire of such property that transformed. It is rather more likely that only a portion of the gift or inheritance that transforms into matrimonial asset.

103 The author suggests that the definition's reference to "gift or inheritance" may be its weakest part.

104 It should be acknowledged, however, that a property acquired as gift or inheritance (and, indeed, by any other windfall) presents the biggest challenge to whether it should be included as matrimonial asset. There was no exertion of personal effort in its acquisition. This is hugely problematic as the exertion of personal effort in acquisition renders any property part of the material gains of the marital partnership.

105 The two arguments offered for transformation of gift or inheritance should be rationalised with the two arguments offered for transformation of pre-marital asset.[79] Section 112(10) offers one common argument and one unique argument each for pre-marital asset and for gift or inheritance. They should be rationalised.

106 Of these, clearly it is the common argument, *viz*, "substantially improved during the marriage by the other party or by both parties to the marriage"[80] that offers sound reason for transforming property into matrimonial asset.

79 The author made this observation in Leong Wai Kum, *Principles of Family Law in Singapore* (Butterworths Asia, 1997) at pp 918–931 and now see Leong Wai Kum, *Elements of Family Law in Singapore* (LexisNexis, 3rd Ed, 2018) at paras 16.125–16.147.

80 Women's Charter 1961 (2020 Rev Ed) s 112(10)(*a*)(ii).

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107 It is of note that this argument is offered both for the pre-marital asset as well as for the gift or inheritance. Indeed, this argument existed even in s 106(5) of the former Women's Charter.

108 Yet it is close to impossible to find this argument successfully argued in a major decision. The author suggests that it is remarkable that, after 27 years of the existence of the definition, there has been no reported decision of successful invocation of this argument that transforms both pre-marital asset and gift or inheritance into matrimonial asset.

109 The author further suggests the reason for the lack of success is because the argument, despite apparently offering sound argument for transformation, is grievously flawed. Literally, the argument demands that efforts of substantial improvement of the pre-marital asset or gift or inheritance during the marriage must emanate from "the other party", if not from "both parties to the marriage".

110 The specification of who must have exerted personal effort to substantially improve the value of the property during marriage is grievously flawed for two reasons:

(a) How unrealistic of life is it to require that it is the non-owner of the pre-marital asset or gift or inheritance who should have exerted the personal effort at substantial improvement? Surely it is far more realistic that it is the owner himself or herself who would have exerted such personal effort at substantial improvement. This may explain why there are few attempts to use this transformation argument in court.

(b) Specifying who between the spouses exerted personal effort at substantial improvement of the value of the property is unprincipled. Section 46(*a*) of the Women's Charter 1961[81] demands that spouses co-operate by exerting possibly different kinds of efforts for mutual benefit. It ought not matter who did what during the marriage as the division of marital roles is a purely personal

81 2020 Rev Ed.

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private matter. It is unprincipled to allow a spouse, in the application for an order of division of matrimonial assets, to specify what effort the other spouse had not made as the division of roles was their mutual decision at some point during their marital partnership.

111 It takes a very calculative spouse to produce evidence that fulfils this transformation argument if read literally. The non-acquiring spouse needs to strategise: "You acquired the pre-marital asset or the gift or inheritance so I had better be the one to exert personal effort at substantially improving its value." We should be grateful that we have not seen such calculative behaviour.

112 The author has since 1997 supported the purposive interpretation of the transformation argument so that it ought not matter who between the spouses exerted personal effort that substantially improved the value of the pre-marital asset or gift or inheritance during the marriage. At the dissolution of their equal co-operative partnership of different efforts for mutual benefit, the portion of the property that substantially improved in value does constitute their material gain.

113 Such purposive interpretation has not been adopted but we should continue to hope that TJ will persuade the FJC to adopt purposive interpretation. It really ought not matter who did what during the marriage. Any exertion of personal effort to improve the value of the property should work to connect the portion of the gift or inheritance to the marital partnership and, thus, constitute part of their material gains.

114 The transformation argument "being a matrimonial home" is also problematic. The author suggests that it needs to be rationalised with the alternative so that this argument should be interpreted as "*substantially* being a matrimonial home". There is no justification for the vast difference in weightage between the alternative transformation arguments.

115 There are, however, green shoots in interpretation consistent with TJ.

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116 The discussion begins with the most recent purposive interpretation by the SGCA.

(1) Purposive interpretation can allow further arguments of transformation, eg, declared intention of owner-spouse

117 In *CLC v CLB*,[82] the wife appealed against the decision of the SGHC(A) below that had removed significant properties (termed "Disputed Assets") from the pool of matrimonial assets. This was a 16-year-long marriage where two teenaged children were brought up. The wife was a bank executive earning $25,238 a month, while the husband became a full-time investor and could earn an average of $22,799 a month. The wife was, thus, the larger income-earner, but the husband acquired gifts from his father before marriage and inheritances from his father when the father died during the subsistence of marriage. They were worth some $5,024,886. These were put into the Disputed Assets worth $3,800,000. Were these Disputed Assets part of the matrimonial assets?

118 The SGHCF found these gifts to have been co-mingled[83] with the "family estate". The SGHC(A) disagreed and removed them from the pool of matrimonial assets. On further appeal the SGCA agreed with the SGHC(A) that there was no sufficient evidence to find co-mingling, but it nevertheless returned the Disputed Assets to the pool of matrimonial assets on different reasoning. By so doing the actual amounts to be received by spouses was re-calculated to be very close to what the SGHCF had calculated. The SGCA may be regarded to have approved of the use of the conduct of co-mingling gift or inheritance with funds acquired from exertion of personal effort to transform both (including the gift or inheritance) into a blended fund that should be included in the pool of matrimonial assets.

82 [2023] 1 SLR 1260.
83 The SGHCF accepted that the conduct of co-mingling of inheritance funds received by the wife during marriage with family funds transformed the inheritance funds into co-mingled, *viz*, blended, funds and so to be included as matrimonial asset in *UYP v UYQ* [2020] 3 SLR 683 at [14]. This principle was affirmed by the SGHCF, of inheritance funds received by the husband before marriage in *VJR v VJS* [2021] SGHCF 10 at [24].

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119 Judith Prakash JCA (as she then was) was prepared to add novel transformation arguments to the two offered in the definition. The judge began by observing:[84]

> [It is possible to read the] intention of the donee spouse to bring non-matrimonial assets into the matrimonial pool … in accordance with principles of property law. In other words, nothing in s 112(10) excludes the right of a spouse to deal with his or her personal asset in any way he or she wishes to deal with it, including bringing it into the family estate.

This purposive interpretation of s 112(10) is useful and holds promise for the future. Although Andrew Phang J had earlier made reference to the possible effect of the intention of the spouse to whom the gift was given in *Chen Siew Hwee v Low Kee Guan*[85] it was mere *dictum* then and appeared to be harder to fulfil.[86]

120 Prakash JCA, then elaborated why the intention of the owner of the gift or inheritance should be accorded full respect:[87]

> In our view, the policy of the law in this area should favour the intention of the parties … For present purposes, our view is that the intention of a spouse in relation to an asset acquired by way of gift or inheritance can be taken into account in determining whether that asset should still be considered as: (a) a gift to that spouse and taken out of the matrimonial pool; (b) as re-gifted to the other spouse and similarly excluded from the pool; or (c) as having lost its character as a gift and having been incorporated into the pool.

121 It was (c) that was found on the facts:[88]

> In sum, where one of the parties to the marriage has received a gift or inheritance but evinces an intention to deal with that asset by, for example, giving it to the other party or

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84 *CLC v CLB* [2023] 1 SLR 1260 at [36].
85 [2006] 4 SLR(R) 605.
86 *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [57]:
> The husband has, at no time, indicated (in a clear and unambiguous fashion) that the shares … have ceased to be gifts from his father and have become part of the pool of matrimonial assets. … In particular [the wife] had to demonstrate that there was a real and unambiguous intention on the part of the husband that the present assets … were to constitute part of the pool of matrimonial assets.

87 *CLC v CLB* [2023] 1 SLR 1260 at [50] and [51].
88 *CLC v CLB* [2023] 1 SLR 1260 at [64].

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> incorporating it into the family estate, it is not inconsistent with s 112 for the court to give effect to such intention. This is a matter of applying ordinary property law principles that are not excluded by the provision. A spouse who has proprietary interest in a non-matrimonial asset naturally has the right to deal with that asset the spouse wishes, including bringing it into the matrimonial pool.

122 What were the bases for the SGCA finding such evincing of intention to bring the gift or inheritance into the family estate? Prakash JCA identified the following evidence which the judge found to be convincing:

> (a) "As early as February 2007, before the Husband started receiving the Inheritance Moneys, he had written an e-mail to the Wife with the title 'Our Net Worth'. There, he included under the list of 'assets' an Australian property which had been a pre-marital gift from his father, as well as two properties that were in the names of the Wife … and had been purchased in 2004 and 2006. After listing their '[liabilities]', he stated that the 'net worth' of S$4.4m meant that 'there [was] plenty to ensure [the son's] and [the Wife's] future comfort'."[89]
>
> (b) "Similar correspondence over the years referred to 'our liquid assets' and 'our net worth'."[90]
>
> (c) "In another WhatsApp message sent to the Wife on 27 September 2018, he calculated their 'total wealth' as being S$16m … This, he stated was 'more than enough'."[91]
>
> (d) "Such intention can also be inferred from the fact that he had placed some of the Inheritance Moneys into the UOB Joint Account. … In our judgment, where one of the parties to a marriage places moneys derived from non-matrimonial assets into a joint account with the other spouse which can be separately operated by each of them, a rebuttable presumption indeed arises that the

89 *CLC v CLB* [2023] 1 SLR 1260 at [88].
90 *CLC v CLB* [2023] 1 SLR 1260 at [89].
91 *CLC v CLB* [2023] 1 SLR 1260 at [90].

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transferring spouse intends to share the said moneys with the other."[92]

(e) "Although [DBS bank account] was registered in the Husband's sole name, the money from this account was used for the benefit of the family."[93]

(f) "Similarly, the funds from [Australian bank account] were used for the family's expenses when they visited Perth annually."[94]

(g) "Indeed, the Husband's evidence, in relation to Property 2 which was purchased in the Wife's name, was that the parties would '[pool their] resources'."[95]

123 The SGCA concluded:[96] "[W]e are satisfied that the Husband clearly and unambiguously intended to treat the Inheritance Moneys … as part of the family estate". This decision opens up doors to arguments based on a variety of evidence adding up as evincing of an intention to include non-matrimonial property as part of the pool of matrimonial assets.[97]

124 It is further of note that the SGCA would not allow the husband's attempt to argue that his burden of proving that the Disputed Assets can be traced to gifts is possibly lighter. His argument was that, once he proves on a *prima facie* basis (*ie*, he raises a credible suggestion that the Disputed Assets are traced to gifts), then the evidential burden shifts to the wife to refute this. Prakash JCA would have none of this. She decided that the burden of proving that property is traced to gift must be discharged fully by the husband. Indeed, the judge observed that the process

92 *CLC v CLB* [2023] 1 SLR 1260 at [91] and [92].
93 *CLC v CLB* [2023] 1 SLR 1260 at [94].
94 *CLC v CLB* [2023] 1 SLR 1260 at [95].
95 *CLC v CLB* [2023] 1 SLR 1260 at [96].
96 *CLC v CLB* [2023] 1 SLR 1260 at [97].
97 It is noteworthy that the SGCA decision in *CLC v CLB* [2023] 1 SLR 1260 represents movement from the position it took in *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405. Andrew Phang JA at [55] had observed:

> Nothing in s 112(10) provides that the mere expression of an intention to bring non-matrimonial assets into the pool of matrimonial assets suffices to take such assets out of the ambit of the Exclusion Clause [and thus be excluded from the pool unless either transformation argument is satisfactorily argued].

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of tracing should not be an overly technical exercise in proof. Rather,[98] "a common sense approach to tracing dependent on sufficient linkage between a non-matrimonial asset and an asset existing at the time of divorce" should be adopted.

125 The SGCA's decision in *CLC v CLB* provides a nice contrast to the much earlier SGHC decision in *Chen Siew Hwee v Low Kee Guan* although it should be noted that the SGCA appeared to have fully agreed with the earlier SGHC decision.

(2) Is it also possible for gifts to have changed character during marriage?

126 In *Chen Siew Hwee v Low Kee Guan*, involving a 17-year-long marriage where the spouses raised the husband's son from an earlier marriage, the husband was gifted two groups of shares by his father before he married. The wife accepted that, having been acquired as gifts, the net current value of shares bought during marriage to replace those gifted to the husband, fell to be considered under the Exclusion Clause within the definition. The SGHC decided that neither transformation argument was fulfilled so the gifts remained outside the pool of matrimonial assets. It is noteworthy that the court was willing to consider the wife's rather novel argument, but ultimately the court demonstrated it favoured a literal interpretation of the definition.

127 In *Chen Siew Hwee v Low Kee Guan*, a 2006 SGHC decision, the wife did not even mount the argument that the husband's exertion of personal effort during their 17-year-long marriage improved substantially the value of the shares so that the argument offered in the definition could possibly be fulfilled. Phang J, in relation to a different point, observed that the definition required the effort of having substantially improved the property must emanate from "the other party" or "both parties".[99]

128 The wife's argument that the court did consider was novel. The companies in which the husband was gifted shares

98 *CLC v CLB* [2023] 1 SLR 1260 at [66]–[77].
99 *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [34]–[35].

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underwent court-ordered liquidation. It was neither revealed how much the husband received nor how much he used to buy shares in other companies. The wife argued that these shares in these new companies are different from those he was gifted so that the character of original gifts had dissipated. She asked the court to regard the shares in the new companies not as gift to the husband but, rather, as "other asset of any nature acquired during the marriage". The SGHC was prepared to consider this novel argument but decided in the end that the husband had not exercised volition in the acquisition of the shares in the new companies. Rather, the husband had no choice as the original companies had been liquidated.[100]

129 With respect, this takes a rather unrealistic view of what transpired. The husband did exercise some degree of volition. He could have wasted away the money he received from the liquidation. He, instead, reinvested the money and it probably grew over time. A TJ view would regard, at least, the increase in value (between the value of the gift to him and the net current value of the shares in the new companies) as part of the material gains of this marital partnership. It may be suggested that the SGCA decision in *CLC v CLB* may come to be accepted as a sounder counterfoil to the literal reading of the part of the definition relating to property acquired by gift or inheritance.

130 It may also be noted that the SGHC in *Chen Siew Hwee v Low Kee Guan* made references to preventing "unwarranted windfalls",[101] "unjustifiable windfall"[102] and not offering the wife "an illegitimate backdoor to a claim".[103] The court was, with respect, also a little too focused on upholding "the donor's intention"[104] given that the husband's father's act of gifting would have been somewhat long in the past; and, in any case, no father should be able to give property to his son before the son's marriage on the understanding that it should never be subject to the court's power to divide. The author suggests that

100 *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [57].
101 *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [32].
102 *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [57].
103 *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [57].
104 *Chen Siew Hwee v Low Kee Guan* [2006] 4 SLR(R) 605 at [32].

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Chen Siew Hwee v Low Kee Guan may have adopted a more literal interpretation of the definition than is optimal.

(3) Inter-spousal gifts present greatest challenge

131 The existing precedents relating to property that one spouse gifts to the other spouse during the subsistence of marriage are contradictory.

132 Although both decided by the SGCA, the pre-definition *Yeo Gim Tong Michael v Tianzon Lolita*[105] is suggested to be superior to *Wan Lai Cheng v Quek Seow Kee*.[106]

133 It should be noted that the SGCA in *Wan Lai Cheng v Quek Seow Kee* took a narrower view of what was decided in *Yeo Gim Tong Michael v Tianzon Lolita*. It should further be noted that the SGCA in *CLC v CLB* largely accepted *Wan Lai Cheng v Quek Seow Kee*, while the SGHC(A) in *CLS v CLT*[107] adopted it completely.

134 The author continues to believe that *Yeo Gim Tong Michael v Tianzon Lolita* can be read to have delivered a wider decision and that the effect of the decision on the conduct of inter-spousal gifting is principled and sound.

135 *Yeo Gim Tong Michael v Tianzon Lolita* can be read as having decided that the conduct of gifting between spouses during marriage should largely be ignored when deciding whether the property fulfils the character of matrimonial asset by the time of the interim judgment. In his elegant 25-paragraph decision, L P Thean JA presented the most principled approach to considering the conduct of inter-spousal gifting when the judge observed:[108]

> [T]he starting point is whether the subject matter of the gift is property originally acquired during the marriage … The fact that the gift was contemporaneously or immediately transferred or

105 [1996] 1 SLR(R) 633.
106 [2012] 4 SLR 405.
107 [2022] SGHC(A) 29.
108 *Yeo Gim Tong Michael v Tianzon Lolita* [1996] 1 SLR(R) 633 at [12].

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> later transferred to the other spouse does not affect the original acquisition of that [inter-spousal] gift.

136 The principle that Thean JA propounded went beyond the actual facts of the case. The principle is that the conduct of inter-spousal gifting should, generally, be ignored so the character of the property should be derived from analysis of its original acquisition. Ignoring the conduct of inter-spousal gifting is for the sensible reason that inter-spousal gifting depletes the pool of matrimonial assets (also known as material gains). Any significant gift between spouses during marriage should, therefore, be returned to the analysis of its acquisition from a party outside the marital partnership in order to decide whether it fulfilled the definition. The only exceptions to returning all gifts between spouses to the norm would be where the gift is of *de minimis* value or the gift was exceptionally sentimental (in which case the spouse to whom it was gifted should keep the sentimental gift).

137 In other words the SGCA had decided in *Yeo Gim Tong Michael v Tianzon Lolita* (1996), quite rightly, that the reference to "gift" in the closing words of s 112(10)(*b*) of the Women's Charter,[109] was not intended to refer to a gift between spouses. The FJC should ignore the gifting conduct and analyse the property from its acquisition.

138 Somewhat unfortunately the SGCA in *Wan Lai Cheng v Quek Seow Kee* (2012) read the decision in *Yeo Gim Tong Michael v Tianzon Lolita* (1996) more narrowly as only applying to the facts of the case, *viz*, the inter-spousal gift was of property that had originally been acquired by the exertion of personal effort by a spouse during marriage,[110] while it has no effect whatsoever where the inter-spousal gift was of property that had originally been acquired as gift or inheritance from a third party to one spouse.

109 Cap 353, 1985 Rev Ed.
110 See *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405 at [49].

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(4) Pure inter-spousal gift differentiated from inter-spousal re-gift of inheritance

139 Taking a narrow view of its pre-definition decision in *Yeo Gim Tong Michael v Tianzon Lolita* (1996), the SGCA in *Wan Lai Cheng v Quek Seow Kee* (2012) did give effect to the gifting conduct between spouses. The SGCA propounded two categories of "inter-spousal gifts". It may be questioned whether such categorisation was absolutely essential.

140 *Wan Lai Cheng v Quek Seow Kee* was a long marriage of 36 years before divorce where two sons, now grown, were raised. The husband was a scion who carried on his own business while the wife was a modest teacher until she retired. The case focused on two groups of shares in two companies owning two sets of apartments. Their common feature was that the husband, as owner, gifted a percentage of each group of shares to his wife during their marriage. This conduct of gifting rendered all of these shares as "inter-spousal gift" to be handled uniquely. If the SGCA had, instead, followed the lead of *Yeo Gim Tong Michael v Tianzon Lolita* (1996), the conduct of gifting could be ignored altogether and the character of the shares determined without regard to this conduct of the husband gifting a percentage to the wife.[111]

141 The initial character of the two groups of shares was diametrically different.

142 The Skeve shares were in the company set up to own an apartment acquired by the husband with his own money. The husband gifted 10% of Skeve shares to his wife. The SGCA decided that the Skeve shares should be termed "pure inter-spousal

111 It should be pointed out that the SGCA in *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405 further introduced the unnecessary complication that it was only the part of the property that the donor-spouse gifted to the donee-spouse that formed the inter-spousal gift although, the balance of the property would also be included as matrimonial asset or excluded from matrimonial asset. See, *eg*, *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405 at [83]–[84]. It is suggested that the same result is reached, and in a less complicated way, by characterising the whole 100% of property affected by conduct of inter-spousal gifting as inter-spousal gift.

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gift"[112] because they originated from the husband's exertion of personal effort. Pure inter-spousal gifts are not within the definition's reference to "gift". Instead, pure interspousal gifts are quintessential matrimonial assets, and clearly included in the pool of matrimonial assets. The SGCA had earlier decided that the just and equitable proportions of division should be 75:25 in favour of the husband.[113] The wife, having already been gifted 10%, was ordered to receive 15% more.

143 The Hawick and Kelso shares were more complicated and the SGCA's decision regarding them was similarly much more complicated. The apartments in the companies holding them were acquired as inheritance by the husband. The husband gifted 40% of these shares to his wife. The SGCA termed them "inter-spousal re-gift of inheritance".[114] Inter-spousal re-gift, the SGCA decided, does fall within the definition's reference to "gift".

144 As such the inter-spousal re-gift had to fulfil either of the two arguments offered by the definition in order to transform into matrimonial asset. Unfortunately for the wife, one of the two arguments, *viz*, "being a matrimonial home" was clearly impossible to fulfil by shares. This still left the other argument, *viz*, "substantially improved during marriage by the other party or by both parties".

145 It was at this point that the SGCA faced a conundrum. The Hawick and Kelso shares were originally inherited by the husband (where the wife would be the "other party"), but there was also the conduct of gifting by the husband so his wife acquired her 40% share (where the husband would then be the "other party"). Is it the wife or the husband who should exert personal effort at substantially improving the value of the shares in order for the property to transform into matrimonial asset?

112 *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405 at [41].
113 *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405 at [73].
114 *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405 at [61].

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146 It is of note that, at this point, the SGCA in *Wan Lai Cheng v Quek Seow Kee* (2012) was at exactly the same point at which the SGHC found itself in *Chen Siew Hwee v Low Kee Guan* (2006). Should this transformation argument be interpreted literally, or would purposive interpretation allow the court to ignore who specifically exerted personal effort at substantially improving the value of the property (and thus be consistent with the demand in s 46(a) of the Women's Charter that spouses co-operate for mutual benefit without distinguishing who discharges which marital role)? It would have been possible for the SGCA in *Wan Lai Cheng v Quek Seow Kee* to acknowledge that the literal interpretation favoured by the SGHC in *Chen Siew Hwee v Low Kee Guan* can lead to a dead-end. To avoid heading into the dead-end, the SGCA could have discarded the literal interpretation for purposive interpretation instead. It did not.

147 The SGCA in *Wan Lai Cheng v Quek Seow Kee* conceded that "the other party" in an "inter-spousal re-gift" can be either the husband or the wife.[115] Given this unresolvable choice the SGCA decided that this alternative argument offered by the definition, *viz*, "substantially improved during the marriage by the other party or by both parties to the marriage", is simply unavailable. Property that is inter-spousal re-gift of an inheritance is offered, by the definition, only one argument to transform into matrimonial asset, *viz*, "being a matrimonial home". No justification was offered as to why such property deserves to be treated less well by the definition. The inter-spousal re-gift of inheritance by the husband was left out of the pool of matrimonial assets.

148 It is of note that Andrew Phang JA who delivered the main judgment (with whom Chan Sek Keong CJ and VK Rajah JA largely agreed) made the point no less than nine times that the court must ensure that no "unmerited windfall" or "windfall" is accrued to the spouse who had not inherited the property and the way to ensure this was by excluding such property from the pool of matrimonial assets.

115 *Wan Lai Cheng v Quek Seow Kee* [2012] 4 SLR 405 at [56].

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149 While this is not the time to discuss the point in any detail, the author will, with respect, observe that the judge's perspective might not sit consistently with s 46(*a*) of the Women's Charter 1961[116] which demands that spouses co-operate as equal partners exerting different efforts for mutual benefit. The author suggests that a downstream message from the legal demand is that each spouse should be prepared to share all the ups and downs that come their way over their 36-year-long partnership. As much as a spouse should support the other in misfortune, should the same not be true of windfalls?

150 As it turned out the wife did not fare poorly with the inter-spousal re-gift. She had been gifted 40% of this by her husband, so the property being excluded from the matrimonial pool, was not subject to the proportions of division ordered. Indeed, her 40% was higher than the 75:25 in favour of the husband ordered by the court below and not the subject of appeal. The question we are concerned with is only what principle ought to have guided the issue of whether the inter-spousal re-gift became transformed as matrimonial asset.

151 The author suggests that TJ would not condone the analysis in *Wan Lai Cheng v Quek Seow Kee* of the conduct of spousal gifting between themselves. TJ seeks comprehensive analysis to reach the whole spectrum of material gains of the marital partnership. Spousal conduct of gifting between themselves depletes the material gains and should, generally, be ignored so the property is returned for analysis.

152 You should persuade the FJC to go back to first principles and highlight that the pre-definition *Yeo Gim Tong Michael v Tianzon Lolita* is more consistent with comprehensive identification of all material gains.

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IV. Advice to family law practitioners

A. Use the SGCA Categories with supplementation

153 The above discussion aims to demonstrate that the definition of matrimonial assets in s 112(10) of the Women's Charter 1961[117] should be interpreted to achieve the purpose of identifying all material gains of the marital partnership. It is only after the FJC identifies the whole spectrum of material gains (and calculates its current net value with the assistance of financial experts) that the FJC proceeds to achieve its just and equitable proportions of division.

154 TJ guides you in determining which precedents are helpful and which are slightly problematic.

155 It is your duty to guide your clients towards therapeutic outcomes. These are the fairest outcomes which side-step technicalities.

156 Technical literal interpretation will also produce a meaning for each term or phrase, but is one that misses the goal. The goal is to add up all the portions of all the properties so a fair sense of the whole spectrum of material gains is reached.

157 Principle and common sense must surely be accorded higher priority than technical literal interpretation.

158 In summary, the author gently proposes that this is how you should proceed using the SGCA's Categories and its default rule on burden of proof.

159 First and foremost, all the cases show that where the parties reached agreement on which properties are matrimonial assets (during their divorce proceedings and while separately represented), the courts have never disapproved of any such agreement. Indeed, such agreement will be accepted by the court and the agreed term(s) incorporated into the court's resolution

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of the application for an order of division. From first quarter 2024, the Family Justice (General) Rules will be operative. Your timelines become truncated and there are strict limits on how many affidavits may be filed and exchanged. It behoves you to reach out to the lawyer representing the other spouse to try to reach agreement on this substantive issue. Use the guide below to form a sense of how the principles apply to your client. Armed with that general guide, discuss with the lawyer on the other side how to reach the agreement that will serve both of them.

(a) When representing the applicant:

(i) From the basket of properties of which your client seeks division, identify the quintessential matrimonial assets.

(ii) Remember that "acquired" should be understood in the substantive way and not the technical way of when legal title was conveyed. It is advisable to prepare arguments that at least the portion acquired by payment during marriage is quintessential matrimonial asset.

(iii) Of pre-marital assets, prepare argument as in (ii) and, additionally, argument that it fulfils either of the two arguments offered in definition, *viz*, "ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together for shelter or transportation or for household, education, recreational, social or aesthetic purposes" or "substantially improved during the marriage by the other party or by both parties to the marriage".

(iv) Of gift or inheritance to one spouse, prepare argument that it, or a portion of it, fulfils the two arguments offered in the definition, *viz*, "being a matrimonial home" or "substantially improved during the marriage by the other party or by both parties to the marriage".

(v) Of property affected by spousal gifting from owner to the other, prepare argument why

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this should be ignored so the court analyses the property from its initial acquisition.

(b) When representing the respondent:

(i) Your client bears the burden of convincing the court why a property apparently bearing two significant connections is still not quintessential matrimonial asset. Prepare strong arguments if your client has them.

(ii) For pre-marital asset, your client only needs to undermine the applicant's arguments for its inclusion.

(iii) For gift or inheritance to one spouse, your client only needs to undermine the applicant's arguments for its inclusion.

(iv) For property affected by spousal gifting between themselves, prepare argument why this should be ignored so the court analyses the property from its initial acquisition.

(c) When representing the appellant:

(i) On appeal, if the appellant disputes the inclusion of a property as matrimonial asset, she bears the burden of convincing the appeal court that the inclusion was wrong.

(d) When representing the respondent:

(i) On appeal, the respondent will need to undermine the arguments raised by the appellant relating to the inclusion of the property as matrimonial asset.

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