Chan Tin Sun
v
Fong Quay Sim

[2015] SGCA 2

Court of Appeal — Civil Appeal No 87 of 2014
Sundaresh Menon CJ, Andrew Phang Boon Leong JA and Judith Prakash J
12 November 2014; 15 January 2015

Family Law *— Matrimonial assets — Division — Wife poisoning husband — Husband making unexplained withdrawals from bank account — Whether misconduct should be considered in determining just and equitable division — Whether adverse inference to be drawn against husband — Section 112(2) Women's Charter (Cap 353, 2009 Rev Ed)*

Facts

The husband ("Husband") and wife ("Wife") were married with a son from 29 March 1977 until 15 December 2011, when a decree *nisi* was granted to both the Husband and Wife on their claim and counterclaim respectively. The Husband had filed for a divorce on the ground that the Wife had systematically poisoned him with arsenic between 2004 and 2005. The Wife was sentenced to one year's imprisonment for the offence of causing hurt to the Husband. The Wife's counterclaim alleged that the Husband had neglected and verbally abused her during the course of the marriage.

At the ancillary hearing, the judge rejected the Husband's contention that the Wife's act of poisoning him ought to negate all her indirect contributions to the marriage. However, he found that the Wife's misconduct significantly reduced her indirect contributions as caregiver *vis-à-vis* the Husband from 2004 onwards. The judge eventually held that an award of a 35% share of the matrimonial assets to the Wife was a just and equitable division of the matrimonial assets. The judge also found that the Husband had failed to make full and frank disclosure in respect of moneys withdrawn from his bank account between November 2009 and July 2012. An adverse inference was drawn against the Husband and the Wife was awarded an additional 7% share of the matrimonial assets.

The Husband appealed against the judge's decision. He contended that the judge had failed to adequately consider the Wife's misconduct in determining the just and equitable division of the matrimonial assets and further that the judge erred in drawing an adverse inference against the Husband.

Held, allowing the appeal:

(1) Whilst s 112(2) of the Women's Charter (which enumerated a list of factors to be considered to assist the court in deciding whether and how to exercise the discretion conferred by s 112(1) of the same Act) did not expressly include the conduct of parties as a matter that the court should have regard to, the enumerated factors in s 112(2) were clearly not exhaustive and were

ultimately subject to the overriding direction in s 112(2) that the just and equitable division of matrimonial assets had to be made having "regard to all the circumstances of the case". Hence, the court was not precluded from considering the conduct of the parties in exercising its power to order the division of matrimonial assets. However, the court only ought to have regard to conduct that was both extreme and undisputed: at [22] and [25].

(2) Marriage was an equal co-operative partnership of efforts for the mutual benefit of both spouses. Where a spouse not only failed to contribute to the marriage, but also engaged in conduct that fundamentally undermined the co-operative partnership and harmed the welfare of the other, a negative value could be ascribed to such conduct. The court would do so as part of the exercise of valuing the spouse's contributions to the marriage and not in order to punish the wrongdoing spouse: at [27] and [28].

(3) The spouses' respective financial needs were something that our courts could have regard to when determining the just and equitable division of matrimonial assets. Where one spouse's future foreseeable financial needs had largely been the result of the conduct of the other, it ought to be given more weight: at [49].

(4) No one factor was determinative in respect of a just and equitable division of the matrimonial assets. The various factors had to be duly assessed and considered in a holistic manner, subject to the overriding direction to the court to come to a just and equitable division of the matrimonial assets having regard to all the circumstances of the case: at [28].

(5) The Wife's conduct was extreme and undisputed; it fundamentally undermined the co-operative partnership and harmed the Husband's welfare. A negative value therefore ought to have been ascribed to the Wife's conduct and considered in the just and equitable division of the matrimonial property. The Wife's needs should be subordinate to those of the Husband's, since his needs largely stemmed from her misconduct of poisoning him the first place. Nevertheless, due credit had to be given for the Wife's contribution to the welfare of the family prior to her misconduct. The Wife ought to be awarded a share of the matrimonial assets. In the premises, it was just and equitable to apply a discount of 7% to the 35% share that the Wife had been awarded by the judge below: at [54] to [56].

(6) The judge did not err in drawing an adverse inference against the Husband. A *prima facie* case had been made out against the Husband in light of the moneys he had withdrawn from his bank account and which remained unaccounted for, despite being a matter clearly within his knowledge. The Husband's explanations for the withdrawals were without basis and unsupported by credible evidence: at [60] to [62].

(7) It was within the court's discretion to determine how to give effect to the adverse inference drawn against a spouse and the appropriate way to do so would depend on the facts of the particular case subject to the overriding impetus of achieving a just and equitable result. Where the appropriated sum of money or the value of the undeclared property was known, the approach that would best achieve an equitable and just result would be to add the known sum or value back into the matrimonial pool for division. Therefore the unaccounted

sum ought to have been added back into the matrimonial pool to give effect to the adverse inference drawn against the Husband: at [65] and [66].

Case(s) referred to

A v A [1995] 1 FLR 345 (refd)

AQS v AQR [2012] SGCA 3 (folld)

Bateman v Bateman [1979] Fam 25 (refd)

BCB v BCC [2013] 2 SLR 324 (refd)

Chan Tin Sun v Fong Quay Sim [2014] 3 SLR 945 (overd)

Clark v Clark [1999] 2 FLR 498 (refd)

Evans v Evans [1989] 1 FLR 351 (refd)

Fong Quay Sim v PP Criminal Motions Nos 34 of 2011 and 36 of 2010 and Magistrate's Appeal No 183 of 2010; [2011] SGHC 187 (refd)

H v H [2006] 1 FLR 990 (folld)

Hall v Hall [1984] FLR 631 (refd)

Koh Bee Choo v Choo Chai Huah [2007] SGCA 21 (folld)

Kyte v Kyte [1988] Fam 145 (refd)

Lock Yeng Fun v Chua Hock Chye [2007] 3 SLR(R) 520; [2007] 3 SLR 520 (refd)

Miller v Miller [2006] 2 AC 618 (refd)

NK v NL [2007] 3 SLR(R) 743; [2007] 3 SLR 743 (folld)

PP v Fong Quay Sim [2010] SGDC 189 (refd)

PP v Fong Quay Sim [2010] SGDC 224 (refd)

Tan Bee Giok v Loh Kum Yong [1996] 1 SLR(R) 130; [1996] 2 SLR 188 (refd)

Tay Sin Tor v Tan Chay Eng [1999] 2 SLR(R) 385; [2000] 2 SLR 225 (refd)

Wachtel v Wachtel [1973] Fam 72 (folld)

W v W [1976] Fam 107 (refd)

White v White [2001] 1 AC 596 (refd)

Yeo Chong Lin v Tay Ang Choo Nancy [2011] 2 SLR 1157 (folld)

Legislation referred to

Penal Code (Cap 224, 1985 Rev Ed) s 328

Women's Charter (Cap 353, 2009 Rev Ed) ss 46(1), 112(1), 112(2) (consd); ss 112, 112(2)(*d*), 112(2)(*h*), 114(1)(*b*)

Matrimonial and Family Proceedings Act 1984 (c 42) (UK)

Matrimonial Causes Act 1973 (c 18) (UK) ss 24, 25 (consd); ss 25(2)(b), 25(2)(g)

N Sreenivasan SC and Stuart A Palmer (Straits Law Practice LLC) for the appellant; Wong Chai Kin (Wong Chai Kin) for the respondent.

[Editorial note: The decision from which this appeal arose is reported at [2014] 3 SLR 945.]

15 January 2015

Andrew Phang Boon Leong JA (delivering the grounds of decision of the court):

1 This is an appeal by the ex-husband ("the Husband") against the decision of the judge ("the Judge") below (in *Chan Tin Sun v Fong Quay Sim* [2014] 3 SLR 945 ("the Judgment")) to award his former wife ("the Wife") a 42% share of the matrimonial assets – 35% based on a just and equitable division of the matrimonial assets with a further 7% uplift after drawing an adverse inference against the Husband for concealing assets.

2 This was a wholly unexceptional case, save in one (perhaps paradoxically) startling respect – the Husband had been systematically poisoned by the Wife with arsenic between 2004 and 2005. In due course, the Wife was convicted for causing hurt to the Husband under s 328 of the Penal Code (Cap 224, 1985 Rev Ed) and was sentenced to one year's imprisonment.

3 On 12 November 2014, we heard the parties and allowed the appeal. We now set out the detailed grounds for our decision.

Facts

4 The Husband and Wife were married on 29 March 1977. The Husband is presently 74 years old and the Wife is 72 years old. They have one son from the marriage ("the Son"), now aged 36. The Son is presently working as a veterinarian in Hong Kong and has been living there since 2005.

5 Throughout the marriage, the Wife was a full-time housewife. The Husband worked as a contractor.

Events leading up to the divorce

6 The Husband started to feel very ill and was admitted to Changi General Hospital several times between August 2005 and September 2006. Upon his readmission in October 2006, he was diagnosed to be suffering from chronic arsenic poisoning. A police report was filed by Changi General Hospital on 29 November 2006.

7 Following police investigations, it came to light that the Husband had been systematically poisoned by the Wife between 2004 and 2005. On 27 May 2010, the Wife was sentenced to one year's imprisonment for causing hurt to the Husband, an offence under s 328 of the Penal Code, by adding arsenic, in the form of powdered insecticide into his food (see *PP v Fong Quay Sim* [2010] SGDC 189 and *PP v Fong Quay Sim* [2010] SGDC 224 for the decisions of the District Court on liability and sentence, respectively). Her appeal against her conviction and sentence was dismissed

in *Fong Quay Sim v PP* Criminal Motions Nos 34 of 2011 and 36 of 2010 and Magistrate's Appeal No 183 of 2010; [2011] SGHC 187.

The divorce proceedings

8 The Husband filed for divorce on 15 April 2011 on the ground of the Wife's unreasonable behaviour. The Wife filed a counterclaim alleging the Husband's unreasonable behaviour as a ground for divorce. She alleged that the Husband had neglected her and had also verbally abused her throughout their marriage to the extent that she was diagnosed to be suffering from Depressive Disorder and Generalised Anxiety Disorder.

9 On 15 December 2011, the Family Court granted an interim judgment of divorce to both the Husband and the Wife on their claim and counterclaim respectively. The hearing of the ancillary matters was held on 12 May 2014 in the High Court as the net value of the matrimonial assets was $2,101,155.53, comprising:

Matrimonial Asset	Value ($)
Moneys paid into Court following the sale of 30 Dafne Street, Singapore	1,906,085.44
Husband's CPF Account	
Ordinary Account	238.22
Medisave Account	1,500.06
Special Account	12.12
Wife's CPF Account	
Ordinary account	83.04
Medisave account	21.61
Retirement account	0
Husband's OCBC Easisave Account No [xxx]9001 ("OCBC Easisave Account")	192,892.85
Wife's DBS Savings Account No [xxx]1784 ("DBS Savings Account")	322.19
Total value of matrimonial assets	**2,101,155.53**

10 The Wife did not dispute the items listed in the preceding paragraph but submitted that the Husband had failed to make full and frank disclosure by concealing some of his assets.

Decision below

11 As only the decision of the Judge in respect of the division of matrimonial assets was appealed against, only that part of the Judgment ([1] *supra*) will be summarised.

12 On the evidence, the Judge found that the Wife did contribute financially towards the education of the Son and also made significant non-financial contributions towards the family. He rejected the Husband's contention that the Wife's act of poisoning him negated all her indirect contributions such that she should not obtain any share in the matrimonial assets. He also rejected the Husband's contention that the court should reduce the Wife's share in the matrimonial assets to reflect its disapproval of her actions in poisoning him.

13 However, the Judge found that the Wife's poisoning of the Husband had a direct and significant impact on her indirection contributions in the form of her caregiver role *vis-à-vis* the Husband from 2004 onwards. He also noted that the Son had graduated in 2004 and had begun working and looking after himself. The Judge therefore held that the Wife's indirect contributions towards the family were drastically reduced from 2004 onwards. However, he rejected the Husband's submissions that the Wife's indirect contributions came to an end in 2004 since she continued to keep the household in order and pay for other miscellaneous household expenses.

14 The Judge found that the Husband had failed to make full and frank disclosure in respect of $704,904.03 out of the total sum of $832,737.50 that was withdrawn from the OCBC Easisave Account for the period between 23 November 2009 and 16 July 2012. Drawing an adverse inference against the Husband, the Judge awarded the Wife an additional 7% share of the matrimonial assets over and above the 35% share of the matrimonial assets he had already awarded her on the basis of her contributions.

15 The final division of the matrimonial assets was therefore in the proportion of 58:42 in favour of the Husband. The Judge ordered that the Wife receive 42% of the following matrimonial assets:

(a) money paid into court following the sale of 30 Dafne Street amounting to $1,906,085.44; and

(b) the sum of $192,892.85 in the Husband's OCBC Easisave Account.

It was also ordered that each party retain the moneys in his or her respective CPF accounts and that the Wife retain the money in her DBS Savings Account.

The respective cases

16 On appeal, the Husband contended that the Judge had erred in:

(a) failing to adequately consider the extreme and undisputed nature of the Wife's misconduct in determining the just and equitable division of the matrimonial assets;

(b) finding that the Wife's contributions to the family did not come entirely to an end in 2004;

(c) failing to adequately take into account the Husband's financial needs, in terms of added medical expenses and physical disabilities which were a direct result of the Wife's misconduct; and

(d) drawing an adverse inference against the Husband for failing to make full and frank disclosure in respect of $704,904.03 withdrawn from the OCBC Easisave Account.

17 The Wife, on the other hand, contended as follows:

(a) Her act of poisoning the Husband should not negate all her contributions made to the family during the 34 years of marital union such that she receives no share of the matrimonial assets as it would be tantamount to punishing her twice for the same act.

(b) The proportion of 35% ordered as her share of the matrimonial assets was already on the low and conservative side. The Judge had further taken into consideration the consequences of her misconduct, *ie*, the Husband's poor health and future healthcare needs, in awarding her a low lump sum maintenance amount.

(c) The Judge did not err in drawing an adverse inference against the Husband for his failure to make full and frank disclosure of the large sum of money he withdrew from the OCBC Easisave Account.

Issues before this court

18 There were two main issues before us:

(a) Whether the Judge had erred in finding that it was just and equitable in the circumstances to award the Wife a 35% share of the matrimonial assets.

(b) Whether the Judge had erred in drawing an adverse inference against the Husband and awarding the Wife an additional 7% share of the matrimonial assets over and above the 35% share already awarded.

Our decision

Division of the matrimonial assets

19 It should be emphasised from the outset that an appellate court will not interfere in the division orders made by the judge below unless it can be demonstrated that the judge had erred in law or had clearly exercised his discretion wrongly or had taken into account irrelevant considerations or failed to take into account relevant considerations (see, for example, the

decision of this court in *Yeo Chong Lin v Tay Ang Choo Nancy* [2011] 2 SLR 1157 ("*Yeo Chong Lin*") at [80]).

The parties' conduct during the marriage

20 The question of whether and how the Wife's (mis)conduct of poisoning the Husband should be taken into consideration in determining what would be a just and equitable division of the matrimonial assets formed the crux of this appeal. We consider first the relevant legal principles that are generally applicable before applying them to the specific facts of the present case.

21 As this court recognised in *NK v NL* [2007] 3 SLR(R) 743 (at [20]), the court's power to order the division of matrimonial assets under s 112 of the Women's Charter (Cap 353, 2009 Rev Ed) ("the Act") is founded on the prevailing ideology of marriage as an equal co-operative partnership of efforts for mutual benefit. This characterisation of a marriage is supported by s 46(1) of the Act, which states "the husband and the wife shall be mutually bound to co-operate with each other in safeguarding the interests of the union and in caring and providing for the children". Thus in *NK v NL*, we observed (at [20]) that:

> … The contributions of both spouses are equally recognised whether he or she concentrates on the economics or homemaking roles, as both roles must be performed equally well if the marriage is to flourish. When the marriage breaks up, these contributions are translated into economic assets in the distribution according to s 112(2) of the Act.

22 The starting point for any division of matrimonial assets is s 112(1) of the Act, which confers a broad discretion on the court to divide the matrimonial assets "in such proportions as the court thinks just and equitable". Section 112(2) of the Act enumerates a list of factors to be considered to assist the court in deciding whether and how to exercise the discretion conferred by s 112(1) of the Act. We note that s 112(2) of the Act does not expressly include the conduct of parties as a matter that the court should have regard to. However, the enumerated factors are clearly *not exhaustive* and are ultimately subject to the overriding direction in s 112(2) of the Act that the just and equitable division has to be made having "regard to all the circumstances of the case". Put simply, the court is not precluded by the Act from considering the conduct of the parties in exercising its power to order the division.

23 However, it is *not* the case that the conduct of parties should *always* be taken into account in determining what would be a just and equitable division of the matrimonial assets. As this court observed in *NK v NL* (at [12]):

> In light of our current 'no fault' basis of divorce law, *it would serve no purpose to dwell on the question of who did what, save where there might be a direct*

> *impact on the legal issues proper* … The salutary objectives sought to be achieved by the ancillary orders of division of matrimonial assets … remain paramount in guiding our review of the Judge's ancillary orders. [emphasis added]

This court further observed thus (at [28]):

> … *[I]t is essential that the courts resist the temptation to lapse into a minute scrutiny of the conduct and efforts of both spouses* … it would be counterproductive to try and particularise each party's respective contribution … [emphasis added]

24 The question of when a spouse's misconduct could be taken into consideration came before this court in *AQS v AQR* [2012] SGCA 3 ("*AQS*"). In *AQS*, the judge below had awarded the wife no share of the matrimonial assets on the grounds that the wife's character flaws and misconduct made her husband's marriage to her "a misery" and that her role as mother and wife left much to be desired. On appeal, this court reiterated as follows (at [39]):

> … [W]hile we note that divorce is no longer based on fault, conduct of the parties in relation to the family is nevertheless a relevant consideration in the division of matrimonial assets. … *But the court should be conscious of the need to exercise caution when confronted with allegations of this nature made by one spouse against the other. … To find a wife, a full-time home-maker, particularly where there are children, to have made zero contributions to the family, the facts must be extreme and also undisputed.* Where parties were clearly in a highly acrimonious relationship and they have alleged various counts of misconduct against each other, *the court should not be too ready to sift through the facts and evidence in order to assign relative blame for the purposes of dividing matrimonial assets.* [emphasis added]

25 The aforementioned cases emphasise and reiterate the point that the hearing of the ancillaries is *not* intended to be another forum for parties to dredge up accusations and allegations relating to each other's conduct. The court is not equipped to scrutinise the conduct of the parties to assign blame, nor should it be so in light of the no-fault basis of divorce embodied within the Act. In the premises, the court only ought to have regard to conduct that is both *extreme* (*ie*, manifestly serious) and *undisputed* in exercising its powers under s 112(1) of the Act.

26 Assuming that regard ought to be had to the misconduct, *how* should the court exercise its discretion in this particular regard? In his submissions before us, the Husband's counsel, Mr N Sreenivasan SC ("Mr Sreenivasan"), sought to characterise the Wife's conduct of poisoning the Husband as a "negative (indirect) contribution" to the marriage and urged the court to ascribe a negative value it. In response, the Wife's counsel, Ms Wong Chai Kin ("Ms Wong"), contended that doing so would be tantamount to punishing the Wife twice over for the same conduct (since she had already served her sentence of imprisonment).

27 In our view, we see no objection, *in principle*, to ascribing a negative value to a spouse's misconduct. As mentioned at the very outset, the prevailing ideology is that of marriage as an equal co-operative partnership of efforts for the mutual benefit of both spouses. It is for this reason that the courts have consistently reiterated the need to give full credit and value to *both* the direct and indirect contributions of spouses to the marriage, even where the latter might be incapable of being measured in precise financial terms (see, for example, the decisions of this court in *Lock Yeng Fun v Chua Hock Chye* [2007] 3 SLR(R) 520 ("*Lock Yeng Fun*") at [39]; *NK v NL* ([21] *supra*) at [34]; as well as *BCB v BCC* [2013] 2 SLR 324 at [11] and [27]). Further, the exhortation for the courts to have regard to contributions made by each party to the welfare of the family has also been put on a statutory footing in s 112(2)(*d*) of the Act. In the converse situation where a spouse not only fails to contribute to the partnership of efforts that is the marriage, but also engages in conduct that fundamentally undermines the co-operative partnership and harms the welfare of the other, the same reasoning would apply and a *negative* value could plausibly be ascribed to such conduct.

28 We agreed with Ms Wong that the court's power to divide the matrimonial assets between former spouses was never intended to serve a punitive function. It is therefore crucial to emphasise that, in ascribing a negative value to such conduct, the court is *not* seeking to punish the wrongdoing spouse. Rather the court does so as part of the exercise of valuing the spouse's contribution to the marriage. Further, we also emphasise that no one factor should be determinative in respect of a just and equitable division of the matrimonial assets. Section 112(2) of the Act does not prescribe the weight that should be attributed to each factor or how each factor should be regarded as against another factor. As we cautioned in *NK v NL* (at [29]), "it is paramount that courts do not focus merely on a direct and indirect contributions dichotomy in arriving at a just and equitable division of matrimonial assets". In our judgment, various factors, including those enumerated in s 112(2) of the Act, must be duly assessed and considered in a holistic manner, subject to the overriding direction to the court to come to a just and equitable division of the matrimonial assets having regard to all the circumstances of the case, *ie*, by applying what has often been referred to as the broad-brush approach (see, for example, the decision of this court in *NK v NL* and *BCB v BCC*).

29 We pause to note, at this juncture, that the relevant *English* authorities are indeed consistent with the approach that we have proffered above and they can be referred to as precedents that could possibly be followed (depending on the facts and context of the case concerned). However, given the difference in views between the parties in the present appeal as to the relevance and applicability of these authorities, it is to that (preliminary) issue that our attention must first turn before proceeding to discuss some of

the more relevant English decisions alluded to at the commencement of this paragraph.

The English authorities

(1) General principles

30 Whilst Mr Sreenivasan sought to use several English authorities to buttress his case, Ms Wong had contended that little weight should be placed on these authorities as the relevant English provisions, *viz*, ss 24 and 25 of the Matrimonial Causes Act 1973 (c 18) (UK) ("the UK Act"), are not equivalent to s 112 of the Act. Section 24 of the UK Act confers on the court the power to "adjust" property holding between spouses. Section 25 of the UK Act sets out the matters which the court is to have regard to in deciding how to exercise its powers under s 24 of the UK Act.

31 Ms Wong directed our attention to s 25(2)(g) of the UK Act, which expressly provides that the court shall, in exercising their power under s 24 of the UK Act, have particular regard to "the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it". The effect of this provision is that the English courts should *not* take into account the conduct of the parties unless it is inequitable for them to disregard it (see the House of Lords decision of *Miller v Miller and McFarlane v McFarlane* [2006] 2 AC 618 ("*Miller*") at [65] *per* Lord Nicholls of Birkenhead). Such an express provision, she contended, is absent from our Act.

32 Whilst a *purely literal* construction of the relevant statutory provisions in both England and Singapore appeared, at first blush, to support Ms Wong's argument, we note, however, that she accepted (correctly, in our view) that the language of s 112(2) of the Act was broad enough to include spouses' conduct as a factor that the court could have regard to in determining a just and equitable division of the matrimonial assets (see above at [22]). In any event, the approach of the English courts in determining *when* the courts are to have regard to the conduct of the respective spouses approximates – in *substance* – our own (see above at [23]–[25]). The English courts have been slow to consider the conduct of the parties except in cases where the conduct is "both obvious and gross" (see the English Court of Appeal decision of *Wachtel v Wachtel* [1973] Fam 72 ("*Wachtel*") at 90). This strict criterion was subsequently approved and applied in numerous decisions (see, for example, the House of Lords decision in *Miller* at [61] *per* Lord Nicholls and at [145] *per* Baroness Hale)).

33 Having regard to their seminal importance, the following oft-quoted observations by Lord Denning MR in *Wachtel* (at 90) merits quotation in full:

> It has been suggested that there should be a 'discount' or 'reduction' in what the wife is to receive because of her supposed misconduct, guilt or blame (whatever word is used). We cannot accept this argument. In the vast majority of cases it is repugnant to the principles underlying the new legislation, and in particular the Act of 1969 [which, like the Act in Singapore, relates to divorce based on the irretrievable breakdown of the marriage, thus carrying no stigma as such]. There will be many cases in which a wife (though once considered guilty or blameworthy) will have cared for the home and looked after the family for very many years. Is she to be deprived of the benefit otherwise to be accorded to her by section 5 (1) (*f*) because she may share responsibility for the breakdown with her husband? There will no doubt be a residue of cases where the conduct of one of the parties is in the judge's [Ormrod J's] words ante, p. 80C-D, '***both obvious and gross***,' so much so that to order one party to support another whose conduct falls into this category is ***repugnant to anyone's sense of justice***. In such a case the court remains free to decline to afford financial support or to reduce the support which it would otherwise have ordered. But, short of cases falling into this category, the court should not reduce its order for financial provision merely because of what was formerly regarded as guilt or blame. To do so would be to impose a fine for supposed misbehaviour in the course of an unhappy married life. Mr. Ewbank disputed this and claimed that it was but justice that a wife should suffer for her supposed misbehaviour. We do not agree. Criminal justice often requires the imposition of financial and indeed custodial penalties. But in the financial adjustments consequent upon the dissolution of a marriage which has irretrievably broken down, the imposition of financial penalties ought seldom to find a place. [emphasis added in bold italics]

34 The spouses' conduct which the English courts will have regard to has been described by Sir Roger Ormrod in the English Court of Appeal decision of *Hall v Hall* [1984] FLR 631 ("*Hall*") at 632 as conduct having "nothing to do with the ordinary run of fighting and quarrelling in an unhappy marriage". In the English High Court decision of *W v W (Financial Provision: Lump Sum)* [1976] Fam 107 at 110, Sir George Baker P referred to this as the sort of conduct which would "cause the ordinary mortal to throw up his hands and say, 'Surely … [that spouse] is not going to get a full award'".

35 It bears emphasising that the strict approach set out in *Wachtel* (see above at [32] and [33]) continues to apply even though the present English position is (as noted above at [31]) ostensibly *statutory* in nature. Pertinently, as has been pointed out in one of the leading textbooks on English family law, although the present version of s 25(2)(g) of the UK Act appeared (after the amendment effected by the Matrimonial and Family Proceedings Act 1984 (c 42) (UK) ("the 1984 amendments")) to have "given greater statutory emphasis" to the *conduct* of each of the parties, there was, however, "no change in practice" (see N V Lowe & G Douglas, *Bromley's Family Law* (Oxford University Press, 10th ed, 2007) ("*Bromley*") at p 1048). As Lord Nicholls emphasised in *Miller* at [65], the statutory

criterion in s 25(2)(g) is a strict one and spouses' conduct should not be taken into account in all but the most exceptional cases.

36 The approach set out in *Wachtel* is of particular importance in the context of the present appeal inasmuch as it *corresponds*, in our view, to the *attitudinal (as well as substantive)* approach that applies in the *Singapore* context (see above at [23]–[25]). Indeed, it should be noted that *Wachtel* was in fact applied in at least one Singapore decision – the High Court decision of *Tan Bee Giok v Loh Kum Yong* [1996] 1 SLR(R) 130. In our judgment, there is no reason in principle or logic why English case law (in respect of the issue of *when* regard should be had of the parties' conduct) ought not to apply in the Singapore context as well – *especially when the overriding consideration is, in* ***both*** *jurisdictions, that of* ***equitability***.

(2) Do the apparent (general) differences matter?

37 That having been said, there appear (in addition to the *particular* difference in statutory language already referred to above in respect of s 25(2)(g) of the UK Act) to be more fundamental (albeit *general*) differences between our Act and the UK Act – in particular, in the underlying philosophy with respect to the division of matrimonial assets in the respective jurisdictions. However, as we shall explain in a moment, the differences are now far less significant and, more importantly, the *specific* analysis in the relevant English decisions themselves is not only consistent with the general approach under s 112 of the Act but is also persuasive from the more general perspective of logic and commonsense.

38 Turning to the differences alluded to in the preceding paragraph, unlike s 112 of the Act, which expressly articulates the purpose of the exercise of the power to order division, *ie*, the just and equitable division of the matrimonial assets, neither s 24 nor s 25 of the UK Act articulates any express *purpose* with regard to the exercise of that power in the English context. Section 25 of the UK Act, which in its present form is (as already mentioned) a result of amendments introduced by the 1984 amendments, sets out the considerations the court should have regard to in exercising its powers under s 24 of the UK Act; in particular, it instructs the courts to give "first consideration" to the interests of any child of the marriage who is under eighteen and take into account a wide range of factors (including the age of the parties and the length of their marriage) but does not give any specific guidance as to the manner in which these factors should be taken into account.

39 The absence of any express articulation of the *purpose* of the court's power in s 24 of the UK Act must be viewed against the backdrop of the UK's "*separation*" of property regime, *viz*, that property is regarded as having been acquired only by the spouse who paid for it. Law reform commissions have consistently *rejected* the concept of "community of property" (deferred or otherwise): see, for example, the Royal Commission

on Marriage and Divorce, *Report* (Cmd 9678, 1956) (Chairman, Baron Morton of Harrington) at paras 650–653; *First Report on Family Property* (Law Com No 52, 1973) at paras 46–60; and *Family Law: Matrimonial Property* (Law Com No 175, 1988) at para 3.6. The effect of this is significant; as has been observed in Leong Wai Kum, "Division of Matrimonial Assets: Recent Cases and Thoughts for Reform" [1993] SJLS 351 at 353:

> This means that the efforts of the spouse who was the homemaker or who continued to work but subordinated his or her career, development to cater to the needs of the family will continue [to] be undervalued. He or, more likely, she will have earned little or nothing and probably contributed nothing in money to the purchase of property. The consequence is that he or she will not be regarded as having contributed to the property through his or her particular efforts.

The learned author further observed that the power of the court under s 24 of the UK Act to "adjust" the property holding between spouses affirms this "separation" regime. Put simply, therefore, the exercise of the power under s 24 of the UK Act has not been (at least in statute) related to the view of spouses as discharging different but equally valuable roles during marriage. A *contrast* should be drawn with Singapore where this court has recognised that the concept of "deferred community of property" is "the very basis upon which s 112 of the Act was premised" (see *Lock Yeng Fun* ([27] *supra*) at [40]).

40 As a result of the lack of any expressly articulated purpose of the power conferred in s 24 of the UK Act, in the cases that followed the 1984 amendments, it became common for the English courts to focus on the factor of "financial needs, obligations and responsibilities" of each of the parties subsumed under a judicially developed concept of "reasonable requirement", "whereby the court's appraisal of a claimant wife's reasonable requirements has been treated as a determinative, and limiting, factor on the amount of the award which should be made in her favour" (see, in this regard Lord Nicholls's analysis of the genesis of this development in the House of Lords decision of *White v White* [2001] 1 AC 596 ("*White*") at 607–608). Such an approach is clearly *contrary* to our own approach in respect of the division of matrimonial assets.

41 Nevertheless, we accept that the English approach to the division of matrimonial assets has *more closely approximated our own in recent years* following the decision of the House of Lords in *White*, which was subsequently approved in *Miller* ([31] *supra*). In *White*, Lord Nicholls criticised (at 609) the aforementioned development of court practice to treat the "reasonable requirements" of spouses as being determinative of the award received and observed that, in doing so, the courts have departed from the statutory provisions, *viz*, s 25 of the UK Act. More significantly, Lord Nicholls opined that the defining principle that should guide the

courts is that of *fairness* (giving first consideration to the welfare of the children) and sought to relate it to the following (at 605):

> … Typically, a husband and wife share the activities of earning money, running their home and caring for their children … But whatever the division of labour chosen by the husband and wife, or forced upon them by circumstances, fairness requires that this should not prejudice or advantage either party when considering paragraph (*f*), relating to the parties' contributions … If, in their different spheres, each contributed equally to the family, then in principle it matters not which of them earned the money and built up the assets. There should be no bias in favour of the money-earner and against the home-maker and the child-carer. …

Having suggested fairness as the defining principle, Lord Nicholls went on to suggest (at 605) that there should be a yardstick of equality of division, in that "equality should be departed from only if, and to the extent that, there is good reason for doing so" and such good reason is articulated; however, he also emphasised that this yardstick was *not* a presumption or a starting point of equal division. At this juncture, a *caveat* (as articulated in the Singapore case law) ought to be noted – that there is neither a presumption nor a yardstick of equal division (see generally *Lock Yeng Fun* at [50]–[58] (and where *White* is also commented upon at [51]–[52])).

42 Returning to the English case law (and, in particular, an important point in the context of the present appeal), it would thus appear that the post-*White* approach to claims for financial provision on divorce in England and Wales does bear some of the hallmarks of a regime based on the deferred community of property (see, for example, Leong Wai Kum, "The Laws in Singapore and England Affecting Spouses' Property on Divorce" [2001] SJLS 19 at p 40 and Elizabeth Cooke *et al*, *Community of Property: A regime for England and Wales?* (The Nuffield Foundation, 2006) at p 28). However, it should be reiterated that the respective positions in England and Singapore are *not wholly* coincident with each other. For example, Baroness Hale took pains to emphasise in *Miller* (at [151]) that, "we do not yet have a system of community of property, whether full or deferred". Moreover, as already noted above (at [41]), this court has emphatically rejected any reference to the concept of equal division as propounded in *White* (see *Lock Yeng Fun* at [51]–[52]).

(3) The specific analysis

43 Nevertheless, even though the respective *general* positions in England and Singapore are still somewhat different, these differences do *not* impact the more *specific* analysis *vis-à-vis* the role of the *conduct* of the parties. We therefore turn to consider a few decisions where one spouse committed a *criminal offence* against the other.

44 *Bromley* ([35] *supra*) summarises the legal position well, as follows (at p 1049):

> Where one spouse commits a criminal offence against the other, conduct, *unsurprisingly*, will be taken into account. [emphasis added]

45 In the English High Court decision of *Bateman v Bateman* [1979] Fam 25, the court took into account the wife's conduct consisting in violence which culminated in two serious wounding attacks on the husband as well as the undermining of his position at work with his superiors and her damaging attitude towards him and his career. Similarly, the wife's conduct of stabbing the husband in the abdomen with a knife in the course of an altercation was taken into consideration by the English Court of Appeal in *Hall* ([34] *supra*).

46 In the English Court of Appeal decision of *Kyte v Kyte* [1988] Fam 145 (which *Bromley* describes (at p 1049) as "[p]erhaps the leading authority"), the husband suffered from depression and was suicidal as well as unpredictable. He did attempt to commit suicide once but was rescued by the wife. However, there were other suicide attempts approximately a year later. On one such occasion, the wife in fact *assisted* the husband in committing suicide and did not dissuade him from doing so. More significantly, the wife had (unbeknownst to the husband) already begun an association with another man by that time and had wanted to set up home with him whilst benefiting as much as she could materially from the husband. Given such motivation, it is not surprising that the court found that the wife's conduct ought to be taken into account within the meaning of s 25(2)(g) of the UK Act. Purchas LJ (with whom Nicholls and Russell LJJ agreed) observed thus (at 156):

> I have, reluctantly, come to the conclusion that the judge was wrong to have reversed the registrar on the findings of conduct. The test as to conduct which the registrar set for himself is as apt an interpretation of the phrase 'inequitable to ignore it' that I can readily envisage. The conduct of the wife not only in actively assisting or, alternatively, taking no steps to prevent the husband's attempts at suicide in the presence of the motive of gain which the registrar found on ample evidence to be established, together with her wholly deceitful conduct in relation to her association with Gregory, would amount to conduct of a gross and obvious kind which would have fallen within the concept under the old law and, in my judgment, could certainly render it inequitable to ignore it even against the conduct of the husband which contributed to the unhappy conditions which existed during the marriage and afterwards as a result of the husband's manic depression.

In the circumstances, the court varied the lump sum award of £14,000 given in the court below downwards to £5,000.

47 In a case that was perhaps closer to that of the facts of the present appeal, the wife was convicted of soliciting others to *murder* the husband. Not surprisingly, the English Court of Appeal in *Evans v Evans* [1989] 1 FLR 351 held that the husband would no longer be required to make

periodical payments to the wife. In the words of Balcombe LJ (with whom Anthony Lincoln J agreed) (at 355):

> … In my judgment the court would be losing sight of reality if it was to condemn a man who had religiously paid, over a period of some 35 years, the amount which he had been ordered by the court to pay to his ex-wife after divorce, to continue to make that payment after she had been convicted of soliciting others to murder him. If the courts were in these circumstances not to discharge the order, the public might think that we had taken leave of our senses. I for one would not be prepared to countenance that …

48 In the English High Court decision of *H v H (Financial Relief: Attempted Murder as Conduct)* [2006] 1 FLR 990 ("*H v H*"), the husband had carried out a horrific attack on his wife, stabbing her repeatedly in front of their children. The wife miraculously survived and the husband was eventually sentenced to a term of 12 years' imprisonment for attempted murder (although it should be noted that he had also (falsely) accused *her* of attempted murder as well). Having accepted that this was conduct at the "very top end of the scale" of gravity which would be inequitable to disregard, Coleridge J observed (at [44]) as follows:

> [T]he court should not be punitive or confiscatory for its own sake. I, therefore, consider that *the proper way to have regard to the conduct is as a potentially magnifying factor when considering the wife's position under the other subsections and criteria. It is the glass through which the other factors are considered. It places her needs, as I judge them, as a much higher priority to those of the husband because the situation the wife now finds herself in is, in a very real way, his fault.* ***It is not just that she is in a precarious position … but that he has created this position by his reprehensible conduct.*** So she must, in my judgment and in fairness, be given a greater priority in the share-out. [emphasis added in italics and bold italics]

Coleridge J went on to consider how the needs of the wife and children had been impacted by the husband's conduct and gave greater priority to those needs over those of the husband.

49 The spouses' respective financial needs are something that our courts can have regard to when determining the just and equitable division of matrimonial assets. Section 114(1)(*b*) of the Act, which pertains to matters the court should have regard to in ordering maintenance for the wife, like s 25(2)(b) of the UK Act, provides that the "financial needs, obligations and responsibilities" each spouse has and is likely to have in the foreseeable future are things that the courts should have regard to. Section 114(1)(*b*) of the Act has in turn been incorporated into the division provisions by s 112(2)(*h*) of the Act. Further, bearing in mind the overriding direction that any division should be just and equitable, we agree with Coleridge J that where one spouse's future foreseeable financial needs have largely been the result of the conduct of the other, it ought to be given more weight.

50 The English High Court decision of *A v A (Financial Provision: Conduct)* [1995] 1 FLR 345 ("*A v A*") concerned a husband, who having become depressed and suicidal, assaulted the wife with a knife and thereafter attempted suicide. The district judge below ordered that the husband's interest in the matrimonial property be settled onto their children, in effect leaving the husband with nothing. The English High Court observed generally that the parties' respective shares "needs to be adjusted to reflect the combination of conduct, responsibility, needs and contribution" (at 349).Whilst the court agreed with the district judge's decision to take the husband's conduct into account in determining the respective parties' shares, it also criticised his failure to also take into account the wife's potential claim to the Criminal Injuries Compensation Board and the husband's needs.

51 Finally, we turn to the English Court of Appeal decision of *Clark v Clark* [1999] 2 FLR 498 ("*Clark*"), where the wife's conduct, although not criminal as such, was described by the court as being "as baleful as any to be found in the family law reports" (at 509). In *Clark*, the wife, who was approximately 36 years younger than her husband, not only refused to consummate their marriage but also utilised the husband's funds to redeem the mortgage on her own home as well as purchase numerous other properties. Her control over her husband also resulted in his spending money on the renovation of a boat which she had owned before their marriage, with the amount spent being more than three times the actual worth of the boat even in its improved state. With little of his money left and a virtual prisoner in his own home, the husband was eventually left in such a pitiful state that he attempted suicide. The trial judge awarded the wife a lump sum of £552,500, but the Court of Appeal reduced the amount of that award to £175,000. In arriving at the revised award, Thorpe LJ (who delivered the judgment) stated that, "I do not consider on the quite extraordinary facts of this case to have left the wife with nothing would have exceeded the wide ambit of judicial discretion" (at 509). He further observed that in addition to the wife's misconduct, she had made no contributions to the relationship and in fact required bailing out of debt to the extent of £30,000 at the outset of the relationship. Nevertheless, the Court of Appeal (taking, as the learned authors of *Bromley* ([35] *supra*) suggested (at p 1049), a "perhaps unduly merciful approach") adopted the husband's proposed figure of £175,000 (in round terms) and awarded it to the wife (see *Clark* at 510).

52 In addition to affirming that, *in principle*, a negative value can be ascribed to the contribution of the spouse guilty of misconduct (where it is serious enough for the court to have regard to), the above cited cases of *H v H*, *A v A* and *Clark* also underscore the *fact-centric* nature of the discretion exercised by the English courts. In our judgment, the English approach not only accords with common sense but also – *in substance* –

approximates our own, *vis-à-vis* the role of the conduct of the parties in determining the just and equitable division of matrimonial property (see above at [28]). In the premises, and as we have alluded to earlier, the English cases may be followed (albeit depending on the precise facts and context of the cases concerned).

53 With the above in mind, let us now turn to *apply* the principles from both the local as well as English decisions to the facts of the present case.

Application of principles to the present case

54 It was plain to us, on the facts of the present case, that the Wife's misconduct was *so extreme and undisputed* that it fell to be considered in determining what would be a just and equitable division of the matrimonial assets. The Wife had embarked on a premeditated course of action to inflict harm on the Husband by poisoning him over a period of time. Indeed, the Judge recognised (correctly, in our view) the gravity of the injuries caused to the Husband and had stated that he was "unable to turn a blind eye to the wife's malicious act", which he found was "grossly disproportionate" to the emotional and verbal abuse the Wife had suffered at the hands of the Husband during the marriage (see the Judgment ([1] *supra*) at [64]–[65]).

55 We agreed with the Judge that the Wife's indirect contributions to the welfare of the family had been drastically reduced from 2004 as a result of her starting to poison her Husband and further because her son had by then graduated with a degree in veterinarian medicine from Glasgow University, moved out of the family home (to Hong Kong), and had begun working and looking after himself. However, we were of the view that the Judge had, with respect, erred in finding that this was the end of the matter. In our view, the Wife's conduct in poisoning the Husband clearly fell to be the type of conduct that not only makes no contribution to the welfare of the family but also fundamentally undermines the co-operative partnership and harms the welfare of the other spouse. A *negative value* therefore ought to have been ascribed to the Wife's conduct and considered in the just and equitable division of the matrimonial property.

56 We turned to consider the Husband's contention that the Judge had failed to give sufficient weight to his financial resources and needs in the foreseeable future. The Wife had argued, in response, that the Husband had exaggerated his medical issues and therefore his financial needs in the foreseeable future; she had further claimed that she also had a host of medical problems, which ought to have been taken into account in coming to a just and equitable division. As regards the Wife's former contention, we found it inappropriate to reopen the issue concerning the validity of the Husband's medical problems. The Judge had accepted the Husband's evidence of his medical conditions and the Wife did not provide any concrete evidence to refute it. Whilst her needs should also be considered, we were of the view that they should be subordinate to those of the

Husband's – particularly since his needs largely stemmed from her misconduct of poisoning him in the first place. However, contrary to the Husband's assertion, the Judge did in fact consider the Husband's financial needs in the foreseeable future (see the Judgment at [35]). Indeed, the sole basis for the Husband's assertion that no weight had been given to this factor appeared to be the quantum of the Wife's award.

57 In spite of the gravity of the Wife's misconduct, we did *not* think that the Wife ought to have been awarded *no* share of the matrimonial assets on the specific facts and circumstances of the present case. As we observed in *AQS* ([24] *supra*), an award of no share of the matrimonial assets to either spouse could only be justified where that spouse had "made no contributions to the marriage whatsoever" (at [38]). In *H v H* ([48] *supra*), Coleridge J accepted (at [51]) that the husband had played a full part in contributing to the marriage and the upbringing of the children prior to the attack and did not find that the husband's misconduct would completely negate those prior contributions. In the present case, the Judge found that up to 2004, the Wife had dutifully discharged her duties as homemaker and as the Son's primary caregiver in spite of the Husband's mistreatment of her for 27 years (see the Judgment at [17]). The Husband did not challenge this finding and we could see no reason that might justify him doing so. We also note that the Judge had taken into account the Wife's indirect financial contribution in the form of paying for their Son's tertiary education. In this regard, the present case was clearly distinguishable on the facts from that of *Clark* ([51] *supra*) and we agreed that due credit must be given for the Wife's contributions to the welfare of the family.

58 This brings us to the Judge's eventual award of a 35% share of the matrimonial assets to the Wife. Before us, Mr Sreenivasan stated that the Husband's position was that the Wife's share should be 20%. Turning to the precedents cited by the Judge, both Mr Sreenivasan and Ms Wong agreed that, for marriages of 17 to 35 years with children, the proportion of the matrimonial assets awarded would range from 35% to 50%. Applying the broad-brush approach and bearing in mind our finding above at [55] that the Judge had, with respect, erred in failing to ascribe a negative value to the Wife's conduct, we considered it just and equitable to apply a discount of 7% to the share that the Judge found that the Wife would have been entitled to. The discount might well have been more, but in fixing it at 7% we took note of the fact that the Judge's award was already at the low end of the range. We therefore held that the Wife was entitled to 28% of the combined matrimonial pool of assets.

The drawing of an adverse inference

59 The Husband was only able to produce bills and receipts for medical expenses totalling $127,833.47. The Judge held at [42] of the Judgment that this left a sum of $704,904.03 unaccounted for, out of the $832,737.50 that

had been withdrawn, mostly via cash cheques, from his OCBC Easisave Account during the period between 23 November 2009 and 16 July 2012. The Judge rejected the Husband's explanations for the unaccounted sum and drew an adverse inference against the Husband. On appeal, the Husband essentially contended that the Judge had erred in rejecting his explanations and repeated his arguments from the trial below.

60 We were satisfied that the Judge did not err in rejecting the Husband's explanations. First, in so far as the Husband's alleged investments in oil and gas in Indonesia were concerned, we agreed with the Judge that there was no credible evidence to support the Husband's account of the investment documents having been stolen by his maid after drugging him. Even though the Husband claimed that his niece, Cecilia, had helped him to call the police, she had furnished no affidavit in support of this account, nor was a copy of any police report filed provided. In our view, the Judge also did not err in finding that the Husband's numerous trips to Indonesia had been for leisure, in light of the numerous photographs of the Husband posing intimately with the aforesaid maid at various informal venues in Indonesia. We also agreed with the Judge that the fact that the Husband had an Indonesian ATM card proved nothing in the absence of any bank statements which had yet to be adduced.

61 Secondly, we agreed with the Judge that there was no basis for the Husband's allegation that the Wife had kept his medical receipts and/or bills. Pertinently, the Husband had made no attempt to seek discovery from the Wife in spite of his allegation. Furthermore, as the Judge pointed out (and we accepted), the Husband could have written to the hospitals or clinics he had visited to obtain the said receipts or records of payment made. Even if the Husband had difficulty keeping track of his medical expenses at that point of time as he was frequently in and out of the hospital, he could nevertheless have subsequently obtained the said bills, receipts or records by the aforesaid means. However the Husband chose not to do so.

62 The law on drawing adverse inferences was succinctly summarised by this court in *Koh Bee Choo v Choo Chai Huah* [2007] SGCA 21 at [28]. In order for the court to draw an adverse inference, there must be:

> (a) a substratum of evidence that establishes a *prima facie* case against the person against whom the inference is to be drawn; and
>
> (b) that person must have had some particular access to the information he is said to be hiding.

In our judgment, a *prima facie* case had been made out against the Husband in the light of the moneys he withdrew. Moreover, what happened to the moneys was clearly within the Husband's knowledge. In the premises, we found that the Judge therefore did not err in drawing an adverse inference against the Husband.

63 However, we disagreed with the manner in which the Judge had chosen to give effect to the adverse inference. In this regard, the Judge had awarded the Wife an additional 7% share of the matrimonial assets over and above the share she had been awarded pursuant to a just and equitable division of the matrimonial assets.

64 There are at least two alternative approaches to give effect to the adverse inference drawn against a spouse, both of which have been endorsed by this court: see *NK v NL* ([21] *supra*) at [61]–[62]. The first approach is for the court to make a finding of the value of the undisclosed assets on the available evidence and for the party dissatisfied with the value attributed to show that it is unreasonable; if the dissatisfied party is unable to do so, the value is then included in the matrimonial pool for division (see, for example, the Singapore High Court decision of *Tay Sin Tor v Tan Chay Eng* [1999] 2 SLR(R) 385 at [18]). Although it endorsed this approach, the court in *NK v NL* also cautioned against "unnecessary speculation with respect to the specific values of undeclared assets" and instead held (at [62]) that in the circumstances of the case, "it might be more just and equitable (not to mention, practical) to order a higher proportion of the known assets to be given to the wife".

65 Ultimately, the appropriate approach to adopt would depend on the facts of the particular case subject to the overriding impetus of achieving a just and equitable result. As this court observed in *Yeo Chong Lin* ([19] *supra*) at [66]:

> … In the final analysis, it is for the court to decide, in the light of the fact-situation of each case, which approach would in its view best achieve an equitable and just result. What must be clearly recognised is that when the court makes such a determination it is not undertaking an exercise based on arithmetic but a judgmental exercise based, in part at least, on feel.

Both Mr Sreenivasan and Ms Wong accepted the general principle that it was within the court's discretion to determine how to give effect to the adverse inference drawn against a spouse in order to achieve an equitable and just result.

66 We found, however, that the Judge had, with respect, erred in exercising his discretion *on the facts of this particular case*. It was not in dispute that the sum of $832,737.50 had been withdrawn from the OCBC Easisave Account. Of this, receipts were produced for only a sum of $127,833.47. Further, based on the Husband's affidavit of assets and means, he would have expended a sum of $58,944 during that 32-month period. On this basis, a sum of $645,960.03 (and not $704,904.03 as the Judge held) remained unaccounted for. In our view, where the appropriated sum of money or the value of the undeclared property is known, the approach that will best achieve an equitable and just result is to add the known sum or value back into the matrimonial pool for division. This was not a case (as in

NK v NL) where the court would have to engage in speculation over the value of undeclared assets.

67 For the foregoing reasons, we ordered that the sum of $645,960.03 be added back into the matrimonial pool to give effect to the adverse inference drawn against the Husband.

Conclusion

68 For the reasons above, we allowed the appeal and ordered that:

(a) The sum of $645,960.03 should be added back to the matrimonial pool of $2,098,978.29. The combined matrimonial pool is therefore $2,744,938.32.

(b) The Wife's share of the matrimonial assets be reduced from 35% to 28%.

The Wife was therefore entitled to $768,582.73.

69 As the Wife was legally aided, no costs were ordered for the appeal. The usual consequential orders followed.

Reported by Loh Hui-min.