

Matrimonial Practice from the Singapore Perspective

Presented by:

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Mandatory Parenting Programme (MPP)

- All parents with children below 14 years old are required to attend the MPP
- MPP is a free one-to-one consultation session for parents before the divorce application is filed in court
- Certificate of Completion required for filing of divorce application
- MPP is a two-hour session by counsellors from Divorce Support Specialist Agencies (DSSAs) under the Ministry of Social and Family Development (MSF)
- Exclusion is based on the criterion of mental incapacity only

Aims of the MPP

- MPP is designed to encourage divorcing couples make informed decisions that prioritise the well-being of children
- The consultation aims to help parents understand:
 - the financial challenges of divorce
 - how divorce impacts living arrangements
 - child custody and access
 - the importance of co-parenting and having a parenting plan

Statutory Basis of the MPP in Singapore

- Section 94A of the Women's Charter came into effect on 1 December 2016

“Parenting programme

94A. – (1) Every prescribed party must complete a parenting programme within the time prescribed by rules made under section 180.

(2)

(3) No writ for divorce, and no counterclaim in proceedings for divorce, is to be filed in the court by a prescribed party, unless the prescribed party –

- (a) has completed a parenting programme;
- (b) is an excluded party; or
- (c) is allowed by the court under subsection (4) to do so.”

Similar “MPP” regime in Malaysia

- Section 106 of the Law Reform (Marriage and Divorce) Act 1976

“Requirement of reference to conciliatory body before petition for divorce

106. (1) No person shall petition for divorce, except under sections 51 and 52, unless he or she has first referred the matrimonial difficulty to a conciliatory body and that body has certified that it has failed to reconcile the parties:”

Division of Matrimonial Assets in Singapore

- Structured approach under ***ANJ v ANK* [2015] 4 SLR 1043; [2015] SGCA 34**
- Step 1: Ascribe a ratio that represents each party's ***direct contributions*** relative to that of the other party, having regard to the amount of ***financial contribution*** each party has made towards the acquisition or improvement of the matrimonial assets
- Step 2: Ascribe a second ratio to represent each party's ***indirect contribution*** to the well-being of the family relative to that of the other
- Step 3: Using each party's respective direct and indirect percentage contributions, derive each party's ***average percentage contribution*** to the family which would form the basis to divide the matrimonial assets

ANJ v ANK table

	Husband	Wife	Assumed equal weightage to both types of contributions*
Direct contributions	60%	40%	50%
Indirect contributions (both financial and non-financial)	40%	60%	50%
Average percentage contributions	50%	50%	

*Situations (non-exhaustive) when the courts would adjust the weightage of the contributions

- a) The length of the marriage
 - Long marriages: Higher weightage to **indirect** contributions
- b) The size of the matrimonial assets and its constituents
 - Pool of assets available for division is extraordinarily large and all of that was accrued by one party's exceptional efforts: Higher weightage to **direct** contributions
- c) The extent and nature of indirect contributions made
 - No domestic helper, homemakers who have raised children to adulthood at significant expense to their careers: Higher weightage to **indirect** contributions

Division of Matrimonial Assets (Previous Regime)

- Caution against use of the “uplift” methodology
- Start from the proportions of the spouses’ financial contributions to the acquisitions of matrimonial assets
- Adjust those proportions by giving the spouse who had more significant non-financial contributions an “uplift” (“mark-up” or “premium”) to those proportions

Primary Difficulties with the “Uplift” Methodology

Risk of Undervaluation

- Undervaluation might occur when direct contribution was used as the *prima facie* starting point; doing so placed undue emphasis on direct contribution, leaving little room for indirect contribution to feature within the calculus

Risk of Overvaluation

- Overvaluation might occur when the court, by giving one party a percentage uplift representing his/her indirect contribution, also deducted the same number of percentage points from the other party’s share of direct contribution

Treatment of Trust Assets (Declared Trusts) in the Division of Matrimonial Assets

- **Section 132 of the Women's Charter** → "*claw-back*" provision
- **Section 112 of the Women's Charter**

Sum equivalent to trust was ordered to be put into bank account which could be used by either parent for the welfare of the children of the marriage:

- ***TQ v TR* [2009] 2 SLR(R) 961; [2009] SGCA 6**

Cases in which the court did not unwind the trust or put back any part of its funds into the pool for division:

- ***NI v NJ* [2007] 1 SLR(R) 75; [2006] SGHC 198**
- ***AQT v AQU* [2011] SGHC 138**
- ***Kwee Lee Fung Ivon v Lim Gordon* [2013] SGHC 228**

Section 132 of the Women's Charter

Power of court to set aside and prevent dispositions intended to defeat claims of maintenance

132. – (1) Where

- (a) any matrimonial proceedings are pending;**
- (b) an order has been made under section 112 and has not been complied with;**

... ..

the court shall have power on application –

- (i) to set aside any disposition of property, if it is satisfied that the disposition of property made within the preceding 3 years, with the object on the part of the person making the disposition of
 - (A) reducing that person's means to pay maintenance; or**
 - (B) depriving that person's wife, former wife, incapacitated husband or incapacitated former husband of any rights in relation to that property; and****
- (ii) if it is satisfied that any disposition of property is intended to be made with any such object, to grant an injunction preventing that disposition**

(2) In this section –

“disposition” includes a sale, gift, lease, mortgage or any other transaction whereby ownership or possession of the property is transferred or encumbered but does not include a disposition made for money or money's worth to or in favour of a person acting in good faith and in ignorance of the object with which the disposition is made;

“property” means property of any nature, movable or immovable, and includes money.

Section 112 of the Women's Charter

Power of the court to order division of matrimonial assets

112. – (1) The court shall have power, when granting or subsequent to the grant of a judgment of divorce, judicial separation or nullity of marriage, to order the division between the parties of any matrimonial asset or the sale of any such asset and the division between the parties of the proceeds of the sale of any such asset in such proportions as the court thinks just and equitable.

(2) It shall be the duty of the court in deciding whether to exercise its powers under subsection (1) and, if so, in what manner, to have regard to all the circumstances of the case, including the following matters:

- (a) the extent of the contributions made by each party in money, property or work towards acquiring, improving or maintaining the matrimonial assets;**
- (b) any debt owing or obligation incurred or undertaken by either party for their joint benefit or for the benefit of any child of the marriage;**
- (c) the needs of the children (if any) of the marriage;**
- (d) the extent of the contributions made by each party to the welfare of the family, including looking after the home or caring for the family or any aged or infirm relative or dependant of either party;**
- (e) any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce;**
- (f) any period of rent-free occupation or other benefit enjoyed by one party in the matrimonial home to the exclusion of the other party;**
- (g) the giving of assistance or support by one party to the other party (whether or not of a material kind), including the giving of assistance or support which aids the other party in the carrying on of his or her occupation or business; and**
- (h) the matters referred to in section 114(1) so far as they are relevant.**

TQ v TR (2009, SGCA) (1/2)

- Husband had set up a trust fund in Mauritius in June 2005 worth US\$261,540, called the ALLIJU Trust, which was designated to be used for the benefit of the children of the marriage. The trust was an irrevocable one. The ALLIJU Trust was set up after the decree nisi had been granted on 19 April 2005 on the divorce filed in 2003 by the Wife.
- SGCA did not wish to intrude on the jurisdiction in the Mauritius context by ordering the ALLIJU Trust to be set aside, but felt it important to recognise the fact that this was a clear attempt to bind the hands of the courts in respect of the issues of maintenance and the distribution of the matrimonial assets, and to deprive the Wife of her rights under the Women's Charter.

TQ v TR (2009, SGCA) (2/2)

- Thus, SGCA ordered Husband to pay a sum equivalent to that in the ALLIJU Trust (not less than S\$380,000.00) into an account in a Singapore bank, which could be used by either parent to pay all reasonable expenses necessary for the welfare and education of the children of the marriage jointly or severally.

NI v NJ (2006, SGHC) (1/4)

- Facts of the case

- Husband and Wife were married on 4 July 1997 for 7 years
- They have 2 daughters, one 8 years old and one 6 years old
- Husband was 61 years old at the time of hearing whilst Wife was 49 years old at the time of hearing
- On 8 October 2004, an uncontested decree nisi was granted on the basis of the Husband's unreasonable behaviour

NI v NJ (2006, SGHC) (2/4)

- Characteristics of the family trust
 - On 3 November 2004, the Husband created a family trust which consist of the following assets:
 - a property, 66 Maskell Street, Auckland, New Zealand
 - money from his ANZ Growth Fund investment
 - some debenture stock investments
 - the Husband's savings with the United Overseas Bank
 - There is no dispute that the assets in the family trust were acquired prior to the Husband's marriage to the Wife although the trust was created after the decree nisi was granted in October 2004.
 - The sole beneficiaries of the family trust were the children of the marriage

NI v NJ (2006, SGHC) (3/4)

- SGHC was not inclined to view the family trust as being created with the primary object(s) of reducing Husband's means to pay maintenance or deprive Wife of any rights in relation to the trust assets. → no breach of s 132 of WC
 - Husband was merely concerned that adequate provision be made for the children and this was rightly so as the Wife has adopted a rather generous spending approach from time to time.
 - Husband also averred that he had discussed the setting up of the trust with his Wife and he also confirmed that he would regularly account to the Wife and their children.

NI v NJ (2006, SGHC) (4/4)

- The family trust was entirely for the children who should in the circumstances of this case constitute the paramount consideration for both parties. The children were still very young. One of the main considerations in such assessments by the court is to ensure that adequate provision is made to support the children of the marriage. It is pertinent that the Husband himself will no longer derive any benefit from the trust assets.

AQT v AQU (2011, SGHC) (1/7)

- Facts of the case

- Husband and Wife married on 5 June 1992 (the marriage lasted 17 years)
- Husband filed for divorce on 22 December 2007
- On 20 January 2009, interim judgment was granted on Wife's counterclaim
- Husband is aged 50 years old and is currently the Head of e-FX Sales, South East Asia, at a foreign bank, [A] Bank, in Singapore
- Wife is aged 48 years old and is a homemaker
- There are three children of the marriage viz 2 daughters aged 15 and 9 and a son aged 13

AQT v AQU (2011, SGHC) (2/7)

- Characteristics of the Bemali Trust:

- The Bemali Trust was established within the same week that the Husband said he wanted a divorce and mere months before the Husband filed for divorce
- The Bemali Trust was established by the Husband and was valued at £465,791.93 as at 17 May 2010.
- From the trust documents, it was noted that the Husband had irrevocably transferred the beneficial ownership of the Bemali Trust to his three children. The beneficial ownership of the Bemali Trust belonged neither to Husband nor Wife.

AQT v AQU (2011, SGHC) (3/7)

- Issue: Should the Bemali Trust be treated as a matrimonial asset?
 - Husband's version: Funds used to set up the Bemali Trust were wholly acquired and earned by him with no monetary contribution from Wife
 - Wife's version: Husband had unilaterally set up the Bemali Trust using a substantial portion of their savings which was meant for the family
 - SGHC held: As the funds used (£480,000) to set up the Bemali Trust were acquired during the marriage, the **funds used (£480,000) to set up the Bemali Trust was a matrimonial asset.**

AQT v AQU (2011, SGHC) (4/7)

- Issue: Should the funds used to set up the Bemali Trust be put into the pool of matrimonial assets to be divided?
 - Using the Court's just and equitable discretion under s 112 of the Women's Charter, SGHC exempted the funds used in setting up the Bemali Trust from the pool of matrimonial assets, even though the funds were technically matrimonial assets.

AQT v AQU (2011, SGHC) (5/7)

- Issue: Should the funds used to set up the Bemali Trust be put into the pool of matrimonial assets to be divided?
 - It is clear from the Memorandum of Settlor's wishes that the Bemali Trust is meant to safeguard the assets for the children and is not available to the Husband or Wife or their future spouses and that Husband would not be able to renege on his intention that the children would be the beneficiaries under the trust in the future.
 - The Bemali Trust will pay for the schooling expenses of the three children until the completion of their first degree. The Bemali Trust is also meant to provide both daughters with a capital sum on their attaining 25 years of age. The Husband also foresaw that the son (who has special needs as he suffers from Williams syndrome) will remain a dependant of the Bemali Trust for much of his life (or possibly, his entire lifetime) until he can support himself independently. The son's capital sum will remain in the trust and the Bemali Trust will continue to provide for him. The wife, as the primary caretaker of the children, will benefit from the Bemali Trust which provides certainty for the children's long-term financial needs

AQT v AQU (2011, SGHC) (6/7)

- Issue: Should the funds used to set up the Bemali Trust be put into the pool of matrimonial assets to be divided?
 - In this case, it is just and equitable to exempt the Bemali Trust from the pool of matrimonial assets since the terms of the Bemali Trust showed that it was intended solely for the children's benefit, which is consistent with the aims of the matrimonial partnership. This is also consonant with s 112(2)(c) of the Women's Charter, which states that one of the main considerations for division under s 112(2) is "the needs of the children (if any) of the marriage."
 - The Bemali Trust also has the benefit of ringfencing the funds from inheritance tax in the UK, which the Husband alleged would decrease the funds by £200,000.

AQT v AQU (2011, SGHC) (7/7)

- Obiter: When would the court notionally place the funds (acquired in the course of marriage) used to set up a trust back into the pool of matrimonial assets?
 - If the Husband had (just before the divorce) set up a trust for someone completely unrelated to his marriage, eg, his brother, it may then be just and equitable for the Court to notionally place the £480,000 back into the pool of matrimonial assets.
 - In fact, s 132 of the Women's Charter can be used to "claw-back" this asset if the Husband had disposed of it with the object of reducing his means to pay maintenance or depriving the Wife of any rights in relation to the property.
 - However, the facts clearly do not fall within s 132 of the Women's Charter because the Husband did not have such a motive in setting up the Bemali Trust for his children. Therefore, the Bemali Trust will not be treated as part of the pool of matrimonial assets to be divided.

Kwee Lee Fung Ivon (2013, SGHC) (1/4)

- Facts of the case:

- Husband (61 years old) and Wife (54 years old) are medical doctors and were married on 3 June 1985.
- There are 5 children from the marriage, three boys born between 1986 and 1990 and a pair of twins (girls) born in 1992.
- Interim Judgment entered on 17 December 2010.
- In 2010, Husband diagnosed with fibromyalgia (a chronic incurable disease characterised by multiple muscle and joint pains, trigger points, stiffness and muscle weakness) which would prevent him from practising as a gynaecologist indefinitely.
- On 22 August 2011, parties entered into consent judgment granted both parties with joint custody of the 3 youngest children of the marriage with the Husband being given care and control with reasonable access to the Wife. The Husband also agreed to solely maintain without any contribution from the Wife:
 - (i) the 3 youngest children as well as (ii) their second child until he obtains his first degree.
- Outstanding ancillaries: (1) division of matrimonial assets, and (2) Wife's maintenance

Kwee Lee Fung Ivon (2013, SGHC) (2/4)

- Characteristics of the Grateful Trust

- In April 2009, the Husband set up the Grateful Trust using the funds which he transferred from the parties' 2 joint accounts totalling S\$2.9 mil
- The Grateful Trust had assets worth around S\$3.3 mil
- The projected costs of the four younger children's education totalled around S\$2.1 mil
- SGHC accepted that the value of the Grateful Trust would fluctuate from time to time as the Grateful Trust comprises of a portfolio of securities
- The Grateful Trust was specifically created so that Husband can withdraw money therefrom for the children's education (and which the Husband did on 13 June 2013 to pay for the second child's Monash University fees of A\$16,504.25)

Kwee Lee Fung Ivon (2013, SGHC) (3/4)

- SGHC found the Grateful Trust to be a matrimonial asset because the Grateful Trust was set up using monies from the parties' two joint accounts.

Kwee Lee Fung Ivon (2013, SGHC) (4/4)

- However, SGHC did not unwind the Grateful Trust or put back any part of its funds into the pool for division with the Wife:
 - “The Wife submitted that the Trust should be unwound and the funds therein divided equally between the parties. At the very least S\$1m should be taken therefrom and put back into the matrimonial assets pool for division.”
 - “For a mother who professed she had given her life to the children, the Wife’s stand was utterly selfish... ..She only thought of herself and not the children or the Husband who at 61 years of age, is unlikely to practice indefinitely as a gynaecologist. Physically he cannot especially if his fibromyalgia condition worsens. The husband too needs funds to live on after his retirement/for his old age. The court will not unwind the Trust or put back any part of its funds into the pool for division with the Wife. There is precedent for this court’s ruling in *AQT v AQU* [2011] SGHC 138 and *NI v NJ* [2007] 1 SLR(R) 75.”