

**Divorce Proceedings: the Power of Intent in the
Division of Assets Acquired by Gift or Inheritance
CLC v CLB [2023] SGCA 10**

I. Executive Summary

In a divorce, one often contested issue concerns what makes up the “matrimonial pool” of assets that is to be divided between the divorcing spouses. An additional complication is that section 112 of the Women’s Charter 1961 (2020 Rev Ed) (the “**Women’s Charter**”) *excludes* from this matrimonial pool assets that have been acquired by gift or inheritance.¹ This is due to the following reasons: *first*, it recognises that the donor’s intention may have been to benefit *only the donee spouse* (i.e. the spouse who received the asset by gift or inheritance) and not the other spouse, given that the donor is usually related to the donee spouse; *second*, it acknowledges the need to prevent windfalls accruing to the other party to the marriage, given that division of the matrimonial pool is generally based on contributions made by the spouses during the marriage.

However, where the donee spouse manifests a “clear and unambiguous intention to treat the asset so acquired as part of the family estate”, two questions then arise: *first*, whether the courts should give effect to such intention, and *second*, how the recognition of such an intention may be reconciled with section 112 of the Women’s Charter. The Court of Appeal (“**CA**”) dealt with these questions in *CLC v CLB* [2023] SGCA 10 (“**CLC v CLB**”).

CLC v CLB was the (then-latest) decision in a years-long dispute between the divorcing appellant (“**Wife**”) and respondent (“**Husband**”). The Husband had received certain monies from his late father. In the proceedings regarding the division of matrimonial assets in the divorce, he argued that pursuant to section 112 of the Women’s Charter, these monies should be excluded from the matrimonial pool and not be subject to division with the Wife.

The High Court (“**HC**”) disagreed with the Husband. Among other things, the HC found that the monies had been “co-mingled” with other matrimonial assets and were “no longer separately identifiable” as the Husband’s inherited or gifted assets. On appeal, the Appellate Division of the High Court (“**AD**”) reversed the HC’s decision. The Wife then appealed to the CA.

The CA held that, while section 112(10) of the Women’s Charter does not expressly provide for the intention of the donee spouse to bring non-matrimonial assets into the matrimonial pool, this *does not preclude* the courts from giving effect to such intention in accordance with principles of property law. Accordingly, as the Husband had demonstrated a clear and unambiguous intention to incorporate the disputed amounts into the family estate, these assets were matrimonial assets subject to division between the divorcing parties.

II. Material Facts

The Husband had received monetary gifts from his late father and had also inherited substantial sums from his late father’s estate (the “**Gifted Monies**”). The Husband argued that the Gifted Monies had flowed into six Australian bank accounts and investment portfolios that were in his sole name (the “**Disputed Assets**”). More specifically, he claimed that the Disputed Assets came from: money from

¹ Section 112(10) defines “matrimonial asset” as

- (a) any asset acquired before the marriage by one party or both parties to the marriage —
 - (i) ordinarily used or enjoyed by both parties or one or more of their children while the parties are residing together ... ; or
 - (ii) which has been substantially improved during the marriage by the other party or both parties to the marriage; and
- (b) any other asset ... acquired during the marriage by one party or both parties to the marriage, but does not include any asset (not being a matrimonial home) that has been acquired by one party ... by gift or inheritance and that has not been substantially improved during the marriage by the other party or both parties ...

his father's Australian will (the "**Australian Inheritance**" and "**Australian Will**", respectively), money from the winding up of a company [G] Inc (the "**[G] Money**"), and money from the sale of the shares of a company [H] Sdn Bhd (the "**[H] Money**"). The monies from these sources were referred to by the AD as the "**Inheritance Monies**".

The Husband further argued that another bank account in his sole name, "**ANZ-55**", was a pre-marriage asset derived from the Australian Inheritance. Thus, pursuant to section 112 of the Women's Charter, they should be excluded from the matrimonial pool. The Husband also claimed that his father had given him shares in [G] Inc before his marriage. Accordingly, it was listed as a separate property in a pre-nuptial agreement that the parties had entered into prior to their marriage. Upon the liquidation of [G] Inc in 2006, the Husband's share of the distribution was "transferred to and mixed with the existing funds" in another account "**DBS-3**". This account was also listed as a separate property in the pre-nuptial agreement and was "excluded by agreement from being [a] matrimonial asset". The money was also used to partially fund the balance price of a property which the parties had purchased during their marriage and registered in the wife's name. The monies were additionally placed into the Disputed Assets as well as other accounts the Husband argued were excluded on the basis of being pre-marriage assets or derived from gifts or inheritance.

Finally, the Husband stated that he became the beneficial owner of shares in [H] Sdn Bhd under a trust created by his father in 1998. Following his father's death, the Husband received monies over several tranches between February 2010 and mid-June 2015 which were paid into two joint accounts held with the wife (together, the "**UOB Joint Account**"). The Husband argued that although money was used from the UOB Joint Account during the marriage, it was not mixed with any money from the Wife during the entire marriage. Instead, the reason for the UOB Joint Account was "simply to operate as a contingency plan" for his wife and children should anything untoward happen to him.

The Wife did not dispute that the Australian Inheritance was placed in several of the Husband's accounts in Australia, including ANZ-55. She argued, however, that these accounts must also have contained large sums of monies which the Husband had transferred out of their joint bank accounts in Malaysia between December 2018 and April 2019. The Wife further argued that, according to the Husband, his expenditure on the family's expenses in Singapore and the Singapore matrimonial properties were made from DBS-3. Furthermore, DBS-3 was also credited by the Wife in a total amount of \$28,000 from 2007 to 2015. As the [G] Money had been co-mingled with other funds used for family expenses, it was no longer separately identifiable.

The Wife also claimed that the Husband's intention to share the [H] Money with the Wife and use it to provide for the family was "unambiguous and undisputed". Money from the UOB Joint Account was used for the family's holidays in Malaysia and kept in the account until the marriage broke down in late 2018. Furthermore, as with the [G] Money, the [H] Money could not be traced to the Disputed Assets given that only two of the deposits therein could be traced to the Gifted Monies. As there was no proper trail or accounting, it was impossible to ascertain whether funds that went into the Disputed Assets were attributable to the Husband's inherited funds, having come from mixed sources of funds such as the Husband's investments and the UOB Joint Account.

III. Issues on appeal

After the AD reversed the HC's decision and excluded the Disputed Assets from the matrimonial pool, the Wife applied to the CA for leave to appeal against the AD's decision. The CA granted the Wife leave to appeal on the following issues only:

- (a) Whether the statutory purpose and language of section 112(10) of the Women's Charter provide support in determining, with reference to the intention of the donee spouse, whether an asset acquired by him by way of gift or inheritance has lost its character as such and may therefore be regarded as a matrimonial asset?

- (b) What is required to trace an asset, in particular money in a bank account, to an asset acquired by gift or inheritance? In particular, where such money has been co-mingled with funds from other sources, which party bears the burden of proving that the money that remains in the account, is traceable to the gift or inheritance in question?

The CA first considered these issues, before applying them to the facts of this case.

A. *Section 112(10) of the Women's Charter and the intention of the donee spouse*

(i) The parties' arguments

The Wife argued that although section 112(10) of the Women's Charter does not expressly provide for the possibility of an asset acquired by gift or inheritance losing its character as such, such possibility was supported by a purposive reading of the provision, since it is the "essence of the partnership that gains and losses – even windfall gains – are ... shared and enjoyed between the partners". In this regard, the donee spouse's intention is relevant in determining whether an asset acquired by gift or inheritance has lost its character as such.

The Wife further submitted that the Disputed Assets had lost their character as gifts or inheritance. The Husband had utilised the Gifted Monies for the family and indicated as much in his correspondence with the wife. The conduct of the parties during the marriage had also departed from the terms of the pre-nuptial agreement in which both parties agreed that they would not have a claim on each other's gifts and inheritance. The Gifted Monies received by the Husband had therefore been transferred and mixed in a way that demonstrated they would objectively no longer be regarded as separate assets and had therefore lost their character as such.

Conversely, the Husband argued that the consideration of a donee spouse's intention in determining whether a gift or inheritance has lost its character as such "overly stretche[d]" and "muddle[d]" the statutory definition of a matrimonial asset. An investigation into the intentions of spouses by the court would be undesirable. Applying this principle, the AD did not err in its finding. Further, even if he had had any intention for these monies to be part of the matrimonial pool, such intentions had no place within the matrimonial framework. Finally, the [H] Money was kept in the UOB Joint Account for convenience, rather than as a representation of his intention to include his assets within the matrimonial pool.

(ii) The CA's decision

The CA first held that in construing legislative provisions such as section 112(10) of the Women's Charter, the "purposive approach" encapsulated in section 9A of the Interpretation Act 1965 directs the courts to prefer an interpretation that advances the objects and purposes underlying that law. This involves: *first*, ascertaining possible interpretations of the text, with due regard to the context of that text within the written law as a whole; *second*, ascertaining the legislative purpose of the statute; and *third*, comparing the possible interpretations of the text against the purpose of the statute, preferring the interpretation which *furtheres the purpose* of the written text.

Applying these principles of statutory interpretation, the CA held that section 112(10) of the Women's Charter contemplates two ways in which an asset acquired by gift or inheritance may be included in the matrimonial pool. The *first* is by substantial improvement of the asset by the other party or both parties to the marriage, and the *second* is by use of the asset as the matrimonial home. These methods connected the property "sufficiently to the time of the marriage and the personal efforts of a husband and wife so that it is part of the partnership wealth". However, given that section 112(10) was silent on whether a "gift or inheritance" includes assets which were originally acquired by gift or inheritance, but which the donee spouse intended to become part of the matrimonial pool, it remained unclear as to whether the intention of a donee spouse could, in effect, provide a *third* way of bringing a gift or inheritance into the matrimonial pool.

Given the lack of clarity, the CA then referred to the Report of the Select Committee on the Women's Charter (Amendment) Bill (Bill No 5/96) (Parl 3 of 1996, 15 August 1996) as well as the Third Reading of the Women's Charter (Amendment) Bill (Bill No. 5/96) ("**Third Reading**") to determine the appropriate interpretation of section 112(10). The CA concluded that these materials were silent on the role of the intention of a donee spouse under section 112(10). Further, during the Third Reading the then-Minister for Community Development expressed the view that "it [was] not the intention for the body of case law built up over the years to be cast aside, but that it should continue to serve as a guide to judges in their decisions". This indicated that Parliament had affirmed the law as it stood at the time: it retained the definition of matrimonial assets, without considering how it dealt with parties' intentions in the context of an alleged transformation of a gift or inheritance into a matrimonial asset.

The CA made three further observations. *First*, where section 106 of the 1985 Women's Charter stipulated a closed list of criteria for the court's consideration in the division of matrimonial assets, section 112(2) of the current Women's Charter (as amended in 1997 ("**the 1997 Amendments**")) provides for a list of non-exhaustive factors for the court to consider in deciding whether and how to exercise its "broad discretion" to achieve what is "just and equitable in all the circumstances of the case". Thus, the 1997 Amendments were intended to enlarge and clarify the circumstances that a court should take into consideration under section 112 of the Women's Charter, to determine what was just and equitable. On this basis, it would not necessarily be inconsistent with "what is just and equitable", for the court to consider the intention of a donee spouse to include in the matrimonial pool assets originally acquired by gift or inheritance.

Second, in the context of a gift from a third party, the donee spouse's intention has no impact on acquisition of legal ownership. Instead, the relevant intention would only be formed after the acquisition, and that is the intention that could transform the gift into a matrimonial asset. This was supported by the principle behind the division of matrimonial assets as the "prevailing ideology of marriage as an equal co-operative partnership of efforts".

Third, while the court has the power under section 112 to redefine the parties' respective property rights upon divorce, this does not mean that property law principles are irrelevant when the court is assessing the parties' rights to assets in the dissolution of marriage. Accordingly, where a spouse who acquires a gift of property from a third party subsequently re-gifts the said property to the other spouse, "there is no reason why the court should not give effect to that re-gift, as a manifested intention on the part of the donee spouse" to deprive himself of any interest in that property in favour of the other spouse. This would be true even if the manifested intention is instead one which brings the gifted property into the family estate, such that it would be incorporated into the matrimonial pool for division under section 112 of the Women's Charter.

Accordingly, the CA held that the "policy of the law in this area" should favour the intention of the parties: whether an asset is acquired by way of gift or by way of effort, where there is clear intent to treat it as a gift (or conversely, as a matrimonial asset), it ought to be treated as such. This was also not inconsistent with section 112 of the Women's Charter, which did not preclude the application of ordinary property law principles to the assets in question. A spouse who has a proprietary interest in a non-matrimonial asset has the right to deal with that asset in any way the spouse wishes, including by bringing it into the matrimonial pool.

It is ultimately a question of fact as to what a donee spouse intended to do with their asset that was originally acquired by gift or inheritance. However, given the potential impact of a finding that a donee spouse did not intend to retain any interest in the gift or inheritance, the CA cautioned that "it is especially important that the court examine whether such intention has been manifested in a clear and unequivocal manner". In ascertaining the intention of the donee spouse, the court will have regard to the relevant circumstances like their conduct, correspondence, as well as acts such as registering

the other spouse as a joint tenant of property or joint account holder in a bank account.

B. The requirement of tracing an asset to one acquired by gift or inheritance

(i) The parties' arguments

The Wife argued that the essential question is whether the asset “remains factually and in substance the same asset that was [the] gift”. Further, the burden of proving that the money remaining in an account is traceable to a gift or inheritance lay on the person who asserted so, i.e., the donee spouse claiming that the asset is not a matrimonial asset. Conversely, the Husband argued that the equitable approach of tracing value through substitutions should be adopted. While he accepted that the party asserting that an asset was not a matrimonial asset bore the legal burden of proving such assertion, he argued that once the donee spouse has produced *prima facie* evidence that the asset in question is derived from a gift or inheritance, the evidential burden must shift to the *non-donee* spouse to prove that the value of the gift cannot be traced or that the gift is no longer traceable.

(ii) The CA's decision

The CA held that there was no basis for the Husband's argument. *First*, it may not be realistic for the non-donee spouse to be expected to “pinpoint” a portion of money in an account that could fall within the definition of a matrimonial asset. Such evidence may simply not be available to the other spouse, particularly if the bank account is in the name of the donee spouse only. *Second*, as the onus is on the donee spouse to show evidence to prove that any particular asset is traceable to an asset acquired by gift or inheritance, in the absence of such evidence it should follow that the asset cannot be traced.

The CA reiterated the position that “where a spouse receives an asset by way of a gift or inheritance during the course of the marriage, ‘the owner of the gifted asset would have to show that it originated from the generosity of a third party in order to prevent it from being divided upon divorce’”. The test to show that a particular asset is traceable to an asset acquired by gift or inheritance is hence whether the “true nature of a gift remains intact”. This general approach to tracing (as argued by the Wife) should continue to apply. As marriage is an equal co-operative partnership of efforts, it was inevitable that parties' assets may become intertwined or co-mingled during the course of their marriage. In the context of a long marriage, for example, it is unrealistic to expect the married couple to keep detailed records of their fund transfers over time. Nevertheless, the CA considered five principles instructive for the general approach to tracing.

First, a party claiming that an asset has been acquired by gift or inheritance must produce sufficient evidence to show linkage between a currently owned asset and an asset acquired by gift or inheritance. Where money in a bank account is concerned, “this could include details on the source of contributions into the account as well as the specific use of the withdrawals”. *Second*, where it is asserted that an excluded property has changed character, each “link in the chain” required to trace the asset acquired by gift or inheritance into the currently owned asset must be established. The courts will use a “common sense approach” to tracing dependent on sufficient linkage between a non-matrimonial asset (such as an asset acquired by gift or inheritance) and an asset existing at the time of divorce.

Third, the court is entitled to draw reasonable inferences from evidence that is less certain or precise in order to do justice between the parties. However, it would not be sufficient to, for example, point to evidence of a decrease in one account that is concurrent with an increase in another and have the court draw the inference that funds can be traced from one to the other. *Fourth*, the question of co-mingling of matrimonial assets and assets acquired by gift or inheritance is a question of the identifiability of the latter. Accordingly, although it is likely to make the task of tracing more difficult, the co-mingling of two types of assets in a bank account does not necessarily mean that the latter type has ceased to retain its character as one acquired by gift or inheritance. *Lastly*, where an asset acquired by gift has been dissipated or consumed, it would naturally follow that it can no longer be traced.

C. *Application to the facts*

Applying the above principles to this case, the CA held that although the Husband did not provide evidence showing the precise links between the Inheritance Monies and the Disputed Assets, the CA agreed with the AD's assessment that "it was more likely than not that the Disputed Assets were derived from the Inheritance [Monies]". However, the CA also agreed with the Wife that the Disputed Assets and ANZ-55 had lost their character as gifts and inheritance, given the clear and unambiguous intention of the Husband to incorporate the monies therein into the family estate.

(i) Whether the Disputed Assets were traceable to the gifts or inheritance

The CA first focused on whether the Disputed Assets were traceable to gifts or inheritance to begin with. As a starting point, the Husband's monthly income of about \$22,799 was attributed to various accounts which were considered to be non-matrimonial assets on account of being traceable to the Inheritance Monies and Disputed Assets. The CA held that it appeared that "most if not all of his present monies would be attributable to the Inheritance Monies".

While the Wife argued that the funds in the Disputed Assets were mixed with the Husband's investments between 2009 to 2018 and the UOB Joint Account, these were both substantially attributable to the Inheritance Monies. Those investments would have been derived from the Inheritance Monies, especially since the Wife accepted that she had not contributed to the UOB Joint Account. Furthermore, the Wife did not challenge the HC's finding that a UOB account was excluded from the matrimonial pool on the basis that it was traceable to the [H] Money. Accordingly, the CA found that both the Australian Inheritance and the [H] Money could be traced to the Disputed Assets.

Further, apart from the possible co-mingling of S\$28,000 of the wife's money that she had contributed to DBS-3, the CA found that there was little co-mingling of the [G] Money which had gone into DBS-3 and would have otherwise been a matrimonial asset. This is especially since the Husband's monthly income was attributed to various accounts considered to be non-matrimonial assets.

(ii) Whether the Husband's intention was that the Disputed Assets and ANZ-55 be treated as part of the matrimonial pool

The CA held that the Wife was not so much contesting whether the monies in the Disputed Assets and ANZ-55 were traceable to the Inheritance Monies. Rather, her key contention was that the monies in the Disputed Assets and ANZ-55 were treated and dealt with as part of the family estate. The CA then found that the Husband did indeed demonstrate a clear and unambiguous intention to treat the Disputed Assets and ANZ-55 as part of the matrimonial pool.

His correspondence with the Wife demonstrated that he viewed assets that he had acquired by way of gifts or inheritance as part of the family estate. As early as February 2007, he had written an e-mail to the wife with the title "Our Net Worth". There, he included an Australian property which had been a pre-marital gift from his father as well as two properties that were in the name of the Wife and had been purchased in 2004 and 2006.

Similar correspondence over the years referred to "our liquid assets" and "our net wealth". In another WhatsApp message sent to the Wife in 2018, the Husband calculated their "total wealth" as being S\$16m, comprising the Australian property and the two other properties, "cash – [Husband] \$2.5m", "equities – [Husband] \$2.5m" and "[Wife] – \$1m". The S\$5m that he attributed to himself corresponded to the amount of the Husband's then-current assets, including the Disputed Assets and ANZ-55. It was therefore clear that the Husband had put forward the Disputed Assets and ANZ-55 to the Wife as part of their total wealth.

The Husband's intention could also be inferred from the fact that he placed some of the Inheritance Monies into the UOB Joint Account. In the CA's view, where one of the parties to a marriage places

monies 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 transferring spouse intends to share the said monies with the other. This is because, during the pendency of the joint account, both parties would have access to the money without restriction. Though the Husband argued that the purpose of the joint account was to provide for the family if anything untoward happened to him, the CA was not convinced. If this were true, the concern could have been dealt with in other ways, such as by provisions in a will.

As for DBS-3, although it was registered in the Husband's sole name, the money from the account was used for the benefit of the family, including paying for the purchase and renovation works of the Singapore Properties. Similarly, the funds in ANZ-55 were used for the family's expenses when they visited Perth annually. Hence, the Husband's use of the account without regard to the children's possible interest therein (as the account contained money bequeathed to the children) demonstrated a clear and unambiguous intention that the Inheritance Monies were to be part of the family estate.

The CA was thus satisfied that the Husband clearly and unambiguously intended to treat the Inheritance Monies, part of which was then in the Disputed Assets and ANZ-55, as part of the family estate. These bank accounts and investment portfolios were therefore included in the pool of matrimonial assets available for division. The total pool of matrimonial assets, valued at S\$12,670,096.88, was to be divided equally between the parties.

IV. Lessons Learnt

The CA has underlined the importance of a donee spouse's intentions in relation to assets acquired by gift or inheritance. Where the courts find that a donee spouse has manifested a clear and unambiguous intention to include assets within the matrimonial pool, the courts may give effect to that intention notwithstanding that the asset in question was acquired by way of gift or inheritance.

While the CA acknowledged that it would be unrealistic to expect a married couple to keep a detailed accounting of the movement of their assets, it is important that any party hoping to assert that an asset is excluded from the matrimonial pool is able to produce sufficient evidence to support that assertion. This is especially where the asset in question has been transformed into another asset or has been "co-mingled" with other matrimonial assets within joint accounts. A proper "linkage" must then be shown between the original gift or inheritance and the currently owned asset at the time of the divorce.

Written by: Prakhunmeechai Sararaksh, Second-Year LLB student, Singapore Management University Yong Pung How School of Law.

Edited by: Ong Ee Ing, Senior Lecturer, Singapore Management University Yong Pung How School of Law.