PROPERTY DIVISION ON DISSOLUTION OF MARRIAGE

This article discusses s. 106 of Singapore's Women's Charter which gives the courts power to order the division of matrimonial assets when granting a decree of divorce, judicial separation or nullity of marriage. The legislative history of this provision is traced and the language analysed with a view to discovering some guidelines for the exercise of the judicial discretion under the section. The existing case law is reviewed and the article concludes with a discussion of the possibility of replacing the discretionary scheme of s. 106 with more detailed provisions setting out with precision the principles to be applied to the distribution of property on divorce.

I. LEGISLATIVE HISTORY

A. Introduction

THE increase in the number of divorces has focused attention on the need to develop appropriate legal tools to deal with the property rights of the divorced couple. In common law systems husband and wife retain their separate property during marriage.[1] Clearly the traditional roles of the sexes in which the male was the breadwinner and the female the housewife are no longer as widely accepted as was once the case. Nevertheless, it is still quite usual for the woman to give up her career at least for a few years in order to bring up the children of the marriage. Social norms may be changing, but were a man to do this while his wife remained at work, the couple's behaviour would undoubtedly still provoke adverse comment.

Since the common law allows each party to retain and add to his or her own property during marriage just as if he or she were not married, the inevitable result in most families is that the husband will amass greater wealth than the wife during the course of the marriage. It may be questioned whether this is a fair outcome. After all "[t]he cock can feather the nest because he does not have to spend most of his time sitting on it."[2]

Clearly it is not an invariable rule that a man profits financially from a marriage at the expense of his wife. The wife may retain her job and the couple may employ a maid to look after the children. But whatever happens, the effect of the system of separate ownership of property is that the couple's property rights bear no necessary relationship to their needs and interests as a couple. None of this may matter so long as they are living together happily. Whoever earns more will undoubtedly pay more of the joint expenses.

[1] In Singapore the right of a woman to retain her own property after marriage was established by what is now s. 49 of the Women's Charter, Cap. 353, 1985 (Rev. Ed.). In England this was established by s. 2 of the Married Women's Property Act 1882.
[2] *Per* Sir Jocelyn Simon, extrajudicially quoted by Lord Hodson in *Pettitt* v. *Pettitt* [1970] A. C. 777, at p. 811.

The problem is likely to arise, however, should the marriage break down. Then adherence to the concept of separate ownership of property can be productive of great injustice. Nevertheless, it has required legislative interference to deal with this situation. Attempts have been made from time to time by the courts to escape from the straitjacket of separate ownership. But the notion that the rights of the parties must be resolved in accordance with the ordinary rules of property law was reaffirmed by the House of Lords in the two leading cases *of Pettitt* v. *Pettitt*[3] and *Gissing* v. *Gissing*.[4]

B. Singapore

Given the inadequacies of the common law treatment of the problem, it is not surprising that legislative interference in the property rights of divorced couples has gone hand in hand with liberalisation of the divorce laws themselves. Thus, in England, the Divorce Reform Act 1969 marked a major relaxation of the law relating to divorce, but this Act was not brought into force until the Matrimonial Proceedings and Property Act 1970 had been passed and brought into force. The Matrimonial Proceedings and Property Act conferred a discretion on the courts to adjust property rights on divorce.[5] These two Acts were later consolidated in the Matrimonial Causes Act 1973.

This experience was mirrored in Singapore. The English reforms of 1969 were repeated almost verbatim in the 1980 amendments to the Women's Charter.[6] At the same time the courts were given a discretion to adjust property rights on divorce in the shape of what is now section 106 of the Women's Charter.[7]

This section provides as follows:

106. *Power of court to order division of matrimonial assets*

(1) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of the sale.

(2) In exercising the power conferred by subsection (1) the court shall have regard to —

(a) the extent of the contributions made by each party in

[3] [1970] A. C. 777.

[4] [1971] A. C. 886. Under the leadership of Lord Denning the English Court of Appeal developed the new model constructive trust, under which *inter alia* account could be taken of indirect contributions *(e.g.* looking after the house and children) in assessing property rights. For examples of the new model constructive trust see *Heseltine* v. *Heseltine* [1971] 1 W. L. R. 342 and *Hazel* v. *Hazel* [1972] 1 W. L. R. 301. It was always extremely doubtful whether this concept could be reconciled with the decisions of the House of Lords noted above and, with the retirement of Lord Denning, the Court of Appeal has reverted to orthodoxy. See *Burns* v. *Burns* [1984] Ch. 317 and *Grant* v. *Edwards* [1986] *Ch.* 638.

[5] The Divorce Reform Act 1969 came into force on 1st January 1971, and most of the provisions of the Matrimonial Proceedings and Property Act 1970 came into force on the same day. See the Divorce Reform Act 1969, s. 11 (3) and the Matrimonial Proceedings and Property Act 1970, s. 43 (2).

[6] The Women's Charter (Amendment) Act, No. 26 of 1980.

[7] Prior to the 1985 Revised Edition of the Singapore Statutes, s. 106 was numbered s. 100.

money, property or work towards the acquiring of the assets;

(b) any debts owing by either party which were contracted for their joint benefit; and

(c) the needs of the minor children (if any) of the marriage, and,

subject to those considerations, the court shall incline towards equality of division.

(3) The court shall have power, when granting a decree of divorce, judicial separation or nullity of marriage, to order the division between the parties of any assets acquired during the marriage by the sole effort of one party to the marraige or the sale of any such assets and the division between the parties of the proceeds of the sale.

(4) In exercising the power conferred by subsection (3) the court shall have regard to —

(a) the extent of the contribution made by the other party who did not acquire the assets to the welfare of the family, by looking after the home or by caring for the family; and

(b) the needs of the minor children, if any, of the marriage,

and, subject to those considerations the court may divide the assets or the proceeds of sale in such proportions as the court thinks reasonable; but in any case the party by whose effort the assets were acquired shall receive a greater proportion.

(5) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

Curiously enough though the changes to the substantive law of divorce are lifted from the 1969 English legislation, section 106 itself is quite different from the equivalent English legislation. It is true that both section 104 and sections 24 and 25 of the English Matrimonial Causes Act 1973 confer a power on the courts to vary the property rights of the couple on divorce, but it is apparent from even a cursory glance at the two provisions that they are quite different in scope and effect, and the English legislation is lengthier and more detailed than its Singapore equivalent.

As might be expected, at the time amendments to the divorce law were mooted in Singapore in 1980, there was considerable discussion on the changes to the grounds of divorce. Little attention seems to have been paid to the proposed changes in property law. Generally it seems to have been mistakenly assumed by a number of commentators that the proposed changes would reproduce in Singapore the English law on the subject.[8]

[8] See Report of the Select Committee on the Women's Charter (Amendment) Bill [Bill No. 23/79] (presented to Parliament on 25th February, 1980), Paper 7 — written representations from (a) Y.W.C.A., (b) Singapore Women's Association, (c) Cosmopolitan Women's Club, (d) Singapore Business and Professional Women's Association, (e) Singapore Association of Personal and Executive Secretaries, (f) Singapore Association of Women Lawyers, p, A 17, at p. A 21, "Part V — Property — Section 101 onwards". See also Paper 10 — written representations from the Lawyers' Christian Fellowship, p. A 23, at p. A 25. One commentator at the time did point out that what is now s. 106 of the Women's Charter was not derived from English law. See Leong Wai Kum, "A Turning Point in Singapore Family Law: Women's Charter (Amendment) Bill 1979" (1979) 21 Mal. L. R. 327 at p. 342.

A Select Committee of Parliament was appointed to consider the proposed amendments to the Women's Charter. The only change made to the provision for adjustment of property rights was the substitution of "judicial separation or nullity of marriage" in place of the words "or judicial separation" in subsections (1) and (3).[9] The effect of this change was to confer on the courts jurisdiction to adjust property rights not only when granting a decree of divorce or judicial separation, but also when granting a decree of nullity. As a commentator pointed out to the Select Committee "[a]s a matter of principle, on the question of whether she ought to be given part of the family property and/or ought to be given financial provision, there is no reason why a woman who is incapable of consummating her marriage (for which her husband can obtain a decree of nullity) should be treated any differently from a woman with whom her husband finds intolerable to live (for which he may obtain a decree of divorce.)"[10] It should be noted that in England too the power to make financial provision and property adjustment orders is available in cases of nullity as well as in cases of divorce.[11]

C. Malaysia

The direct source of section 106 of the Women's Charter is section 76 of the Malaysian Law Reform (Marriage and Divorce) Act 1976.[12] Although passed in 1976, this Act was not brought into force until 1st March 1982.[13] Section 76 is identical to section 106 except for the words "or judicial separation", which appear in subsections (1) and (3) in place of the words "judicial separation or nullity of marriage" in the Singapore legislation. In other words, section 76 of the Malaysian statute is identical with the form taken by what is now section 106 of the Singapore Act when it was originally presented to Parliament in the Women's Charter (Amendment) Bill[14] and before its amendment by the Select Committee.

The legislative history of the Malaysian section is more complicated than that of its Singapore equivalent. The Law Reform (Marraige and Divorce) Act 1976 originates from the recommendations of the Royal Commission on Non-Muslim Marriage and Divorce Laws.[15] Annexed to the report of the Royal Commission is a draft bill which contains the following clause:

> 73. *Power of court to order division of matrimonial assets*
>
> (1) The court shall have power, when granting a decree of divorce or judicial separation to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.

[9] This change was suggested by Ms Leong Wai Kum, whose representation to the Select Committee is printed in Appendix II of the Report as Paper 5, p. A 1. See Suggestion X, at pp. A 7-8. The Select Committee debate on this amendment is to be found in Appendix IV of the Report, at pp. C 6-19.

[10] Written representation of Ms Leong Wai Kum to the Select Committee, *supra,* note 9, at p. A 8.

[11] See the Matrimonial Causes Act 1973, ss. 23 and 24.

[12] Act No. 164.

[13] See Law Reform (Marriage and Divorce) Act 1976, P. U. (B) 73/82.

[14] Bill No. 23/79.

[15] Report of the Royal Commission on non-Muslim Marriage and Divorce Laws (Kuala Lumpur, 1971).

(2) In exercising the power conferred by sub-section (1) the court shall have regard to —

(a) the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;
(b) any debts owing by either party which were contracted for their joint benefit; and
(c) the needs of the minor children (if any) of the marriage,

and subject to those considerations, the court shall incline towards equality of division.

(3) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

This clause is identical to section 76 of the Law Reform (Marriage and Divorce) Act 1976, except that subsections (3) and (4) are missing.

The bill annexed to the report of the Royal Commission was introduced in Parliament for the first time[16] on 4th December, 1972. In this form the bill was published in the Gazette on 26th April, 1973. In May 1973, both Dewan Negara and Dewan Rakyat appointed a Joint Select Committee to consider the bill. However, before the Joint Select Committee tabled its reports and recommendations, Parliament was dissolved on 31 st July, 1974 and the bill lapsed with the dissolution. The original bill was re-drafted in accordance with the recommendations of the Joint Select Committee and introduced again the Parliament in 1975. The new bill contained a revised version of clause 73 (renumbered as clause 76) in a form identical to that which now appears in section 76 of the Act. As the Explanatory Statement to the 1975 Bill stated:

> Under Clause 73 (1) of the original Bill, the Court is empowered when granting a decree of divorce or judicial separation to order division between the parties of the material assets acquired by their joint efforts. The Select Committee recommended that the Court be given similar power to order division of assets acquired by the sole effort of one party having regard to the extent of the contributions made by the other party to the welfare of the family looking after the home or caring for the family. (Clause 76 (3) and (4));[17]

The Joint Select Committee received a large number of representations from members of the public. The oral evidence given to the Committee was published[18] as was the preliminary report of the Joint Select Committee,[19] but so far as the present writer has been able to as-

16 With minor modifications none of which related to clause 73.

17 The Explanatory Statement to the Law Reform (Marriage and Divorce) Bill 1975 is reprinted in Sim, *Granting of Decrees under the Law Reform (Marriage and Divorce) Act* 7976(1983), pp. 50-53.

18 Minit Mesyuarat dan Lapuran Keterangan Lisan, Mesyuarat Pertama Hingga Keempat, Jawatankuasa Pilihan Bersama Mengenai Rang Undang-Undang Membaharui Undang-undang Perkahwinan dan Perceraian Orang-orang Bukan Islam dan Lapuran Suruhanjaya di Raja engenai Undang-undang Perkahwinan dan Perceraian Orang-orang Bukan Islam (Kuala Lumpur, 1974).

19 Lapuran Suruhanjaya di Raja Mengenai Undang-undang Perkahwinan dan Perceraian Orang-orang Bukan Islam dan Rang Undang-undang Membaharui Undang-undang Perkahwinan dan Perceraian, 1972, Lapuran Permulaaan Jawatankuasa Pilihan Bersama (Kuala Lumpur, 1974).

certain, the final report of the Joint Select Committee was not published.

In the absence of a final report of the Joint Select Committee, it is not possible to be certain as to the reasons for the additions made to clause 73 as drafted by the Royal Commission. It may be that the Joint Select Committee was influenced by two of the representations made to it which touch on this point. One representation enquired "whether the wife's contribution in looking after home, husband, and family be considered as contribution towards acquiring of assets".[20] A more detailed representation was made by the Federation of Women Lawyers, South Malaya.[21] On the subject of clause 73, the view of the Federation was as follows:

> We have compared this Clause with the provision of the English Matrimonial Proceedings and Property Act, 1970. We note that our Bill embodies only a very minor portion of the English Act, the provision [*sic*] of which are comprehensive though not necessarily acceptable in toto. Nevertheless we feel more regard could have been given to the English Act, in particular Clause 5 (f) which deals specifically with the meaning of contribution and clearly includes a wife's efforts in keeping house, looking after children and husband etc. "Work" in our Bill in *[sic]* undefined and might well be interpreted not to include such efforts on the basis that the omission was deliberate. Both here and the United Kingdom the courts have been concerned with the value of a wife's efforts in their desire to do justice. *Wachtel* v. *Wachtel* [1973] 2 W. L. R. 366 makes it clear that it is only by means of such a specific provision that the judges have power to take this aspect into account.[22]

As this contribution suggests, the Joint Select Committee may have felt that clause 73 as drafted would be unfair to a divorced wife because it only applies to assets acquired through the parties' joint efforts or to assets substantially improved through the parties' joint efforts. On one interpretation of the phrase "joint efforts", this would not cover the matrimonial home in a case where the wife remained at home to look after the children and made no financial contribution to the acquisition of the house. Subsections (3) and (4) clearly cover this situation. Whether this is the right interpretation of the phrase "joint efforts" is considered below.[23]

The question remains as to what is the source of clause 73 as it appears in the draft bill annexed to the report of the Royal Commission.[24] Curiously enough, the report itself is misleading on this point. The explanatory statement attached to the draft bill in the Royal Commission report states as follows:

[20] Letter from C. Appoo, published in the Preliminary Report of the Joint Select Committee, *supra,* n(19), at pp. 209-212. The passage quoted above appears on p. 212.
[21] A letter from C. H. Liew, President of the Federation of Women Lawyers containing a report of a sub-committee of the Federation formed to study the Law Reform (Marriage and Divorce) Bill was published in the Preliminary Report of the Joint Select Committee, *supra,* n(19), at pp. 213-220.
[22] See Preliminary Report of the Joint Select Committee, *supra,* n(19), at p. 216.
[23] See section II. B. and C. below.
[24] It has been suggested that there is a certain similarity between clause 73 and the provisions relating to *harta sapencarian* as found in the Undang-undang Mahkamah Melayu of Sarawak. See Ahmad Ibrahim, "The Law Reform (Marriage and Divorce) Bill, 1973" [1975] J. M. C. L. 354, at p. 360.

> Clause 73 gives the Court powers when granting a divorce to order a just distribution of the matrimonial assets, having regard to the respective contributions of each spouse in money or money's worth to the improvement of property. This follows generally the principles set out in section 37 of the (English) Matrimonial Proceedings and Property Act 1970, but requires certain factors to be taken into consideration, such as the needs of dependent children.[25]

This wording was repeated verbatim in the explanatory statement attached to the Law Reform (Marriage and Divorce) Bill 1972.[26]

It is clear, however, that section 37 of the English Matrimonial Proceedings and Property Act is quite different from clause 73 of the Malaysian bill. The English section reads as follows:

> 37. *Contributions by spouse in money or money's worth to the improvement ofproperty.*
>
> It is hereby declared that where a husband or wife contributes in money or money's worth to the improvement of real or personal property in which or in the proceeds of sale of which either or both of them has or have a beneficial interest, the husband or wife so contributing shall, if the contribution is of a substantial nature and subject to any agreement between them to the contrary express or implied, be treated as having then acquired by virtue of his or her contribution a share or an enlarged share, as the case may be, in that beneficial interest of such an extent as may have been then agreed or, in default of such agreement, as may seem in all the circumstances just to any court before which the question of the existence or extent of the beneficial interest of the husband or wife arises (whether in proceedings between them or in any other proceedings).

Section 37 has a very narrow compass. It is aimed at resolving the doubts expressed in the leading case of *Pettitt* v. *Pettitt*[27] on the question of whether one spouse could acquire an interest in the property of the other by effecting improvements on the property. The view had been expressed in that case that, in the absence of an agreement between the parties, the spouse would have no property claim in such a case unless the elements necessary to establish a proprietary estoppel were fulfilled. Whether or not that statement correctly represented the law as it was in England, it is now clear as a result of section 37 that as between husband and wife a proprietary claim will be available in such circumstances.

Clause 73 of the Malaysian bill is more ambitious. It is intended to confer on the courts a newjurisdiction to vary property rights as between husband and wife on divorce or judicial separation. The only point of contact between this clause and section 37 lies in the fact that the clause applies also in the case where property has been substantially improved by one of the parties.

The truth of the source of clause 37 is stated in the body of the report itself, where it is stated that "wide provisions have been

[25] Report of the Royal Commission on Non-Muslim Marriage and Divorce Laws (Kuala Lumpur, 1971), p. 57.
[26] This explanatory statement is reprinted in Sim, *Granting of Decrees under the Law Reform (Marriage and Divorce) Act* 7976(1983), pp. 41-50.
[27] [1970] A. C. 777, at p. 818 *per* Lord Upjohn.

introduced for the division of matrimonial assets, maintenance of spouses and protection of children in line with the recommendations of the Kenya Commission."[28]

D. Kenya and Tanzania

The Kenya Commission referred to in the Malaysian Royal Commission report is the Commission on the Law of Marriage and Divorce under the chairmanship of J. F. Spry, Chief Justice of Kenya.[29] The report was submitted in August 1968. Appendix VIII of the report contains a draft bill on the Law of Matrimony. The following clause is contained in this draft bill:

> 123. *Power for court to order division of matrimonial assets*
>
> (1) The court shall have power, when granting or subsequent to the grant of a decree of separation or divorce, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or the sale of any such assets and the division between the parties of the proceeds of sale.
>
> (2) In exercising the power conferred by subsection (1), the court shall have regard —
>
> (a) to the customs of the community to which the parties belong;
> (b) to the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;
> (c) to any debts owing by either party which were contracted for their joint benefit; and
> (d) to the needs of the infant children, if any, of the marriage;
>
> and subject to those considerations, shall incline towards equality of division.
>
> (3) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

This is clearly the immediate source of the Malaysian legislation, which is itself the source of section 106 of Singapore's Women's Charter. As the Kenyan report has not previously been discussed in the context of the law of either Singapore or Malaysia and as the report is not generally available in either country, an extended quotation from the body of the report on the subject of matrimonial property may not be out of place.

The report itself does not, unfortunately, cast much light on the reasons why the Commission adopted the formulation which appears in the draft bill. The Commission stated that it had given consideration to the Scandinavian system of equal division of assets on the

[28] Report of the Royal Commission on Non-Muslim Marriage and Divorce Laws (Kuala Lumpur, 1971), p. 15.

[29] A special issue of the East African Law Journal (Vol. 5, Nos. 1 and 2, March — June 1969) is devoted to this report and to the companion report of the Kenyan Commission on the Law of Succession. See also Kassim, "Report of the Kenyan Commission on Marriage and Divorce: A Critique" (1969) 2 Eastern Africa Law Review 179.

termination of marriage and the "community of surplus" which applies in the German Federal Republic, but did not think either appropriate to the circumstances of Kenya. The Commission went on to say:

> On the other hand, we do not think either husband or wife should be left without a remedy on divorce where assets towards which he or she has contributed are vested in the other, subject, of course, to bearing his or her share of any debt contracted for their joint benefit. Such matters should normally be settled between the parties … but in the last resort we think the court should have an unfettered discretion to decide each case as the justice of the case may require. We think, however, that in exercising that discretion the court should take into account local customs, the contributions which the parties have made towards the acquisition of the property and the needs of the children of the marriage, and subject to these should lean towards the principle of equality.
>
> We do not propose to attempt any definition of "joint efforts" or "contribution", but we should, perhaps, refer specifically to one problem that has troubled the English courts. That is, whether, when a house belongs to the wife and the husband improves it by doing work on it or by paying for such work, he thereby acquires an interest in the property … We think that the contributions to be taken into account [in such a case] should include contributions in work and kind, as well as in money, where they are greater than would ordinarily be regarded as part of a husband's or wife's normal matrimonial duty. We think, also, that this principle should apply to improvements to property owned by either spouse before marriage, as well as to property acquired during the marriage.

The draft bill was introduced into the Kenyan Parliament, but was rejected. It appears that one of the main reasons for the rejection was that the proposal legislation was felt to take insufficient account of African customs and traditions.[30] Nevertheless, a few years later Tanzania passed the Law of Marriage Act 1971,[31] which was based largely on the Kenyan draft bill.[32] Section 114 of the Tanzanian Act is identical to clause 123 of the Kenyan draft bill save for some minor grammatical changes. However, as the Tanzanian Act is not readily available in either Singapore or Malaysia, the section is quoted here in full for reference purposes.

> 114. *Power of court to order division of matrimonial assets*
>
> (1) The court shall have power, when granting or subsequent to the grant of a decree of separation or divorce, to order the division between the parties of any assets acquired by them during the marriage by their joint efforts or to order the sale of any such asset and the division between the parties of the proceeds of sale.

[30] See Note, "The Rejection of the Marriage Bill in Kenya", [1979] J. A. L. 109. See also Justice Eugene Contran, "Marriage Bill Defended", *The Nairobi Times,* 12 August 1979, p. 4.

[31] Act No. 5 of 1971.

[32] For a discussion of the Tanzanian legislation see Read, "A Milestone in the Integration of Personal Laws: The New Law of Marriage and Divorce in Tanzania" [1972] J. A. L. 19; Ghai, "The New Marriage Law in Tanzania" (1971) 11 Africa Quarterly 101. See also Mapendekezo ya Serikali juu Sheria ya Ndoa (Government's Proposal of Uniform Law of Marriage), Government Paper No. 1 of 1969 (Dar es Salaam, 1969). Neither of the last two papers cited refers to the connection between the Tanzanian legislation and the Kenyan proposals.

(2) In exercising the power conferred by subsection (1), the court shall have regard —

(a) to the custom of the community to which the parties belong;
(b) to the extent of the contributions made by each party in money, property or work towards the acquiring of the assets;
(c) to any debts owing by either party which were contracted for their joint benefit; and
(d) to the needs of the infant children, if any, of the marriage,

and subject to those considerations, shall incline towards equality of division.

(3) For the purposes of this section, references to assets acquired during a marriage include assets owned before the marriage by one party which have been substantially improved during the marriage by the other party or by their joint efforts.

E. Source of the Kenyan Proposals

The Kenyan Commission did not give any source for its proposals on the subject of the distribution of property on divorce. It would seem however, that clause 123 is based to a large extent on ideas which were current in England before the decision of the House of Lords in *Pettitt* v. *Pettitt*[33] as to the power of the courts under section 17 of the Married Women's Property Act 1882. At that time the Court of Appeal exercised a wide discretion to apportion "family assets" under that section.

In *Rimmer* v. *Rimmer*[34] Evershed M. R. said, "Where the court is satisfied that both the parties have a beneficial interest, and a substantial beneficial interest, and where it is not possible or right to assume some more precise calculation of their shares, equality, I think, almost necessarily follows."[35] In the same case Denning L. J. said, "It seems to me that when the parties, by their joint efforts, save money to buy a house, which is intended as a continuing provision for them both, then the proper presumption is that the beneficial interest belongs to them both jointly."[36] The language of Denning L. J. in *Cobb* v. *Cobb*[37] is even closer to that found in clause 123: "I would only add that, in the case of the family assets, if I may so describe them, such as the matrimonial home and the furniture in it, when both husband and wife contribute to the cost and the property is intended to be a continuing provision for them during their joint lives, the court leans towards the view that the property belongs to them both jointly in equal shares."[38] In *Fribance* v. *Fribance (No. 2)*[39] Denning L. J. described "family assets" as that property "intended to be a continuing provision for [the couple] during their joint lives … acquired by their joint efforts during the marriage".

33 [1970] A. C. 777.
34 [1953] 1 Q. B. 63.
35 At p. 73.
36 At p. 74.
37 [1955] 2 All E. R. 696.
38 At p. 698.
39 [1957] 1 W. L. R. 384, at p. 387.

II. ANALYSIS OF SECTION 106

A. Joint Efforts and Sole Effort

Having reviewed extensively the legislative history of section 106 of the Women's Charter, it is appropriate to turn now to an analysis of the wording of the section. There have as yet been few reported decisions on the section and those that do exist are all first instance judgments. These will be discussed later in this article, but in the absence of an authoritative review by the Court of Appeal or the Privy Council, the starting point of the discussion must be an unblinkered analysis of the actual language of the legislature.

The most noteworthy point about the structure of section 106 is the dichotomy made between assets acquired by the joint efforts of the parties and assets acquired by the sole effort of one party. The section is drafted so as to provide in theory two separate systems for the division of matrimonial property on marital breakdown. So far as assets acquired by the joint efforts of the parties are concerned, subsections (1) and (2) apply. If the assets have been acquired by the sole effort of one party, then subsections (3) and (4) apply. Subsection (5) may be seen as a definition section applying to both systems.

Under the "joint efforts" system the court inclines towards equality of division of the assets. Under the "sole effort" system the court may divide the assets in such proportions as it thinks reasonable, but in any case the party by whose effort the assets were acquired shall receive a greater proportion. In practice, however, it is likely that the two systems will not remain distinct. In the first place, there is the problem of the definition of "joint efforts" which will be considered later. Secondly, despite the different language used the two regimes are capable of yielding very similar results. Under the "joint efforts" system the court is to "incline" towards equality of division, but the very use of the word "incline" suggests that the court is to have wide discretionary powers in this matter. This is not so very different from dividing the assets in such proportions as the court thinks reasonable, which is what is required under the "sole effort" regime. Again, although under the "sole effort" provisions the court must give the greater proportion of the assets to the party through whose effort they were acquired, the court may well feel that a division in the proportions of 51% and 49% would be "reasonable".

B. Underlying Philosophy Behind Section 106

This dichotomy between assets acquired through joint efforts and those acquired by the sole effort of one party did not appear in either the Kenyan report or in the Malaysian Royal Commission report. Had section 106 been enacted in this form, one might have been tempted to argue that the legislature had adopted the modern view which sees marriage as an economic partnership between the couple.[40] The practical implications of such a view are that on dissolution one would start with the presumption that all assets acquired during marriage

[40] See the remarks of Sir Jocelyn Simon quoted above in the text at note 2.

should be equally divided.[41] Such a view accords equality to the efforts made typically by the wife in looking after the home and the children and recognises that the economic achievements of the husband are due in large part to her "behind the scenes" work. This approach can be easily reconciled with the original wording of subsections (1) and (2). In part this is because of the general direction to incline towards equality of division of the assets. However, since this direction is expressly made subject to the considerations listed earlier, it would be necessary for the courts to accept that in most cases the wife's contribution in looking after the home and the family is broadly equivalent to the husband's financial contribution towards acquiring the assets.

It must be admitted, however, that had section 106 remained in the form in which it was originally drafted by the Malaysian Royal Commission, there would be doubts as to how the courts would interpret subsection (1). It is by no means unlikely that they would have refused to accept the wife's work in looking after the home and the family as being part of the joint efforts under which all the matrimonial property was acquired.[42] It could have been said that a direct relationship was required between the efforts expended and the assets acquired. In fact the Tanzanian courts have faced this very problem[43] and, after some wavering in earlier cases,[44] the Court of Appeal of Tanzania decided in *Bi. Hawa Mohamed* v. *Ally Sefu*[45] that the words "joint efforts" and "work towards the acquiring of the assets" found in section 114 of the Law of Marriage Act 1971 must "be construed as embracing the domestic 'efforts' or 'work' of the husband and wife".[46]

It appears from the legislative history detailed above that the reason why the Malaysian Joint Select Committee added subsections (3) and (4) was because of the fear that the Royal Commission's original draft would not give the wife any claim to assets in a case where she remained at home and looked after the children and made no financial contributions towards the acquisition of the relevant assets.[47] If this is correct, then it is unfortunate that the Joint Select Committee did not redraft subsections (1) and (2) to make it clear that the domestic efforts of the husband and wife were included in the words "joint efforts" and "work towards the acquiring of the assets" Instead the Joint Select Committee set up a different system to deal with assets acquired by the sole effort of one party which is embodied

41 For a detailed discussion of this approach see Gray, *Reallocation of Property on Divorce* (1977). However, there would be difficulties in adopting such an approach even if subsections (3) and (4) had not been enacted. The problem is that the direction to the court to "incline towards equality of division" is expressly stated to be subject to the considerations listed earlier in subsection (2). See further section D below.

42 The argument here would be parallel to that which has raged in England as to whether account can be taken of "indirect contributions" when a claim is brought on the basis of a resulting trust. The orthodox view is that contributions must be "referable" to the acquisition of the assets. Lord Denning has refused to accept this approach (see in particular *Hazel* v. *Hazel* [1972] 1 W. L. R. 301), but the Court of Appeal has now reaffirmed the orthodox approach: *Burns* v. *Burns* [1984] Ch. 317.

43 See generally Rewezaura, "Division of Matrimonial Assets under the Tanzanian Marriage Law" (1984) 17 Verfassung und Recht in Uebersee 177.

44 See, *e.g.,* the High Court Decisions in *Hamid Amir Hamid* v. *Maimuna Amir* 1977 L. R. T. n. 55, at p. 242, *per* Patel J. and *Zawadi Abdallah* v. *Ibrahim Iddi* [1981] T. L. R. 311, per Mapigano J.

45 Civ. App. No. 9 of 1983 (unreported).

46 At p. 13 of the transcript of the judgment.

47 See text above at notes 20, 21 and 22.

in subsections (3) and (4). The clear reference in subsection (4) (a) to "the extent of the contribution made by the other party who did not acquire the assets to the welfare of the family by looking after the home or by caring for the family" makes it clear that the phrase "joint efforts" in subsection (1) cannot in Singapore and Malaysia be given the broad interpretation adopted by the Court of Appeal of Tanzania.

In light of the above it cannot be said that section 106 adopts the philosophy that marriage should be seen as an economic partnership between the couple. It is true, as has been pointed out, that the imprecise wording of the section may well allow the courts to come close to this approach by dividing the assets almost equally even when applying the "sole effort" system. Nevertheless, it has to be said that the provision in subsection (4) that the party through whose sole effort the assets were acquired should receive the greater share makes it difficult to ascertain what philosophy now lies behind section 106. Certainly it is not simply a question of dividing the assets according the amount of effort expended by each party towards their acquisition. The express mention of other factors that the court is to have regard to as well as the wide discretion given to the court gives the lie to any such suggestion. The difficulty, however, is to determine what is the basic approach to be adopted by the court in the exercise of its discretion.

C. List of Considerations Not Exhaustive

The two systems of "joint efforts" and "sole efforts" are not particularly well matched and their mutual co-existence is liable to create difficulties. The example may be given of the wife who makes a small contribution, say $1000, towards the deposit needed for the purchase of the matrimonial home. The balance of the deposit is paid by the husband, who also pays all the mortgage instalments, because the wife gives up her job to look after the home and the children. After the children have grown up and left home, the couple get divorced. Since the wife has made a small contribution towards the purchase of the matrimonial home, her claim to a share of it must be considered under the "joint efforts" head. Here, however, the dominant consideration of the court must be "the extent of the contributions made by each party in money, property or work towards the acquiring of the assets". It is only subject to this consideration that the court is to incline towards equality of division. Since the wife's contribution is very small, this would suggest that she will get only a small share of the house or of the proceeds of the sale. If, however, she had made no financial contribution at all towards the purchase of the house, then her claim would be brought under the "sole effort" head under which the court is to have regard to the "extent of the contribution made by the other party who did not acquire the assets to the welfare of the family by looking after the home or by caring for the family". Under the "sole effort" head the court could award her a share of up to 49% of the house. There is nothing in the language of the section to suggest that the court can have regard to the wife's contribution to the welfare of the family under the "joint efforts" head.

It seems absurd that a wife might be better off claiming under the "sole effort" head rather than under "joint efforts" and it is most likely that the courts will attempt to avoid this result. One way in which this might be achieved is by stressing the direction to the court

to "incline towards equality of division". The difficulty here, however, is that this is expressly stated to be subject to the considerations listed earlier in the subsection. Alternatively it might be argued that the list of considerations in subsections (2) and (4) is not intended to be exhaustive. It is noteworthy that under the "sole effort" head there is no equivalent provision to paragraph (a) of subsection (2). In other words there is no requirement that the court should have regard to the extent of the contribution (which will be 100%) made towards acquiring the assets by the party — usually the husband — through whose sole effort they were acquired. Of course his interests may be said to be protected by the fact that the court must always award him the greater share of the asset in question. However, if this is his sole protection and, if in deciding what division is reasonable the court is not to have regard to his contribution, then the result will be that in every case he will obtain no more than 51% of the asset. Surely the court is to have regard to his financial contribution in deciding on a reasonable division even though that is not expressly mentioned? The list of considerations is therefore not exhaustive. By the same token the "extent of the contribution made by the other party who did not acquire the assets to the welfare of the family by looking after the home or by caring for the family" should be taken into account even under a *"joint* efforts" claim. As against this it may be said that the fact that this consideration is mentioned specifically in subsection (4) and not in subsection (2) would suggest on the face of it that it does not apply in a case of "joint efforts". But if this argument is followed one would have to say by parity of reasoning that the extent of the contributions made by each party towards the acquiring of the assets is expressly mentioned in subsection (2) and therefore should not be read into subsection (4) by implication. The absurd results which follow here from a rigid adherence to the rule of construction that *expressio unius exclusio alterius* surely mean that it cannot be applied to subsections (2) and (4).

D. Relationship Betweeen Listed Considerations and General Direction

Another difficulty which arises from the loose drafting of section 106 is to understand the relationship between the considerations listed in paragraphs (a) to (c) of subsection (2) and the direction to incline towards equality of division. The latter direction is expressly stated to be "subject to those considerations", so precedence must be given to those considerations. Take the typical case where the husband has contributed 80% of the financial expenses of the acquisition of the matrimonial home. The court is to have regard to "the extent of the contributions made by each party in money, property or work towards the acquiring of the assets" and subject to that consideration "the court shall incline towards equality of division". On the assumption that none of the other considerations is relevant, the court is to have regard to the fact that the husband paid 80% of the cost 9f the house and, subject to that consideration, the court shall incline towards ordering that the house be divided equally. The directions are contradictory and unless the court cuts the Gordian knot by splitting the difference and awarding the husband 65% of the house, it would seem that the court will have to give precedence to the first direction as the language of the subsection suggests and give the husband the

proportion of the asset represented by the extent of his contribution.[48] This problem will arise in every case under the "joint efforts" head and one wonders what meaning is then to be given to the general direction to incline towards equality of division.[49] It is when a question like this arises that one feels that a knowledge of the underlying philosophy of the legislation would assist in its interpretation. Be that as it may, it would seem that the only way to give any meaning to the general direction to incline towards equality while remaining faithful to the principle that precedence should be given to the listed considerations is to restrict the general direction to cases where the listed considerati9ns do not give a clear guide as to what division is to be made.[50] This would obviously happen where two of the relevant considerations point in different directions.

E. Definition of "Joint Efforts"

The distinction drawn by section 106 between assets acquired by the "joint efforts" of both parties and those acquired by the "sole effort" of one makes it necessary to define these terms with some precision. As has already been pointed out the wide definition of "joint efforts" adopted in Tanzania cannot be applied in Singapore or Malaysia. The language of subsection (4) (a) shows clearly that the view of the legislature is that a party does not acquire assets by looking after the family home. There must therefore be a clear relationship between the expenditure of the effort and the acquisition of the asset. Clearly a direct financial contribution towards the purchase of the asset would be sufficient. Probably the courts would be prepared to go further than this and accept also cases which in the context of the law of resulting trusts have been described as indirect contribution referable to the acquisition of the property. An example would be the case where the asset in question is the matrimonial home. By arrangement between the couple the husband pays the mortgage instalments and the wife public utility bills. Although payment of the public utility bills would not normally be considered as referable towards purchase of the house, as the wife's payment in this case was part of an arrangement with the husband, they can be counted as such in this case. The same would apply where there was no arrangement between the couple, but without the wife's payment of the public utility bills the husband would not have been able to pay the mortgage instalments. It seems reasonable to say in such cases that the wife's payments are part of a joint effort made towards the acquisition of the house.[51]

F. Property Owned Before Marriage

Only assets acquired during marriage are covered by section 106. If one takes the example of a rich man who buys a house while single and

[48] This problem would be less likely to arise in practice were it possible to adopt the Tanzanian definition of "joint efforts". It would then be possible to say in most cases that the wife's domestic efforts were broadly equivalent to the husband's financial efforts and thus the extent of their contributions was roughly equal.

[49] In theory a similar problem arises under the "sole effort" system where the conflict is between the two considerations listed in subsection (4) (a) and (b) and the general direction to effect a reasonable division of the assets. However, given the vagueness of the general direction in this case the problem is likely to be academic only.

[50] This view may be supported by reference to the legislative history of the section. See, *e.g.,* the remarks of Evershed M. R. in *Rimmer* v. *Rimmer* [1953] 1 Q. B. 63, at p. 73, quoted in the text, *supra,* n(35).

[51] *Cf. Zawadi Abdallah* v. *Ibrahim Iddi* [1981] T. L. R. 311, at pp. 313-4, *per* Mapigano J.

then gets married and lives in the house with his wife, his wife will have no claim to the house under section 106. This example suggests a potential difficulty in what must be the frequent case of a man who purchases a house with the help of a large mortgage before marriage, but pays most of the mortgage off after the marriage. It could be argued that the house is acquired at the moment when legal title is transferred to the man before marriage with the result that the court has no power in relation to it under section 106. Clearly this could be most unfair to the woman, and the unfairness would only be aggravated where she had helped pay towards the mortgage instalments. It is true that in the latter case she may be able to acquire a property interest under resulting trust or constructive trust principles, but this is unlikely to be as beneficial as that available under section 106. Hopefully the courts will be prepared to adopt a more realistic view of the transaction and treat the house as *being acquired* during the marriage while the mortgage is being paid off.[52] If this approach is not adopted a woman who marries a man who has already purchased a house subject to a mortgage would be well advised to use her money to add an extension on to the house, thereby bringing subsection (5) into play, rather than using her money to help pay off the mortgage.

G. Gifts

It is doubtful whether assets acquired by either party as a gift or an inheritance are covered by section 106. The use of the word "efforts" seems inappropriate to cover the case of a gift. In a case where the wife's father leaves her a house in his will, then it cannot be said that the house has been acquired by the joint efforts of the husband and wife or even by the sole effort of the wife.[53] The husband should therefore have no claim under section 106 in respect of this house. There is one rather illogical consequence of this interpretation of the word "efforts". It would seem to follow that even if the husband substantially improves the house subsequently, he will have no claim under section 106 because subsection (5) applies only to "assets owned before the marriage by one party."[54]

In theory a problem might arise where the wife's father pays off part of the mortgage on the matrimonial home which belongs solely to the husband. If this is the only contribution to the acquisition of the house which comes from anyone other than the husband, it could be argued that the house was not acquired by the joint efforts of the husband and wife. The wife's claim in respect of the house would then fall to be decided under subsections (3) and (4), which would not on the face of it allow the court to have regard to the contribution made by her father. The courts would presumably avoid this result by treating the gift as being in reality a cash gift made to the wife and used

[52] *Cf.* the approach of Lord Diplock in *Gissing* v. *Gissing* [1971] A. C. 886, at pp. 907 *et seq.*

[53] Clearly there are exceptional cases in which it can be said that a gift has been acquired by an "effort". One example might be the case of a conditional gift. If the donee has to perform some action in order to obtain the gift, can it not be said that the asset has been acquired by the "sole effort of one party to the marriage"? The word "sole" here is presumably to be read as excluding the other party to the marriage and not as implying that nobody else in the world had a hand in the acquisition of the asset.

[54] A claim might possibly be available under equitable principles. See, *e.g., Hussey* v. *Palmer* [1972] 1 W. L. R. 1286. It should be noted in this context that Singapore has no equivalent legislation to s. 37 of the English Matrimonial Proceedings and Property Act 1970

by her towards paying off the mortgage. The direct payment from the father to the mortgagee could be seen as merely a matter of convenience.

H. Family Assets

The exclusion of gifts and assets acquired before marriage from the regime of section 106 is consistent with the theory of the matrimonial partnership. These assets were not acquired as a result of the joint efforts of the married couple.[55]

In other jurisdictions property is sometimes excluded from the court's power of reallocation on divorce by limiting this power to "family assets"[56] or to "matrimonial property".[57] Had the original draft of the Malaysian Royal Commission been retained, it would have been possible for the courts to develop a similar doctrine of "family assets"[58] and add to the number of assets excluded from section 106 by holding that they had not been acquired by "joint efforts". One can cite as a possible candidate for such treatment the example of business assets.[59] Be that as it may, the fact that assets acquired by the sole effort of one spouse are now included prevents any such attempt to limit the power of the courts under section 106. Except in the case of marriages of very short duration[60] virtually the entire estate of both spouses will now generally be available for reallocation on dissolution of the marriage.

III. SECTION 106 IN PRACTICE

A. The Leading Case

What is now section 106 of the Women's Charter came into force on 1st July 1981[61] and there have as yet been few reported cases on it. One would like to think that this is because of the small number of divorces, but in fact the statistics suggest an average of over two thousand divorces a year in Singapore during this period.[62]

55 See Gray, *Reallocation of Property on Divorce* (1977), at pp. 126 *et seq.*

56 See, *e.g.,* the British Columbia Family Relations Act, RSBC 1979, Chap. 121, ss. 43 and 45.

57 See, *e.g.,* the New Zealand Matrimonial Property Act 1976, ss. 8 and 9.

58 *Cf.* the English cases which appear to represent the source of the Kenyan proposals referred to above in section I. E. The Court of Appeal of Tanzania has held that the power to order the division of assets under s. 114 of the Law of Marriage Act 1971 applies only in relation to matrimonial or family assets. See *Bi Hawa Mohamed* v. *Ally Sefu,* Civ. App. No. 9 of 1983, at pp. 2 — 3 of the transcript.

59 *Cf.* the British Columbia Family Relations Act, RSBC 1979, Chap. 121, s. 46.

60 In such cases there will normally not as yet be many assets which have been "acquired during the marriage".

61 See the Women's Charter (Amendment) Act (Commencement) Notification, No. S. 153/81.

62 According to Singapore Facts and Pictures 1987 published by the Information Division of the Ministry of Communications and Information there were 2,055 divorces in 1981, 2,111 in 1982, 2,313 in 1983, 2,313 in 1984, 2,344 in 1985 and 2,608 in 1986. Of these 1,441 in 1981, 1,575 in 1982, 1,602 in 1983, 1,676 in 1984, 1,606 in 1985 and 1,822 in 1986 were decreed under the Women's Charter. The remaining divorces were decided under the Muslim Law Act. It should be borne in mind that the court's power under s. 106 is available too in cases of nullity.

The leading case is *Fan Po Kie* v. *Tan Boon* Son.[63] In this case the couple had been divorced on the grounds of the husband's cruelty and the dispute revolved around ownership of the Housing and Development Board flat in Marine Drive which they had purchased together as joint tenants. Both had made contributions to the purchase of the flat, so it was clearly a case of "joint efforts", although the judgment does not say this expressly. The wife had been living outside the flat for two years with the children and the flat was occupied by the husband and his mother. The wife had obtained an order for maintenance against the husband, but he was considerably in arrears in his payments.

Curiously there is no express mention of section 106 (then numbered section 100) at all in the judgment. The wife's affidavit claimed that both she and her husband had contributed to the purchase of the matrimonial home and this was not denied by the husband. However, it is not clear from the judgment exactly what contributions were made by each party.

Most of the judgment revolves round the question of where each party would live, if the other got the house. The wife said that with rising rents, she could not afford the financial burden of having to rent a flat to accommodate herself and the children and a servant and of having to apply constantly for the order of maintenance she had got against her husband to be increased. The husband said that he could not afford to maintain himself and his mother after paying maintenance, if he had to rent a flat.

In these circumstances, Abdul Wahab Ghows J. held that the house should be transferred into the sole name of the wife, subject to the wife refunding to the husband all the contributions he had made to the purchase price of the flat. The main reason given was that "the court should not endorse the husband's action in compelling his wife and children by his cruelty to leave the flat and should not back up such action by ordering the wife to sell her share in the matrimonial home to the husband."[64]

The decision was appealed against. The Court of Appeal dismissed the appeal making only some minor adjustments to the figures in the order, which are not material. The Court of Appeal did not give a written judgment.[65]

This case raises a number of difficulties. Firstly, the claim was brought under section 56 (then numbered section 55) of the Women's Charter and not under section 106. Section 56 provides for questions between husband and wife as to property to be decided in a summary way. Under subsection (4) an application may be made under the section notwithstanding the dissolution of the marriage so long as the application is made within the period of three years from the date of dissolution of the marriage. Section 56 of the Women's Charter is virtually identical to section 17 of the English Married Women's Property Act 1882, which was considered by the House of Lords in *Pettitt* v. *Pettitt*.[66] In that case the House of Lords held that the courts

63 [1982] 2 M. L. J. 137.

64 At p. 139.

65 An article on the Court of Apeal judgment was published in *The Straits Times,* 14 January 1982. A letter written by Allen & Gledhill, solicitors for Madam Fan Po Kie, containing a memorandum of the proceedings in the Court of Appeal prepared by Allen & Gledhill was published in [1986] 2 M. L. J. ccxix.

66 [1970] A. C. 777.

had no power to adjust property rights under section 17. That section was procedural only and designed solely to facilitate the speedy resolution of property disputes between husband and wife. However, once section 17 was invoked, the court had to decide the dispute in accordance with the normal rules of property law.

It would not in fact have been possible to have brought the claim under section 106 which gives the court power to adjust property rights "when granting a decree of divorce". In this case the divorce was decreed in 1979, two years before the section came into effect. It is quite clear that the phrase "when granting a decree of divorce" cannot be construed so as to confer jurisdiction on the court to adjust property rights subsequent to the grant of the divorce. When the legislature wishes to confer such a jurisdiction on the court it does so expressly. Section 107 confers on the court a power to order a man to pay maintenance to his wife or former wife "when granting or subsequent to the grant of a decree of divorce, judicial separation or nullity of marriage". Clause 123 of the Kenyan draft bill provides that the court shall have power "when granting or subsequent to the grant of a decree of separation or divorce" to adjust the parties' property rights. It would have been desirable to have retained the reference to "subsequent to the grant of a decree" in section 106, but curiously it was omitted in the draft bill prepared by the Malaysian Royal Commission.[67]

A second difficulty lies in the court's approach to the considerations to which the court is directed to have regard under section 106 (2). It has to be said that the court seems to have paid little attention to the extent of the contributions made by each party, as these are not even set out in the judgment. The final order does, of course, take account of the contributions in so far as the wife was ordered to refund to the husband the contributions he had made. This is not, however, the same as dividing the asset in question having regard to the extent of the contributions made by each party to its acquisition. The house was in fact handed over in its entirety subject to her refunding the husband's contributions. Although the court did not say so specifically, the needs of the minor children, which have to be considered under section 106 (2) (c), must have played an important role in the decision that the house should be given to the wife who had custody of the children rather than to the husband.

The factor to which Abdul Wahab Ghows J. gave most attention in his judgment was the conduct of the husband.[68] Conduct is not mentioned as a factor to be considered by the court in exercising its discretion under section 106. It is interesting to note that one of the representations made to the Malaysian Joint Select Committee recommended that the court be directed to have regard to the conduct of the parties.[69] The Committee clearly did not accept this proposal.

[67] *Cf.* the equivalent English legislation, ss. 23 and ss. 24 of the Matrimonial Causes Act 1973 which empower the court to make financial provision and property adjustment orders in connection with divorce proceedings "[o]n granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter".

[68] In so far as one can tell from the report in *The Straits Times,* the Court of Appeal paid considerable attention to this factor too.

[69] The proposal was to add an additional paragraph to subsection (2) as follows: "(*d*) the degree of responsibility which the court apportion [sic] to each party for the breakdown of the marriage." This proposal is contained in a letter from Dr. Yong Foong Thye, Jabatan Pergigian, Pasir Mas, Kelantan, dated 20th September 1973, published in the Preliminary Report of the Joint Select Committee, *supra,* n. 19, at p. 163.

The same question has arisen in Tanzania under section 114 of the Law of Marriage Act 1971. In the case of *Swiga Kilima* v. *Hamisi Mwakafila*[70] Samatta J. stressed that "whether the provisions of section 114 are read by the use of a magnifying glass or a microscope it is patently clear that a spouse cannot lose his or her share of matrimonial assets because he or she is the one who caused the burial of the marriage." This approach was affirmed by the Court of Appeal of Tanzania in *Bi Hawa Mohamed* v. *Ally Sefu*[71] where Nyalali C. J. delivering the judgment of the court said "[W]hat is in issue is the wife's contribution or efforts towards the acquisition of matrimonial or family assets, and not her contribution towards the breakdown of the marriage. Of course there may be cases where a wife's misbehaviour may amount to failure to contribute towards the welfare of the family and thus failure to contribute towards the acquisition of matrimonial or family assets; but this has to be decided in accordance with the facts of each individual case."[72]

It has been suggested above that the list of considerations given in subsections (2) and (4) should not be treated as exhaustive and it is therefore permissible for the court to take account of considerations other than those expressly mentioned in the exercise of its discretion under section 106.[73] If the court feels that conduct is particularly relevant, it should not feel compelled to ignore it. However, it is submitted that any additional considerations should as a general rule be given less weight than those the legislature thought sufficiently important to mention in the section it would seem, however, that the court attached more importance in *Fan's* case to the question of conduct than to the extent of the contributions made by each party.

This leads to the third difficulty raised by the case, which arises from the fact that under section 106 the court has the power to order the "division" of assets or to order the sale of assets and the "division" of the proceeds of sale. The use of the word "division" seems to imply that the court should decide on the proportions in which each party is to own the assets or the proceeds of their sale. The court in *Fan's* case awarded the asset — the matrimonial home — in its enirety to the wife subject to her refunding the husband's contributions. It is difficult to categorise such an order as amounting either to a division of the asset or to a division of the proceeds of sale of the asset.

In *Fan's* case the flat cost $35,000 when it was bought in 1976. At the time of the judgment it was worth between $ 150,000 and 170,000. In return for having title to the flat transferred to her Madam Fan was ordered to pay her ex-husband the sum of $19,429 — the contributions he had paid.[74] Given that Madam Fan had custody of the children, the court may have felt it had little choice but to give her possession of the flat, but one wonders whether this had to be done at such great expense to her ex-husband. There are in reality two questions here — the social question of where the ex-wife and children

70 Dodoma High Court (PC) Matr. Civ. App. No. 7 of 1977 (unreported), noted in Rwezaura, *supra,* n. 43, at p. 182.
71 Civ. App. No. 9 of 1983.
72 At p. 11 of the transcript.
73 See section 11. C. above.
74 The figures for the value of the flat are taken from the article in the Straits Times. The precise figure which Madam Fan had to pay is not calculated in the Order which leaves it open to Mr. Tan to prove that he had made additional contributions, but the figure given above would seem to be very close to the final figure.

of the marriage are to be housed and the legal question of how the matrimonial property should be divided. It is difficult to achieve a satisfactory resolution to both problems, but the court should be wary of allowing the urgent need to solve the social problem to subvert a just resolution of the legal problem. One possibility might have been an equal division of the flat coupled with an order granting exclusive possession to the wife and children and prohibiting a sale without the consent of the court until the youngest child reached the age of twenty-one.[75] Alternatively, one wonders whether it might have been possible for the flat to have been sold and for each party to have acquired a cheaper flat using the proceeds of sale towards the deposits.[76]

One suspects that the court may have been influenced by the fact that the payments to buy a house are commonly made from the purchaser's Central Provident Fund account. Such moneys cannot be freely used and at the time of the judgment virtually the only use to which they could be put before the account holder reached the age of 55 was towards the purchase of approved residential property. Had Mr. Tan not got married and bought the flat, the money he had paid by way of contributions towards the purchase price would have remained in his Central Provident Fund account. It may have been felt therefore that an order refunding the payments merely deprived him of a gain he never would have made in any case had he not married Madam Fan and bought the flat with her.

B. Other Cases

In the case of *Shanmugam Nagaiah* v. *Sivakolunthu Kumarasamy*[77] the matrimonial home had been conveyed to the couple as joint

[75] It is arguable that the court's only power under section 106 is to divide the asset or to order its sale and the division of the proceeds. On this view the jurisdiction would not extend to orders concerning the future use of the asset or restricting its sale. This seems, however, an unduly restrictive reading of the section. It is submitted that the court has power to make ancillary orders consequent upon its order for division of the asset. The English courts have shown considerable imagination in fashioning orders of this nature. See, *e.g., Mesher* v. *Mesher, The Times,* February 13, 1973 (C.A.); *Brown* v. *Pritchard* [1975] 1 W. L. R. 1366; *Williams (J. W.)* v. *Williams (M. A.)* [1976] Ch. 278. A possible difficulty with such an order here is that as it would retain the husband's co-ownership of the flat it would prevent him from buying another Housing and Development Board flat. See s. 47 (1) of the Housing and Development Act, Cap. 129, 1985 (Rev. Ed.). Perhaps there is a case for amending s. 47 (1) so as to give the divorce court the discretion to exempt a divorced person from its provisions in an appropriate case. But this clearly raises wider questions of social policy which go beyond the scope of this article.
One example of such an order has been found. In *Tai See Ping* v. *Goh Choon Hee,* Divorce Petition No. 802 of 1982, (unreported) Coomaraswamy J. ordered that the matrimonial home should be held in trust by the husband and wife for themselves and for their two children, with each of the four persons being entitled to a quarter share, and that no sale or other disposition of the property was to take place without an order of the court until the youngest child attained her majority or reached the age of 18 and married. No written judgment was given. It does not appear from the court file that this was a consent order, but the husband had said that he was prepared to leave the matter in abeyance until the children were of age. It is hard to see, however, how the court could have had jurisdiction without consent to order a settlement under which the children were beneficiaries because s. 106 only permits the court to order a division of the assets "between the parties".

[76] According to *The Straits Times,* "When Mr. Muzammil [Counsel for Mr. Tan] suggested she could sell the flat and benefit from it, Mr. Justice Wee replied: 'Of course she could. But if she does, where is she going to live with her two children? She will also have to buy herself a property at the inflated price.' He said the fact that the flat can fetch a higher market price today is only a 'paper profit' because the flat is still the same." It does not appear from the article whether consideration was given to the possibility of her buying a cheaper flat.

[77] [1986] 2 M. L. J. 181.

tenants. In an earlier order under what is now section 106 Chua J. had ordered that the matrimonial home be sold and divided equally between the husband and wife. A few days after this order was made, the husband poured kerosene over himself and set himself alight. He died shortly afterwards.

The question which arose in this case was whether the earlier order had had the effect of severing the joint tenancy. If it did not have this effect, then the wife could now claim the whole house by virtue of the doctrine of survivorship. Chua J. held that the joint tenancy was severed. The question then arose whether the court had jurisdiction to vary the earlier order made under section 106. The wife had made an alternative application to have this order varied so that seventy-five per cent of the proceeds of sale of the house could be paid to her. The reason given for this was that the wife had made a bigger contribution towards the purchase of the property, she had incurred debts amounting to $45,000 for supporting the family, and the husband had not made a full disclosure of his assets as he had $123,000 savings. It was held that the court had no jurisdiction to vary the order. The judgment of Chua J. was affirmed on appeal.[78] The case is of some interest in the present context because Chua J. stated that even if he had the power to do so, he would not have varied his earlier order. He then proceeded to give his reasons for his earlier decision to divide the property equally.[79] He said, "I had in the divorce proceedings weighed the facts relevant to the issue before me … namely, the claim of the defendant [wife] that she had made a bigger contribution towards the purchase of the said property and that she had incurred debts for supporting the family. Now the defendant wants me to take into consideration the savings of the husband of $123,000 which the husband had not disclosed. Even if the husband had disclosed the sum of $123,000 it would not have affected my decision and I would still have decided that the proerty be sold and the proceeds be equally divided. At the time of the divorce proceedings the husband, who was 60 years old, was unemployed and not in receipt of any income and was living on his savings."[80]

There is obviously a risk of reading too much into this short statement of the reasons for the order under section 106, but it is interesting to note that the judge appears to have given preference to the general direction to incline towards equality of division, rather than to the matters referred to in paragraphs (a) and (b) of section 106 (2). The wife seems to have made the greater contribution towards the acquisition of the property and to have incurred debts for the joint benefit of the couple. It has been argued that it is only subject to the listed considerations that the court has to incline towards equality of division, and therefore it is arguable that the wife should have received the greater share.[81]

One wonders whether the court was influenced by the fact that the couple had agreed to hold the property as joint tenants? This raises the question whether an antecedent agreement is a factor to be considered by the court under section 106. If it is accepted, as has been argued above, that the statutory list of considerations is not exhaustive, then clearly the court can have regard to the parties' antecedent agreement.

78 Sub. nom. Sivakolunthu Kumarasamy v. Sharmugam Nagaiah [1988] 1 M. L. J. 341.
79 A written judgment was not given in connection with the earlier order.
80 At p. 185. No comment was made on these *obiter* remarks by the Court of Appeal.
81 See section II. D. above.

But can the court give priority to such an agreement over the listed considerations? It has been argued above that priority as a general rule should be given to the listed considerations over any other considerations introduced by the court.[82] However, this problem is academic only. The court has power to adjust property rights under section 106, but it is under no obligation to do so. If the parties have made an antecedent agreement which regulates their property rights to its satisfaction, then the court will surely be justified in simply dismissing any application made under section 106.

The next case which needs to be considered is *Chia Gek Yong* v. *Chng Hiang Keow*.[83] In essence the case is an application of *Fan PoKie* v. *Tan Boon Son.*[84] The case seems to illustrate again the preference for refunding contributions, rather than dividing the asset. In this case the wife had contributed $20,000 and the husband $38,855 towards the down payment on the flat, which they had purchased jointly. Thereafter the husband paid all the instalments to the Housing and Development Board. In total he had paid $51,430 as compared to his wife's $20,000. There appear to have been no children of the marriage and the wife had left the matrimonial home after having lived in it for only eighteen months. The marriage was dissolved on the grounds of the wife's adultery.

The wife asked for the flat to be transferred into her sole name. The husband stated that he wished to surrender the flat to the Board. As the wife was not living in the flat and the husband wanted to surrender it, it would seem a case in which the court could have ordered its sale and the division of the proceeds. In essence Sinnathuray J. offered this as an alternative to the wife. The flat could be surrendered to the Board and the contributions made paid back into the Central Provident Fund accounts of both parties. Liberty to apply was given in case there was any excess of money available for distribution. A simpler method of calculation — and one more in keeping with the language of the statute — would have been to determine the shares in which the proceeds of sale should have been divided. Probably the explanation for the approach adopted by the court is the precedent for refund of contributions set by *Fan Po Kie* v. *Tan Boon Son.*[85]

In the alternative the wife could at her option take over the flat on refunding to the husband all his contributions. This alternative does not seem entirely fair to the husband. As Sinnathuray J. himself said, "[I]f she opted for the flat, she would have paid just about $71,500.00 for a $87,000.00 flat." The entire capital gain from the flat would go to her. On the figures given in the judgment, this amounts to only $ 15,500 because if the flat were to be sold, it had to be surrendered to the Board at its posted price, but once the flat could be sold on the open market, the capital gain would undoubtedly be much greater. It must be said, however, that as the husband had indicated that he wanted to surrender the flat to the Board, he would be in no position to complain about the loss of the additional capital gain once the flat could be sold on the open market.

82 See section II. C. above .
83 [1987] 1 M. L. J. 93 .
84 *Supra,* n63 .
85 *Supra,* n63 .

In the recent case of *Jacqueline Bey* v. *Edmond Lee Yok Lung*[86] the house which was the subject of the dispute was bought in 1980 by the husband using his own funds and was registered in his own name. The couple never lived in the property because at the time of its purchase the husband was working in Brunei and the marriage broke up before he returned to Singapore. The house was sold by the husband in 1984. A decree nisi was granted in 1985, but the application under section 106 was not decided until 1988.[87]

There was considerable dispute as to whether the parties had disclosed fully all the assets held by them, and most of the judgment is conerned with an analysis of the evidence on these matters. Chua J. held that the property had been acquired during the marriage by the sole effort of the husband with the intention that it should be the matrimonial home and that, contrary to the husband's claim, the proceeds of sale had not been dissipated. On the subject of the appropriate division to be made under section 106 (3) he said,[88] "the question arises as to the apportionment of the proceeds of sale of the Property which is reasonable in the circumstances of the case. Giving it the best consideration I can, I think that one-third of the proceeds of sale should go the [the wife] following the principles laid down by the English Court of Appeal in *Wachtel* v. *Wachtel*"[89]

In *Wachtel* v. *Wachtel* Lord Denning M. R. laid down what has become known as the "one-third rule" under which a wife should be awarded as a general rule one-third of the matrimonial property where she is also claiming continuing maintenance. Whatever the merits or otherwise of this rule in England, it is difficult to see how it can be applied in Singapore. Firstly, as has already been seen, section 106 is quite different from the equivalent English legislation, and it should not be assumed that English principles can be applied in its interpretation. Secondly, at least in "joint efforts" cases the "one-third rule" is in complete opposition to the general direction in section 106 (2) to "incline towards equality of division". Of course, in theory the courts could adopt the "one-third rule" in "sole effort" cases, such as *Bey* v. *Lee* itself, where the general direction of the statute is to "divide the assets or the proceeds of sale in such proportions as the court thinks reasonable". However, applying the "one-third rule" in "sole effort" cases only would be most arbitrary. The equivalent English legislation does not distinguish between "joint efforts" and "sole effort" cases and therefore in England the "one-third rule" is intended to apply in both cases. Moreover, as has been seen, the distinction between "joint efforts" and "sole effort" cases is a very fine one, and it would be most unsatisfactory to lay down a general rule which would produce a marked difference in result between the two cases. For example, if the wife in *Bey* v. *Lee* had paid only one of the mortgage instalments on the house, the case would have been one of "joint efforts". Then, subject to the listed considerations, the court would have had to

86 Divorce Petition No. 2018 of 1984. Unreported (10th March 1988).

87 As in *Fan Po Kie* v. *Tan Boon Son, supra,* n63, a jurisdiction under s. 106 was assumed without discussion even though strictly speaking the court has this power only "when granting a divorce".

88 At p. 13 of the transcript of the judgment.

89 [1973]Fam72.

incline towards equality of division rather than awarding the wife only one-third of the proceeds of sale.[90]

C. Unreported Cases

The small number of reported decisions on section 106 of the Women's Charter led the present writer to suspect that there might be other judgments on the subject which had not been reported. The Registry of the Supreme Court prepared a list of all the divorce and nullity petitions heard within the five year period following the date when section 106 came into force in which the question of division of matrimonial property was raised.[91] There are 459 petitions on the list. The writer inspected the files of just over ninety percent of these petitions.[92] As might be expected, in the great majority of cases the matter was the subject of a consent order or was otherwise settled. No written judgments were given in any of the files inspected.[93]

It was not the purpose of this research to undertake a statistical survey of the activity of the courts in this field, but rather to check whether any important judgments had been overlooked. It is disappointing for the researcher to have to report that there do not appear to be any important unreported cases in this area. The value as precedents of the files which were inspected is very limited. Nevertheless, little research has been done on the operation of section 106 in practice and there may be therefore some benefit in recording here some observations on the subject.

It is interesting to note that no notices of appeal had been filed in any of the files inspected. In those cases which were not settled, the most frequent type of order made is one for the return of contributions paid usually with interest to one party's Central Provident Fund account in exchange for a transfer of the entire beneficial interest in the property to the other.[94] Doubts have been expressed above as to the correctness of *Fan Po Kie* v. *Tan Boon Son*[95] but it is quite clear that the order made in that case has been most influential in practice.

90 *Bey* v. *Lee* may be compared with *Lee Yu Lan* v. *Lim Thain Chye* [1984] 1 M. L. J. 56, the only reported Malaysian case on s. 76, Law Reform (Marriage and Divorce) Act 1976. This too was a "sole effort" case where the husband had sold the matrimonial home. Peh Swee Chin J. awarded the wife one-third of the proceeds of sale taking into consideration her contribution to the welfare of the family. Unlike *Bey* v. *Lee* the couple had lived together in the house for several years. *Wachtel* v. *Wachtel* was not referred to. Even though the result is the same as in *Bey,* the reasoning is to be preferred, as it is clearly based on the considerations listed in the statute.

91 I should like to express my thanks to Mr. Low W2e Ping, the Registrar of the Supreme Court, and to his staff for preparing this list and for affording me access to all the files I wanted to look at.

92 The remainder were unavailable for technical reasons.

93 I also inspected the files for all originating summonses — just under thirty in number — brought under s. 56 for the five year period following the date on which s. 106 came into effect. Most of these cases had either been settled or had not yet reached trial. The only written judgments found were *Fan Po Kie* v. *Tan Boon Son, supra,* n63, and the case of *Neo Tai Kim* v. *Foo Stie Wah* [1982] 1 M.L.J. 170(C.A.), [1985] 1 M. L. J. 397 (P.C.). This case does not raise any issue under s. 106.

94 *See e.g., Leong PowChing* v. *Jong Chew Kwe,* Divorce Petition No. 550 of 1982, *Tan Poh Huay* v. *Tan Lik Kian Andrew,* Divorce Petition No. 428 of 1985, *Lim Ai Boon* v. *Cheong Wei Foon,* Divorce Petition No. 777 of 1985, *Tang Choi Fah* v. *Lim Chin Guan,* Divorce Petition No. 1190 of 1985.

95 *Supra,* n63.

In argument before the court, *Fan Po Kie* v. *Tan Boon Son*[96] is the case which is most frequently cited, but *Wachtel* v. *Wachtel*[97] is cited with almost equal frequency. As has been noted above, there is a great danger in relying on English cases for the interpretation of section 106, as the English statutory provisions for the redistribution of property on divorce are quite different from those in Singapore.

IV. CONCLUSION

It is unfortunate that although section 106 has been in force since 1st June 1981, the courts have not as yet had the opportunity to undertake an authoritative review of its provisions and to lay down clear guidelines for the exercise of the wide discretion given them by the legislature. The concept of giving the courts a wide discretion to deal with property questions on divorce is not a new one. The English courts have also been given an extremely wide discretion although they have been provided with statutory guidelines rather more detailed than those afforded to the Singapore courts. A large body of case law has built up in England and this undoubtedly serves as a guide to the general direction that the law is taking in this area. Nevertheless, one wonders whether this is a satisfactory method of law reform. Since principles for the exercise of the judicial discretion will ultimately have to be laid down by the courts, would it not have been better if the legislature had undertaken the job in the first place rather than inflicting several years of uncertainty on litigants? Such a body of case law has not yet built up in Singapore and until this happens the task of lawyers advising clients as to their property rights on divorce must be an unenviable one.

The advantage of leaving property questions on divorce to be decided by the exercise of judicial discretion is that it enables the court to achieve justice in the case at hand. No two cases are the same and the adoption of definite rules for the division of property — or even adherence to precise guidelines for the exercise of a judicial discretion to divide property — may inhibit the court in its task of achieving the most just result in what are often very difficult circumstances. It may well be for this reason that the Singapore courts have been reluctant to lay down clear guidelines for the exercise of their powers under section 106. It might be felt that such an exercise would fetter their discretion in future cases.

The difficulty with such an approach, however, is that it makes it extremely difficult for lawyers to advise clients as to the likely result of any proceedings and this serves only to encourage litigation. The legislature has abolished the concept of the matrimonial offence and made it easier to obtain a decree of divorce in the recognition that where a relationship has broken down, couples should be allowed to settle their affairs as amicably as possible. It is not therefore consistent to have a legal regime which encourages the parties to fight over peripheral matters, such as their respective property entitlements. Indeed a desire to introduce some certainty into section 106 may perhaps be indicated by the frequency with which *Wachtel* v. *Wachtel*[98] is cited by practitioners.

96 *Supra,* n63.
97 [1973] Fam 72 (C.A.).
98 [1973] Fam 72. (C.A.).

An attempt has been made in this article to demonstrate that there are clear boundaries to the exercise of judicial discretion under section 106. Firstly, not all assets owned by a married couple fall within the purview of section 106. Secondly, the general directions to "incline towards equality of division" or to "divide the assets … in such proportions as the court thinks reasonable" take effect subject to the listed considerations. If the listed considerations — and any unlisted considerations which the court thinks it appropriate to introduce[99] — suggests a clear answer to the question of what is an appropriate division, then this should settle the matter. If they do not, the court should then proceed as a general rule in "joint efforts" cases to divide the property equally. No guidance is given by the statute as to how the judicial discretion should be exercised in "sole effort" cases, but bearing in mind that the dividing line between "sole effort" cases and "joint effort" cases is a very fine one, the court should generally be inclined not to achieve a dramatically different result in such a case. In practice such an approach would probably mean that if the listed and any appropriate unlisted considerations do not provide a clear answer to the question of what division is to be made in a "sole effort" case, then the court should make an approximately equal division, although because of the statutory language it must necessarily give the greater share to the party through whose sole effort the asset was acquired.

It cannot be said, however, that the approach advocated here has yet been accepted by the courts. Indeed, although this is not stated expressly, a case like *Fan Po Kie* v. *Tan Boon Son*[100] seems to be predicated on the contrary assumption that the judicial discretion overrides the listed considerations and that even in that exercise of the discretion the court may depart freely from the general direction to incline towards equality laid down by the statute.[101] Although it has to be said that section 106 is loosely drafted, it is submitted with respect that the approach adopted in *Fan Po Kie* v. *Tan Boon Son*[102] is not in accordance with the statutory intention. Moreover, such an approach, by maximising the judicial discretion which is already inherent in section 106, only serves to increase the area of uncertainty in this area of the law.

It is necessary, however, to sound a note of caution at this point. The difficulty in identifying any coherent underlying philosophy to section 106 which might assist in its interpretation has already been pointed out. Nevertheless, it is possible to discern in the section certain tendencies which reflect its origins. Although it was not enacted in Singapore until 1980, the discussion above as to its legislative history shows that its roots lie in thinking as to matrimonial property current in England in the 1950's and the early 1960's. This is revealed most clearly in the emphasis placed by the section on contributions towards acquiring the assets as the predominant factor to which the court should have regard. As such the section reflects a society in which divorce is not as frequent as it is today[103] and in which the role of the wife as home-carer is not considered to be of equal value

99 Priority being given as a general rule to the listed considerations over any unlisted ones.

100 Supra, n63.

101 One wonders, however, whether *Bey* v. *Lee, supra,* n86, with its acceptance of a clear guideline for the exercise of the judicial discretion marks the beginning of a judicial recognition of the needs for certainty in this area.

102 *Supra,* n63.

103 In such circumstances leaving the matter to the free exercise of judicial discretion is clearly more acceptable.

in the marriage as that of the man as wage-earner. Admittedly the Tanzanian courts have avoided this last problem by placing a benevolent construction on the words "joint efforts" and "work towards the acquiring of the assets", but as has been argued above such an approach to the language of the section is not possible in Singapore and Malaysia given the existence here of subsections (3) and (4).[104] Indeed the Malaysian legislature[105] has only added further emphasis to the importance attached to contributions in the original draft by adding the "sole effort" regime and by providing in it that the party by whose effort the assets were acquired must always receive a greater proportion of the assets. One wonders whether it was a recognition of the unfairness to the wife that would be occasioned by strict adherence to the listed considerations that persuaded the court in *Fan Po Kie* v. *Tan Boon Son*[106] to prefer an approach which has the effect instead of stressing the element of judicial discretion.

The time has come to look again at section 106. There have been many changes in society since the time when the Kenyan Commission worked on its first draft of this section. Divorce has become more common and the equality of women is now more widely recognised. In particular there is growing acceptance today of the view that marriage should be seen as a partnership in which the role of the home-carer is broadly equivalent in most cases to that of the wage-earner who of necessity has the ability to acquire more assets. There have also been many changes over this time in legal thinking on the subject, and there are many models of different regimes of matrimonial property throughout the common law world considerably more sophisticated than that laid down by section 106. An example is the approach of the New Zealand legislature, which has enacted a detailed scheme setting out with some precision the basic principles which apply to the distribution of property on divorce.[107]

That said, however, it is necessary to sound here another note of caution. The writer's study of the court files of cases decided during the first five years of the operation of the section shows that hardly any appeals have been lodged against the decisions of the courts under section 106. It is arguable that this suggests that there is general satisfaction as to the operation of the system. Moreover, in other countries there has been considerable public debate about matrimonial property law. This has not occurred in Singapore, which again might suggest that the present system meets the needs of the public. As has been shown above there are many theoretical difficulties involving section 106 and the cases decided under it. However, academic difficulties alone are not a sufficient justification for recommending amending legislation if the section as it stands meets with general public approval. Certainly we need more research in this area to investigate further into the attitudes of divorced couples and their legal advisers as to the operation of the present system.

B. C. CROWN*

104 See section II. B. above.
105 Followed by the Singapore legislature.
106 *Supra,* n63.
107 See the Matrimonial Property Act 1976.

* LL.B. (Jer.), (Lond.), M.Litt. (Oxon.); Solicitor (England & Wales); Senior Lecturer Faculty of Law, National University of Singapore.