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GIVING HOMEMAKERS DUE RECOGNITION: FIVE LANDMARK CASES ON THE ROAD TO GENDER EQUALITY

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Five landmark cases, one from each decade between 1960 to 2010, are chosen to discuss the developments in the law on matrimonial property and the proper weight that should be given to contributions of the homemaker spouse. The journey towards giving homemakers, who are predominately women, their proper share has not been an easy one and, as these cases show, has not ended yet. It remains to be seen how well the law is able to respond to the needs and aspirations of modern women who fulfil this role in Singapore.

I. THE SINGAPORE FAMILY: THEN AND NOW

In the fifty years since the passing of the *Women's Charter*[1] in Singapore, marriage, child bearing and divorce patterns have changed dramatically.[2] Polygamous marriages for the non-Muslim population have been outlawed.[3] Men and women now marry later than before[4] and have fewer or even no children.[5] Women no longer

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1 Cap. 353, 2009 Rev. Ed. Sing. [*Women's Charter*].

2 For general information on the legal and sociological transformation of women, see Aline Kan Wong & Leong Wai Kum, eds., *Singapore Women: Three Decades of Change* (Singapore: Times Academic Press, 1993); Jean Lee, Kathleen Campbell & Audrey Chia, *The Three Paradoxes: Working Women in Singapore* (Singapore: Association of Women for Action and Research, 1999). See also Leong Wai Kum, "The Next Fifty Years of the Women's Charter—Ripples of Change" in this special issue. The statistics which follow give "snapshots" of the changes taking place in Singapore families. They are not meant to be exhaustive and variations exist between the different ethnic communities and between Muslim and non-Muslim families. In most of the statistics presented, the years 1970 and 2000 were chosen for comparison as a nation-wide census was taken in each of those years.

3 For a review of marriage laws before the *Women's Charter*, see Leong Wai Kum, *Principles of Family Law in Singapore* (Singapore: Butterworths Asia, 1997) c. 2 [Leong Wai Kum, Principles of Family Law in Singapore].

4 The median age at first marriage in 1970 was 26.9 for men and 23.1 for women. By 2000, it was 28.7 for men and 26.2 for women, and by 2009, it was 29.8 for men and 27.5 for women (Singapore Department of Statistics, *Population Trends 2010* (Singapore: Singapore Department of Statistics, 2010) [Singapore Department of Statistics, Population Trends 2010]).

5 The mean number of children per married woman in 1970 was 4.0 (P. Arumainathan, *Report of the Census of Population 1970* (Singapore: Singapore Department of Statistics, 1973) [P. Arumainathan]), but by 2000, this figure had fallen to 2.5 (Leow Bee Geok, *Census of Population 2000: Demographic*

have large families which entail sacrificing a significant portion of their lives to child bearing and rearing.[6] Many women in fact return to the workforce after childbirth or when suitable child-care arrangements are found.[7] Divorce rates have roughly doubled since 1970,[8] and divorces happen in marriages of shorter duration.[9] Marriages where one or both partners have been married before constituted 25.5 per cent of all marriages solemnized in Singapore in 2009 as compared to only 18.2 per cent in 1999.[10]

Between 1960 and 2010, Singapore's per capita gross domestic product at current market prices grew by more than forty-five times.[11] Women in general have reaped the gains of Singapore's spectacular economic development. Literacy attainment of the female resident population progressed faster than their male counterparts: female enrolment in institutes of higher education increased at an average rate of 15 per cent per annum over the years 1987 to 1999, nearly double the rate of increase for males.[12] Reflecting such higher educational attainment, the female labour force participation rate increased from 28.2 per cent in 1970 to 50.2 per cent in 2000.[13]

Improvements in the socio-economic status of women in Singapore have had a significant impact on family life and, in the event of marital breakdown, the feasibility of divorce as an option for women in unhappy marriages. Women are much less dependent financially on their husbands than before and as such are not held to

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Characteristics (Singapore: Singapore Department of Statistics, 2001) [Leow Bee Geok]). Total fertility rate (TFR) per woman was 3.07 in 1970 and 1.60 in 2000 (Leow Bee Geok, *ibid.*), well below the replacement level of 2.1. In 2010, TFR was estimated at 1.16 (Li Xueying, "Fertility figures hit all time low" *The Straits Times* (18 January 2011)).

6 Average size of households in 1970 was 5.35 persons (P. Arumainathan, *ibid.*). This decreased to 3.7 in 2000 (Leow Bee Geok, *ibid.*).

7 This trend emerged in more recent years: see Leow Bee Geok, *Census of Population 2000: Economic Characteristics* (Singapore: Singapore Department of Statistics, 2001).

8 In 2009, 7,386 divorces and annulments were recorded as compared to 1,721 in 1980. This works out to a divorce rate of 7.7 per thousand married men and 7.3 per thousand married women in 2009 as compared to 3.7 and 3.8 respectively in 1980: Singapore Department of Statistics, Population Trends 2010, *supra* note 4.

9 Among those who married in 1987, 3.2% divorced within 5 years. By 2002, 5.3% had divorced within 5 years: see Sing., *Parliamentary Debates*, vol. 87 (10 January 2011) (Dr. Vivian Balakrishnan).

10 Singapore Department of Statistics, *Statistics on Marriages and Divorces 2009* (Singapore: Singapore Department of Statistics, 2010).

11 Singapore's per capita gross domestic product at current market prices in 1960 was $1,310. By 2010, it was $59,813. See Singapore Department of Statistics, "Time series on Per Capita GDP at Current Market Prices", online: Singapore Department of Statistics <http://www.singstat.gov.sg/stats/themes/economy/hist/gdp.html>.

12 Pundarik Mukhopadhaya, "Changing Labor-Force Gender Composition and Male-Female Income Diversity in Singapore" (2001) 12 Journal of Asian Economics 547 [Mukhopadhaya]. One example is that only 18% of females aged 20 to 25 had graduated from secondary school in 1980, but by 1995, this figure had increased to 46%.

13 Singapore Department of Statistics, "Key Indicators on Gender", online: Singapore Department of Statistics <http://www.singstat.gov.sg/stats/themes/people/gender.pdf>. Unfortunately, there is still an income disparity between men and women, even if they are employed in the same occupations: see Singapore Department of Statistics, *Social Progress of Singapore Women: A Statistical Assessment* (Singapore: Singapore Department of Statistics, 1998). The gender gap ratio is currently about 75% in general and differs according to occupational groups. See Mukhopadhaya, *ibid.*; William Keng Mun Lee, "Gender Inequality and Discrimination in Singapore" (1998) 28(4) Journal of Contemporary Asia 484; Ministry of Manpower, *Singapore Yearbook of Manpower Statistics* (Singapore: Ministry of Manpower, various years).

marriages by economic necessity.[14] It has been observed that the greater preponderance of women who initiate court proceedings for divorce as compared to men could be partially due to greater confidence in the legal system to protect their interests on divorce.[15] Eekelaar suggests (in the context of England and Wales) that the increase in petitions by wives is due to the extensive powers given to the courts to order a division of matrimonial assets in their favour.[16]

There is a foreign dimension as well to the transformations taking place in Singapore families. With Singapore's rise as a thriving and cosmopolitan economy where people from other parts of the world are welcomed to live and work in Singapore,[17] we can expect more cases coming before our courts involving at least one non-Singaporean spouse. It was reported in 2008 that four in ten marriages solemnized in Singapore involved one party who was non-Singaporean.[18] Therefore, in the case of marital breakdown, legal issues with a foreign element will increasingly come before the local courts.[19] One example is found in anecdotal reports by those who marry non-Singaporeans, of their being asked to enter into prenuptial agreements as this is "standard practice" where the foreign partner comes from.[20]

It is not possible to capture in this article all the various high points or landmark cases involving family law in Singapore in the last fifty years. What has been selected instead are what the writer considers to be five important cases, one from each decade, in the area of matrimonial property. This is a controversial area, not only because it is a subject of frequent disagreement when marriages break down, but also because of the value given by the law (as a reflection of society's views) to each spouse's contribution to the family when it comes to dividing the spouses' assets.[21]

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14 Wives initiated roughly two-thirds of all divorces under the *Women's Charter*: see Wing-Cheong Chan, "Trends in Non-Muslim Divorces in Singapore" (2008) 22 Int'l J.L. Pol'y & Fam 91.

15 *Ibid*.

16 John Eekelaar, *Family Law and Personal Life* (Oxford: Oxford University Press, 2006) at 141-142.

17 Singapore citizens comprised 63.6% of the total population in Singapore in 2010, as compared to 74.1% in 2000 and 90.4% in 1970. The rest comprised Singapore Permanent Residents and foreigners given temporary permission to live in Singapore to work or study. See Singapore Department of Statistics, Population Trends 2010, *supra* note 4.

18 Mavis Toh, "Four in 10 S'poreans marry foreigners" *The Straits Times* (12 October 2008). See also Sing., *Parliamentary Debates*, vol. 83, col. 973 (22 May 2007). About three-quarters of all marriages involving at least one non-Singaporean are between a Singaporean man and a foreign woman, and most foreign spouses were from Asia. These statistics do not include persons who married overseas, so the numbers are likely to be higher.

19 For recent changes in the law, see *Women's Charter (Amendment) Act 2011* (No. 2 of 2011, Sing.) (allowing a Singapore court to order "financial relief" even where the marriage had been terminated overseas); *International Child Abduction Act 2010* (No. 27 of 2010, Sing.) (Singapore's accession to the Hague Convention on the Civil Aspects of International Child Abduction); *Constitution of the Republic of Singapore (Amendment) Act 2004* (No. 12 of 2004, Sing.) (allowing children born overseas to acquire Singapore citizenship by descent from their Singaporean mothers).

20 See the discussion forum on SingaporeBrides: A Wedding Directory for Singapore Weddings, online: <http://www.singaporebrides.com/forumboard/messages/36737/401483.html?1256877688>. In reality, it is said that premarital agreements are used by a small minority (less than 10%) of couples in the US and in Europe: see Margaret Ryznar & Anna Stępień-Sporek, "To Have and To Hold, For Richer or Richer: Premarital Agreements in the Comparative Context" (2009-2010) 13 Chapman Law Review 27 at n. 169; Allison A. Marston, "Planning for Love: The Politics of Prenuptial Agreements" (1996-1997) 49 Stan. L. Rev. 887. Prenuptial agreements are also known as ante-nuptial and pre-marital agreements.

21 Leong Wai Kum, Principles of Family Law in Singapore, *supra* note 3 at 894.

Before embarking on this journey, there is a need for a word of apology. The five landmark cases are chosen entirely subjectively by the writer. One cannot hope for any consensus on this subject, and there are many cases to choose from. However, it is hoped that from the discussion that follows, readers will agree that even if the five cases discussed below are not universally agreed to be turning points in the history of matrimonial property, they are still worthy of consideration as significant vantage points in the law.

II. 1960s: Landmark Case 1

The first case to be discussed is that of *Roberts alias Kamarulzaman v. Ummi Kalthom*.[22] This is a Malaysian case decided in 1966, and did not involve the *Women's Charter*. It was decided on the basis of Malay *'adat* law. However, it is argued that it is nevertheless worthy for inclusion in this article for the views taken in the case on what should be considered as matrimonial property and how this should be divided between the spouses on divorce.

The facts of this case involved a husband and wife who bought a house in Kuala Lumpur for RM50,000. The husband contributed RM40,000 and the wife RM10,000. The house was registered in the name of the wife only as the husband was at the time a government officer who was not a Malayan citizen and thus needed permission to own property. When the parties divorced after 12 years of marriage, the husband sought a half share of the house but the wife did not agree. The husband therefore brought an action in the High Court to resolve the issue.[23]

The learned judge, Raja Azlan Shah J., held that the property was jointly acquired property subsequent to their marriage out of their joint resources. The property was therefore considered as *harta sepencarian*, as recognised under Malay custom.[24] There was no evidence to show that the husband intended it to be a gift to the wife. After a survey of the practice of the different State courts, it was found that in the division of *harta sepencarian*, the divorced spouse is entitled to either a one-third share or a half share depending on whether there was direct or indirect contribution to acquisition of the property.

The court was ready to divide the property in equal shares if the parties agreed to such a division, which they did. The interesting point in this case is that although the financial contribution of the husband was far greater than that of the wife, the

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[22] [1966] 1 M.L.J. 163 (Unknown Court) [*Roberts alias Kamarulzaman*]. For a discussion of this and other cases, see Ahmad Ibrahim, *Family Law in Malaysia*, 3rd ed. (Malaysia: Malayan Law Journal Sdn Bhd, 1997).

[23] Claims relating to *harta sepencarian* can only be brought in the Shariah Court now, since the amendment to the *Federal Constitution of Malaysia* (Malaysia Fifteenth Reprint, 2006), Art. 121, which provides that the civil courts shall not have jurisdiction over any matter which falls within the jurisdiction of the Shariah court.

[24] *Harta sepencarian* is now codified in the Islamic family law statutes. It is defined as "property jointly acquired by husband and wife during the subsistence of marriage in accordance with the conditions stipulated by *Hukum Syarak*" (*Islamic Family Law (Federal Territories) Act 1984* (No. 303 of 1984, Malaysia), s. 2). *Harta sepencarian* as practised by the *Undang-Undang Mahkamah Melayu* (Law of Malay Courts) of Sarawak is such that even assets acquired by the *sole* effort of one spouse may be shared with the other spouse having regard to the latter's contributions made to the welfare of the family by looking after the home or caring for the family (Ahmad Ibrahim, "The Law Reform (Marriage and Divorce) Bill, 1975" [1975] J.M.C.L. 354).

court did not give a larger share to the husband. How does this compare with the law under the *Women's Charter*?

The extensive powers to divide matrimonial assets under the *Women's Charter* were only introduced in 1980 by the *Women's Charter (Amendment) Act 1980*.[25] Prior to this, the court could only make "settlement" of property as it thought reasonable.[26] In common with the division of *harta sepencarian*, the court was given powers in 1980 to divide the spouses' assets which, *inter alia*, required the court to consider the "extent of contributions made by each party in money, property or work towards acquiring of the assets", and was instructed to "incline towards equality of division" for assets acquired by "joint efforts". However, a definition of "matrimonial assets" was not to be found in Singapore law until the 1996 amendments to the *Women's Charter*.[27] The definition of a "matrimonial asset" now found in s. 112 of the *Women's Charter* is surprisingly similar to what Raja Azlan Shah J. gave as a definition of *harta sepencarian*:

> [*Harta sepencarian*] is a matter of Malay *'adat* and is applicable only to the case of a divorced spouse who claims against the other spouse during his or her lifetime … [O]nce it is clearly established that property was acquired subsequent to the marriage out of their joint resources or by their joint efforts a presumption arises that it is *harta sepencarian*. The presumption is rebuttable such as by evidence that the property was acquired by the sole efforts or resources of the husband or by the evidence that it was a gift made to the wife.[28]

Under s. 112(10)(b) of the *Women's Charter*, a matrimonial asset may be an:

> … asset of any nature acquired during the marriage[29] by one party or both parties to the marriage, but does not include any asset (not being a matrimonial home) that has been acquired by one party at any time by gift or inheritance and that has not been substantially improved during the marriage by the other party or by both parties to the marriage.

This definition improves on the concept of *harta sepencarian* in three ways. First, all property acquired during marriage is generally included as jointly acquired property. There is no need to further show that the property was acquired out of "joint resources or by joint efforts". It is more sensible to assume that the parties have cooperated in their matrimonial partnership and should therefore be able to claim a share of all the assets acquired during marriage. The parts played by each spouse only go toward determining their equitable share in the matrimonial assets. In *NK v. NL*,[30] it was

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25 No. 26 of 1980, Sing. The previous s. 106 was introduced *via* this amendment, and is now found as s. 112 of the *Women's Charter*.

26 See Barry Clive Crown, "Property Division on Dissolution of Marriage" (1988) 30 Mal. L. Rev. 34 [Crown]; Leong Wai Kum, "Division of Matrimonial Assets: Recent Cases and Thoughts for Reform" [1993] Sing. J.L.S. 351.

27 *Women's Charter (Amendment) Act* (No. 30 of 1996, Sing.). See *Neo Heok Kay v. Seah Suan Chock* [1992] 3 S.L.R.(R.) 390 (H.C.); Chan Wing Cheong, "Latest Improvements to the Women's Charter" [1996] Sing. J.L.S. 553.

28 *Supra* note 22 at 165.

29 Assets acquired before marriage may also be exceptionally included as matrimonial assets under the *Women's Charter*, s. 112(10)(a).

30 [2007] 3 S.L.R.(R.) 743 (C.A.) [*NK v. NL*].

said that:

> The division of matrimonial assets under the [*Women's Charter*] is founded on the prevailing ideology of marriage as an equal co-operative partnership of efforts. The contributions of both spouses are equally recognised whether he or she concentrates on the economics or homemaking role, as both roles must be performed equally well if the marriage is to flourish.[31]

Second, gifts and inheritances acquired by one party may be re-included as matrimonial assets if they have been "substantially improved during the marriage by the other party or by both parties to the marriage"—a conception which appears to be excluded from *harta sepencarian*.[32] Third, a matrimonial home is automatically re-included as a matrimonial asset irrespective of whether the property was acquired by way of gift or inheritance. The house in dispute in *Roberts alias Kamarulzaman* in fact served as the parties' matrimonial home and it would certainly have been considered a matrimonial asset under the *Women's Charter*.

If the case of *Roberts alias Kamarulzaman* were to be decided under the *Women's Charter* today in Singapore, awarding the wife an equal share of the house could be justified on the basis of the wife's financial contribution of 20 per cent of the purchase price of the house, plus her non-financial contributions to the welfare of the family over the course of the 12 year marriage. The approach towards division of matrimonial assets under the *Women's Charter* is that there is no presumption of equal division,[33] but the courts have nevertheless awarded equal division on the individual circumstances of each case.[34]

What is noteworthy in *Roberts alias Kamarulzaman* is that the definition of *harta sepencarian* or jointly acquired property foreshadowed the very similar definition introduced to the *Women's Charter* thirty years after that decision. Furthermore, the case awarded an equal division of the house to the wife who had contributed only 20 per cent of its purchase price without any in-depth discussion of the role she played as a matrimonial partner to justify her half share. Although it could be argued that this approach was due to the husband's request to be awarded a half share of the house only, the result may not be any different even if the husband had argued for more. This simple approach foreshadowed the similar development for later cases decided under the *Women's Charter*, which have sought to point out that non-financial contributions of a spouse must not be undervalued. See for example the following judicial statements:

> [C]ourts might not have given sufficient recognition to the value of factors like homemaking, parenting and husbandry when attributing to them a financial value in the division of matrimonial assets. This ought *not* to be the case. It is true that, by their very nature, such kinds of contributions to the marriage are … difficult to measure because they are, intrinsically, incapable of being measured in precise financial terms … Difficulty in measuring the financial value of such

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31 *Ibid.* at para. 20.

32 For a case under the *Women's Charter*, see *Wan Lai Cheng v. Quek Seow Kee* [2011] SGHC 9.

33 *Lim Choon Lai v. Chew Kim Heng* [2001] 2 S.L.R.(R.) 260 (C.A.) [*Lim Choon Lai*].

34 See *e.g.*, *Yow Mee Lan v. Chen Kai Buan* [2000] 2 S.L.R.(R.) 659 (H.C.) [*Yow Mee Lan*]; *Ryan Neil John v. Berger Rosaline* [2000] 3 S.L.R.(R.) 647 (H.C.); *Lim Choon Lai*, *ibid.*; *Lock Yeng Fun v. Chua Hock Chye* [2007] 3 S.L.R.(R.) 520 (C.A.) [*Lock Yeng Fun*].

> contributions has never been—and ought never to be—an obstacle to giving the spouse concerned his or her just and equitable share of the matrimonial assets that is commensurate with his or her contributions …[35]
>
> [I]t is essential that courts resist the temptation to lapse into a minute scrutiny of the conduct and efforts of both spouses, which may be objectionable in disadvantaging the spouse whose efforts are difficult to evaluate in financial terms. Section 112 of the [*Women's Charter*] was enacted in response to the concept of marriage as an equal partnership of efforts, such that it would be counterproductive to try and particularise each party's respective contribution to wealth creation …[36]
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> [A] marriage is not a business where, generally, parties receive an economic reward commensurate with their economic input. It is a union in which the husband and wife work together for their common good and the good of their children. Each of them uses (or should use) his or her abilities and efforts for the welfare of the family and contributes whatever he or she is able to. The partners often have unequal abilities whether as parents or as income earners but, as between them, this disparity of roles and talent should not result in unequal rewards where the contributions are made consistently and over a long period of time.[37]

III. 1970s: Landmark Case 2

In *Tan Evelyn v. Tan Lim Tai*,[38] the presiding judge, A.V. Winslow J., remarked in the judgment, "I am informed from the Bar that no case like this has arisen for decision either in Singapore or Malaysia before …".[39]

The case involved a matrimonial house which was purchased in the sole name of the husband in 1960. The purchase was financed partly by a loan from the husband's mother and partly by a bank loan through mortgaging the property. Marital discord arose subsequently, which led to the wife living separately from the husband from 1970 onwards. When the house was sold in 1971, the wife claimed a half share of the net proceeds of sale of the house under what is now s. 59 of the *Women's Charter*.

At the time, the court did not have the power to order a re-allocation of the parties' property interests on divorce, as this power was not granted until the amendment of the *Women's Charter* in 1980. In any case, the parties were still legally married to each other, although they were living apart. The wife claimed that she had a beneficial interest in the property, held on trust for her by her husband.

Significantly, Winslow J. noted that the wife's application under the *Women's Charter* provision corresponded to s. 17 of the English *Married Women's Property Act 1882*.[40] As such, English decisions, particularly *Pettitt v. Pettitt*[41] and *Gissing v. Gissing*,[42] were referred to and followed. It was noted that this provision did not

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35 *Lock Yeng Fun*, *ibid*. at para. 39.
36 *NK v. NL*, *supra* note 30 at para. 28.
37 *Yow Mee Lan*, *supra* note 34 at para. 43.
38 [1971-1973] S.L.R.(R.) 771 (H.C.) [*Tan Evelyn*].
39 *Ibid.* at para. 13.
40 (U.K.), 45 & 46 Vict., c. 75, s. 17.
41 [1970] A.C. 777 (H.L.).
42 [1971] A.C. 886 (H.L.) [*Gissing*].

create any proprietary rights over the disputed property which were not in existence already. It only simplified the procedure to resolve disputes between a husband and wife.[43] Following *Gissing*, Winslow J. held that:

> [A] matrimonial home in the name of one spouse alone is nevertheless held to belong to both by virtue of a trust which can be imputed to the parties from their conduct and the surrounding circumstances. Such an inference can be made where each has made a substantial financial contribution towards its purchase, whether such contributions are made directly or indirectly as contributions towards the purchase moneys or mortgage instalments due thereon.[44]

It was held in *Tan Evelyn* that the wife, by handing over to the husband her entire monthly salary she earned as a clerk, made a substantial financial contribution to the purchase of the matrimonial home which justified the conclusion that it was the common intention of both spouses that they should share the house in equal shares.[45] According to the later House of Lords decision in *Lloyds Bank Plc v. Rosset*,[46] which was accepted in Singapore in *Tan Thiam Loke v. Woon Swee Kheng Christina*,[47] there are two ways of arguing for a common intention constructive trust depending on whether there was an agreement between the parties to share the property beneficially. Where no agreement between the parties to share the property is found (as was held in *Tan Evelyn*), conduct of the parties is relied upon as the basis to infer a common intention to share the property as well as conduct giving rise to a constructive trust. In this situation, only direct financial contributions by the party who is not the legal owner—either to the purchase price or the mortgage payments—will suffice.

However, Winslow J. could have found a common agreement to share the property beneficially. In such a situation, the party claiming beneficial ownership only has to show acts to his or her detriment or significant alterations to his or her position in reliance on the agreement. Since Winslow J. accepted the wife's evidence that the husband had told her prior to the purchase of the house that "they should both co-operate with one another and save money towards the purchase of the house which was to be theirs",[48] he could have found a common agreement to share the house beneficially. All the wife had to show in addition was that she acted to her detriment in reliance on the agreement.

Tan Evelyn is important for adopting the view that marriage did not create a special property regime for spouses, and accepting the English law on constructive trusts where one spouse seeks a beneficial share of property held in the other spouse's name. This approach had two undesirable consequences. First, it made the law unnecessarily rigid, which may not accurately reflect the interaction between couples. An example of this can be found in the case of *Tan Thiam Loke*. Although that case did not involve a married couple, the parties involved were living as husband and wife.

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43 An application to court may be made within 3 years of termination of the marriage but a couple in the midst of divorce proceedings may not use this provision to avoid the court's power to divide matrimonial assets under the *Women's Charter*, s. 112. See *Ho Kiang Fah v. Toh Buan* [2009] 3 S.L.R.(R.) 398 (H.C.).

44 *Tan Evelyn*, *supra* note 38 at para. 19.

45 *Ibid.* at para. 21.

46 [1991] 1 A.C. 107 (H.L.).

47 [1991] 2 S.L.R.(R.) 595 (C.A.) [*Tan Thiam Loke*].

48 *Tan Evelyn*, *supra* note 38 at para. 7.

The married man had tricked the woman into continuing the adulterous relationship with him by leading her to believe that he would marry her as soon as he could get a divorce from his wife. To assure her of his intentions, he bought a house "for her" as their eventual matrimonial home but put it into their joint names in order to have a hold on her in case she left him. The woman did not contribute any money to the purchase of the house and she argued that the man held his half-share on trust for her. The Court of Appeal found that although there was a clear agreement that the house was bought for the woman absolutely, her claim failed because she could not show that she moved into the house in reliance on the agreement. The Court of Appeal found that she had moved in because of the man's assurances that he was going to divorce his wife soon, and because she loved him.[49] However, it is submitted that the woman may have been influenced by various motivations.

The second undesirable consequence is that property law principles generally operate unfairly against the homemaker spouse. In a traditional family, the husband is the sole breadwinner, whereas the wife stays at home to look after the family's needs. Even when the wife works, it is likely that she would earn less than her husband.[50] The English *Married Women's Property Act 1882*, which s. 59 of the *Women's Charter* was modeled on, brought formal equality to the spouses by recognising the married woman's right to own separate property. However, the fact remains that these married women often lack the wherewithal to do so. Unfortunately, property law principles still very much focus on who makes financial contributions to the purchase of property, and undervalues the homemaker's contributions to the family.[51]

IV. 1980s: Landmark Case 3

In *Fan Po Kie v. Tan Boon Son*,[52] the husband and wife bought a Housing and Development Board (HDB) flat in their joint names in 1976, with the wife making financial contributions to renovations and to the monthly instalments towards the purchase price. The wife left the matrimonial flat with their two children in 1979, and a *decree nisi* terminating the marriage was given the same year. The case began before the amendments to the *Women's Charter* in 1980—which gave the court the power to reallocate the spouses' property interests on divorce—became effective. The wife applied to the court under what is now s. 59 of the *Women's Charter* for an order that the husband transfer the flat to her, upon refund of his contributions to the purchase price.

The husband resisted the application on the basis that, *inter alia*, he was already paying maintenance for the wife and two children. The learned High Court judge,

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49 *Tan Thiam Loke*, *supra* note 47 at paras. 21 and 22.

50 *Supra* note 13.

51 It remains to be seen the extent to which the Singapore courts will adopt the more liberal stance in English law towards recognition of beneficial interests of a homemaker spouse, as exemplified in *Stack v. Dowden* [2007] 2 A.C. 432 (H.L.). See Tang Hang Wu, "Equity and Trusts" (2007) 8 S.A.L. Ann. Rev. 215 at paras. 13.2-13.8. *Cf.* Tan Yock Lin, "'Matrimonial' Realty Under a Resulting Trust" in this special issue.

52 [1981-1982] S.L.R.(R.) 233 (H.C.) [*Fan Po Kie*]. The Court of Appeal did not render a written judgment, but a memorandum of the proceedings by the lawyers acting for the wife can be found at *Fan Po Kie v. Tan Boon Son* [1986] 2 M.L.J. ccxix. The appeal was concerned only with the amount the wife was to refund to the husband.

A. Wahab Ghows J., made the order as requested by the wife as "the [wife] and the two children of the marriage have a right to reside in the matrimonial home", and the order was "equitable in the circumstances of this case".[53] Despite the fact that this case involved a consideration of the parties' interests under the property law regime under s. 59 of the *Women's Charter*, considerations of the needs of the minor children were allowed to influence the final order made.

On appeal by the husband against the quantum to be paid to him by the wife, the Court of Appeal made *obiter* remarks on the principles to be applied under the newly enacted power under the *Women's Charter* to order division of matrimonial assets. In considering the appropriate share to be awarded, the court was prepared to award a larger share to one party on account of the needs of the minor children. Furthermore, the sum to be refunded to the husband could be based on the value of past payments made, rather than on the present market value of the flat—thus allowing the wife to keep the capital gains by retaining the flat.[54] The Court of Appeal noted that it was unlikely that the wife would sell the flat, since it was meant to be the home for herself and her children. In any case, the wife would not have been able to repay the husband if the sum were based on the market price of the flat.[55] These comments and the orders made eventually shaped the approach of the courts towards the division of matrimonial assets on divorce. In a study of unreported decisions after *Fan Po Kie*, it was found that the most common type of order made on divorce concerning the spouses' property was a transfer of one spouse's entire beneficial interest to the other spouse, on return of the contributions paid to the Central Provident Fund (CPF) account with accrued interest.[56] This approach is particularly important to the homemaker spouse (usually the wife) who will remain as caregiver of the children and will not have sufficient assets built up to compensate for the loss in capital value of the property.[57]

The case of *Tan Evelyn* should be contrasted with *Fan Po Kie*. The former may be held as an example of an uncompromising attitude towards a homemaker spouse while the latter signaled the importance of family contributions which can be considered when dividing the parties' assets on divorce. The former looked retrospectively at the parties' intentions and whether financial contributions were made to purchase the property, whereas the latter made prospective assessments on the needs of minor children and their caregiver.

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53 *Fan Po Kie*, *ibid.* at para. 11.

54 The original cost of the flat when it was bought in 1976 was $35,000. The wife was ordered to pay her husband $19,429 in exchange for keeping the flat, which was worth between $150,000 and $170,000 at the time of the judgment. See Crown, *supra* note 26.

55 It may be a different matter if the children were older or if the wife had the financial means to buy over the husband's interest in the property. See *e.g.*, *Tan Margaret Mrs Anderson Percival Malcolm (m.w.) v. Anderson Percival Malcolm* [1995] SGHC 54. Another possibility is for the sale of the flat to be postponed until the youngest child reaches 21 years of age and the sale proceeds to be divided at that time. See *e.g.*, *Lim Tiang Hock Vincent v. Lee Siew Kim Virginia* [1990] 2 S.L.R.(R.) 778 (C.A.).

56 See Crown, *supra* note 26.

57 *Supra* note 13; see also excerpts of AWARE-Tsao Foundation, "Women and Income Security in an Ageing Singapore Population" (2004), online: Tsao Foundation <http://www.tsaofoundation.org/pdf/AWARE_TSAO_Ageing_Report_23pp.pdf> and <http://www.tsaofoundation.org/genderDisparity.html>.

The order made in *Fan Po Kie* is now statutorily recognised in ss. 112(5)(c)[58] and 112(2)(c)[59] of the *Women's Charter*. In *Tham Khai Meng v. Nam Wen Jet Bernadette*,[60] a case decided in 1997 involving an eight year marriage which produced two children aged eight and ten, the Court of Appeal was similarly swayed by the needs of the young children in awarding a house worth $6.5 million to the wife, upon payment to the husband of $1 million.

It may be argued that it is unfair that the wife should get the capital gains on the purchase of the matrimonial property. However, as Leong Wai Kum has explained:

> [I]n most families there are really only two major items of property—the former matrimonial home and the earning potential (invariably) of the husband. In most cases, especially where there are still young children who ought to be able to continue to live in their home with their mother who will probably continue to be their caregiver, it would make more sense for the home to be transferred to the wife and the husband to keep his career assets …[61]

Statutory changes have now been made to make it even easier for a homemaker spouse to enjoy the full value of the property. The previous rule that all CPF moneys withdrawn for the purchase of property must be refunded before there can be a transfer of ownership of the property between the spouses was changed in 2007. The court is now given the power to order the transfer of the property to a spouse without refunds being made to the CPF, provided that a charge is placed to secure the refund of the CPF moneys should the property be sold later.[62]

V. 1990s: Landmark Case 4

The high level of compulsory savings in the form of the employee's and employer's contributions towards CPF means that money in the CPF account often forms a sizable resource in the name of the breadwinner spouse. In 1993, after some wavering, it was conclusively settled that money in the CPF account, if accumulated during marriage, forms part of the matrimonial assets available for division.[63] In most cases, money in the CPF account would be considered in the computation of assets for division. If there were other assets to be divided, there would be no need for the court to make an order impinging on the CPF money. In the case of *Central Provident Fund Board v. Lau Eng Mui*,[64] the issue encountered was whether the court could place a charge

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58 This sub-section enables the court to make "an order vesting any matrimonial asset … in either party".

59 This sub-section allows the court, in considering the just and equitable division of the matrimonial assets, to consider "the needs of the children … of the marriage".

60 [1997] 1 S.L.R.(R.) 336 (C.A.). See also *Chan Choy Ling v. Chua Che Teck* [1995] 3 S.L.R.(R.) 310 (C.A.).

61 Leong Wai Kum, "Division of Matrimonial Property Upon Termination of Marriage" [1989] 1 MLJ xiii. Career assets are said to "cover the entire gamut of benefits that come from working including income, the expense account, the club membership, health and insurance and retirement benefits and so on" and that "[t]he only way the wife can share a part of these career assets that she has helped enhance is if she gets an order for substantial personal maintenance": at xvii.

62 *Central Provident Fund (Amendment) Act 2007* (No. 40 of 2007, Sing.), inserting ss. 27C-27F to the *Central Provident Fund Act* (Cap. 36, 1991 Rev. Ed. Sing.) [*CPF Act*].

63 *Lam Chih Kian v. Ong Chin Ngoh* [1993] 1 S.L.R.(R.) 460 (C.A.). *Cf. Neo Heok Kay v. Seah Suan Chock* [1992] 3 S.L.R.(R.) 390 (H.C.).

64 [1995] 2 S.L.R.(R.) 826 (C.A.) [*Lau Eng Mui*].

on CPF money in favour of the spouse of the CPF member, if there were insufficient assets for the spouse's share of the matrimonial assets to be satisfied other than from the moneys in the CPF account.

Section 25(1) of the *CPF Act* unfortunately appeared to disallow such a charge considering the broad immunity given to a CPF member's funds:

> [N]o withdrawals made by the authority of the Board from the Fund … nor the rights of any member of the Fund acquired thereunder shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever.

The Court of Appeal in *Lau Eng Mui* held that the words "assignable or transferable" and "attached, sequestered or levied" were not wide enough to encompass an order under the *Women's Charter* for division of matrimonial assets. The court held that the former words relate to the act of alienation or disposal by the CPF member himself, and the latter words refer to a process of execution by a creditor. The interest of the spouse in the CPF member's money was not a "debt" under the provisions of the *CPF Act*.

The court also distinguished the Malaysian case of *Central Electricity Board v. Govindamal.*[65] In that case, the husband was ordered to pay his wife a sum of RM50 per month as maintenance for their two children. This was subsequently changed to direct the husband's employer, the Central Electricity Board, to deduct the amount of maintenance payable to her from the husband's salary and pay it to her solicitors. The payments were made regularly until the husband retired. The wife's lawyers then sought an order to attach the husband's gratuity and pension from which the Board was to pay the wife's maintenance. The Board objected, relying on s. 22(2)(b) of the *Electricity Ordinance 1949*[66] which provided:

> [N]o … contribution to a fund established [for the payment of superannuation allowances, pensions or gratuities] shall be assignable or transferable or liable to be attached, sequestered or levied upon for or in respect of any debt or claim whatsoever …

On appeal to the High Court, Ong J. held that the attachment of the gratuity and pension of the husband for the payment of maintenance fell within the immunity set out by the *Electricity Ordinance*.

In *Lau Eng Mui*, it was held that the decision in *Govindamal* was correct. The latter involved an order directing the husband to pay maintenance, and this did not create a proprietary interest in the husband's gratuity or pension. Section 22 of the *Electricity Ordinance* prevented the wife from attaching the gratuity and pension of the husband in satisfaction of the maintenance claim. On the other hand, an order for division of matrimonial assets was held to give the wife a proprietary interest in the husband's funds.

Lau Eng Mui was groundbreaking for its conception of the funds standing in the CPF account: they were seen as matrimonial assets, despite being built up solely by the breadwinner spouse. Moreover, the lack of statutory provisions allowing the wife to withdraw the amount that she was entitled to, was dismissed as "merely procedural

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[65] [1965] 2 M.L.J. 153 (Unknown Court) [*Govindamal*].

[66] No. 30 of 1949, Federation of Malaya [*Electricity Ordinance*].

[difficulties], [which could not] override the substantive right the spouse has".[67] The Court of Appeal memorably concluded by saying:

> The CPF moneys of a member are his savings under a compulsory saving scheme as provided in the CPF Act and these savings are intended for the benefit of the member himself *and his family*, essentially his spouse, on his retirement.[68]

Therefore, it may be "his" savings, but the CPF moneys of a member are intended for sharing with his spouse. In the event of divorce, the amount in the CPF account would be shared even though this would normally be immune to claims by third parties. However, this is still subject to various restrictions; namely having to wait until the CPF member spouse is eligible to withdraw the CPF amount on turning 55 years old, and having set aside the Minimum Sum and Medisave Minimum Sum.[69] As such, a "clean break" from the marriage cannot be achieved, and the homemaker spouse may not have sufficient savings to tide her over in the meantime. The retirement needs of the CPF member-spouse therefore takes priority over the interests of the other spouse, since only the balance of funds—after the CPF member-spouse has set aside the prevailing Minimum Sum and Medisave Minimum Sum—is available for distribution. This is contrary to the pronouncement in *Lau Eng Mui* that "CPF moneys … are intended for the benefit of the member himself and … his spouse".[70] Amendments to the *CPF Act* were finally carried out in 2007 to rectify this by allowing the court to order on divorce an immediate transfer of CPF moneys to the former spouse's CPF account, if the former spouse is a citizen or permanent resident, without having to first set aside the Minimum Sum or Medisave Minimum Sum.[71]

VI. 2000s: Landmark Case 5

Marriage creates a status that has legal consequences for both husband and wife. For example, on marriage, a husband has a duty to provide reasonable maintenance to his wife.[72] However, as legally competent adults, should they not be given greater autonomy for choices which only concern them, such as division of their matrimonial assets on divorce?

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67 *Lau Eng Mui*, *supra* note 64 at para. 15. The court suggested further consequential orders which could fulfil the terms of the order made: at para. 33.

68 *Ibid*. at para. 37 (emphasis added).

69 These amounts aim to ensure that Singaporeans set aside sufficient savings for their retirement and for their medical needs. The amounts have been increasing over the years. See online: CPF Board <http://www.cpf.gov.sg>.

70 *Supra* note 64 at para. 37.

71 *Central Provident Fund (Amendment) Act 2007* (No. 40 of 2007, Sing.), inserting s. 27B to the *CPF Act*. In the event that the former spouse is not a citizen or permanent resident, immediate transfer of CPF moneys is not allowed but the CPF member will not be required to set aside the Minimum Sum and Medisave Minimum Sum before the former spouse can receive her share.

72 *Women's Charter*, *supra* note 1, s. 69(1). A husband will of course not be made to do so if he does not have the financial means to pay maintenance or if his wife earns more than sufficient for her needs: see *Women's Charter*, s. 69(4).

Under the common law, it was once held to be contrary to public policy for a married couple, or soon to be married couple, to enter into an agreement that provided for the contingency that they might separate in the future.[73] Such agreements were thought to encourage couples to separate, which undermined the concept of marriage as life-long. This policy also had a gender dimension: since women were generally financially dependent on their husbands, they needed to be protected from unfair agreements. Modern law now treats agreements between married couples as to the financial consequences of their divorce very differently. In fact, unlike the common law, s. 112(2)(e) of the *Women's Charter* gives express recognition to "any agreement between the parties with respect to the ownership and division of the matrimonial assets made in contemplation of divorce", in deciding the just and equitable proportions to be given to each spouse.

It should be noted, however, that such an agreement on the distribution of property in the event of divorce is not enforceable on its own in Singapore: instead it is only one factor to be taken into account in the court's decision on the parties' respective shares in the matrimonial assets. Ultimately, it is still for the court to decide on what amounts to a just and equitable division of the matrimonial assets. Nonetheless, the Court of Appeal in *TQ v. TR*,[74] agreeing with developments in English case law, accepted that there are situations where a prenuptial agreement would be accorded significant or even conclusive weight or be of "magnetic importance".[75] It was said that "it might well be the case that a prenuptial agreement is, given the circumstances as a whole, considered to be *so crucial* that it is, in effect, enforced in *its entirety*."[76]

In the particular circumstances of *TQ v. TR*, the parties were both foreign nationals who moved to Singapore when the husband obtained a job in Singapore. The prenuptial agreement was entered into abroad where it would have been perfectly valid. The court accorded the prenuptial agreement "significant weight" to prevent forum shopping by other couples undergoing divorce.[77] However, the court was at pains to point out that "even where the prenuptial agreement is *wholly local* in character, a *significant (even pivotal)* weight would nevertheless be accorded to that agreement *if the facts and circumstances so warrant it*."[78]

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[73] *Cartwright v. Cartwright* (1853) 43 E.R. 385 (Ch.). See also *Granatino v. Radmacher* [2010] 3 W.L.R. 1367 (S.C.) [*Granatino*] at paras. 31-46 and 141-146. Agreements for immediate separation or to formalise an existing separation were dealt with very differently.

[74] [2009] 2 S.L.R.(R). 961 (C.A.) [*TQ v. TR*]. See Debbie Ong, "Prenuptial agreements: a Singaporean perspective in *TQ v TR*" (2009) 21 Child and Family Law Quarterly 536; Leong Wai Kum, "The Law in Singapore on Rights and Responsibilities in Marital Agreements" [2010] Sing. J.L.S. 107.

[75] *TQ v. TR*, *ibid.* at para. 86, citing *Crossley v. Crossley* [2008] EWCA Civ 1491 and *MacLeod v. MacLeod* [2010] 1 A.C. 298 (P.C.) [*MacLeod*]. The leading local cases on marital agreements in general in Singapore are: *Kwong Sin Hwa v. Lau Lee Yen* [1993] 1 S.L.R.(R.) 90 (C.A.); *Wee Ah Lian v. Teo Siak Weng* [1992] 1 S.L.R.(R.) 347 (C.A.); *Wong Kam Fong Anne v. Ang Ann Liang* [1992] 3 S.L.R.(R.) 902 (H.C.).

[76] *TQ v. TR*, *supra* note 74 at para. 80.

[77] *Ibid.* at para. 87. Singapore, as an open economy which seeks to attract more people to live and work within its shores, will increasingly have to deal with foreign nationals living in Singapore who have prenuptial agreements which are considered binding in their own countries.

[78] *Ibid*. at para. 91. However, less deference will be accorded to an agreement which regulates the maintenance of a wife and/or children or the custody of the children since these relate to the welfare of individuals and changes in circumstances impact them adversely: *ibid.* at para. 93.

The decision of *TQ v. TR* has been received with some caution.[79] What are the interests at stake? On the one hand, one might argue that if the parties had freely and willingly come to an agreement as to how their matrimonial assets would be shared on divorce, their decision should be respected and upheld by the courts. Situations where such agreements would be discarded would necessarily be rare. On the other hand, it might be argued that the court is mandated under s. 112 of the *Women's Charter* to ensure that the division of matrimonial assets is just and equitable, and therefore the parties should not be allowed to circumvent the court's powers by way of a private agreement.

The balance struck in Singapore in *TQ v. TR*—between private autonomy and protection of the weaker party from an unequal bargain—can be compared with the recent case of *Granatino* in the U.K. Supreme Court.[80] The French husband in that case sought to argue that he should not be bound by a prenuptial agreement that he entered into, which would shield his German wife's wealth from him. The U.K. Supreme Court held (with a strong dissent by Baroness Hale) that the parties should be bound to an agreement "that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement".[81] A prenuptial agreement will therefore usually carry decisive weight—which may be likened to a rebuttable presumption—which goes further than the previous approach in English case law (which was adopted in Singapore) that a prenuptial agreement may prove determinative considering all the circumstances of the case.

How possible is it for the parties to argue that it is unfair to hold them to their agreement? In *Granatino*, it was found that the lack of independent legal advice did not make it unfair: the husband understood the agreement and had opportunity to seek legal advice, which he declined to do. Failure by the wife to disclose the value of her assets also did not make it unfair, since the husband knew that his wife had considerable wealth. However, it was recognised that the parties would not be held to their agreement if this would prejudice the reasonable requirements of any children of the family,[82] lead to one partner being left in real financial need, or mean that one partner will be able to retain all the fruits of his or her labour at the expense of the partner who looked after their children.[83] It remains to be seen whether other procedural or substantive issues may make it unfair to bind the parties to their agreement.

The effect of the decision in *Granatino* is that for wealthy spouses where there is more than sufficient wealth to satisfy their financial needs in the foreseeable future, it

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79 Leong Wai Kum, "Prenuptial Agreement on Division of Matrimonial Assets Subject to Court Scrutiny" [2009] Sing. J.L.S. 211.

80 See also Gillian Douglas, "Women in English Family Law: When is Equality Equity" in this special issue.

81 *Granatino*, *supra* note 73 at para. 75. Baroness Hale (dissenting) preferred to word it the following way to avoid a presumption of fairness (*Granatino* at para. 169):

> Did each party freely enter into an agreement, intending it to have legal effect and with a full appreciation of its implications? If so, in the circumstances as they now are, would it be fair to hold them to their agreement?

82 *Ibid.* at para. 77.

83 *Ibid.* at paras. 81 and 82.

will be fair to hold the parties to their agreement even if the outcome is very different from what a court would order without the agreement, on the basis of sharing the family's wealth.[84] Greater respect is given to private autonomy in this approach. Should a court in Singapore adopt the same stance as in *Granatino*?

This may not be possible since s. 112(1) of the *Women's Charter* directs the court to consider the *result* of the division of matrimonial assets: the proportions awarded to each spouse must be "just and equitable" or fair. It is not the *process* by which the division is arrived at that must be fair. Hence, a Singapore court may still intervene if the parties had freely and knowingly entered into an agreement which did not provide for a fair division. Such an agreement can only have "significant weight" or "magnetic importance" when the court considers whether to exercise its powers to divide matrimonial assets.[85]

The dissenting opinion of Baroness Hale in *Granatino* also provides much food for thought. She argued that giving presumptive weight to a prenuptial agreement would erase the difference between the married and unmarried. Marriage should confer a special legal status since the couple have mutually pledged to support one another and their children.[86] There is also a gender dimension to prenuptial agreements to be considered. Baroness Hale noted:

> [T]he court hearing a particular case can all too easily lose sight of the fact that … the object of an ante-nuptial agreement is to deny the economically weaker spouse the provision to which she—it is usually although by no means invariably she—would otherwise be entitled … Would any self-respecting young woman sign up to an agreement which assumed that she would be the only one who might otherwise have a claim, thus placing no limit on the claims that might be made against her, and then limited her claim to a pre-determined sum for each year of marriage regardless of the circumstances, as if her wifely services were being bought by the year? Yet that is what these precedents do. In short, there is a gender dimension to the issue which some may think ill-suited to decision by a court consisting of eight men and one woman.[87]

It is submitted that Baroness Hale was right in focussing attention on the gender divide[88] and the one-sided nature of prenuptial agreements.[89] We should not ignore women's actual socio-economic status to their detriment. It is submitted that the present approach of the Singapore court in *TQ v. TR*—which allows a court to scrutinise the substance of the prenuptial agreement and to give the agreement due weight if it provides for an equitable division between the parties—is a good one. This approach may be further refined by adopting the proposal by Gail Frommer Brod

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84 *Ibid.* at paras. 82, 112 and 169.

85 *Women's Charter*, *supra* note 1, s. 112(2).

86 *Granatino*, *supra* note 73 at para. 194. See *Women's Charter*, s. 46 for the Singaporean context.

87 *Granatino*, *supra* note 73 at para. 137.

88 See *supra* notes 13 and 57.

89 Other parties who may wish to make use of a prenuptial agreement include those who may have had a bad experience in a previous divorce and those who may wish to specially provide for children from a previous marriage by shielding some of their wealth. Anecdotal evidence indicates that such people are few in number as compared to husbands who wish to shield their wealth from their wives. The highly unusual circumstances of *Granatino*, *supra* note 73 (where it was the heiress wife who was wealthier than her husband) should be noted.

that the "economic justice of the agreement" and the "procedural fairness of its execution" should be considered in inverse relation to each other when a court decides whether to uphold the prenuptial agreement.[90] In other words:

> The more economically just the agreement, the more leeway the court should allow in the procedural requirements necessary to uphold the agreement; the more economically unjust the agreement, the more demanding the court should be in determining whether the agreement was procured fairly. In essence, the law may presume that an economically just agreement is the result of a fair bargaining process and that an economically unjust agreement is the result of an unfair bargaining process.[91]

VII. Conclusion

The enactment of the original *Women's Charter* was lacking in that it did not explicitly ensure that a homemaker's contribution during the marriage would receive value.[92] Improvements came with the amendments to the *Women's Charter* in 1980 and 1996 to the provisions relating to division of matrimonial assets.

In 1980, extensive powers were given to the court to order a division of matrimonial assets between the spouses on divorce, judicial separation or nullity of marriage. However, infelicities in the drafting of the provisions remained: a theoretical distinction was made between assets acquired by the spouses by "joint efforts" and assets acquired by the "sole effort" of one spouse; and it was only in the latter case that the court would "have regard to … the extent of the contributions 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." Even the apparently generous stance towards homemakers in the latter case was contradicted by the instruction given to the court that "the party by whose effort the assets were acquired shall receive a greater proportion".[93]

In 1996, the law on division of matrimonial assets was improved by deleting the distinction between assets acquired by "joint" and "sole" efforts. The broad power of the court was simply to be exercised "as the court thinks just and equitable". It is

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90 Gail Frommer Brod, "Premarital Agreements and Gender Justice" (1994) 6 Yale Journal of Law and Feminism 229 [Brod]. An argument could also be made that agreements made after marriage should be treated differently from prenuptial agreements. See *MacLeod*, *supra* note 75. See also Baroness Hale's dissenting judgment in *Granatino*, *supra* note 73 at para. 162.

91 Brod, *ibid.* at 288.

92 However, it could be argued that the fundamentals for recognising the equal contribution of a homemaker spouse were already embedded in the original *Women's Charter* in what is now s. 46's "equal co-operative partnership of different efforts": see Leong Wai Kum, "Fifty Years and More of the Women's Charter of Singapore" [2008] Sing. J.L.S. 1 [Leong Wai Kum, "Fifty Years and More"].

93 See Crown, *supra* note 26. The courts have sought to overcome the statutory restrictions in two ways. First, by ensuring that "rough justice is done" (*Yeong Swan Ann v. Lim Fei Yen* [1999] 1 S.L.R.(R.) 49 (C.A.)). Second, by lessening any differences between the two categories of matrimonial assets. In *Ong Chin Ngoh v. Lam Chih Kian* [1992] 1 S.L.R.(R.) 574 (H.C.), it was remarked that the court could award a spouse up to 49% of matrimonial assets acquired by the sole effort of the other spouse, if appropriate. In *Ng Hwee Keng v. Chia Soon Hin William* [1995] 1 S.L.R.(R.) 819 (C.A.), it was said that a homemaker spouse's contribution to the welfare of the family was equally relevant in the division of matrimonial assets, regardless of whether the asset was acquired by the sole effort of the other spouse or the joint efforts of the spouses.

to the credit of the courts that they have recognised the equal value of homemaking efforts in a very sensitive manner.[94] Amendments to the *CPF Act* followed in 2007 to ensure that the homemaker's share of the matrimonial assets can be received expeditiously. Practical significance is therefore given to the commitment to gender equality within the marital relationship.[95]

The intention of presenting the five cases in this article is to signpost the development of the law on matrimonial property and how matrimonial property should be divided between the spouses on marital breakdown. It is hoped that this brief survey has been a fruitful journey in helping us assess the strengths and weaknesses of the law in this area. By referring to the significant cases in each decade between 1960 to 2010, hopefully a greater understanding has been gained in the progress of the law in this area, and the continuing efforts that must be put in to ensure that all married homemakers are given due recognition for their role.

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94 See text accompanying notes 35-37.

95 *Women's Charter*, s. 46; Leong Wai Kum, "Fifty Years and More", *supra* note 92.