# Gifts and Inherited Assets in Divorce: A Look Back at *CLC v CLB* [2023] 1 SLR 1260

In many marriages, it is not uncommon for spouses to be given assets by other family members, particularly the spouses' parents, by way of inheritance or gift. Ordinarily, assets acquired by way of gift or inheritance from third parties are not liable for division in divorce proceedings. Where the gifts or inheritance are anticipated to be substantial, it is increasingly common for prenuptial agreements to explicitly exclude gifted or inherited assets from being divided in the event of divorce.

This update takes a look back at the Singapore Court of Appeal's decision in *CLC v CLB* [2023] 1 SLR 1260 (***CLC v CLB***), which held that, where a party to a marriage receives a gift or inheritance but evinces a clear and unambiguous intention to deal with that asset (by, e.g., giving it to the other party or incorporating it into the family estate), the court can give effect to such intention and include the asset for division in the matrimonial asset pool even though it would ordinarily be excluded. Significantly, the Court of Appeal did not disturb the findings in the decision below, where the General Division of the High Court (**High Court**) in *CLB v CLC* [2021] SGHCF 17 (***CLB v CLC***) held that the terms of the parties' prenuptial agreement excluding gifted or inherited assets from division would not be given weight as the donee spouse had shown a clear and unambiguous intention for these excluded assets to form part of the family's wealth.

## Our Comments

Under Singapore law, the default position is that assets acquired by third-party gift or inheritance are excluded from the matrimonial asset pool. Exceptions apply where these assets constitute the matrimonial home or if the other spouse had made "*substantial improvement*" to such assets (section 112 of the Women's Charter 1961 (**Women's Charter**)). Thus, the law recognises the donor's intention to benefit only the donee spouse (as the donor is usually related to the donee spouse), and acknowledges the need to prevent windfalls accruing to the other party to the marriage, given that division of matrimonial assets is generally based on contributions made by the spouses during the marriage.

Marital agreements, particularly prenuptial agreements, are increasingly used as tools for spouses to order their financial affairs in light of the wider family context where would-be spouses – typically young adults at the start of marriage – tend to receive goodwill financial assistance from other family members to set them up for family life. Marital agreements are not enforceable in and of themselves under Singapore law, but the Singapore courts have established that, while they hold the ultimate power to determine the just and equitable division of the matrimonial assets, marital agreements can be a vital factor for consideration (as statutorily provided for in section 112(2)(e)) of the Women's Charter). Where it would be just and equitable to do so, the Singapore courts have no objection to incorporating, sometimes wholly, the terms of a marital agreement into its orders – in particular, terms relating to the division of the parties' matrimonial assets.

The decisions in the *CLB v CLC* and *CLC v CLB* line of cases demonstrate the importance of parties adhering to the terms of their marital agreement in order for assets to retain the protection desired when the agreement was first entered into. Where parties anticipate that their treatment of some of their assets may change due to evolving demands of marriage and family life, periodic review of their marital agreement (including the entry into a postnuptial agreement with updated terms) would be highly recommended.

This decision further demonstrates the vital role played by the donor spouse's clearly and unequivocally expressed intentions *vis-à-vis* assets that would ordinarily have been excluded from the matrimonial asset pool. In coming to its decision, the apex court has clarified that treating an ordinarily excluded asset as part of the family estate or co-mingling it with other funds could cause the asset to lose its character as an excluded gift or inheritance, and thus be considered for division as part of the pool of matrimonial assets.

## Background

The marriage in this case lasted close to 16 years and produced two children. Five days before the wedding, the parties signed and executed a prenuptial agreement excluding certain categories of assets from the matrimonial asset pool in the event of divorce. The excluded assets mainly involved those which the couple anticipated they would receive by way of gift or inheritance.

Indeed, over the course of the 16-year marriage, the husband received monetary gifts from his father and also inherited substantial sums from his father's estate after his father passed away. When the marriage broke down, the husband sought to insulate the gifted and inherited assets from division, in line with both the prenuptial agreement and operation of law.

The wife, on the other hand, argued that the assets should form part of the matrimonial asset pool and be divided between the parties in view of the husband's treatment of them as family assets during the marriage. In particular, the assets in six Australian bank accounts and investment portfolios were disputed (referred to by the court as the **Disputed Assets**). The wife contended that, even if the Disputed Assets could be traced back to the gifted or inherited assets (**Gifted Monies**), they should still be divided as part of the matrimonial asset pool as the husband had evinced a real and unambiguous intention to share the Gifted Monies with her. Thus, she argued, the Disputed Assets had lost their character as excluded assets.

## The Court of Appeal's Decision

The Court of Appeal found in favour of the wife.

### *Intention of donee spouse vis-à-vis gifts and inheritance to be manifested clearly and unequivocally*

The Court of Appeal held that the intention of the donee spouse in relation to an asset acquired by way of gift or inheritance can be taken into account in determining whether that asset should still be considered: (a) a gift to that spouse and taken out of the matrimonial pool; (b) re-gifted to the other spouse and similarly excluded from the pool; or (c) as having lost its character as a gift and incorporated into the pool.

Further, given the potential impact of a finding that a donee spouse did not intend to retain any interest in the gift or inheritance, it is especially important that the court examine whether such intention had been manifested in a clear and unequivocal manner.

### *Clear and unambiguous intention by husband to treat Disputed Assets as matrimonial assets*

The Court of Appeal found that the husband had demonstrated a clear and unambiguous intention to treat the Disputed Assets as matrimonial assets:

(a) **Co-mingling of funds**: The husband had combined Gifted Monies with the rest of his assets. For instance, some of the monies he received from his late father's Australian will were mixed with the funds existing in another account, from which monies were spent when the family made trips to Australia. He had also used some of the Gifted Monies to purchase a property registered in the

wife's name. The husband had further placed part of the Gifted Monies in joint accounts from which the family's expenses were paid. The Court of Appeal held (at [92]) that "… *where one of the parties to a marriage places monies derived from non-matrimonial assets into a joint account with the other spouse which can be separately operated by each of them, a rebuttable presumption indeed arises that the transferring spouse intends to share the said monies with the other*".

(b) **Written correspondence**: The Court of Appeal affirmed the High Court's findings that the "*open and frank contemporaneous correspondence*" between the husband and wife as recently as three years prior to the ancillary matters hearing showed that the husband had considered the matrimonial assets, including the Disputed Assets, to be pooled together for the family's use despite the prenuptial agreement. In emails, he had referred to the assets as part of the family's "*Total Wealth*", "*our liquid assets*", and "*Our Net Wealth*", evincing that both husband and wife operated on a common understanding and managed their financial affairs on a footing that was inconsistent with the separation of property regime set out in their prenuptial agreement.

In the circumstances, the Court of Appeal allowed the appeal, holding that the Disputed Assets were to be included in the pool of matrimonial assets available for division. It also upheld the decisions of the High Court and the Appellate Division of the High Court that the pool of matrimonial assets was be divided 50:50 between the parties.

## Key Takeaways

The Court of Appeal's decision provides welcome clarity on the treatment of assets acquired by parties over the course of a marriage. Parties should rightfully not be allowed to exclude former spouses from a share of gifted or inherited assets due simply to legal technicalities if the reality was that those assets were always clearly and unequivocally intended by the donee spouse to benefit the family. What is intended to be shared between spouses during the good times of the marital relationship should not be sequestered from the other spouse's reach after marital breakdown.

About half a year after *CLC v CLB* was handed down, the High Court had the occasion, in *VXM v VXN* [2023] SGHCF 39, to consider the "clear and unequivocal" test. In that case, the wife argued that certain items (comprising mostly luxury handbags, jewellery, and watches) gifted to her by her husband and paid for using matrimonial funds should be excluded from matrimonial asset pool as they were "*for women*" and that the husband "*had not expressed any intention to assume any interest in ornaments for women*". The High Court rejected the wife's argument, finding that the mere fact that the luxury items were for women did not mean that the husband had evinced a clear and unequivocal intention to divest his interests in such assets in favour of the matrimonial pool. The High Court therefore included the luxury items among the matrimonial assets for division.

The decision in *CLC v CLB*, taken together with the High Court's decision in *CLB v CLC*, reinforces the fact that the terms of prenuptial agreements should not be taken lightly, especially if the prenuptial agreement is to have continued effect as a tool to delineate between spouses what is and is not to be shared. Where prenuptial agreements are drawn up at the request of family members who anticipate being the donors of gifts and inheritance (such as the parents of one of the parties), care should be taken to ensure that the couple fully buys into the process and understands the ramifications of future behaviour on their prenuptial agreement.

The decision also underscores the importance of continued frank conversations between spouses and family members on the treatment of assets that one spouse may receive from his or her family members over the course of the marriage. Where donor family members wish to minimise the risk of heirloom assets being divided in divorce proceedings, legal advice should be sought on available options, which may include postnuptial agreements or trust arrangements that delay the transfer of legal and/or beneficial ownership of the asset to the spouse.

If you would like information or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or the following Partner:

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