

Resulting and Constructive Trusts in the Contemporary Singaporean Family Context

MAN YIP*

I. Introduction

The legal rules that emerge in a society are shaped by the conditions of that society. In the area of trusts law, this chapter argues that the English principles of the presumed resulting trust and the common intention constructive trust have been adapted to suit the Singaporean family context. At first sight, given that Singapore law has declined to follow the *Stack v Dowden*¹ line of developments that have taken place in English law concerning beneficial ownership of family property,² it may appear that Singapore trusts law is more conservative³ and that pre-*Stack* English law is better preserved on Singapore soil than in England.

This chapter argues that whilst there is no outwardly *radical* departure from pre-*Stack* English trusts law principles in the family context under Singapore law, subtle substantive adaptation has occurred. First, a clear framework of analysis has emerged, even though the principles of the presumption of resulting trust and the common

* Associate Professor, Yong Pung How School of Law, Singapore Management University. The author would like to thank Ying Liew, Ying-Chieh Wu, Kelvin Low and Lusina Ho for their insightful comments and questions. All errors and views remain the author's own.

¹ *Stack v Dowden* [2007] UKHL 17, [2007] 2 AC 432.

² It is currently unclear if the approach in *Marr v Collie* [2017] UKPC 17, [2018] AC 631, which suggested that the *Stack* reasoning is applicable beyond the purely domestic setting, will replace the *Stack* approach in English law. See *Thomas v Bulathwela* [2019] EWHC 3511 (Ch) [25]–[26].

³ See KFK Low, 'Victoria Meets Confucius in Singapore: Implied Trusts of Residential Property' in YK Liew and M Harding (eds), *Asia-Pacific Trusts Law, Vol 1: Theory and Practice in Context* (Hart Publishing 2021). Low, whose chapter is intensely focused on the resolution of property disputes between spouses, observed that 'Singapore law likely reflects the most conservative position among the leading Commonwealth jurisdictions both in relation to the resulting trust as well as with respect to the common intention constructive trust'. See also M Yip, 'The Presumptions of Resulting Trust and Advancement under Singapore Law: Localisation, Nationalism and Beyond' in A Robertson and M Tilbury (eds), *Divergences in Private Law* (Hart Publishing 2016).

intention constructive trust that operate within the framework do not look radically different from pre-*Stack* English law. Second, and more pertinently, most of the family property disputes that come before the Singapore courts concern non-spousal types of family relationships. They tend to be legal contests arising between parents/parents-in-law and their adult children/children-in-law or between siblings.⁴ As a consequence, the liberality of the *Stack* approach – which was crafted to cater for the informal and less calculative nature of a relationship between committed partners such as spouses or long-term cohabitantes⁵ – is unsuited for other types of family relationships. Simply put, the conservative pre-*Stack* English law principles – developed in the context of spousal or spousal-like relationships – have been deployed by the Singapore courts to resolve property disputes arising in other family relationships. English law is in this sense adapted to suit the cultural contours of the Singapore family.

In the main, this chapter seeks to explain the seemingly conservative developments of the presumption of resulting trust and the common intention constructive trust under Singapore law by reference to the features of the types of disputes that usually come before the Singapore courts. The Singapore courts' treatment of these cases also reveals the underlying assumptions on non-spousal family relationships, as well as the contemporary socio-economic and cultural conditions of Singaporean society.

In particular, many of these property disputes are underlined by an argument as to whether the relevant property had been purchased or transferred pursuant to an informal family understanding which reflects that the parties had intended to hold their interests differently from the legal title. These cases are typically characterised by the lack of formal documentation, the absence of direct evidence from key witnesses who had already died at the time of trial, the children's strong deference to the parents' wishes and a communal treatment of property by at least some of the family members. Where the party relying on the family understanding is able to convince the Singapore court that his or her version of the story is more credible, the presumption of resulting trust and the common intention constructive trust are wielded to give legal effect to that family understanding. In other words, these are not cases in which the court determines the parties' respective shares in the property based purely on the conduct of parties in a horizontal relationship, much less imputing an intention based on what would be fair sharing in the circumstances. Instead, the informal family agreement is often formed between two generations and concerns how parents provide for their adult children. Moreover, the assets in dispute are not always the family home – an asset that is regarded as the principal form of wealth between spouses or unmarried cohabitantes in English case law.

⁴ See, eg, *Su Emmanuel v Emmanuel Priya Ethel Anne* [2016] 3 SLR 122; *Tan Yok Koon v Tan Choo Suan* [2017] 1 SLR 654; *Ong Chai Soon v Ong Chai Koon* [2022] SGCA 36; *Somwonkwan Sharinrat v Wong Hong Sang Maurice* [2021] SGHC 127; *Kwek Pit Seng Jeffrey v Koek Ah Hong* [2021] SGHC 143; *Koh Lian Chye v Koh Ah Leng* [2021] SGCA 69; *Tay Nguang Kee Serene v Tay Yak Ping* [2021] SGHC 194; *Lim Sze Wei (the joint executor and trustee of the estate of Mrs Lim Ah Fong née Loh Ah Fong) v Lim Chuan Wei* [2021] SGHC 267.

⁵ See M Yip, 'Comparing Family Property Disputes in English and Singapore Law: "Context" is Everything' (2021) 41 *Legal Studies* 474.

II. Doctrinal Departure from English Law

A. The *Chan Yuen Lan* Framework

Chan Yuen Lan v See Fong Mun is generally considered to be a watershed in Singapore trusts law for two reasons.⁶ First, and the most frequently discussed aspect, is the Singapore Court of Appeal's unequivocal refusal to follow the *Stack* approach, attributing the development of the English approach to the unique 'changing economic and social conditions in England'⁷ and the diminishing relevance of the presumptions of resulting trust and advancement under English law.⁸ The Court also observed that the *Stack* approach has been fiercely criticised for being subjective and uncertain in its operation,⁹ noting in particular the lack of a sharp definition for the domestic and commercial context distinction which is critical in determining the applicability of the relevant equitable doctrine under English law.¹⁰

Second, and pertinently for the development of Singapore law, *Chan Yuen Lan* sets out a multi-step framework of analysis to address property ownership disputes where parties have contributed unequally to the purchase price. The framework, which reflects Lord Neuberger's minority approach in *Stack*, affirms the relevance of both the applicability of the resulting trust and the common intention constructive trust under Singapore law, as well as clarifying their interplay in resolving property disputes. The Court also made it crystal clear that Singapore law will not impute an intention¹¹ and where the evidence of parties' intentions is available, it will not resort to presumptions.¹² Hence, when confronted with a property ownership dispute, whether arising in the commercial or domestic context, lawyers now refer to the *Chan Yuen Lan* framework. This has contributed to a growing pool of Singapore cases on the common intention constructive trust. As the Singapore Court of Appeal acknowledged in *Chan Yuen Lan*,¹³ there were previously very few cases on the common intention constructive trust and one reason for the infrequent invocation of this equitable doctrine could be the 'perceived restrictive nature of the remedy' following the English case of *Lloyd's Bank plc v Rosset*.¹⁴

It would be apposite to set out the *Chan Yuen Lan* framework in full:

In view of our discussion above, a property dispute involving parties who have contributed unequal amounts towards the purchase price of a property and who have not executed a

⁶ *Chan Yuen Lan v See Fong Mun* [2014] 3 SLR 1048, noted in HW Tang, 'A Dispute in Chancery Lane: Re-Considering the Resulting and Common Intention Constructive Trust' [2015] *Conveyancer* 169.

⁷ *Chan Yuen Lan* (n 6) [127]. The Singapore Court of Appeal pointed to the 'rise in property prices in England (as well as other parts of the UK), coupled with the dramatic increase in the number of unmarried couples living together (some with dependent children) over the past 50 years'.

⁸ For the Singapore Court of Appeal's reasons, see *ibid* [127] and [131]–[132].

⁹ *ibid* [136].

¹⁰ *ibid* [153]–[155].

¹¹ *ibid* [160].

¹² *ibid* [51].

¹³ *ibid* [97].

¹⁴ *Lloyd's Bank plc v Rosset* [1991] 1 AC 107.

declaration of trust as to how the beneficial interest in the property is to be apportioned can be *broadly* analysed using the following steps in relation to the available evidence:

- (a) Is there sufficient evidence of the parties' respective financial contributions to the purchase price of the property? If the answer is 'yes', it will be presumed that the parties hold the beneficial interest in the property in proportion to their respective contributions to the purchase price (ie, the presumption of resulting trust arises). If the answer is 'no', it will be presumed that the parties hold the beneficial interest in the same manner as that in which the legal interest is held.
- (b) Regardless of whether the answer to (a) is 'yes' or 'no', is there sufficient evidence of an express or an inferred common intention that the parties should hold the beneficial interest in the property in a proportion which is different from that set out in (a)? If the answer is 'yes', the parties will hold the beneficial interest in accordance with that common intention instead, and not in the manner set out in (a). In this regard, the court may not impute a common intention to the parties where one did not in fact exist.
- (c) If the answer to both (a) and (b) is 'no', the parties will hold the beneficial interest in the property in the same manner as the manner in which they hold the legal interest.
- (d) If the answer to (a) is 'yes' but the answer to (b) is 'no', is there nevertheless sufficient evidence that the party who paid a larger part of the purchase price of the property ('X') intended to benefit the other party ('Y') with the entire amount which he or she paid? If the answer is 'yes', then X would be considered to have made a gift to Y of that larger sum and Y will be entitled to the entire beneficial interest in the property.
- (e) If the answer to (d) is 'no', does the presumption of advancement nevertheless operate to rebut the presumption of resulting trust in (a)? If the answer is 'yes', then: (i) there will be no resulting trust on the facts where the property is registered in Y's sole name (ie, Y will be entitled to the property absolutely); and (ii) the parties will hold the beneficial interest in the property jointly where the property is registered in their joint names. If the answer is 'no', the parties will hold the beneficial interest in the property in proportion to their respective contributions to the purchase price.
- (f) Notwithstanding the situation at the time the property was acquired, is there sufficient and compelling evidence of a subsequent express or inferred common intention that the parties should hold the beneficial interest in a proportion which is different from that in which the beneficial interest was held at the time of acquisition of the property? If the answer is 'yes', the parties will hold the beneficial interest in accordance with the subsequent altered proportion. If the answer is 'no', the parties will hold the beneficial interest in one of the modes set out at (b)–(e) above, depending on which is applicable.¹⁵

B. General Observations on Post-*Chan Yuen Lan* Developments

The rest of the chapter focuses on reviewing post-*Chan Yuen Lan* cases. Four key observations may be made of these cases at the outset. First, although the framework prescribes a particular sequence in which the different doctrines are to be addressed, more recent cases have taken the view, whether explicitly or implicitly, that the prescribed sequence

¹⁵ *Chan Yuen Lan* (n 6) [160] (emphasis added).

need not be rigidly adhered to.¹⁶ Much would depend on parties' pleadings. This clarification renders the *Chan Yuen Lan* framework a more useful and sensible analytical tool.

Second, post-*Chan Yuen Lan* cases have not noticeably advanced the law of common intention constructive trust in Singapore. There has not been a liberalisation of the *Rosset* approach¹⁷ which established that where an express common intention could not be proved, a common intention was generally to be inferred from direct contributions to the purchase price. Indeed, the Singapore Court of Appeal affirmed in *Geok Hong Co Pte Ltd v Koh Ai Gek* that local law remains very much focused on parties' direct financial contributions in the inference of a common intention.¹⁸ As I have explained in a previous publication,¹⁹ this state of affairs can be explicated by reference to the type of family property disputes that most frequently come before the Singapore courts. Unlike the English landmark decisions, the cases that have confronted the Singapore apex court have not concerned unmarried cohabitants parting ways which require the court to determine their beneficial interests in the family home, an area that is fraught with socio-economic issues.²⁰ The landmark Singapore cases that have established the modern Singapore law in the area of beneficial ownership over family property have generally involved children fighting over parents' assets or have been shaded by such a contest.²¹ This feature, as I have argued, would explain the Singapore courts' focus on the proprietary aspects of the disputes.²² Notably, *Geok Hong Co*, a post-*Chan Yuen Lan* decision, concerned a property held in the name of the family owned company which the claimant and his family had resided in rent free for 40 years. The unusual fact pattern, coupled with the lack of documentation of an alleged exchange between the claimant and his father (the family patriarch) over the former's entitlement to the home, rendered the application of a conventional common intention constructive analysis far less straightforward, much less provided occasion for liberalisation. In the subsequent

¹⁶ *Ng So Hang v Wong Sang Woo* [2018] SGHC 162 [24]; *Soemarto Sulistio v Stukan Yetty Fang* [2021] SGHC 4 (the appeal before the Appellate Division of the Singapore High Court was focused on whether the proper legal inquiry ought to have been whether the husband intended to make an *inter vivos* gift to the wife as opposed to whether the parties had a subsequent change in common intention: see *Soemarto Sulistio v Stukan Yetty Fang* [2021] SGHC(A) 5); *Koh Lian Chye* (n 4) [26]; *Ong Chai Koon v Ong Chai Soon* [2021] SGHC 76 [43]–[46] (this point was not appealed nor revisited by the Singapore Court of Appeal: *Ong Chai Soon* (CA) (n 4). cf *Lim Sze Wei* (n 4) [19].

¹⁷ Endorsed to be part of Singapore law in *Tan Thiam Loke v Christina Woon* [1991] 2 SLR(R) 595.

¹⁸ *Geok Hong Co Pte Ltd v Koh Ai Gek* [2019] 1 SLR 908 [81]. cf *Ng So Hang* (n 16) [56]–[57]. The High Court accepted that a common intention can be inferred from indirect financial contributions that enable direct contributions to be made towards the purchase price.

¹⁹ See Yip, 'Comparing Family Property Disputes in English and Singapore Law' (n 5) 483–86.

²⁰ The prevailing societal attitude towards unmarried cohabitation in Singapore is that it is a pre-marital short-term arrangement. It has yet to be widely accepted as a long-term family structure within which children are produced. See '50 per cent of Singles Okay with Cohabitation' *The New Paper* (15 February 2014), available at: www.asiaone.com/singapore/50-cent-singles-okay-cohabitation; K Strijbosch 'Single and the City: State Influences on Intimate Relationships of Young, Single, Well-Educated Women in Singapore' (2015) 77 *Journal of Marriage and Family* 1108, 1113. Moreover, there are non-commercial, intimate relationships (whether there is cohabitation or not) which are not based on a family paradigm such as the domestic partnership we see in *Stack*: see, eg, *Ng So Hang* (n 16) 30 ('a relationship of some intimacy at the start which persisted for a considerable period of time'); *Xu Zhigang v Wang Fang* [2020] SGHC 254 (an extra-marital affair).

²¹ See *Lau Siew Kim v Yeo Guan Chye Terence* [2008] 2 SLR(R) 108; *Chan Yuen Lan* (n 6); *Geok Hong Co* (n 18). In *Lau Siew Kim* and *Chan Yuen Lan*, the parties did not even advance any argument based on the common intention constructive trust.

²² Yip, 'Comparing Family Property Disputes in English and Singapore Law' (n 5).

case of *Ong Chai Soon v Ong Chai Koon*, the Singapore Court of Appeal confirmed that in inferring a common intention, the focus would very much be on the financial contributions of the parties.²³ It, however, acknowledged that in exceptional situations a common intention can be inferred from other forms of conduct.²⁴ In that case,²⁵ a property dispute arose between siblings and the Court noted that it was an exceptional situation as ‘neither the appellant nor the respondents had made any direct financial contributions towards the purchase price of the Property in the typical manner, such as by using moneys from their personal bank accounts or Central Provident Fund’. Instead, sub-tenancy rental monies and earnings from what was regarded as a family business were used to finance the mortgage instalments.²⁶ The Court thus held that the High Court was justified in inferring a common intention from ‘*the totality of the evidence*’, instead of focusing on the parties’ direct financial contributions.²⁷ Notwithstanding that neither side had made direct financial contribution from the typical sources of funding, if the sub-tenancy rental proceeds and the family business earnings were indeed profits generated from family assets, they would be considered as parties’ direct financial contributions.

Third, and related to the second observation, the clarification on the interplay between the presumption of resulting trust and the common intention constructive trust in the *Chan Yuen Lan* framework has not led to a sharp decrease in the number of cases in which the presumptions of resulting trust and/or advancement are argued as the primary or sole case. This may come as a surprise as the common intention constructive trust, at least based on the English experience, is thought to be more flexible and therefore more appropriate for the domestic setting. The presumption of resulting trust, which is exclusively focused on the parties’ direct contributions to the purchase price at the time of the purchase of the property, is generally assumed to be more in line with dealings arising in the commercial context.²⁸ There are two probable reasons for this development. First, the structure of the *Chan Yuen Lan* framework prescribes the presumption of resulting trust as a starting point which would undoubtedly influence how parties plead their case. The influence of this factor may however diminish over time in view of recent judicial comments that parties need not faithfully adhere to the apparent order of the analysis. Second, and arguably the more influential factor, is that the common intention constructive trust doctrine does not greatly assist the parties in a number of the Singapore disputes. There are two facets to this factor. As explained above, the doctrine remains rather restrictive under Singapore law. The flip side, which is the other facet, is that a majority of the post-*Chan Yuen Lan* disputes are not concerned with family members (at least one of whom is the legal owner) contributing financially or non-financially to a shared home as a joint commitment. As highlighted above, most of the cases concern contests between parents and their adult children or between siblings. Further, in many of the cases the contributions

²³ *Ong Chai Soon* (CA) (n 4) [35].

²⁴ *ibid.*

²⁵ The facts of the case are discussed in the text to and around nn 41–46.

²⁶ See discussion in the text to and around nn 59–60.

²⁷ *Ong Chai Soon* (CA) (n 4) [36].

²⁸ *Stack* (n 1) 455.

relied on by the parties to acquire an equitable interest in the property are financial in nature, usually comprising contributions to the purchase price and/or mortgage instalments. Parties who do not rely on direct financial contributions for the acquisition of an equitable interest (or an equitable interest that differs from the legal interest) usually advance a case based on an *inter vivos* gift being made in their favour; argue their case based on direct evidence of a gift; or invoke the presumption of advancement. Even in cases where the common intention constructive trust is argued, the argument is built on whether the parties had arrived at a certain understanding or agreement, whether at the time of purchase or post-purchase, as to their sharing of the asset that was different from the legal interests.²⁹ In other words, these are cases concerned with divining an express common intention.

Fourth, where the litigants are joint legal owners, this would not give rise to an automatic and strong presumption under Singapore law that they are to share the property equally in equity while all parties are still alive.³⁰ The Singapore courts are aware that where the parties concerned are siblings or in a parent–child relationship, they might have opted for joint tenancy to enable the operation of the right of survivorship without intending equal sharing in equity during their lifetime. As I have explained in detail elsewhere, joint tenancy is frequently used in Singapore as a device to effect intergenerational transfer of wealth.³¹ Notably, in a couple of the cases the Singapore courts found on the evidence that parties had been joined as legal co-owners post-purchase of the property to enable them to contribute (usually through their Central Provident Fund) to mortgage instalments which the original legal owners had difficulty paying.³² This factual finding would strengthen the case that the parties did not intend equal sharing in equity. It also goes to establish that sharing in equity would be based on their financial contributions, thereby greatly reducing the strength of an applicable presumption of advancement and rendering it easily rebuttable.³³ I will return to this point in section IV.

²⁹ In *Soemarto Sulistio* (n 16), before the Singapore High Court, the parties argued their case based on the common intention constructive trust. The case, however, concerned 122 gold bars which were purchased as an investment, as opposed to a family home. The parties' arguments were directed at the parties' intention post-purchase when the husband put his signature under the 'Delivery Instructions' section of the gold certificates, without indicating the name of the intended transferee. On appeal ([2021] SGHC(A) 5 [5]), the Appellate Division of the Singapore High Court ruled that 'an important factual question is whether the appellant intended to gift legal and beneficial ownership of the gold bars to his wife solely when he signed the Original Gold Certificate in 2016'.

³⁰ *Ng So Hang* (n 16) [46]–[47]; *BUE v TZQ* [2018] SGHC 276, [2019] 3 SLR 1022 [57].

³¹ Yip, 'Comparing Family Property Disputes in English and Singapore Law' (n 5). The morbidity and inauspiciousness associated with drafting a will, coupled with estate duty which was applicable to all Singapore assets owned by the deceased until its abolition on 15 February 2008, might have made will-making a less popular option.

³² *Su Emmanuel* (n 4) (the husband's sister was added as a legal owner to the married couple's property to enable her to assist in the mortgage repayments; their respective registered legal interests were 50% (wife); 49% (husband's sister) and 1% (husband)); *Low Yin Ni v Tay Yuan Wei Jaycie* (formerly known as *Tay Yeng Choo Jessy* [2020] SGCA 58 (the son and his wife were added as co-owners after they got married to enable them to financially help with mortgage repayments); *Somwonkwan Sharinrat* (n 4) [61] (the son and his wife became co-owners as his parents had difficulty servicing the mortgage loan on their own).

³³ *Low Yin Ni* (n 32) [8]–[10].

III. The Singapore Family Norms

In section III, we turn to examine the recent Singapore disputes with attention being paid to the characteristic norms within a Singapore family. Extracting these norms not only advances our understanding of the Singaporean family, but also helps us better appreciate the apparent conservatism of the Singapore developments, as well as the subtle adaptation of the English trust principles on Singapore soil. Of course, an important caveat for this part of the analysis is that the norms are gleaned from a review of the litigation that has been resolved by the local courts. These are the most complex cases where substantial assets are at stake, reliable documentary evidence or oral testimonies are lacking, where family relationships have irretrievably broken down or where all (or most) parties involved have the means to pursue litigation to a court determination. It is possible that the norms highlighted are not representative of family property disputes that have been settled out of court. Nor am I suggesting that the norms accurately depict all Singaporean families as the observations are not obtained from or corroborated by a contemporaneous sociological survey. The value of my analysis is nevertheless significant. First, it is the disputes that end up in court which shape the developments of Singapore law. Second, the analysis can assist some Singaporean families to have better planning of their dealings, in order to avoid bitter and long drawn out court battles.

I should also add that this chapter is a complementary research project to another book chapter that I have co-authored with Hang Wu Tang in which we explored the family norms of very rich families in Singapore to gain insights into how their disputes on family assets and family business germinate and can be prevented.³⁴ The present chapter, with its focus on the presumption of resulting trust and the common intention constructive trust, considers only family property disputes but without limiting the scope of the review to the wealthy. Some of the family norms observed amongst the very rich are equally relevant in less wealthy families residing in less opulent homes, such as government housing flats or private apartments. These norms include, as examined below, the informality of family dealings between the different generations, the deference and trust which the younger generation usually pay towards the older generation, and the communal treatment of assets owned by family members or family businesses. The analysis offered in this chapter can thus provide a general indication of the local family culture.

A. Informal Family Understanding

In a number of the Singapore family property disputes, the courts have found that an informal family understanding existed which relates to the specific property in dispute or family assets in general. It is informal because the family understanding

³⁴ See M Yip and HW Tang, 'Crazy Rich Families in Singapore: Property, Trust and Business Disputes and the Incompatibility of English Principles' in R Nolan, M Yip and HW Tang (eds), *Trusts and Private Wealth Management: Developments and Directions* (Cambridge University Press 2022).

has not been properly or contemporaneously reduced in writing. It is divined by the court based on an evaluation of inconsistent and/or patchy oral testimonies from all parties involved in the litigation.³⁵ There is undoubtedly some conjecture and guesswork involved.³⁶ Nor could the court be confined to reviewing evidence at the time of purchase in determining disputes argued based on the presumptions of resulting trust and advancement if it were to arrive at an objective and educated guess as to what probably happened. It is thus hardly surprising that the Singapore Court of Appeal abolished the restrictive rule in *Shephard v Cartwright*³⁷ and allowed all evidence to be admitted and assessed as to the appropriate weight to be ascribed.³⁸ As the Court explained, ‘the new approach would allow the court to consider the parties’ intentions more holistically and achieve a fairer result especially in complex cases where parties’ intentions are not readily apparent’.³⁹

Informality in family dealings is nothing new. The abolition of the anachronistic rule in *Shephard v Cartwright* – which established that post-purchase acts and declarations are only admissible as evidence against the party who made them for the purpose of rebutting the presumptions of resulting trust and advancement – is also somewhat within expectation.⁴⁰ There are, however, two features of the informal family understanding in the Singaporean family context that merit further scrutiny. In *Quek Hung Heong v Tan Bee Hoon (executrix for estate of Quek Cher Choi)*, the Singapore High Court has made the following observation regarding an informal family understanding:

It is not unusual for arrangements between family members not to be documented. That is true – it may even be especially true – when those arrangements concern money or property rights, always a sensitive subject-matter. Arrangements of this nature are arrived at in an informal context between individuals of different generations, united by their close and unique relationship as family members and subject to the inevitable deference which younger members accord to older members. It is typical that family members will not feel the same desire or need to document their rights and interests that strangers would. Even if they were to feel the same desire or need to do so, it is also typical that they would feel inhibited in acting upon it. That would have been even more true of the more patriarchal families of 1966 than it is of today’s more egalitarian families.⁴¹

First, the informal family understanding is usually formed between two different generations, often concerning how parents would distribute family wealth amongst their adult children. Second, the deference which the younger family members accord to the

³⁵ See, eg, *Tan Yok Koon* (n 4) [2]; *Ong Chai Soon* (HC) (n 16) [1] (on appeal, the Singapore Court of Appeal found no basis to ‘disturb the specific findings of fact made by’ the lower court: see *Ong Chai Soon* (CA) (n 4) [37]).

³⁶ *Ong Chai Soon* (HC) (n 16) [52]. The Singapore High Court commented that ‘[i]n the absence of any documentary evidence, in assessing the oral evidence of the Ong siblings, I had to consider the inherent probabilities of each side’s version of events against the undisputed facts’.

³⁷ *Shephard v Cartwright* [1955] AC 431.

³⁸ *Tan Yok Koon* (n 4) [110].

³⁹ *ibid.*

⁴⁰ In *Lau Siew Kim* (n 21), a case decided nine years before *Tan Yok Koon*, the Singapore Court of Appeal had already considered the parties’ entire course of relationship in assessing the strength of the presumption of advancement, without differentiating between pre-purchase acts and declarations and post-purchase acts and declarations.

⁴¹ *Quek Hung Heong v Tan Bee Hoon (executrix for estate of Quek Cher Choi)* [2014] SGHC 17 [91].

older family members is why the family deems it unnecessary to have matters recorded in black and white. The corollary to deference is complete trust which the adult children often repose in parents who are authoritative figures at home. The trust is so strong in some cases that they do not even quibble over who is registered as the legal owner of the family assets at the time of purchase and quite often, even up to the time of the parents' demise or loss of mental incapacity.

In *Ong Chai Soon v Ong Chai Koon*,⁴² six siblings disputed over whether they shared a common intention that a Housing and Development Board (HDB) shophouse purchased many years ago was a family asset or their 'retirement fund' and that they were to share in the sale proceeds equally if the property was sold. The shophouse was registered in the name of the oldest son,⁴³ the defendant, who claimed sole ownership of the property. In particular, the shophouse housed, amongst others, a hair salon business that was registered in the defendant's sole name. The Singapore High Court,⁴⁴ on a careful review of the evidence and tracing of the source of the funding for the property, concluded that the parties did indeed have such a common intention, having regard to the fact that the property was purchased using a combination of funds that were regarded as family monies. As to why the property and the business were registered in the name of the defendant, the Court clearly preferred the evidence of the second plaintiff (the youngest sibling) that she had 'thought it was probably fine to have the property registered in the name of the defendant given the whole family knew that this was considered a "family property"'.⁴⁵ This was notwithstanding that the siblings always had a strained relationship.⁴⁶ According to the second plaintiff, a collective decision to purchase the shophouse was arrived at pursuant to a discussion with her mother (who managed the family finances) and the siblings.⁴⁷ When their mother – whose presence must have prevented deep-seated tension between the siblings from developing into legal contests during her lifetime – died in 2016, the defendant's behaviour led the plaintiffs to become concerned that he wanted to claim sole ownership in the shophouse, which resulted in the courtroom battle. On appeal, the Singapore Court of Appeal found no basis to disturb the factual findings and conclusion of the High Court on the issue of common intention constructive trust.⁴⁸

In *Tay Nguang Kee Serene v Tay Yak Ping*,⁴⁹ the plaintiff asked her parents to use the proceeds from her successful leather goods business to purchase an apartment for the entire family to live in. An apartment was duly purchased and registered in the names of the father, the mother and the youngest brother, Yak Ping, as tenants-in-common

⁴² *Ong Chai Soon* (CA) (n 4).

⁴³ He was the existing tenant of the shophouse and the opportunity to purchase the property was offered to him in April 1995: see *ibid* [68].

⁴⁴ *Ong Chai Soon* (HC) (n 16).

⁴⁵ *ibid* [69].

⁴⁶ *ibid* [19].

⁴⁷ *ibid* [68].

⁴⁸ *Ong Chai Soon* (CA) (n 4) [30]–[42]. The Court of Appeal also upheld the High Court's orders for the sale of the property and equal distribution of the sale proceeds amongst the Ong siblings, even though it had 'considerable reservations' regarding the High Court's basis for arriving at its conclusion to make the aforesaid orders (see *Ong Chai Soon* (CA) (n 4) [117]–[124]).

⁴⁹ *Tay Nguang Kee Serene* (n 4).

whose respective interests were 50:25:25. Her mother later died and according to her will, her one-quarter interest in the property was bequeathed to her two other children and Yak Ping in equal shares.⁵⁰ This apartment was later sold in an *en bloc* exercise and a second apartment, registered in the names of the father and Yak Ping (the defendants). It was not disputed that the purchase of the second apartment was funded mainly by the proceeds from the sale of the first apartment. Yak Ping contributed \$26,300 towards the purchase of the second apartment. The second apartment was subsequently sold in an *en bloc* exercise, yielding close to \$3.3 million in sale proceeds which became the subject matter of the dispute between the plaintiff and the defendants. The plaintiff claimed that the sale proceeds were held on resulting trust for her as the purchase of both apartments was mostly funded by the proceeds of her business. Her alternative claims lay in constructive trust and express trust. Yak Ping, on the other hand, contended that the leather goods business, registered in the names of the plaintiff, the father and Yak Ping, was a family business rather than being solely owned by the plaintiff. He also argued that their father had used his own money to pay for the purchase of the first apartment. To cut a long story short, based on the objective evidence, the Singapore High Court found for the plaintiff, holding that the first apartment was indeed purchased with the proceeds of the business which was determined to be owned solely by the plaintiff on a balance of probabilities. Accordingly, the sale proceeds of the second apartment (subtracting the sum of \$26,300 which was provided by Yak Ping) was held on trust by the defendants for the plaintiff.

The application of the law was straightforward and brief once the Court had completed the Herculean task of combing through the evidence to decide which party's version of the events was more credible on a balance of probabilities. What is pertinent to note, for present purposes, is the level of trust which the plaintiff reposed in her father. She did not object to the defendants' names being included in the business nor did she object to the apartments, which were mainly funded by business proceeds belonging to her, being registered in the names of her parents and other siblings. The Court noted that '[i]t is understandable that [the plaintiff], and her siblings, trusted Father in these circumstances and there was never any consideration for the need to document such arrangements' as their father, 'an authoritative figure in the family', had reassured the plaintiff that the first apartment remained hers.⁵¹ However, the plaintiff's father lost mental capacity in 2017 and it thereafter became clear to the plaintiff that Yak Ping wished to claim the sale proceeds of the second apartment for himself. The father was unable to give testimony at trial, although the other siblings did step forward to corroborate the plaintiff's version.

In both *Ong Chai Soon v Ong Chai Koon* and *Tay Nguang Kee Serene*, an informal family understanding was found and given effect to through implied trusts. In *Ong Chai Soon v Ong Chai Koon*, the informal family agreement was legitimised by the common intention constructive trust as all siblings were taken to have contributed to the purchase price of the shophouse equally since it was funded by family funds. In *Tay Nguang Kee Serene*, on the other hand, the family understanding was indirectly

⁵⁰The sale proceeds from the sale of this property were paid to the legal owners based on their respective shares. The plaintiff allowed her two other siblings to keep their shares of the sale proceeds (see *ibid* [12]).

⁵¹*ibid* [83].

given effect to through the presumption of resulting trust as it was the plaintiff who had contributed to the purchase monies of the two apartments. The Court's factual findings meant that the presumption could not be rebutted on the facts. Even though the device of the presumption of resulting trust is not agreement based, its application indirectly buttressed the contributor's position.⁵² And conversely, the available evidence supported the presumption.

Of course, it is not in every case that an informal family agreement is alleged that one would be found by the court on the facts. Parties may be fabricating an informal family arrangement that does not exist; there might be insufficient evidence to prove the existence of the family agreement; or the parties might have come to an understanding that was not shared by the other family members. In any event, the lack of a proper documentation of parties' intentions and understanding often results in property contests once the authoritative parent dies, especially if the financial contributions of the co-owners in the younger generation are unequal.

In *Koh Lian Chye v Koh Ah Leng*,⁵³ an HDB shophouse was registered in the joint names of the father and his two sons, Lian Chye and Ah Leng. After the demise of their father, the two brothers each claimed to be solely entitled to the property based on a common intention constructive trust. The purchase of the property was financed by a bank loan. Although the mortgage was taken out in the joint names of all parties, Ah Leng had never contributed towards the repayment. Lian Chye applied \$76,800 towards paying down the mortgage of \$570,000; the rest was paid off by the father. Ah Leng, in particular, relied on a video recording of a discussion that took place at the father's bedside in the hospital at a point when the latter was speaking in a 'very soft' and 'breathy' manner.⁵⁴ During the discussion, the father asserted that 'Lian Chye's share in the Property "cannot eat" the shares held by Ah Leng and himself, their shares could "eat" Lian Chye's share.'⁵⁵ The trial judge, with whom the Singapore Court of Appeal agreed, did not consider the video relevant as the father was found to be labouring under possible dementia at the time of the recording.⁵⁶

⁵² It may be questioned whether the court needed to resort to presumptions as inferences were drawn from both direct and circumstantial evidence, even if the evidence might not be complete. See KFK Low, 'Apparent Gifts: Re-Examining the Equitable Presumption' (2008) 124 *Law Quarterly Review* 369, 373. Perhaps, the court did not feel confident in resolving the dispute based simply on the evidence, given the heavily contested facts, the lack of documentation and unavailability of oral testimonies from key witnesses as a result of their demise or loss of mental capacity. In *Chan Yuen Lan* (n 6) [51], the Singapore Court of Appeal commented that '[i]n *Lau Siew Kim*, the father was no longer alive; thus, it was necessary to rely on the presumptions and the circumstantial evidence in order to divine his intentions with respect to his contributions towards the purchase price of the properties in question'. It has also been clarified that the equitable presumptions do not only apply where there is no evidence on parties' intentions; they would apply where there is 'insufficient evidence' (see *Pereira Dennis John Sunny v Faridah bte v Abdul Latiff* [2017] 5 SLR 529 [25]). An alternative explanation is found in Ying Khai Liew, 'Trusts: Modern Taxonomy and Autonomy' (2021) 35 *Trust Law International* 27, 37–40. Liew points out that there is a tendency for courts to conflate the presumption of resulting trust with the resulting trust, the latter of which is a legal response which is triggered by positive evidence.

⁵³ *Koh Lian Chye* (n 4).

⁵⁴ *ibid* [10].

⁵⁵ *ibid*.

⁵⁶ *ibid* [31].

The Singapore Court of Appeal, upholding the lower court's ruling, held that the beneficial interests in the property held by Lian Chye and Ah Leng were in the ratio of 57.15: 42.85. The figures were arrived at by taking into account Lian Chye's financial contribution to the purchase price (14.3 per cent) and by operation of the presumption of advancement pursuant to which the father was taken to have gifted his share (85.7 per cent) jointly to his two sons.⁵⁷ The Court gave credence to the fact that the father had not dealt with the property in his will, and on this basis it could be inferred that 'he saw no need to make provision for the Property as his share had already been given to the sons whom [the father] wished to benefit'.⁵⁸

B. Older Generation's Attitude Towards Assets Owned by the Family and Individual Family Members

More broadly, the discussion of the cases above reveals that the older generation generally holds a communitarian view towards assets owned by the family and individual family members. Such a view is sometimes shared by members of the younger generation who grew up under the parents' influence. The older generation family members also consider that they have the power to use the assets and decide on their ownership, quite apart from who paid for the assets or who the registered owner was.

In *Ong Chai Soon v Ong Chai Koon*, for instance, the compensation proceeds paid to the parents for the acquisition of their kampong land were treated as a communal fund to pay for the expenses of the Ong family and intended by the mother to be used for setting up businesses to benefit all her children. The Court of Appeal affirmed the High Court's finding that the source of funding for the initial payments for the tenancy of the shophouse and the costs for setting up the hair salon business was derived from the mother's funds which in part probably came from the balance compensation proceeds.⁵⁹ The mortgage for the shophouse was serviced by rental payments from the hair salon business (treated as a family business) and other sub-tenants in the shophouse. The High Court's decision (which was upheld on appeal) was also arrived at based on the Ong family's dealings and treatment of two HDB flats which were regarded by all siblings as family assets shared equally between them. Whilst one of the flats was purchased with the compensation proceeds, the mortgage repayments for the other flat, which purchase price was \$60,000, was initially paid by the mother and later by one of the siblings who was the legal owner and who contributed \$39,267.15 towards servicing the mortgage.⁶⁰ Different family members resided in the flats over the years.

Whilst parents' communitarian views of family assets might proceed out of the good intention of providing for their children, such an attitude, taken to the extreme, could lead to a complete and outrageous disregard of an individual family member's ownership of his or her assets. In *Tay Nguang Kee Serene*, even though the plaintiff's mother acknowledged that the plaintiff had paid for the purchase of the first property,

⁵⁷ *ibid* [3].

⁵⁸ *ibid* [40].

⁵⁹ *Ong Chai Soon* (HC) (n 16) [66].

⁶⁰ *ibid* [90].

she bequeathed her legal interest in the property by will to her other children. In fact, she did so partly on the thinking that the plaintiff ‘was very good in making money and she did not have to worry about [the plaintiff] in the future.’⁶¹ Further, the parents had added the names of the plaintiff’s siblings as co-owners of the two properties without seeking her consent.⁶² Her parents, who insisted on safekeeping the plaintiff’s business proceeds for her, had also spent the plaintiff’s money on other purposes without telling the plaintiff.⁶³

The communitarian attitude towards family assets may also extend to a blurring of the ownership of family business assets and family assets. In *Tan Yok Koon v Tan Choo Suan*, the Singapore Court of Appeal noted that the patriarch of the family, Mr Tan, drew ‘no distinction between the assets of this family members and those of his companies.’⁶⁴ The case concerned Mr Tan’s transfer of company shares to his children and his pattern of behaviour gave a sense that he never had a clear intention as to whether his children became the legal owners of the company shares.⁶⁵

As I have explained in my work with Tang, the tendency to blur the line between family and business and between the self and the collective may partly be explained by the Asian collectivist culture of prioritising the family and common good above the individual.⁶⁶ However, such a pattern of behaviour would make it more challenging for the courts to determine the parties’ intentions.

C. ‘Blood is Thicker than Water’?

Reading some of the Singapore cases brings to mind the proverb that ‘blood is thicker than water’. On a positive note, the essence of the proverb is exhibited in the selfless family behaviour of stepping in to assist with servicing mortgage payments⁶⁷ and helping to provide for one’s siblings and parents even after one has married.⁶⁸

On the flip side, the perverse effect of this belief would mean that one is to place greater trust in one’s family with whom one shares blood ties than in one’s spouse or partner. Such a mindset could lead to complications in property interests, as can be seen in the case of *Tay Kguang Kee Serene*. In that case, the plaintiff had allowed her parents to safekeep her business proceeds, agreed to her family members being registered as co-owners of the business even though she solely funded and operated the business,

⁶¹ *Tay Nguang Kee Serene* (n 4) [47].

⁶² *ibid* [81]–[82].

⁶³ *ibid* [37].

⁶⁴ *Tan Yok Koon* (n 4) [49].

⁶⁵ Many years after the share transfer, Mr Tan executed statutory declarations to the effect that he retained beneficial ownership of the shares transferred to his children. The Singapore Court of Appeal, however, did not place weight on the declarations as they ‘were too far removed in time’ from the transfers and they were made at a time when he was in poor health and under one of his children’s influence (see *Tan Yok Koon* (n 4) [117]).

⁶⁶ Yip and Tang (n 34).

⁶⁷ *Su Emmanuel* (n 4) [7]–[10]. The sister was prepared to utilise her CPF funds to assist her brother in servicing the mortgage repayments of the brother’s matrimonial home (then registered in the joint names of the brother and his wife) so as to help them keep their home.

⁶⁸ *Kwek Pit Seng Jeffrey* (n 4) [4].

consented to her parents using her monies to pay for mortgage repayments in a way that would make it harder to trace the source, and (unwillingly) acquiesced to her name not being included in properties she purchased with her own money, on her parents' advice that they were protecting her assets from her boyfriend (and later her husband).⁶⁹ It subsequently emerged that her own family members could not be trusted.

IV. Parents and Siblings

In this final part of the discussion, I would like to highlight the Singapore courts' assumptions as to the norms of family relationships. It cannot be denied that different family relationships are underpinned by different expectations and norms. This is in fact very much reflected in the categories of family relationships which attract the application of the presumption of advancement under Singapore law and those that do not. In this connection, the Singapore Court of Appeal has affirmed that new 'advancement' relationships may be recognised on the basis of 'love and affection'.⁷⁰ It is, however, clear that 'love and affection' does not bring into play the presumption of advancement in familial relations such as between siblings⁷¹ or from an adult child to his or her parent.⁷² The same assumption underlines the courts' assessment of the facts of a case in deciding what has happened based on a balance of probabilities or whether the family members had a common intention to share regardless of financial contributions. Indeed, in disputes involving siblings and in the absence of clear evidence to the contrary, the court would ordinarily determine the siblings' shares in the property based on their respective financial contributions.⁷³ The Singapore courts are alive to the reality that while siblings can be very generous towards each other, it cannot be said that on a balance of probabilities that siblings are more likely to make a gift to each other in circumstances where the actual intentions are not readily apparent. After all, siblings would in the ordinary course of things go on to form their own households (whether with a spouse/partner or living on their own) and build up their own economic resources.

As between parents and adult children, it cannot be denied that Singaporean parents do have a culture of providing for their adult children, whether through *inter vivos* gifts or testamentary bequests. Indeed, we currently see more disputes involving co-owned properties paid fully or principally by parents than the converse scenario. And certainly, the recently recognised presumption of advancement applicable in the transfers from parents to independent adult children is *not* based on a legal obligation to provide,⁷⁴

⁶⁹ *Tay Nguang Kee Serene* (n 4) [11], [38], [47] and [50].

⁷⁰ *Lau Siew Kim* (n 21) [68].

⁷¹ *Chan Gek Yong v Chan Gek Lan* [2008] SGHC 167 [17].

⁷² *Ang Hai San Henry v Ang Bee Lin Elizabeth* [2010] SGHC 353 [8]; *Neo Hui Ling v Ang Ah Sew* [2012] 2 SLR 831.

⁷³ See *Tay Nguang Kee Serene* (n 4); *Kwek Pit Seng Jeffrey* (n 4); *Koh Lian Chye* (n 4). *cf* *Su Emmanuel* (n 4) (the Court of Appeal ruled that only 49% was available for sale to the sister who repaid most of mortgage repayments; her remedy in respect of the amounts that were paid beyond the parties' common agreement would lie in equitable accounting).

⁷⁴ *Lau Siew Kim* (n 21) [68].

but rather stems from parental love and affection. Perhaps the better view is that, apart from love and affection, the parents also feel a moral obligation to provide for their adult children based on cultural and social norms.

Kelvin Low has suggested that the presumption of advancement in respect of transfers from parents to independent adult children may require some adjustments to take into account the proliferation in financial exploitation of the elderly.⁷⁵ He makes two proposals: first, the burden of proving a gift to an adult child where the parent is especially elderly should lie with the child; and second, the presumption of resulting trust in respect of the life interest should apply in favour of such an elderly parent to safeguard his or her financial security, unless a gift is clearly intended. Recent Singaporean developments do reflect greater cautiousness on the part of the courts to protect parents (whether especially elderly or not) from unmeritorious claims of their adult children.⁷⁶ First, joint tenancy under Singapore law does not lead to a strong or even automatic presumption of equal sharing in equity while the parties are alive. The courts have pointed out that joint tenancy might be used in order to enable the operation of the right of survivorship. Second, the courts examine the parents' reasons for including adult children as co-owners. Where there is evidence that the adult children are registered as co-owners to enable them to assist with servicing mortgage repayments, the presumption of advancement might be inapplicable, or even if applicable, would be weak and therefore easily rebutted. Whether these developments are sufficient to safeguard the financial interests of parents remains to be seen.

V. Crystal Ball-Gazing: Future Developments of the Law

This chapter concludes by crystal ball-gazing into the future developments of the law of the implied trusts in the context of family property disputes in Singapore. It is apposite to do so because the thesis of this chapter is that the development of the law is inextricably linked to and influenced by the type of family relationship and the underpinning norms. Family norms are, however, constantly evolving. The collectivist culture that is characteristic of the family relationships in the family property disputes we discussed may progressively be watered down and even be replaced by a more individualistic mentality in the younger families in Singapore. It has been noted that modern Singaporean families are smaller as compared to families in the past. The collectivist culture in the past might also be strengthened by reason of the older siblings having to step in to 'act as surrogate parents' in households where both parents work,⁷⁷ which arguably fosters

⁷⁵ Low, 'Victoria Meets Confucius in Singapore' (n 3).

⁷⁶ In *Lau Siew Kim* (n 21) [68], the case in which the Singapore Court of Appeal endorsed (in obiter) the application of a presumption of advancement in respect of transfers from parents to independent adult children, the Court made clear that 'the greater the number of children one has, the less likely that a transfer of property of substantial value to a single child without similar provision for the other children would be intended as a pure gift to that child.'

⁷⁷ Dr Foo KH 'Commentary: Smaller Families in Singapore, Leading to Unhealthy Parent Styles' (*ChannelNewsAsia*, 27 August 2017), available at: www.channelnewsasia.com/singapore/commentary-smaller-families-singapore-leading-unhealthy-parenting-styles-1002631.

a stronger bond of kinship and spirit of sharing in both vertical and horizontal relationships in the family. In contrast, in the smaller modern families, children have direct and constant access to an outpouring of love and material resources from their parents⁷⁸ which may lead to a growing sense of entitlement in the children. A psychologist has thus pointed out that this may result in the children having a lack of empathy for their parents instead of gratitude.⁷⁹ And certainly, the traditional virtue of filial piety would greatly diminish in the young generation if this trend of parenting continues. As such, it may be in 10 to 20 years' time, we will see a very different culture of family interaction in Singapore. If this prediction comes true, trusts law will need to adapt to these changes accordingly.

⁷⁸ It has been found through a recent survey that modern Singapore parents care more about their children than themselves, and many spend 20% or more of their monthly household income on their children alone which is far more than the amount they set aside for their own retirement. See Tan Ooi Boon, 'Parents in Singapore Spend More on Kids than for their Own Future' *Straits Times* (8 August 2021), available at: www.straitstimes.com/business/invest/parents-in-singapore-spend-more-on-kids-than-for-their-own-future.

⁷⁹ Dr Foo KH (n 77).