AOS *v* Estate of AOT, deceased
[2012] SGCA 30

Case Number : Civil Appeal 102 of 2010

Decision Date : 25 May 2012

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Adrian Tan Gim Hai, Wendell Wong Hin Pkin, Tay Eu-Yen and Kueh Xiu Ying (Drew & Napier LLC) for the appellant; John Tan Thong Young (Pereira & Tan LLC) for the respondent.

Parties : AOS — Estate of AOT, deceased

Probate and administration

25 May 2012

Chao Hick Tin JA (delivering the grounds of decision of the Court):

Introduction

1 The appellant, [AOS], ("the appellant") is the widow of [AOT] ("the Testator"). The Testator made no provision for the appellant or his three children in his Will executed on 3 April 2006. Accordingly, the appellant instituted an application in the High Court under s 3(1) of the Inheritance (Family Provision) Act (Cap 138, 1985 Rev Ed) ("IFPA") praying for reasonable provision of maintenance for herself and her eldest son, [B]. [B], an adult in his thirties, has an eight year old son, [H]. [H], the appellant's grandson, is the sole beneficiary under the Testator's Will.

2 By way of background, we ought to mention that the appellant's marriage with the Testator was at all material times turbulent, so much so that in March 2005, the appellant commenced proceedings for divorce. Decree nisi was granted in January 2006. Before ancillary matters could be determined, the Testator died. As a result, the Testator's Will took effect and the appellant found herself in the rather unfortunate predicament of having to seek reasonable provision of maintenance under the IFPA. In the course of this appeal, the appellant also reserved the right to challenge the Testator's Will in subsequent proceedings. [note: 1]

3 The central issue in this appeal was whether the High Court Judge ("the Judge") erred in the exercise of his discretion under s 3(1) of the IFPA in determining what constituted *reasonable provision of maintenance*. [note: 2] In particular, the appellant argued that the Judge should have taken into account the impending division of matrimonial assets at the time of the Testator's death, as a relevant factor in quantifying the reasonable provision of maintenance under the IFPA. While this appeal was dismissed for the reasons stated below, the fortuitous nature of the facts prompted this Court to closely examine the applicable law and its defensibility. This in turn raised the question as to whether it was just and appropriate that a surviving spouse, in circumstances such as these, should be entitled to a smaller part of the Testator's estate under the IFPA than she would otherwise have received as a divorcee in ancillary proceedings under the Women's Charter (Cap 353, 1997 Rev Ed) ("the Women's Charter"). [note: 3]

Background to the dispute

Background to the dispute

Relevant facts

4 The appellant and the Testator were married in India on 12 May 1975 and they had three sons, [B] aged 33, [F] aged 32 and [E] aged 28. [note: 4] On 29 March 2005, the appellant commenced divorce proceedings against the Testator. In the petition for divorce, the appellant named [B]'s wife, [G] (*ie*, the appellant's daughter-in-law), as co-respondent, alleging that she was having an affair with the Testator. Shortly thereafter, the appellant withdrew her allegations against [G] and leave was granted to delete [G] from the title of the appellant's divorce petition. [note: 5] Nevertheless, the appellant stated that by the time divorce proceedings had been commenced, her marriage with the Testator had broken down irretrievably due to his "... unreasonable and violent behaviour". [note: 6] While the Testator initially contested the divorce, eventually it proceeded on an uncontested basis.

5 Decree nisi was obtained on 24 January 2006 [note: 7] and except for the determination of the ancillaries, the divorce could have been made final and absolute, pursuant to s 99 of the Women's Charter, three months thereafter, on 24 April 2006. [note: 8] In fact, in preparation for a hearing on the division of matrimonial assets, on 17 April 2006, the Testator filed his affidavit of Assets and Means. [note: 9] The appellant followed suit. [note: 10] However, before the ancillaries could be heard and determined and the decree nisi made absolute, the Testator passed away on 22 August 2006 in Chennai, India. Accordingly, an order was made on 24 January 2007 to rescind the decree nisi and the appellant was granted leave to withdraw her divorce petition on account of the death of the Testator. [note: 11]

6 Shortly before his passing, on 3 April 2006, the Testator executed his Will in Singapore in which he vested all of his assets in the executors as trustees for the sole benefit and interest of his grandson, [H]. It was undisputed that during the few years before the Testator's death, he and his family were embroiled in intense intra-family conflict. Furthermore, it was common ground between parties that [B] suffered from cerebral palsy and had been living with obsessive compulsive disorder since a relatively young age. [B]'s condition added additional stress on the family and, in particular, the appellant's relationship with the Testator. We were told that [B] is currently receiving medical treatment and living in India. Notwithstanding the troubled personal circumstances, even after the Testator's demise, the appellant continued to reside with [G] and [H] at [Property 1]. It is against this unusual factual backdrop that the appellant's prayer for reasonable provision of maintenance for herself and [B] fell to be determined.

Decision below

7 First, the Judge held that the appellant was a "dependent" under s 3(1)(*a*) of the IFPA and that the court had the power to make reasonable provision for her maintenance out of the net estate of the Testator. However, the Judge also found that during his lifetime, the Testator had purchased a number of properties which were vested in the appellant's name. There was evidence to show that the appellant was receiving at least $12,000 in monthly income, which was in excess of her stated monthly expenses of $9,443. [note: 12] The appellant's income was derived primarily from the rental payments she received from commercial properties which she owned in Mumbai, India. [note: 13] The Judge also noted that in addition to the rental income, the appellant was also receiving a monthly sum of $5,000 from the Testator's family in India. [note: 14]

8 In essence, the Judge took the view that in light of the *inter vivos* gifts given by the Testator

to the appellant, and the income she obtained therefrom (as against her stated expenses), no additional financial provision under the IFPA needed to be made. The Judge did, however, order that the Executors continue to provide the appellant with accommodation at [Property 1] with [H], her grandson, provided that she continued to live with him until he attained the age of 21 years. In the eventuality that the Executors should decide to sell [Property 1] and provide a replacement home for [H], they were to also provide suitable accommodation for the appellant in the replacement home. The Judge reasoned that such an order satisfied the rights of the appellant under the IFPA while preserving the rights of the beneficiary under the Will. [note: 15] The Judge took the view that the IFPA was not enacted for the "purposes of constraining a person's ability to dispose of his assets under his will but for the reasonable maintenance of that person's dependants during the lifetime of such dependants". [note: 16]

The appellant's prayers

9 At the hearing before the High Court as well as in the present appeal, the appellant asked the court to exercise its discretion under s 3(1) of the IFPA to order reasonable provision of maintenance for herself and her son [B] in the following terms:

(a) $20,000 a month from the Testator's estate;

(b) Further and/or alternatively, a lump sum payment of $7.2 million, with $240,000 per annum as the multiplicand and 30 as the multiplier;

(c) Further and/or alternatively, transfer of ownership of [Property 1], being the matrimonial home, to the appellant.

10 For the purposes of this appeal, this Court felt it necessary to obtain updated information as to the state of the Testator's assets and the appellant's assets and monthly expenses. Accordingly, at the initial hearing of this appeal on 5 July 2011, we directed the parties to file affidavits exhibiting the current valuations of the relevant properties and providing an accurate account of the relevant assets and expenses so as to enable this Court to come to a fair and just decision. In the succeeding paragraphs of these grounds, we will first address the question as to the assets of the Testator and the appellant as well as examine the reasonableness of the sums claimed by the appellant in her prayers for maintenance under the IFPA (above at [9]).

Testator's assets

11 In the affidavit of the executor, [C], dated 25 August 2011 filed pursuant to this Court's direction ("[C]'s affidavit"), the current value of the Testator's estate in Singapore and in India was quantified. Relevant to this appeal, the breakdown of his assets in Singapore were as follows: [note: 17]

Description of Assets in Singapore	**Value in SGD**
[Property 1]	$ 8,800,000.00
Current Account	$3,651,383.83
Fixed deposit	$ 511,958.01
Car	$ 30,000

12 The total value of the Testator's estate in Singapore is approximately $13 million. As [C]'s affidavit stated that "[t]he Estate ha[d] no regular income in Singapore", the annual income of the Testator's estate in Singapore was undefined. [note: 18] In fact, the only cash asset available to the appellant was the monies in the Estate's current account amounting to $3,651,383.83. [Property 1] housed the appellant, [G] and [H]. The fixed deposit would only mature on 8 October 2012 and the car was currently being used by the appellant herself. As such, if this Court were to allow the appellant's prayer for $7.2 million, or $240,000 per annum over 30 years, the Testator's assets would have to be realised, beginning with the sale of [Property 1].

Appellant's assets

13 The updated information as to the appellant's assets and expenses told a slightly different story from the picture presented before the Judge. The appellant's assets as of 19 September 2011 can be summarised as follows:

No	**Assets**	**Value**	**Ownership**
1	[xxx] and [xxx] [Property 3] [note: 19] Leave and License Agreement for [Property 3] in India from October 2008 to September 2013. Terminated as of 4 September 2011.	Was receiving rental monthly income about $12 000. However, based on current estimation, it was only likely to receive $6,872 in rental in the current market. Valuation report dated 3 February 2010 estimated value of [Property 3] at $777,539.52. Valuation report dated 5 September 2011 estimated current sale price of $548,866	Appellant [note: 20]
3 [note: 21]	Contribution from Testator's father ("Father-in–Law's contribution")	$100,000	Appellant
4 [note: 22]	The appellant's bank accounts ("bank accounts")	$22,535	Appellant
5 [note: 23]	Shares	$216,000	Appellant
6 [note: 24]	Vacant land	$1, 414, 474 (Valuation report dated 30 September 2008). Recent valuation report dated 5 September 2011 valued the property at approximately $809,761.	Joint ownership with [B].
Total (based on latest valuations excluding monthly rental income)			$ 1,697,162

14 The total current value of the appellant's assets (based on latest valuations and excluding any

rental income) is $1,697,162. It would appear that the two sums of $216,000 and $100,000, being monies the appellant received from the Shares and her Father-in-law's contribution, had been depleted in less than two years. A further significant change in circumstances occurred when the rental agreement for [Property 3] was terminated. Thus, at the time of this appeal, the appellant's assets consisted of the Vacant land, [Property 3] and the balance in her bank accounts. We will next briefly examine some of these assets.

Contribution from the Testator's father and Shares

15 The appellant received the money from the Shares in or around 2010 and her Father-in-law's contribution in or around October 2008. The appellant asserted that her Father-in-law's contribution had been expended on household matters. Although no documentary proof of the same was produced by the appellant, we recognised that it would be too much to expect every household expense to be evidenced in writing. In relation to the $216,000 received from the Shares, the appellant asserted that $140,000 was used to repay her father for a loan of $100,000 and the remaining $76,000 was spent on household expenses. Again, no supporting documentation was provided.

Rental income from [Property 3]

16 We noted that the Judge when delivering his decision, remarked at [9] of the GD that:

> I took into account that during his lifetime, the Testator had vested in the applicant a number of properties out of which she is presently deriving at least about $12,000 in monthly income. This amount is more than the sum of some $9,443 that she had stated in her supporting affidavit as her monthly expenses, apart from accommodation.

17 However, based on the appellant's affidavit dated 19 September 2011 (at para 24) ("the appellant's 19 Sep affidavit") and her supplemental submissions of the same date (at paras 153 – 158) ("the supplemental submissions"), her monthly rental income of $12,000 had ceased as of 4 September 2011. The appellant also asserted that she was unable to find another tenant. Furthermore, relying on a valuation obtained as to the rental yield of the property, the appellant claimed that even if she should manage to find a new tenant she would likely only receive approximately $6,872 based on the current rental market. The Testator did not provide any contrary valuations.

18 In this regard, we would point out that a similar argument raising the issue of an applicant's inability to rent a property was made in *In Re Inns, Deceased (Inns v Wallace)* [1947] Ch 576 ("*In Re Inns*") which the English court did not pay very much attention to, in the absence of clear evidence. Similarly, here all we had before us was just the appellants' bald assertions made barely two weeks after [Property 3] had become vacant. No evidence was provided to support the submission that the appellant would not be able to secure another tenant, albeit at the lower rental. No authorities were provided by the appellant to persuade this Court that the loss of a tenant, *ipso facto*, justified disturbing the orders made by the Judge. In any event, even on the reduced rental income, the appellants' declared monthly personal expenses would be taken care of (below at [20] to [21]).

Appellant's monthly expenditure

19 Turning to the appellants' expenses, in her earlier affidavit dated 30 July 2007, the appellant claimed that her personal monthly expenses alone amounted to about $9,443, while [B]'s were stated to be about $7,350. [note: 25] Furthermore, the appellant said that she incurred an additional $16,000 to $17,000 for her other two adult sons, [E] and [F], who were studying in the United States. In

total, the appellant submitted that her monthly expenditure was between $30,000 and $37,000. [note: 26]

20 In appellant's 19 Sep affidavit, she revised her stated expenses to $28,828. This revised figure reflected a considerable reduction in her personal monthly expenses from about $9,443 to $5,257 and [B]'s expenses from about $7,500 to $1,716. It consisted of the following: [note: 27]

No	Description	SGD$
1	Appellant's Personal expenses (below at [21])	5,257
2	Household expenses (below at [22] – [23])	4,662
3	[G]'s expenses (below at [24] – [25])	1,501
4	[H]'s expenses (below at [24] – [25])	1,397
5	[E]'s expenses (below at [26] – [27])	1,545
6	[F]'s expenses (below at [26] – [27])	12,750
7	[B]'s expenses (below at [28])	1,716
	Total	28, 828

Appellant's personal expenses

21 First, the appellant's personal monthly expenses of $5,257 consisted of her expenditure on food, mobile phone, gym membership and personal trainer, health supplements, temple offerings, medical expenses, medication, dentist, clothes and accessories, glasses/sunglasses, facial treatments, hairdressing, personal grooming and travel. We noted that if [Property 3] were tenanted, even on the estimated current reduced market rent of $6,872, the appellants' revised monthly expenditure would be well met.

Household expenses

22 As per the appellant's 19 Sep affidavit, the breakdown of the stated Household expenses amounting to $4,662 was as follows: [note: 28]

No	Description	SGD$
1	Groceries from supermarkets	697
2	Groceries from wet markets	400
3	Utilities	772
4	Car maintenance	478
5	ERP Charges and parking expenses	150
6	Petrol for the car	294
7	Maintenance of the home	158

8	SSC membership (family)	318
9	Newspapers	25
10	Dog's upkeep	194
11	Gas cylinder	64
12	Maid salary	762
13	Plumber	100
14	Gardener	250

23 Firstly, we noted that receipts for most of the listed monthly expenses were not produced in support. In her claim for household expenses, the appellant did not separate her portion of the household expenses from those of [G] and [H], whose expenses were not her responsibility. Two obvious examples of this were the groceries expenses totalling to $1,097 and the Singapore Swimming Club family membership amounting to $318. It stands to reason that any expense incurred for the maintenance or upkeep of [Property 1] should be borne by the Testator's estate rather than the appellant. Accordingly, the expenses incurred for utilities, maintenance and upkeep of the family residence (maid, plumber, gardener and gas cylinder) amounting to $2,106 as well as the expenses flowing from the use of the car (*ie*, property of the Testator's estate) amounting to $922, should rightfully be borne by the Testator's estate. Thus the expenses incurred by [G] and [H], as well as the outgoings for the upkeep of [Property 1] and car (the declared assets of the Testator's estate) should not form part of the appellant's expenses, claimed by her against the Testator's estate.

Expenses of [G] and [H]

24 The appellant accounted for [G] and [H]'s monthly expenditure under the joint header of household expenses as well as individually under their own names. [G]'s monthly expenditure was listed as $1,901 in one part of the appellant's 19 Sep affidavit and as $1,501 in a later part. As a result, [G] and [H]'s monthly expenditure ranged between $2,898 and $3,298 (depending on the correct figure adopted as [G]'s expenses). It is worthwhile noting that the appellant stated that since September 2008, the trustees of the Testator's estate transferred $4,000 monthly to [G]'s bank account for her expenses. The appellant stated that she would withdraw this sum using [G]'s ATM card. [note: 29] The appellant asserted that [G] authorised her to make the monthly withdrawals from [G]'s account as the latter was "illiterate". There was unfortunately no objective evidence to confirm this. The $4,000 monthly sum was used by the appellant to set off [G]'s contribution to the household, her living expenses and [H]'s school fees. It was unclear to us how much of the monthly withdrawal went towards the household expenses. Furthermore, it appeared that, on the expenses as presented by the appellant, there could have been double counting between the household expenses and the expenses listed separately under [G] and [H]'s names. For example [G] and [H]'s expenses for food had been listed separately under their individual expenses and there was nothing to indicate that the household expenses claimed by the appellant did not also include food expenses incurred for [G] and [H], bearing in mind that the appellant ran the household as one single unit.

25 In any event, and as stated at [23] above, [G] and [H]'s monthly expenses including household expenses, should be borne by the Testator's estate. While we recognise that because the appellant had run the household as one single unit there could be difficulties in apportionment, it must nevertheless at the very least be done in a broad way.

Expenses of [E] and [F]

Expenses of [E] and [F]

26 In the appellant's 19 Sep affidavit at paras 14 – 16 and as part of her total monthly expenses at para 68, [E]'s monthly expenses were stated to amount to $1,545. Further, at paras 17 and 68 of the same affidavit, [F]'s monthly expenses were stated as $12,750. The bulk of [F]'s expenses were attributable to his impending postgraduate studies in Australia, due to commence this year.

27 The appellant sought to rely on certain authorities to support her application for expenses incurred by her on behalf of other "dependants", [E], [F] and [B] in the present case (see the appellant's supplemental submissions at paras 121 – 123). Leaving aside the question of [B]'s expenses (dealt with below at [28]), the authorities cited do not lend any support to the appellant's submission. By way of example, the case of *In Re Lidington (Lidington v Thomans (No 2))* [1940] Ch 927 related to a widow seeking provisions for her infant children. Similarly the case of *Re Tan Hui Gan, deceased (Phang Siew Fa v Aw Kim Siok)* [2006] 3 MLJ 663 related to a situation where the widow applicant was left with an infant child after the unexpected demise of her husband in a motor accident. Neither of these situations can be said to apply to the appellant's sons [E] and [F] who, at the hearing of this appeal, were in fact of the ages 27 and 30 respectively. Here, we ought also to highlight the fact that in her affidavit filed on 30 July 2007, cognisant of the fact that her youngest son [E] was over the age of 21, the appellant stated that she "would not belabour this Honourable Court with the details of his expenses". [note: 30] Accordingly, the appellant was aware that her claim for maintenance could not reasonably include financial support for her adult sons, [E] and [F]. Thus the appellant should not include the expenses of [E] and [F] in her claim for maintenance under the IFPA from the Testator's estate.

Expenses of [B]

28 The appellant's final claim related to [B]'s expenses amounting to $1,716 (the appellant's 19 Sep affidavit at para 9). The Judge found that the appellant was not the proper applicant for [B]'s expenses, who, as a "dependant" within the contemplation of s 3(1) of the IFPA, should make a separate application for his own maintenance. Insufficient evidence was tendered by the appellant to satisfy this Court that [B] lacked the necessary mental capacity to make his own application. In any event, the appellant should have obtained the necessary authority at law prior to making an application on [B]'s behalf. As no arguments were made in the appellant's supplemental submissions in relation to this point, we found that [B]'s expenses should not be taken into account as part of the appellant's application.

Conclusion

29 In the result, having regard to the reasons above, the only expense which the appellant was entitled to claim as maintenance under the IFPA was her own monthly personal expenditure of $5,257 and nothing else.

Broader issue canvassed before this Court

30 We now turn to the more important legal issue in this appeal. The appellant asserted that the language of s 3(1) of the IFPA "granted the Court the widest possible discretion". [note: 31] As such, it should follow that the division of matrimonial assets, which she was entitled to prior to the death of the Testator, was a "relevant factor" which ought to be taken into account under s 3(6) of the IFPA, and which provision reads:

(6) The court shall, on any application made under this Act, have regard to any past, present

or future capital or income from any source of the dependant of the deceased to whom the application relates, to the conduct of that dependant in relation to the deceased and otherwise, *and to* ***any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependant*** *, to persons interested in the estate of the deceased, or otherwise.*

[emphasis added]

31 The appellant's counsel sought to persuade this Court that weight should be given to the fact that with an interim judgment of divorce, the matrimonial assets would have been, but for the death of the Testator, the subject of just and equitable division under s 112(1) of the Women's Charter. The appellant's argument was also premised on the trend that in many divorce cases, the court would usually split the matrimonial assets *equally* between the parties. On this basis, the appellant prayed for half of the Testator's estate under the IFPA.

32 This argument raised an interesting issue as to the interplay between *just and equitable division* under the Women's Charter and *reasonable provision of maintenance* under the IFPA. We will begin by first examining the legislative history and purpose of the IFPA.

Law on the provision of maintenance under the IFPA

Historical significance of the IFPA

33 By way of brief historical background it is worth noting that in medieval times, English law made provision for the surviving wife by way of the dower. The wife was entitled to an estate for life in a third of all her husband's freeholds acquired during the marriage. This right to her dower attached notwithstanding her husband's alienation of the land. As noted by J.G Ross Martyn and Nicholas Caddick in *Williams, Mortimer and Sunnucks on Executors, Administrators and Probate* (Sweet & Maxwell, 19th Ed., 2008) at p 858, "as a great oversimplification" from about 1400, or at least by 1500, the era of testamentary freedom was born in England, reaching completion with the enactment of the Dower Act of 1833 (c 105) (UK) (abolished the dower) and the Mortmain and Charitable Uses Act 1891 (c 73) (UK). There was then nothing in the way of a man or woman bequeathing his or her whole estate to charity or in any way he/she saw fit. As noted by Anthony R. Mellows in *Mellows:The Law of Succession* (Butterworths, 5th Ed., 1993) at p 203, in stark contrast, many civil law countries retained the principle of *legitio portio* or forced heirship, whereby close relatives were entitled to a fixed proportion of the family assets. Under the Scottish system of *jus relictae* for the widow and *legitim* for the children, only part of the deceased's estate is subject to testamentary freedom (see judgment of Lord Simon of Glaisdale in *Schaefer v Schuhmann* [1972] AC 572 at 596).

34 The era of total testamentary freedom in England only lasted from about 1891 to 1938. As noted by Stephen Cretney, *Family Law in the Twentieth Century: a History* (Oxford University Press, 2003) at pp 485 to 511, "[t]he introduction, in the 1930s, and the subsequent development of the law of family provision is a fascinating reflection of the change in family forms and in public opinion during the twentieth century". In order to cope with the extreme consequences of total testamentary freedom, English law then moved towards the approach of vesting discretionary power in the courts to reasonably assess maintenance for dependants in certain limited circumstances. It was against this background that the Inheritance (Family Provision) Act 1938 (c 45) (UK) ("the 1938 Act") was enacted in England. As explored by Hardingham, Neave and Ford in *The Law of Wills* (The Law Book Company Limited, 1977) at p 261, the forerunner to the 1938 Act was first enacted in New Zealand in 1906 and shortly thereafter in the Australian territories.

35 The 1938 Act entitled certain persons, "dependants", linked to the deceased by ties of marriage or blood, to apply to the court on the ground that the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or a combination of the two, did not make reasonable provision for them. Viewed in the context of the larger landscape of the law of succession operative at the time, the 1938 Act merely granted a sliver of discretion to the courts in situations whereby the advent of total testamentary freedom had caused wholly inequitable circumstances for dependants. Without seeking to unnecessarily transgress on the intention of the testator and the rights of the beneficiaries under his/her will the discretionary power vested in the courts merely sought to redress any injustice which might follow from "unreasonable" provisions or the lack of any provision at all for the maintenance of dependants following the death of the testator.

Legislative impetus for the enactment of the IFPA in Singapore

36 The 1938 Act was adopted in Singapore in 1966 by way of the enactment of the Inheritance (Family Provision) Act 1966 (Act 28 of 1966) ("the 1966 Act") and its significance to the law of succession was underscored when the Inheritance Family Provision Bill (Bill No 8 of 1966) ("the Bill"), which eventually became the 1966 Act, was referred to a Select Committee for full consideration of its provisions. In fact, during the second reading of the Bill, Mr Yong Nyuk Lin, Minister for Law and National Development ("the Minister") remarked (*Singapore Parliamentary Debates*, vol 25 at cols 77-78 (21 April 1966)):

> As this Bill will change the existing law and will affect the right of a person to will away his property as he likes, it is proposed to refer it to a Select Committee, so that full consideration can be given to its provisions.

37 The 1966 Act gave statutory force to the moral obligation that one's financial responsibility to one's spouse and children endured even after death, albeit in a limited capacity. Crucially, as evidenced by the context within which the 1938 Act was enacted, the legislative purpose behind the 1966 Act (the local enactment of the 1938 Act) was not to create legacies but was for the limited purpose of providing *maintenance*. The Minister's speech, alluding to the history and purpose of the Bill, is germane (*Singapore Parliamentary Debates*, vol 25 at cols 77-78 (21 April 1966)):

> *After [the Dower Act of 1833], there was nothing to stop a man (or a woman with respect to her separate property) from devising and bequeathing his whole estate to charity or to a complete stranger and leaving his widow and children penniless. It was to prevent this evil that in 1938 the Inheritance (Family Provision) Act was enacted.* The *Act did not cast upon the testator any positive duty to make reasonable provision for his dependants*, for it would be impossible to enforce any such obligation, but it provides that if he fails to do so, the Court may order such reasonable provision as it thinks fit to be made out of the estate for his dependants as defined in the Act. The Act was further amended in 1952 to extend it to cases of intestacy, as it was felt that the general law of intestacy might leave a child inadequately provided for. The provisions relating to family provisions appear to have worked well in England and it is proposed to introduce them into Singapore.
>
> [emphasis added]

38 The appellant's further submissions helpfully engaged in a detailed analysis of "six particular scenarios" that the 1938 Act (in our case, the 1966 Act) sought to prevent, [note: 32] namely, (a) infidelity of the spouse; (b) mental imbalance of the spouse; (c) inability of wife to re-enter workforce; (d) unjustifiable disinheritance and stigma; (e) living in fear of disinheritance and (f) protection from a moment of irrationality. As the Bill (which led to the 1966 Act) was not subject to

lengthy debate in Singapore, our Parliamentary records do not provide very much guidance beyond the excerpt cited above on the intention or objective of the 1966 Act. However, the importance of giving effect to Parliamentary intention was recognised by this Court in *AAG v Estate of AAH, deceased* [2010] 1 SLR 769 at [15] and [40]. It stands to reason that in ascertaining the IFPA's legislative purpose, the historical context and legislative impetus prompting the 1938 Act's enactment in England and the case law that followed would be of great assistance. For present purposes, it is worth highlighting that during the Second Reading of Inheritance Family Provision Bill in England before the House of Commons, in delivering a speech in support, the Honourable Lady Miss Rathborne, highlighted the importance of preventing unemployed widows from bearing:

> [T]he cruellest kind of poverty which faces those who are too proud to seek charity, to compel her to hide in solitude and suffering and to ensure the harsh verdict of the world which she cannot in anyway repudiate.

39 It is clear that the particular type of injustice or evil that the IFPA sought to remedy was a direct consequence of total testamentary freedom and the enduring moral obligation which was deemed by Parliament to be owed to one's dependants. The question that remained to be determined was how wide or onerous this obligation under the IFPA was and whether the courts were merely empowered to prevent *destitution*.

Determining the ambit of "reasonable provision" of maintenance under the IFPA

40 The discretionary power of the court to order maintenance for the benefit of a surviving spouse or child out of the net estate of the deceased is set out in s 3 of the IFPA:

> 3. —(1) Where, after the commencement of this Act, a person dies domiciled in Singapore leaving —
>
> (a) *a wife* or husband;
>
> (b) a daughter who has not been married or who is, by reason of some mental or physical disability, incapable of maintaining herself;
>
> (c) an infant son; or
>
> (d) *a son who is, by reason of some mental or physical disability, incapable of maintaining himself*,
>
> then, if the court on application by or on behalf of any such wife, husband, daughter or son as aforesaid (referred to in this Act as a dependant of the deceased) *is of opinion that the disposition of the deceased's estate effected by his will, or the law relating to intestacy, or the combination of his will and that law, is not such as to make* ***reasonable provision*** *for the maintenance of that dependant, the court may order that such reasonable provision as the court thinks fit shall, subject to such conditions or restrictions, if any, as the court may impose, be made out of the deceased's net estate for the maintenance of that dependant*:
>
> Provided that **no application** shall be made to the court by or on behalf of any person in any case where the disposition of a deceased's estate effected as aforesaid is such that the surviving spouse is entitled to not less than two-thirds of the income of the net estate and where the only other dependant or dependants, if any, is or are a child or children of the surviving spouse.

(2) The provision for maintenance to be made by an order shall, subject to subsection (4), *be by way of periodical payments and the order shall provide for their termination not later than —*

(a) in the case of a wife or husband, her or his remarriage;

(b) in the case of a daughter who has not been married, or who is under disability, her marriage or the cesser of her disability, whichever is the later;

(c) in the case of an infant son, his attaining the age of 21 years;

(d) *in the case of a son under disability, the cesser of his disability*,

or in any case, his or her earlier death.

(3) *Periodical payments made under subsection (2) to any one dependant shall not be at an annual rate which exceeds the annual income of the net estate, and, where payments are so made to more than one dependant in respect of the same period, the aggregate of the annual rates at which those payments are made* ***shall not exceed the annual income of the net estate .***

(4) Where the value of a deceased's net estate does not exceed $50,000, the court shall have power to make an order providing for maintenance, in whole or in part, by way of a lump sum payment.

(5) In determining whether, and in what way, and as from what date, provision for maintenance ought to be made by an order, the court shall have regard to the *nature of the property representing the deceased's net estate* and shall not order any such provision to be made as would necessitate a realisation that would be improvident having regard to the interests of the deceased's dependants and of the person who, apart from the order, would be entitled to that property.

(6) The court shall, on any application made under this Act, *have regard to* ***any past, present or future capital or income from any source of the dependant of the deceased to whom the application relates, to the conduct of that dependant in relation to the deceased and otherwise, and to any other matter or thing which in the circumstances of the case the court may consider relevant or material in relation to that dependant, to persons interested in the estate of the deceased, or otherwise*** .

(7) The court shall also, on any such application, *have regard to* ***the deceased's reasons, so far as ascertainable, for making the dispositions made by his will (if any), or for refraining from disposing by will of his estate or part of his estate, or for not making any provision, or any further provision, as the case may be, for a dependant*** *, and the court may accept such evidence of those reasons as it considers sufficient including any statement in writing signed by the deceased and dated, so, however, that in estimating the weight, if any, to be attached to any such statement the court shall have regard to all the circumstances from which any inference can reasonably be drawn as to the accuracy or otherwise of the statement*.

(8) The court in considering for the purposes of subsection (1), whether the disposition of the deceased's estate effected by the law relating to intestacy, or by the combination of the deceased's will and that law, makes reasonable provision for the maintenance of a dependant

shall not be bound to assume that the law relating to intestacy makes reasonable provision in all cases.

[emphasis added]

41 Under s 3 of the IFPA, two pre-conditions must be met before the court can exercise its discretion:

(a) the applicant must be a "dependant" under s 3(1); and

(b) the testator must have failed, objectively, to have made "reasonable provision for the maintenance of that dependant".

42 In the present case, it was not in dispute that the appellant satisfied the first pre-condition. As regards the second pre-condition, the position was less clear-cut. This is because under s 3(6) of the IFPA, the judge upon such an application, shall have regard to "*any past, present or future capital or income from any source of the dependant*". Here the Testator had, during his lifetime, given substantial gifts to the appellant, which were capable of generating reasonable income for her (see [7]–[8] and [13] above). In these circumstances, should this Court nevertheless exercise its discretion in ordering the estate of the Testator to provide reasonable provision for her? We will in a moment consider what would constitute reasonable provision. In any event, as mentioned at [30] above, the appellant's real contention centred on the provisions relating to division of matrimonial assets in the Women's Charter and her point was that her entitlement to a fair and equitable share of his assets under the Women's Charter should be taken into account in determining what would be reasonable maintenance for her under s 3(1) of the IFPA.

English amendments to the 1938 Act

43 In this regard, we must highlight that in England, pursuant to law reform initiatives undertaken, the 1938 Act underwent rather radical changes in 1975. For present purposes, the introduction of a different standard of provision for a surviving spouse as compared to all other dependants marked a significant deviation from the 1938 Act. We will refer to the two separate standards hereafter as the surviving spouse standard and the reasonable maintenance standard. By way of summary, as noted by the English Law Commission report on Intestacy and Family Provision Claims on Death (2011) Law Com No 331 at para 1.66:

The term "reasonable financial provision" carries two alternative meanings, depending on whether the applicant is a surviving spouse of the deceased or one of the other classes of applicant entitled to apply under the [1975] Act. A surviving spouse is entitled to seek such financial provision as it would be reasonable in all the circumstances of the case for a spouse to receive, *whether or not that provision is required for maintenance*. The measure of provision for all other applicants is reasonable provision for the applicant's maintenance.

44 We will analyse the relevant case law spawned from the reasonable maintenance standard (the only standard under the IFPA) and the unique English surviving spouse standard so as to delineate the precise ambit of each.

Reasonable maintenance standard

45 We will now examine the relevant case law as to what constitutes, or the test to be applied, in determining reasonable maintenance under s 3(1) of the IFPA. The difficulty with the term

"reasonable" is that it is unavoidable that the question arises as to which expenses within the spectrum of expenses ranging from bare necessities to luxuries, does the term cover. While the English contemporary of the IFPA, the Inheritance (Provision for Family and Dependants) Act 1975 (c 63) (UK) ("the 1975 Act"), includes provisions which are not found in the IFPA, the provisions on reasonable maintenance in the IFPA and the 1975 Act remain identical. Accordingly, English authorities remain relevant or persuasive in relation to the interpretation of s 3 of the IFPA. In *In Re Coventry, Decd (Coventry v Coventry)* [1980] Ch 461 at 485, Buckley LJ stated that under this standard, reasonable provision would be:

> What is proper maintenance must in all cases depend upon all the facts and circumstances of the particular case being considered at the time, but I think it is clear on the one hand that one must not put too limited a meaning on it; *it does not mean just enough to enable a person to get by; on the other hand, it does not mean anything which may be regarded as reasonably desirable for his general benefit or welfare*.
>
> [emphasis added]

Similar sentiments were also uttered by Harman J in the earlier decision of *In re Borthwick, Decd (Borthwick and another v Beauvaid and others)* [1949] Ch 395 at 401:

> It is said that maintenance is the only thing which you can look at. What does that mean? It does not mean that you can only give the dependant just enough to put little jam on his bread and butter. It has already been held that what is reasonable for one may not be reasonable for another. It must depend on the circumstances of the case. It certainly depends to some extent on the circumstances of the widow, but I think it must also depend on the circumstances of the testator, that is to say, whether he died a rich man or not, because a rich man may be supposed to have made better provision for his wife's maintenance than a poor one.

46 While on the one hand the court is not limited to ordering maintenance on a sustenance basis, it is also not at liberty to make provision for all that may be reasonably desired for the general benefit or welfare of the dependant. This approach is congruous with the historic context and legislative impetus for the IFPA. For example, in *In re Jennings, Decd* [1994] Ch 286 ("*In re Jennings*"), the English Court of Appeal held that discharging the applicant's mortgage might be for the applicant's general benefit or welfare but that it was not reasonably required for his maintenance. In *In re Jennings*, the applicant was a 50-year-old who had been brought up from the age of four by his mother and stepfather. There was very limited contact between him and the testator, his father. The applicant (*ie*, the son) had been very successful in business and on the basis that he was financially comfortable and was unlikely to encounter financial difficulties in the future, the court found that it was impossible to show that he required "maintenance". Approving *In Re Dennis* [1981] 2 All E.R. 140, Nourse LJ at 297 – 298 said:

> "[M]aintenance" connotes only those payments which will directly or indirectly enable the applicant in the future to discharge the cost of his daily living at whatever standard of living is appropriate to him...

47 In the New Zealand Court of Appeal decision of *Agnes Allardice and Another v Elizabeth Allardice and Others* (1910) 29 N.Z.L.R 959, affirmed in [1911] AC 730, interpreting a similar provision to the 1938 Act, Stout CJ said that the relevant Act was not a statutory mechanism to make a new will for a testator. Accordingly, even where the will was most unjust from a moral perspective, this alone was insufficient to prompt a court to alter the testator's disposition of property. He remarked at 970 as follows:

> Even in many cases where the Court comes to a decision that the will is most unjust from a moral point of view, that is not enough to make the Court alter the testator's disposition of his property. The first inquiry in every case must be what is the need of maintenance and support; and the second, what property has the testator left.

48 *In Re Inns* concerned a situation similar to the present where the family was wealthy and was noted to "live in style". The testator had made provision for his widow in his will and entitled her to continue living at their mansion. The widow claimed that she was unable to maintain the mansion as the deceased had not made sufficient provision for her to ensure its upkeep. The court remarked at 581:

> I do not think that a judge should interfere with a testator's dispositions merely because he thinks that he would have been inclined, if he had been in the position of the testator, to make provision for some particular person. *I think that the court has to find that it was unreasonable on the part of the testator to make no provision for the person in question or that it was unreasonable not to make a larger provision*.
>
> [emphasis added]

49 This sentiment has been tirelessly articulated in many decisions concerning the question of what constitutes reasonable provision of maintenance (see *In re Pugh, Deceased (Pugh v Pugh)* [1943] 1 Ch 387 at 395 and *In re Brownbridge* [1942] 193 L.T. Jour. 185). It is clear that the discretion accorded by Parliament under the 1938 Act, or IFPA, was not intended to place the court in the testator's shoes. Rather, the court is to look at the applicant's mode of living, the size of the testator's fortune, relations between the parties and all other considerations as listed in s 3 of the IFPA to determine if the provision, as is, is unreasonable. The following passage in *In Re Inns* at 581 – 582 is particularly instructive as regards the exercise of discretion in our present context:

> By the law of England as it stood prior to the coming into effect of the Inheritance (Family Provision) Act, 1938, no man could be compelled to leave any part of his estate to any person, who under the Act is a dependant. Still less could he be compelled to make provision that his wife, for instance, should be enabled to live in circumstances similar to those in which, during his life, he and she had lived together. *The Act is not designed to bring about any such compulsion. It proceeds upon the postulate that a testator should continue to have freedom of testamentary disposition provided that his disposition as regards dependants should be capable, having regard to all the circumstances, of being regarded by the court as reasonable. From this it follows that the jurisdiction is essentially a limited jurisdiction.* ***The legislature, presumably in its wisdom gave no guidance to the court as to how the jurisdiction should be exercised ....The previous decisions clearly establish that the jurisdiction is one which should be cautiously, if not sparingly, used.***
>
> [emphasis added]

50 Keeping these principles in mind, Wynn-Parry J in *In Re Inns* resisted the exercise of discretion in awarding any provision for the upkeep of the mansion to the widow notwithstanding his admission that if he had been in the testator's position he might have provided a somewhat larger fund for the widow. Ultimately, the court must be satisfied that the provisions which the testator had made for a dependant's maintenance were unreasonable, before exercising its discretion under the IFPA. The test is objective not subjective. It is not whether the testator stands convicted of unreasonableness, but whether the provision in fact made is reasonable: see *Goodwin v Goodwin & Ors* [1968] 1 Ch 283.

51 In the present case, in light of the *inter vivos* gifts given by the Testator to the appellant and her stated monthly expenses (above at [29]), on the reasonable maintenance standard, as indicated in the immediate preceding paragraphs, this Court did not find any reason to disturb the orders made by the Judge. We would reiterate that the IFPA is concerned with maintenance and not the creation of legacies. The appellant's prayers were far in excess of what constituted reasonable maintenance under the IFPA. In claiming for half of the Testator's estate, the appellant was seeking to incorporate the provisions of the Women's Charter concerning just and equitable division of matrimonial assets between divorcing spouses into the IFPA, a question to which we will now turn.

Surviving spouse standard

52 As stated earlier at [43], the "surviving spouse standard" was brought into being in England by way of statutory amendment in the 1975 Act, in response to the Law Commission's concern (Second Report on Family Property: Family Provision on Death (1974) Law Com No 61 at paras 12 – 18 and 26 – 30) ("1974 Law Commission report") that:

> ***The first principle is that maintenance should no longer be retained as the objective in determining family provision for a surviving spouse ... and that the court's powers should, as far as practicable, be as wide as its powers to award financial provision on divorce*** .
>
> ...
>
> The second principle ... is that for other dependants the function of family provision legislation should be confirmed, as it is at present, to securing reasonable provision for maintenance.
>
> [emphasis added]

53 As a result, s 1(2) of the 1975 Act set out two distinct standards as follows; separating the treatment of a surviving spouse from all other dependants:

> In this Act "reasonable financial provision"—
>
> (a) in the case of an application made by virtue of subsection (1)(a) above by ***the husband or wife of the deceased*** (except where the marriage with the deceased was the subject of a decree of judicial separation and at the date of death the decree was in force and the separation was continuing), *means* ***such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive*** , ***whether or not that provision is required for his or her maintenance*** ;
>
> (b) in the case of any other application made by virtue of subsection (1) above, *means such financial provision as it would be* ***reasonable in all the circumstances of the case*** *for the applicant to receive for his maintenance*.
>
> [emphasis added]

54 It would be seen that, unlike the reasonable provision of maintenance standard, the surviving spouse standard takes a *very much* wider approach as the provision is expressly stated not to be limited to "maintenance". It seems clear that it would enable the English courts to take into account what the surviving spouse would have been entitled to had there been, on the facts, a divorce instead of death. At this juncture we would pause to observe that, pursuant to s 1(2)(a) of the 1975 Act, the surviving spouse standard is not applicable to a spouse who has obtained an order for judicial

separation at the time of the death of the deceased spouse. However, the English courts are accorded with discretion to apply the surviving spouse standard even in the face of a subsisting order for judicial separation if:

(a) the deceased died within 12 months of the decree of judicial separation or of the decree absolute of divorce or nullity of marriage; and

(b) at the time of the deceased's death no order making (or refusing) financial provision for such spouse had been given in the subsisting matrimonial proceedings.

As stated by John G. Ross Martyn in *Theobald on Wills* (Sweet & Maxwell, 17th Ed., 2010) at p 207, this broader discretion given to the court in those circumstances was, "to deal fairly with cases where the death of the deceased has deprived the surviving spouse ... of the opportunity to obtain a fair division of the family assets in ancillary relief proceedings". It appears clear to us that if the provisions of the 1975 Act were to be part of the law of Singapore, the appellant would have been entitled to relief under the surviving spouse standard and this standard effectively incorporates the "imaginary divorce approach" as can be seen from s 3(2) of the 1975 Act which provides:

[I]n the case of ***an application by the wife or husband of the deceased*** , the court shall also, unless at the date of death a decree of judicial separation was in force and the separation was continuing, ***have regard to the provision which the applicant might reasonably have expected to receive if on the day on which the deceased died, the marriage, instead of being terminated by death, had been terminated by a decree of divorce*** **.**

[emphasis added]

55 By reason of s 3(2) of the 1975 Act, which clearly contemplates the division of matrimonial assets as a relevant factor for a surviving spouse, a surviving spouse applicant under the 1975 Act could justifiably ask for the amount which he or she could have expected to have received in ancillary proceedings in a divorce. However, we note that in some cases the courts seem to have interpreted the new standard of provision more liberally, so much so that the surviving spouse would in fact obtain a larger sum than he/she would have received if the testator had been alive and had the spouses proceeded in court for the determination of ancillary matters. An example of this is the case of *Re Bunning, Decd (Bunning v Salmon and others)* [1984] Ch 480 ("*Re Bunning*"), where Vinelott J calculated that the maximum award which the widow would have received in matrimonial proceedings to be £36,000. Yet on an application under the 1975 Act he awarded her £60,000. However, in *In Re Besterman (Deceased)* [1984] Ch 458 at 469 ("*Re Besterman*") Oliver LJ sounded a timely caution that notwithstanding the surviving spouse standard, "*the overriding consideration [in such an application] is what is "reasonable" in all the circumstances*."

56 As noted by Nourse L.J in the Court of Appeal decision of *In re Krubert, decd* [1997] Ch 97 at 104 the vital distinction between ancillary relief proceedings and family provision proceedings is that in the latter the deceased is dead and has no future earning power or earthly needs. However, it was held, rejecting the *Re Bunning* approach in favour of the *Re Besterman* approach, that a court was only to take the imaginary divorce approach as one of the many factors in determining what would be the reasonable maintenance awarded for the surviving spouse. In other words the surviving spouse standard was not to be interpreted without cognisance what was reasonable in light of the totality of the circumstances.

57 In the House of Lords decision of *White v White* [2001] AC 596 ("*White v White*") the Lords took the view that in ancillary relief proceedings, the correct approach for the court to adopt was to apply

the law to the individual facts of the case with the objective of achieving a result which is fair and non-discriminatory. While the court emphasised that there was no presumption of equal division of assets, as a general guide, equality was only to be departed from if there was a good reason for doing so. In this connection, we would pause to clarify that this is not the position in Singapore on the question of division of matrimonial assets: there is neither a presumption nor a starting point of equality of division. In *Cunliffe v Fielden and others* [2006] 1 Ch 361 ("*Cunliffe v Fielden*") the Court of Appeal took the view that there was no reason why the principles articulated by the Lords in *White v White* should not apply to the surviving spouse standard in the 1975 Act. For example, in a short marriage, the brevity of the marriage could support a powerful argument against equality of division. In fact, the court went so far as to state as follows (see *Cunliffe v Fielden* at [19] – [21]):

> [19] ... There is, however, no presumption of equal division of assets, but as a general guide, in the words of Lord Nicholls of Birkenhead, at p 605 [*White v White*]: "equality should be departed from only if, and to the extent that, there is good reason for doing so." He added:
>
> > "The need to consider and articulate reasons for departing from equality would help the parties and the court to focus on the need to ensure the absence of discrimination".
>
> …
>
> [21] Caution, however, seems to me necessary when considering the *White v White* cross-check in the context of a case under the 1975 Act. Divorce involves two living former spouses, to each of whom the provisions of section 25(2) of the Matrimonial Causes Act 1973 apply. In cases under the 1975 Act a deceased spouse who leaves a widow is entitled to bequeath his estate to whomsoever he pleases: his only statutory obligation is to make reasonable financial provision for his widow. In such a case, depending on the value of the estate, the concept of equality may bear *little relation* to such provision.
>
> [emphasis added]

58 It seems to us that what this dictum illustrates is that notwithstanding s 3(2) of the 1975 Act, the English courts have tended to take a cautious approach and are reticent in granting half of the estate of the deceased spouse to a surviving spouse pursuant to an application under the 1975 Act. For the purpose of the present case, there is no need for this Court to go further and make any other comment. This is because our IFPA has not followed suit and introduced the surviving spouse standard into our law. In any case, even on the basis of the 1975 Act, the equal division sought by the appellant might not necessarily be available to her. Of course, what is also clear is that, in whichever way one may interpret ss 1(2) and 3(2) of the 1975 Act, what a surviving spouse would obtain under the surviving spouse standard will certainly exceed what a dependant could receive under the reasonable provision of maintenance standard (or under our IFPA), as the discretionary remit accorded to the court under the surviving spouse standard is undoubtedly wider than that under the reasonable maintenance standard.

Whether the division of matrimonial assets was a relevant factor under s 3(6) of the IFPA

59 The appellant's counsel relied on the decision of *Soh Siew Yoke v Ching Kwong Yew & Ors* [1991] SGHC 37 ("*Soh Siew* Yoke") where the facts were very similar to the present. There the plaintiff and the testator were undergoing proceedings relating to the division of matrimonial assets after decree nisi had been granted. Mid-way through the hearings on division of assets, the testator died leaving no provision for the plaintiff in his will. In deciding a similar application under s 3(1) of the IFPA, F A Chua J observed at [5]:

It appears to me that had the deceased not died Rajah J might have made a substantial award to the plaintiff on her application for the division of matrimonial assets as he had directed the two properties viz No 5 Wimborne Road and No 46 Nassim Road to be valued. The valuation of a half-share of No 5 Wimborne Road was $750,000 while No 46 Nassim Road was $2,500,000.

[emphasis added]

60 However, *Soh Siew Yoke* does not stand for the proposition which the appellant purported to make in this appeal. The comments of the judge quoted above were purely observational and the written judgment did not in any way suggest that the division of matrimonial assets, an entirely separate enquiry, would be a relevant factor in determining reasonable provision of maintenance for the surviving spouse under the IFPA. The court could not and would not, as there was, and still is, no equivalent of ss 1(2) and 3(2) of the 1975 Act in our IFPA. Moreover, unlike the case at hand, the executors in *Soh Siew Yoke* did not dispute the widow's entitlement and eligibility for maintenance under IFPA. What was granted to the widow was $ 2,500 per month as reasonable provision for maintenance, an exercise of discretion by the court well within the scope of IFPA.

61 We acknowledge that if the Testator had lived, the appellant would have proceeded to the division of matrimonial assets stage, and the court would then have made a just and equitable division of the assets of the Testator and the appellant. But it does not follow from this unfortunate turn of events (the demise of the Testator) that the aborted proceedings relating to the division of assets would thereby *ipso facto* become a relevant factor under the IFPA. The events of death and divorce are materially different as upon death, the rights of the beneficiaries under the will of the deceased spouse come into being and the will forms a central part of the court's exercise of its discretion in the context of the IFPA. One should not lose sight of the fact that the object of the statutory discretionary power accorded to the court under the IFPA relates to the provision of *maintenance* rather than just and equitable compensation to the parties on the dissolution of a marriage.

62 We have earlier mentioned (at [58]) that the IFPA has not adopted the statutory amendments incorporated in the 1975 Act which provides for a separate surviving spouse standard in England. The reasonable maintenance standard, the only standard in the original English 1938 Act, is the *sole* standard which the courts in Singapore are to apply. As noted above at [45] – [58], the pertinent case law giving life to the reasonable maintenance and surviving spouse standards clearly establishes how different the ambits of their respective inquiries are. In plain terms, to subsume the latter within the former as argued by the appellant would be to misunderstand their individual contours and objectives. In the absence of our Parliament enacting the surviving spouse standard, following the 1975 Act, into law in Singapore, it does not fall within the powers of the court to judicially expand the scope of s 3(1) of the IFPA. The historical context and legislative impetus behind the enactment of the IFPA, (above at [33] – [39]) clearly shows that Parliament, in enacting the reasonable maintenance standard, did not and could not have contemplated that there should be a remedy to mitigate the disparity between the assets which would be available to a widow following the death of the husband as compared to the situation where there was a divorce between the parties. The English Parliament, in enacting the 1938 Act, was merely concerned with alleviating the harshness which could be caused to a surviving spouse as a result of the then consequences of total testamentary freedom. When our Parliament in 1966 adopted the 1938 Act as our law, it did so for the same objective: see *Singapore Parliamentary Debates*, vol 25 at cols 77-78 (21 April 1966). Unlike the objective of the 1938 Act, the objectives of the 1975 Act were noted by Nigel Lowe and Gillian Douglas in *Bromley's Family Law* (Butterworths, 9th Ed, 1998) at p 890 to be as follows:

[The 1975 Act] has two distinct objectives: to provide appropriate support for a dependant (including a surviving spouse) and to make fair division of assets between the spouses (under the

surviving spouse standard), although it is apparent that the courts do not always keep these two objects distinct.

[emphasis added]

While the English courts might not have always kept the two objects distinct, it does not follow that a Singapore court could, in the absence of an amendment to our IFPA, be permitted to unilaterally extend the scope of s 3(1) of IFPA as the appellant had contended.

63 Finally we ought to mention that the appellant also sought to argue that the English case law surrounding the 1938 Act had established that in determining reasonable provision for maintenance the court could take into account what a surviving spouse would be entitled to claim on divorce and that the surviving spouse standard introduced by the 1975 Act merely codified what was already common law under the 1938 Act. Thus, even without the introduction of the surviving spouse standard into IFPA the courts in Singapore were empowered to so act. The appellant had relied on a number of cases to put forth this proposition, *eg*, *Re Clarke* [1968] 1 WLR 618 and *Re Thornley* [1969] 1 WLR 1037. But a close examination of those cases show that they were in fact only concerned with determining reasonable provision of maintenance *simpliciter.* They in no way held that in determining an application under the 1938 Act, the court could take into account what the surviving spouse applicant would be entitled to claim as his/her share of matrimonial assets pursuant to divorce. The introduction of the surviving spouse standard in the 1975 Act was a direct consequence of the 1974 Law Commission report's recommendations which clearly reflected that societal attitudes in England had changed in relation to what the court should be able to take into account when exercising its discretion in relation to family provision, over and above maintenance, for surviving spouses. There was nothing in the 1974 Law Commission report to indicate that their recommendations merely codified settled case law interpretation of the 1938 Act. As such, in the absence of a clear direction from Parliament signalling a similar change of attitude in Singapore, we have to reject the appellant's contention.

Conclusion

64 While it is truly unfortunate that a widow in the appellant's predicament is for no reason other than the lack of statutory provision, receiving a smaller proportion of the Testator's estate than she would otherwise have likely to have received in matrimonial proceedings, one cannot ignore the specific limitations of the IFPA. This may well be an opportune moment for Parliament to review the IFPA and, if it thinks fit, to consider adopting the changes effected by the 1975 Act into our law. While the overarching enquiry the court is tasked with remains what is reasonable in the circumstances, the existence of the surviving spouse standard, a separate standard, acknowledges the fortuitous nature of death and its harsh, rather unfair consequences for the widow/widower as compared with a divorcee.

65 There are certainly strong grounds, both moral as well as just, to warrant the change. Fortuitous circumstances should not be allowed to affect what a surviving spouse would be entitled to under the Women's Charter in relation to the assets of the deceased spouse.

66 We were not unsympathetic to what the appellant had contended before us, but we found ourselves constrained by the limitations in the IFPA from varying the order made by the Judge not to award the appellant any financial provision. The assets which she held were capable of keeping her comfortable in light of her stated monthly expenses. Furthermore, no evidence was adduced to persuade this Court that her financial situation was likely to change in the future in such a way as to require maintenance from the Testator's estate. We also found that the order made by the Judge on

the provision of her accommodation to be fair and adequate. On the basis of reasonable maintenance, the sole basis allowed under the IFPA, the appellant had not made out her case.

Result

67 In the result, we dismissed the appellant's appeal. As the present proceedings were, in a sense, analogous to estate proceedings, we ordered that the costs of the parties be borne by the Testator's estate and fixed the appellants' costs for this appeal in the sum of $20,000 (inclusive of disbursements).

[note: 1] Appellant's Case ("AC") dated 6 May 2011 at para 15.

[note: 2] AC at para 32.

[note: 3] We note that a further edition has been published in 2009.

[note: 4] AC at para 9.

[note: 5] Respondents Case ("RC") at para 8; Core Bundle ("CB") at pp 28-29.

[note: 6] AC at para 11.

[note: 7] Note that the Grounds of Decision of the High Court at [3] erroneously states 26 January 2006 as the date decree nisi was granted.

[note: 8] CB at pp 28-29; AC at para 13.

[note: 9] CB at pp 73-123; AC at para 16.

[note: 10] CB at pp 132-147.

[note: 11] CB at pp 125-127; AC at para 18.

[note: 12] CB at pp 136; 149-177.

[note: 13] The appellant's affidavit dated 19 September 2011 at para 32.

[note: 14] The Grounds of Decision ("GD") at [4].

[note: 15] The GD at [9].

[note: 16] The GD at [8].

[note: 17] [C]'s affidavit at p 8.

[note: 18] [C]'s affidavit at para 4.

[note: 19] We note that [Property 2] was sold prior to the hearing of this appeal. It was not an asset in dispute between the parties in the present appeal.

[note: 20] The appellant's affidavit dated 19 September 2011 at para 32.

[note: 21] The appellant's affidavit dated 19 September 2011 at paras 28 – 30.

[note: 22] The appellant's affidavit dated 19 September 2011 at para 31.

[note: 23] The appellant's affidavit dated 19 September 2011 at paras 36 – 39.

[note: 24] The appellant's affidavit dated 19 September 2011 at paras 34 – 35.

[note: 25] CB at pp 135-137.

[note: 26] CB at pp 202 -242; AC at para 23.

[note: 27] The appellant's affidavit dated 19 September 2011 at paras 68 – 69.

[note: 28] The appellant's affidavit dated 19 September 2011 at paras 4 – 6.

[note: 29] The appellant's affidavit dated 19 September 2011 at paras 21 – 22.

[note: 30] Record of Appeal (Vol III)(Part A) p 119.

[note: 31] AC at para 39.

[note: 32] The supplemental submissions at paras 27 – 44.