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# 24. MUSLIM LAW

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## I. Introduction

24.1 It has been suggested elsewhere that the enduring co-existence of parallel Muslim and civil law regimes in the domestic context is underpinned by the "mutual respect the Muslim and the non-Muslim community have for each other".[1] This philosophy of mutual understanding and an in-depth appreciation of the logic and limits of each of these regimes relative to the other in such a pluralistic legal regime in which these two regimes operate in concert extends to the jurisprudential stances taken by the domestic courts. In line with this, the civil courts have long emphasised the need to recognise Muslim law as being "part of the law of the land"[2] and taken pains to determine questions of law arising before it in the civil courts, where appropriate, through reliance on Muslim law and doctrines.[3]

24.2 Consonant with this, the Muslim courts have, over the years, increasingly placed reliance on and made reference to jurisprudence emanating from the civil courts in the determination of its disputes. That this is so is, of course, unsurprising and unexceptional – while the practice of religion, by its nature, involves the adopting and espousing of a unique belief system that incorporates a suite of "distinctive sets of practices and rituals",[4] it is axiomatic that the practice of religion anywhere in the world would be largely informed by the prevailing customs, values and ethical precepts of that particular society. In that sense, it should be unsurprising that notions of justice across civil and Muslim law spheres in Singapore often overlap and sometimes wholly converge. Of course, there are logical limits to this argument – to take an obvious example, there are specific areas of Muslim law for which no parallel or meaningful

1 Ahmad Nizam Abbas, "The Islamic Legal System in Singapore" (2012) 21 Pac Rim L & Pol'y J 163.
2 *LS Investments Pte Ltd v Majlis Ugama Islam Singapura* [1998] 3 SLR(R) 369 at [38].
3 See, *eg*, the decision of *Majlis Ugama Islam Singapura v Saeed Salman* [2016] 2 SLR 26, as summarised in (2016) 17 SAL Ann Rev 604 at 607–610, paras 22.10–22.17.
4 Dr Mohamed Fatris Bakaram, closing remark at the International Conference Singapore 2018 (8 November 2018).

analogue exists in the civil law context: areas such as *faraid* or *talak*, for example, and it is inevitable that in those categories of jurisprudence, the Muslim courts would have to chart its own unique path. In the same vein, where the statutory powers across the two regimes differ, then it would follow that discrete outcomes might follow for similar applications across the two spheres.

24.3 The four written decisions from the Appeal Board in 2021 illustrate the workings and variations of these themes and reflect the *modus vivendi* approach of the Appeal Board to Muslim law issues. The first two cases, *NA v WN*[5] and Appeal Case No 8/2021 ("*Appeal Case No 8*"), provide illuminating examples of the convergence in jurisprudential approaches in areas of Muslim law which possess a civil law equal, while the third, Appeal Case No 5/2021 ("*Appeal Case No 5*"), provides a snapshot of the need to take a unique jurisprudential approach in areas that possesses no equivalent (given the unique place of the subject matter of that discussion in the context of Muslim matrimonial law) in the civil law landscape. The final decision, Appeal Case No 30/2021 ("*Appeal Case No 30*") deals with the related question of whether the powers conferred upon the civil courts in dealing with matrimonial disputes are, by way of analogy, *ipso facto* automatically available in the Syariah Court. This chapter will deal with these four cases in turn.

## II. Convergence of Muslim and civil laws – Division of assets

24.4 *NA v WN* involved cross-appeals by both parties in relation to the division of two matrimonial properties pursuant to the breakdown of an eight-year-long marriage from October 2011 to January 2020 between two professionals, a medical doctor ("the wife") and a legal professional ("the husband"). The two properties in question were a landed home that was purchased in November 2014 held solely in the wife's name ("Property 1") – bought for a sum of $4.7m – and an apartment purchased in 2008 by the husband held solely in his name ("Property 2").

24.5 As can be seen from the brief chronology set out above, Property 2 was bought prior to the existence of the marriage, while Property 1 was bought during the course of the marriage. In order to fund the purchase of Property 1, the wife had sold a condominium property that she was in possession of and that she held in her sole name prior to the marriage. The husband also provided a smaller sum of money towards the purchase of Property 1.

5 Appeal Case No 14/2020.

24.6 On 26 November 2014, the parties executed a detailed financial document ("the Written Agreement") which set out the costs involved in the purchase of Property 1 and a detailed breakdown of the financial contributions of both parties to Property 1. It also set out the net value and outstanding mortgage for Property 2 as well as a summary of the contributions of both properties by the parties from 1 December 2014 onwards. The Written Agreement was entitled "Equal Property Assets of 26 November 2014". It would appear, for all intents and purposes, that the Written Agreement was a document that sought to reflect how an equal sharing of both properties 1 and 2 ought to be achieved *inter partes* through a series of financial arrangements.[6] It is not in dispute that by the time of the divorce some five years after the genesis of the Written Agreement, the arrangements set out in it were perfected and satisfied by both parties.

24.7 The question that arose before the Muslim courts was how, if at all, the Written Agreement should influence the process of division of matrimonial assets. At first instance, in relation to the matter of direct contributions, the wife contended that reliance on the Written Agreement would result in a "patently unfair" outcome in so far as she had put in more money than the husband; the court should accordingly "replace" the proportions envisaged in the Written Agreement with what she claimed to be a more equitable approach. In that connection, it was pointed out by the wife that s 52(8)(*e*) of the Administration of Muslim Law Act[7] ("AMLA") was not applicable in so far as the provision in question mandated that consideration be had to "any agreement between the parties with respect to the ownership and division of [matrimonial] property in contemplation of divorce", and it was contended that this was not the premise of the document, as the Written Agreement was no more than a document that focused solely on how the parties should contribute towards the purchase of the two properties.[8] In contrast, the husband contended, at first instance, that full effect ought to be given to the Written Agreement and that consequently, both parties should be deemed to have contributed equally such that the direct contributions for both parties ought to be the same.[9]

24.8 On the matter of indirect contributions, the wife contended that she had put in significantly more into the marriage than the defendant, including her contributions on the logistical matters affecting both parties and her status as the primary caregiver to the two children. With this in

6 *NA v WN* (Appeal Case No 14/2020) at [18] and [19].
7 Cap 3, 2009 Rev Ed.
8 *NA v WN* (Appeal Case No 14/2020) at [24] and [25].
9 *NA v WN* (Appeal Case No 14/2020) at [27] and [29].

mind, the wife contended that her contribution to indirect contributions was 80%, while the husband's contribution should be assessed at 20%. The husband unsurprisingly disagreed and contended that they had contributed equally.

24.9 The wife then made arguments on an eventual ratio of distribution that averaged out their ostensible direct and indirect contributions, and grafted upon that calculation a further "adjustment" of the proportions in her favour to take into account the fact that she would have two young children under her care moving forward.

24.10 The approach set out in the preceding paragraphs, in which a court undertaking the process of division of matrimonial assets does so through the lenses of direct and indirect contributions, which are then adjusted where necessary, mirrors the three-step structured approach ("the structured approach") adopted by the Court of Appeal in *ANJ v ANK*.[10] Under that approach, the court adopts a three-stage test in which it first considers the parties' direct contributions as a ratio relative to each other, then proceeds to undertake the same exercise for indirect contributions, before deriving a final point by taking the average of these ratios, with a final adjustment where needed.[11]

24.11 The President of the Syariah Court ("the learned President"), at first instance, applied the structured approach in coming to her conclusion on the appropriate orders to be made for the division of matrimonial assets. However, she found that in ascertaining the parties' direct contributions, only *actual and direct* payments ought to be considered. Having considered the evidence, she found that the ratio of direct contributions was 55.9: 44.1, in favour of the wife. On the matter of indirect contributions, the learned President opined that a "rather specific" ratio of 72:38[12] in favour of the wife was appropriate. This was then averaged out to a proportion of 64:36 in favour of the wife having regard to the rounded versions of the average of these two ratios.

24.12 Both parties appealed the decision of the learned President. Their arguments on appeal can be broadly summarised as follows:

> (a) **The husband**. On the matter of financial contributions, the husband contended that while he accepted that the Written Agreement did not fall within the auspices of s 52(8)(*e*) of the AMLA, it should be given weight as corroborative evidence of

10 [2015] 4 SLR 1043.

11 A slightly more detailed discussion of the specifics of the *ANJ v ANK* approach is set out in (2020) 21 SAL Ann Rev 761 at 763–764, paras 24.7–24.9.

12 *NA v WN* (Appeal Case No 14/2020) at [42].

the parties' intent given the level of specificity of the document in question and the financial arrangements that the parties carried out pursuant to such document.[13] On the matter of indirect contributions, the husband accepted that the wife contributed more in this manner but suggested a more equitable ratio would be 55:45 in the wife's favour. The average of these would be 52.5:47.5 in favour of the wife.[14]

(b) **The wife**. The wife sought a *further increase* in direct contributions (from 55.9% to 57.4%) from that ordered by the learned President and sought to be allocated 80% for her indirect contributions, resulting in a weighted average of 68.7:31.3 in her favour.[15] She then proceeded to further seek an upwards adjustment of the ratio to a range of between 70% and 73% (from that of 68.7%), though the Appeal Board noted that "there [was] nothing in the submissions suggesting the nature and extent of the adjustments".[16]

24.13 The Appeal Board allowed the husband's appeal and dismissed the wife's appeal. As a preliminary point, the Appeal Board observed that both parties had adopted the structured approach as set out in *ANJ v ANK* and that the learned President had similarly undertaken her analysis on the basis of such an approach. This then raised the question of whether this would be the appropriate approach.

24.14 The Appeal Board noted that the structured approach as set out in *ANJ v ANK* was the presumptive starting point in all cases involving division of matrimonial assets (in the civil setting) and had been endorsed as being applicable in Muslim law by the Appeal Board in 2020 in *Appeal Case No 26 of 2018*.[17] In a resounding endorsement of that position and its applicability in the Muslim law context, the Appeal Board indicated that the utility in "reiterating the applicability of [the structured approach] ought to be in the forefront of every practitioner's mind when dealing with the issue of division",[18] noting that doing so would often facilitate the court's process of arriving at a just and equitable division. The Appeal Board therefore utilised the structured approach as the basis for effecting division on the case before it.

13 *NA v WN* (Appeal Case No 14/2020) at [46] and [48].
14 *NA v WN* (Appeal Case No 14/2020) at [48].
15 *NA v WN* (Appeal Case No 14/2020) at [52]–[57].
16 *NA v WN* (Appeal Case No 14/2020) at [58].
17 That case is discussed *in extenso* in (2020) 21 SAL Ann Rev 761 at 764–766, paras 24.10–24.13. While affirming the general principle underlying the structured approach, the Appeal Board in that case, however, did not find the approach to be applicable on those specific facts.
18 *NA v WN* (Appeal Case No 14/2020) at [63].

24.15 Turning then to the facts, the Appeal Board indicated the importance of understanding what the *raison d'être* of the Written Agreement was, noting that its purpose seemed to be to confer upon both parties an equal "share" in each of the two properties despite it being in their respective sole names.[19] The Appeal Board then considered the extent to which such written agreement should feature in the discussion, and the weight that should be attributed to it. In this connection, the Appeal Board observed that the relevant provision on division of assets under s 52 of the AMLA serves to replicate s 112 of the Women's Charter.[20] The Appeal Board then noted that where jurisprudence from the civil courts relates to the relevant provisions under s 112 of the Women's Charter which are then replicated in the AMLA, these decisions may be relied upon to shape Muslim law jurisprudence, to the extent they are not inconsistent with Syariah law principles.[21] The Appeal Board then observed that under civil law, relying on the observations in the Court of Appeal's decision of *TQ v TR*,[22] the precise weight to be given to such agreements is necessarily fact-dependent, and could range from little or no weight to even conclusive weight. Unless doing so would be contrary to parliamentary intent, or otherwise inconsistent with the principles of Syariah law, this should form part of the overall review of what would constitute a fair and equitable division of matrimonial assets.[23] On the present facts, given what the parties had put in on the terms of the Written Agreement in acquiring a stake in the two properties, the Appeal Board found that the parties' direct contributions had equal footing (that is, a 50:50 ratio).[24]

24.16 On the matter of indirect contributions, the Appeal Board expressed some hesitation on the ratio of 72:38 arrived at by the learned President, noting that indirect contributions, by their very nature, typically lack the type of specificity that lends itself to such precise figures and such precise terms (as opposed, the Appeal Board noted, to ratios that are in broader multiples of 5 or 10). The Appeal Board took pains to impress the fact that this does not mean that such specificity is not allowed, but only that there would presumably be more precise particulars in such cases to rationalise and justify such a position.[25] While agreeing with the learned President that the wife did provide more indirect contributions than the husband, it concomitantly noted that the husband was an involved parent

19 *NA v WN* (Appeal Case No 14/2020) at [63], [72], [73] and [76].
20 Cap 353, 2009 Rev Ed.
21 *NA v WN* (Appeal Case No 14/2020) at [78]–[80].
22 [2009] 2 SLR(R) 961.
23 *NA v WN* (Appeal Case No 14/2020) at [81(f)].
24 *NA v WN* (Appeal Case No 14/2020) at [87].
25 *NA v WN* (Appeal Case No 14/2020) at [90] and [91].

and for that reason, only a moderate adjustment, to a ratio of 65:35 in favour of the wife, would be in order.[26]

24.17 Averaging out the direct and indirect contributions (as set out in the preceding two paragraphs) and having considered that no further adjustment was warranted on the facts,[27] the Appeal Board found that the division of Property 1 and Property 2 ought to be in the ratio of 57.5:42.5 (that is, the averages of the 50:50 direct contributions and 65:35 indirect contributions as found by the Appeal Board).

24.18 Two observations are appropriate on *NA v WN*. First, it is interesting to note that the Appeal Board appeared to harbour some reservations on the agreed position *inter partes* that the Written Agreement did not fall within the auspices of s 52(8)(*e*) of the AMLA, that is, that it was not an agreement "between the parties with respect to the ownership and division of the property made in contemplation of divorce". The Appeal Board opined it was hard to understand "the purpose of the Written Agreement, if [it were not fashioned] to resolve any *subsequent* issues which may arise as to the parties' proper stake in the two properties, after the document was executed by both parties" [emphasis in original].[28] It would be interesting to see how subsequent cases might deal with the matter of characterisation of such an agreement; after all, as noted in *TQ v TR*, s 112(*e*) of the Women's Charter (which is *in pari materia* with s 52(8)(*e*)) does seem, on its face, to cover post-nuptial arrangements in the event of possible separation or divorce, though it is conceivable that it may not cover the Written Agreement if there is insufficient evidence that "a divorce is imminent or a real possibility".[29] In the final analysis, this may very well be a storm in a teacup, given that the *effect* of any agreement is ultimately fact-dependent. The facts of *NA v WN* bear this out, as the Appeal Board ultimately arrived at the very outcome that the Written Agreement seemed to contemplate, in effect giving full weight to the document, without express reliance on s 52(8)(*e*) of the AMLA.

24.19 Second, *NA v WN* reinforces the clear convergence in jurisprudential approaches between civil law and Muslim law in the realm of division of matrimonial assets as evidenced in recent years and has been noted in previous iterations of this chapter. That this is so is unsurprising, given the obvious parallels in statutory language between

26 *NA v WN* (Appeal Case No 14/2020) at [94]–[96].
27 *NA v WN* (Appeal Case No 14/2020) at [98] and [99].
28 *NA v WN* (Appeal Case No 14/2020) at [82].
29 See the comments of the High Court in *Wong Kam Fong Anne v Ang Ann Liang* [1992] 3 SLR(R) 902 at [33].

s 112 of the Women's Charter and s 52 of the AMLA and the reminder in both these provisions that the aim of the exercise of division of assets is to achieve a "just and equitable" outcome. *NA v WN*, however, provides a useful and important gloss to the limits of this principle, noting that in applying civil jurisprudence to the Muslim law context, it would remain important for the courts dealing with Muslim law matters to ensure that such civil jurisprudence being relied upon is in fact consonant with Syariah law and precepts.

## III. Convergence of Muslim and civil laws – Adducing fresh evidence

24.20 Such a convergence between civil and Muslim law approaches can also be seen in *Appeal Case No 8*.[30] *Appeal Case No 8* involves an appeal by a husband against the ancillary orders of the learned President on division of matrimonial assets, *nafkah iddah* and *mutaah*, and care and control of the three children (collectively, "the children"). Of especial interest for the purposes of this chapter is how the Appeal Board dealt with the issue of the adduction of fresh evidence.[31]

24.21 In order to understand the context of the additional evidence, it would be useful to briefly sketch out some salient aspects of the proceedings that led to the matter being heard by the Appeal Board. The proceedings before the Appeal Board represented the culmination of very lengthy proceedings before the Muslim courts involving various rounds of satellite litigation. Against the backdrop of such litigation, the President had, at first instance on dealing with the ancillary issues, arrived at the following conclusions:

> (a) The husband was to pay the wife *nafkah iddah* of $2400[32] and *mutaah* of $10 a day for a period of 2,631 days (the length of the marriage) resulting in a total *mutaah*[33] of $26,310. In coming to this conclusion, the learned President had rejected the

30 See para 24.3 above.

31 This chapter will not deal with the substantive merits of the appeal, though, for those who are interested, the husband's appeal was almost entirely dismissed save in relation to a slight variation of the Central Provident Fund quantum to be provided to the wife, and a slight variation to the access orders in relation to the children.

32 This is in essence a maintenance sum due from a husband to the wife for a period of three months after divorcing her. In this particular instance, the sum of $2,400 was derived from $800 per month for three months.

33 *Mutaah* is regarded as compensation given by a husband to the wife and is calculated based on the length of the marriage.

contention that the wife had been *nusyuz*[34] and therefore was not entitled to such payments.[35]

(b) On the issue of care and control and access, the learned President granted the wife sole care and control of the children, rejecting the numerous allegations by the husband on the alleged unfitness of the wife *qua* mother.[36]

(c) On the issue of division of matrimonial assets, the learned President awarded 20% of the husband's Central Provident Fund ("CPF") Special Account to the wife.[37] In this regard, it is important to note that the husband's position until the actual hearing before the learned President (that is, his ostensible position as evidenced in his own court documents) appeared to be that the entirety of his CPF moneys (both before and during marriage) were liable for division but that they should not be the subject of any order for division for reasons specific to the facts; however, on appeal, the husband contended that it was his position that only CPF moneys accumulated after marriage (which took place in 2013) were liable for division.[38] Consequently, before the learned President (that is, before such an ostensible shift in position), no evidence was adduced on the quantum of CPF at the time of marriage, even though such evidence would have been readily available.

24.22 In support of his appeal, the husband filed a notice of motion before the Appeal Board to introduce nine categories of fresh evidence. Very broadly, the nine categorises can be described as follows:[39]

(a) Category 1: documents relating to a child's schoolwork and school performance including screenshots evidencing the child's incomplete online assignments and a screenshot showing the wife apologising for the child's failure to complete an assignment on time;

(b) Category 2: documents purportedly evidencing the wife's refusal to co-parent with the husband including WhatsApp messages between the parties;

34 Very broadly, this means that the wife has failed in her responsibilities as part of the marriage. It is necessary, in the domestic context, for such an allegation to be supported by cogent proof brought by the party advancing such a contention.
35 Appeal Case No 8/2021 at [64]–[65].
36 Appeal Case No 8/2021 at [66].
37 Appeal Case No 8/2021 at [67].
38 A summary of why this is so can be found in Appeal Case No 8/2021 at [229].
39 See the table as found in Appeal Case No 8/2021 at [89] for a detailed breakdown of the documents.

(c) Category 3: documents purportedly evidencing the wife's true intent for a sole care and control order for the children, that is, an alleged desire for her to purchase a Housing and Development Board flat;

(d) Category 4: document evidencing the wife's recognition of the need for the children to spend more time with the husband;

(e) Category 5: documents evidencing an agreement between the parties involving revised access arrangements;

(f) Category 6: transcript of an audio recording of a conversation taking place one week after the learned President's orders, in which one of the children was hostile to the husband, adduced ostensibly to show the impact of such orders;

(g) Category 7: communications (in the form of WhatsApp messages) that one of the children had swallowed a toy while under the wife's care, adduced ostensibly to show that the wife had neglected the children;

(h) Category 8: communications (in the form of WhatsApp messages) that suggested that the wife was living with a friend, suggestive of the fact that she was unable to provide meaningful long-term stable accommodation for the children; and

(i) Category 9: the husband's CPF Statement of Accounts in 2013. The parties were married in August 2013, and these accounts would therefore give a clear picture of what the husband's CPF savings were at the time of marriage.

24.23 In dealing with the principles that govern the admission of such additional evidence, the Appeal Board observed that r 42 of the Muslim Marriage and Divorce Rules[40] ("the Muslim Law Rules"), which sets out the procedural framework to adduce further evidence on appeal, is worded differently from its equivalent under the Family Justice Rules 2014 (governing matters before the Family Courts) and under the Rules of Court[41] (governing matters before the Supreme Court).[42] In particular, while under the Family Justice Rules 2014 and the Rules of Court, a distinction is made in relation to evidence pre-dating and post-dating the decision appealed against, with "special grounds" being needed for the former but not the latter, no such distinction is provided for under the Muslim Law Rules. Further, the Muslim Law Rules similarly did not statutorily provide for the need for "special grounds" to be shown, instead

40 2001 Rev Ed.
41 2014 Rev Ed.
42 Appeal Case No 8/2021 at [92]–[94].

only mandating that leave be sought for such evidence to be adduced.[43] The upshot of all of this is that it raises the spectre of the extent to which the principles employed in civil cases (that is, in cases before the Family Courts or the Supreme Court) – in particular, the approach adopted in *Ladd v Marshall*[44] – for the adduction of fresh evidence would apply *mutatis mutandis* in Muslim law proceedings.

24.24 In resolving this question, the Appeal Board observed that, in principle, there was no reason why the *Ladd v Marshall* principles should not serve as a useful starting point in any assessment of whether further evidence could or should be adduced on appeal. The *Ladd v Marshall* approach had much to commend in so far as it recognised the need for finality in litigation and to incentivise parties to lay all their cards on the table at first instance.[45] Nonetheless, the Appeal Board opined that while finality and fair play were vital to the fair administration of justice, the *Ladd v Marshall* guidelines may be relaxed if the ends of justice so required it. In this connection, the Appeal Board echoed observations made by the Court of Appeal in a civil matter[46] in which it highlighted that this may especially be so in cases involving welfare and custody of children.[47] Even then, however, such evidence must have a real as opposed to a fanciful chance of making a difference to the deliberations of the Appeal Board and ought to only be exercised for evidence that would likely have a "perceptible impact" on the decision should it be admitted. This mitigates the desire of parties to launch every conceivable attack on a decision on appeal with the hope that something would eventually stick.[48]

24.25 Having regard to those overarching considerations, the Appeal Board only allowed for the Category 9 documents to be admitted. In particular, the Appeal Board concluded as follows:

> (a) Category 1: The documents, even if admitted, would not have a material influence on the outcome as such slippages in relation to the care (for example, involving failure to complete assignments in school) of a child are not uncommon immediately after ancillary orders are made given that the parties would necessarily be acclimatising to new realities;[49]

43 Appeal Case No 8/2021 at [100].
44 [1954] 1 WLR 1489. So named after the decision of *Ladd v Marshall* [1954] 1 WLR 1489.
45 Appeal Case No 8/2021 at [98].
46 *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341.
47 Appeal Case No 8/2021 at [100].
48 Appeal Case No 8/2021 at [101(c)].
49 Appeal Case No 8/2021 at [104]–[106].

(b) Category 2: The documents would similarly not have a material influence on the outcome as they did not evidence any clear lack of co-operation by the wife or a failure to prioritise the child's well-being;[50]

(c) Category 3: The documents did not have an important influence or a real chance of affecting the Appeal Board's deliberations on whether to reverse care and control given that on their true import, the documents and messages did not in fact mean that the wife could get a flat *only if* she had a sole care and control order;[51]

(d) Categories 4 and 5: The Appeal Board cautioned generally against reliance on such familial correspondence noting that even ignoring concerns of "without prejudice" privilege, such familial communications by their nature would inevitably lack the finesse, formality and structure inherent in commercial communication and touch on very personal matters between parties;[52]

(e) Category 6: The transcript would not have had an important impact on the Appeal Board's determination. As the Appeal Board noted, in relation to its reasoning *vis-à-vis* Category 1 above, it is inevitable that some acclimatisation to the new realities would be necessary immediately after an ancillary order is made.[53] The Appeal Board also took a dim view of the husband's attempts to make such a surreptitious audio recording of his own child for use in the proceedings before the Appeal Board, noting that this "does give some insight on the defendant's general disposition".[54]

(f) Category 7: The Appeal Board noted that it would be a stretch to suggest that the singular incident in question would have any impact on the Board's eventual decision given that it was nothing more than a storm in a teacup;[55]

(g) Category 8: This piece of evidence would not have the kind of impact that the husband thought that it did and taking it even at its highest, the Appeal Board found that it could not be

50 Appeal Case No 8/2021 at [107]–[108].
51 Appeal Case No 8/2021 at [109].
52 Appeal Case No 8/2021 at [110]–[112].
53 Appeal Case No 8/2021 at [113]–[114].
54 Appeal Case No 8/2021 at [114].
55 Appeal Case No 8/2021 at [115].

said to have a perceptible impact on any decision that it would have to make;[56]

(h) Category 9: The Appeal Board noted that such evidence was readily available from the outset of the proceedings. If it were the husband's consistent case that he was only agreeable to division of his CPF moneys after marriage (though the Appeal Board took pains to emphasise that this did not appear to be so, since the position he took before the Appeal Board that *only* post-marriage CPF accruements were liable for division did not appear to be his initial position),[57] then such a statement would have a real impact in determining the proper outcome before the Appeal Board since the new evidence provided indisputable evidence of what his quantum of CPF savings were immediately prior to marriage.[58] Accordingly, the Appeal Board was minded to allow this evidence to be admitted.

24.26 *Appeal Case No 8* provides useful clarification of the applicability of the *Ladd v Marshall* principles in Muslim law, notwithstanding the distinct legislative language found in the relevant provisions in the Muslim Law Rules when contrasted with its civil equivalents. It also reflects the sensitivities of the Appeal Board to the dynamism of matrimonial disputes, and the need to strike a fine balance between the need for finality and the concomitant desire to ensure that relevant, available evidence is produced before the court in order to achieve the ends of justice.

## IV. *Talak* – Charting its own unique Muslim law path

24.27 Under Muslim law, the pronouncement of *talak* is made by a husband to a wife, and when valid (that is, having, *inter alia*, attained puberty and being of sound mind), results in a divorce. Under the *Shafi'i* school of jurisprudence (jurisprudentially the primary reference point for the application of Muslim law in Singapore), there are two forms of *talak*: a *talak raji'i*, or a revocable divorce; and *talak ba'in kubra*, or an irrevocable divorce. The pronouncement of *talak* on three occasions renders the divorce irrevocable though contrary to that seemingly conclusive characterisation, there is technically no complete bar for the parties in question to remarry, though certain stringent criteria must be satisfied before this can be done. Where a *talak raji'i* is concerned, the divorce can be revoked by a process called *rujuk*, such that it would be

56 Appeal Case No 8/2021 at [117].
57 As discussed at para 24.21(c) above.
58 Appeal Case No 8/2021 at [119]–[122].

unnecessary for parties to undergo the entire process of solemnisation in order to be legally married.

24.28 What then happens when an individual pronounces *talak raji'i* three times in immediate succession, or otherwise indicates he is seeking a *talak ba'in kubra* (that is, an irrevocable divorce) by stating, for example, to the other party: "I divorce you with three *talak*"? In theory, this should render an otherwise revocable divorce irrevocable (in the manner suggested in the preceding paragraph). This mechanism of trying to effect an immediate irrevocable divorce, known colloquially as a triple *talak*, and its implications is of some controversy in many jurisdictions. In 2019, for example, a majority decision of the Supreme Court of India deemed the practice unconstitutional. Several other jurisdictions have similarly disallowed the practice of triple *talak*.

24.29 In the domestic context, while the use of the triple *talak* mechanism is technically allowed and not explicitly barred, it is discouraged in view of the sanctity of the institution of marriage. In this regard, the Muslim courts (both the Syariah Court and the Appeal Board) have repeatedly emphasised the need to carefully assess the facts of the case to ensure that it is satisfied that there is unequivocal evidence of such intent before it characterises any such actions as an intent to employ the use of the triple *talak*.

24.30 *Appeal Case No 5*[59] involved a joint appeal by both husband and wife (collectively "the appellants") against the decision of the learned Senior President of the Syariah Court that the husband effected an irrevocable divorce by way of a triple *talak*. The parties had married on 3 September 2016, and on 16 August 2020, in a fit of anger, the husband had apparently pronounced an irrevocable divorce by way of an equivalent Malay pronouncement to "I divorce you with three *talak*".[60] The husband then contacted the Syariah Court to enquire on how a *rujuk* of his pronouncement[61] could be effected; after filing the necessary papers, it was found by the learned Senior President of the Syariah Court that what the husband had stated amounted to an irrevocable divorce, that is, a *talak ba'in kubra*.[62] The learned Senior President noted, *inter alia*, that the pronouncement of three *talak* at short intervals or close succession is recognised by the four schools of law and similarly by a Fatwa Committee ruling by the Majlis Ugama Islam Singapura that indicated that such

59 See para 24.3 above.
60 Appeal Case No 5/2021 at [2], [13] and [14].
61 A *rujuk* is, *colloquially speaking*, an attempted reconciliation of the marriage.
62 Appeal Case No 5/2021 at [4]–[6].

mechanism was valid and irrevocable.[63] It was then noted that the husband had made a clear expression of divorce and while he may have been angry, he was aware of his actions and the words spoken, and his actions did not amount to insanity such as to invalidate the repercussions of such actions.[64]

24.31 On appeal to the Appeal Board, the appellants also filed a motion for leave for further evidence to be adduced to contextualise what was stated by the husband on 16 August 2020. In gist, the husband intimated that he was a layperson with a relatively modest level of academic education and no formal religious education. He had not intended for a permanent dissolution of the marriage and was unaware of the consequences of a triple *talak*.[65]

24.32 The decision of the learned Senior President was overturned by the Appeal Board on appeal. On the issue of admitting the new evidence above, the Appeal Board noted that the discretion of the court to admit new evidence was governed by the principles in *Ladd v Marshall* in that (a) it must be shown that the evidence could not be obtained with reasonable diligence for use at the trial; (b) it should be such that, if given, it would probably have an important influence on the result of the case though it need not be decisive; and (c) it must be such as is presumably to be believed, or in other words, it must be apparently credible though it need not be incontrovertible.[66] While the Appeal Board observed that the first condition in *Ladd v Marshall* did not appear on the present facts to be satisfied, it noted past jurisprudence from the Appeal Board[67] noting that a just and equitable decision that is in line with the principle of justice and fairness in Islam may sometimes involve allowing such evidence to be admitted even in the absence of the satisfaction of such condition, and that the interest of justice mandated that this be done in this case.[68]

24.33 On the matter of the triple *talak* mechanism, the Appeal Board noted that any determination of the status of the *talak* must be informed by Islam's position on the sanctity of marriage as an institution.[69] It observed that the question of the effect of a triple *talak* is a contentious matter. In a wide-ranging survey of Muslim jurisprudence and scholarship on point and the past cases before the Appeal Board, it noted that there have been multiple *hadiths* (that is, collected and documented traditions of

63 Appeal Case No 5/2021 at [16].
64 Appeal Case No 5/2021 at [17].
65 Appeal Case No 5/2021 at [9].
66 Appeal Case No 5/2021 at [10].
67 *BW v BX* [2018] SHGSAB 2.
68 Appeal Case No 5/2021 at [11].
69 Appeal Case No 5/2021 at [18].

the Holy Prophet Muhammad (peace be upon him)) that suggested that a triple *talak* could effect a revocable *talak*.[70] It then traced the religious origins of a shift in the approach in this regard, noting that the situation had changed sometime later to render a triple *talak* irrevocable as there was a tendency at the time to treat divorce in a casual, light and non-serious manner and a desire to stem such an undesirable practice.[71] This allowance for a shift in the law reflected the fact that the law is sufficiently flexible to reflect the exigencies of time and allows for the application of *maslaha*, an extended methodological principle of Islamic jurisprudence denoting the prohibition or permission of a thing according to necessity and whether it serves the public interest of the Muslim community.[72] The Appeal Board similarly noted that in line with this, various jurisdictions have enacted laws that mandated that a triple *talak* not be irrevocable.[73]

24.34 The Appeal Board then surveyed the jurisprudence on the implications of a triple *talak* in the application of Muslim law in Singapore both by itself and by the Syariah Court. In doing so, the Appeal Board noted that these bodies have appeared to underscore the need to exercise care, caution and prudence when dealing with such cases.[74] It observed, *inter alia*, that where these bodies have found that the triple *talak* amounted to an irrevocable divorce,[75] the husband had clearly intended the irrevocable nature of the triple *talak* in those cases.[76]

24.35 On the present facts, the Appeal Board opined that it was clear that this was not the case and there was no intent on the part of the husband to end the marriage permanently. Also taking into consideration his rudimentary level of religious knowledge, the Appeal Board did not think it to be in conformity with the spirit of Islam towards the preservation of the sanctity of marriage to treat the pronouncement of the husband in this case on 16 August 2020 as irrevocable.[77] The Appeal Board, accordingly, allowed the appeal and declared the pronouncement on 16 August 2020 to be a *talak raji'i* (revocable divorce), and extended time for the appellants to apply for the revocation of divorce.

24.36 The Appeal Board also gave broad guidance on the use of the triple *talak* mechanism. In particular, it opined that the intention of

70 Appeal Case No 5/2021 at [24]–[26].
71 Appeal Case No 5/2021 at [27]–[28].
72 Appeal Case No 5/2021 at [28]–[29].
73 Appeal Case No 5/2021 at [30].
74 Appeal Case No 5/2021 at [35].
75 See, *eg*, *AM v AN* [2012] 6 SSAR 202 and *Mohd Rashid bin Mohd Hussein v Zarina binte Kassim* [1991] 1 SSAR 16.
76 Appeal Case No 5/2021 at [39] and [40].
77 Appeal Case No 5/2021 at [43].

the husband in such cases to effect an irrevocable divorce is crucial and important.[78] This declaration should be generally put on oath and should be carefully scrutinised by the court, especially in cases where he is unrepresented, for it to ensure that the husband is not only aware of but also fully understands the nature and consequences of such a pronouncement.[79] In the words of the Appeal Board, "care, caution and prudence should be the norm of the day".[80]

24.37 *Appeal Case No 5* reflects the reality that there are some areas of jurisprudence where no parallels would be possible between civil and Muslim jurisprudential approaches given the unique nature of certain facets of Muslim law that possess no meaningful equal civil law counterpart. In that sense, it necessarily represents developments that are largely uninfluenced by the development of civil law in Singapore. This is, however, not to suggest that any such position taken by the Muslim courts on that point would be entirely unchartered or untethered by principle – instead, as *Appeal Case No 5* highlights, the Muslim courts would, in such cases, carefully consider developments in other jurisdictions, the applicable Muslim law scholarship, and even developments in that specific area of jurisprudence over time to carefully calibrate the proper jurisprudential approach to be had in the domestic contemporary context.

## V. Jurisdictional boundaries of powers of the Syariah Court

24.38 Finally, *Appeal Case No 30*[81] underscores another facet of the limits of being able to draw meaningful parallels between the civil courts and the Syariah Court, this time in the context of the powers of the Muslim courts to grant certain forms of preservative or interim relief. *Appeal Case No 30* involves an appeal by a wife in which she sought a Mareva injunction for the interim preservation of property which was the subject matter of divorce proceedings in the Syariah Court. At first instance, the learned Senior President declined to grant such an injunction as she opined that the Syariah Court did not have the power to grant such an injunction.[82] The wife appealed such finding.

24.39 On appeal, the Appeal Board upheld the decision of the learned Senior President, and similarly concluded that the Syariah Court did not have powers to issue a Mareva injunction. It noted that the genesis of the Family Justice Courts' power to grant such interim relief is in s 26(2)(*b*)

78 Appeal Case No 5/2021 at [45].
79 Appeal Case No 5/2021 at [45] and [46].
80 Appeal Case No 5/2021 at [46].
81 See para 24.3 above.
82 Appeal Case No 30/2021 at [4].

of the Family Justice Act 2014, which extends the powers of the General Division of the High Court (including for the ordering of a Mareva injunction) to it. A similar power exists in the Women's Charter which allows the Family Justice Courts to grant an injunction on matrimonial property in certain circumstances to prevent any disposition of property. It was observed that no such (or equivalent) provisions conferred upon the Syariah Court such powers.[83] It was also noted that s 52(4) of the AMLA – which sets out that the Syariah Court would be empowered to "make such other orders and give such directions as may be necessary or expedient to give effect to any other order" (made consequent to ancillary matters arising out of matrimonial proceedings) – did not confer upon it freestanding powers to grant an interim injunction, as its *raison d'être* was to allow the Syariah Court to make *consequential* orders to give effect to its judgments and orders and not for the purposes of granting *interim preservative* relief (such as that of a Mareva injunction).[84]

24.40 While there are many areas of convergence in jurisprudential approaches between the Muslim law and civil law regimes (as set out above), *Appeal Case No 30* serves as a useful reminder of the limits to the parallels that can be drawn between the two regimes. In particular, *Appeal Case No 30* reminds us that the civil courts and the Muslim courts are both, at their core, creatures of statute, and the powers that each such court can exercise must therefore stem from, and be defined by, their respective statutes and statutory instruments. It would consequently be critical not to assume that a power or jurisdiction must necessarily exist in either regime merely because of the existence of such statutory powers in the other. Put another way, it underscores the obvious, but oft-forgotten, point that while there are admittedly a wealth of similarities across the two regimes, they are nonetheless discrete legal frameworks defined by discrete laws and regulations, and one must be careful not to blithely assume that they are statutory analogues of each other.

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83 Appeal Case No 30/2021 at [8]–[13].

84 Appeal Case No 30/2021 at [21] and [22].