HCAP 4/2011

[2025] HKCFI 1401

**IN THE HIGH COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**COURT OF FIRST INSTANCE**

PROBATE ACTION NO 4 OF 2011

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IN THE ESTATE of LIM POR YEN (林百欣) late of 11th Floor, Lai Sun Commercial Centre, 680 Cheung Sha Wan Road, Kowloon, Hong Kong, married man, deceased (the “Deceased”)

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BETWEEN

CHEUNG TING KAU, VINCENT Plaintiff

and

KOO SIU YING 1st Defendant

LING MENG CHU, PEARL 2nd Defendant

AND BETWEEN

CHOW PUI WA, CAROL and FUNG WAN YIU, AGNES Plaintiffs

and

KOO SIU YING 1st Defendant

LING MENG CHU, PEARL 2nd Defendant

(By Original Writ and Order of Master J Wong dated 27 August 2021 to carry on)

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Before: Hon Wilson Chan J in Court

Dates of Hearing: 15-19, 22-26 April; 2-3, 6-10, 13-14, 16-17 May;

5-6 June 2024

Date of Judgment: 11 April 2025

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| J U D G M E N T |

# **A. INTRODUCTION**

1. This action concerns the estate of the late Mr Lim Por Yen (林百欣) (“**Mr Lim**”), the founder and controlling shareholder of the Lai Sun Group (麗新集團), a group of listed companies including Lai Sun Development, Lai Sun Garment, Lai Fung Holdings and Lai Sun Hotels. Mr Lim died in Hong Kong on 18 February 2005 aged 90.
2. By this action, the plaintiffs ask the Court to pronounce in solemn form a will made by Mr Lim dated 3 December 2004 (“**2004 Will**”).
3. This action was originally commenced by Mr Cheung Ting Kau Vincent (“**Vincent Cheung**”), a senior solicitor who qualified in 1972. At the time of the execution of the 2004 Will, Vincent Cheung was the senior partner of Messrs Vincent TK Cheung, Yap & Co. Vincent Cheung was also the executor named in the 2004 Will. Vincent Cheung passed away in July 2021, and the plaintiffs took up this probate action as the alternative executrices named in the 2004 Will and became substituted as the plaintiffs. See: Order of Master J Wong dated 27 August 2021.
4. The defendants in this action are Koo Siu Ying (顧瑞英) (“**Madam Koo**”), who claims to be a concubine of Mr Lim, and Ling Meng Chu, Pearl (林明珠) (“**Pearl Ling**”), the daughter of Mr Lim and Madam Koo. The plaintiffs have brought this action against Madam Koo and Pearl Ling because they each entered caveats against the 2004 Will. Under the 2004 Will, Madam Koo and her children with Mr Lim, Pearl Ling and Ling Wai Kwan Eric (林偉鈞) (“**Eric Ling**”), were completely disinherited.

# **B. FACTUAL BACKGROUND**

# **B1. Mr Lim’s family and business**

1. Mr Lim was a well-known businessman. He came to Hong ‍Kong in 1931 and established Lai Sun Garment in 1947. In 1987, he diversified into real estate with Lai Sun Development. Other than his interests in the Lai Sun Group, Mr Lim also held numerous properties and other investments in his lifetime.
2. Mr Lim is described by the witnesses as a strong-willed and hard-working person who was very much devoted to his business. He worked long hours and on public holidays. He also continued to go into Lai Sun Group’s offices in Cheung Sha Wan to sign documents in 2004, when he was already 89 years old.[[1]](#footnote-1)
3. Mr Lim’s family was divided into four separate households:[[2]](#footnote-2)
   1. Mr Lim had two children by his first wife, Madam Lai Yuen Fong (賴元芳) (“**Madam Lai**”), Lam Kin Ming (林建名) and a daughter, Lam Shuk Ying (林淑瑩). Madam Lai passed away in 2013.
   2. Mr Lim’s 2nd marriage was with Madam U Po Chu (余寶珠) (“**Madam U**”). They had a son, Lam Kin Ngok Peter (林建岳) (“**Peter Lam**”), and a daughter, Lam Shuk Yue Mabel (林淑如) (“**Mabel Lam**”).
   3. Mr Lim had a relationship with Madam Koo (who claims to be a concubine). There were two children from the relationship, Pearl Ling and Eric Ling.
   4. Mr Lim also had a relationship with a Madam Choy Yin Hong (蔡妍紅) (“**Madam Choy**”), a resident of Taiwan. They had one daughter, Lam Shuk Ling (林淑玲).
   5. Mr Lim also had an adopted son, Lam Kin Hong Matthew (林建康) (“**Matthew Lam**”).
4. Peter Lam joined Lai Sun Group after completing his university studies and assisted Mr Lim on almost all aspects of the business. It is his evidence (which appears undisputed) that he was chosen as the successor to Mr Lim’s business empire in 1993.[[3]](#footnote-3)
5. Several of Mr Lim’s other children also participated in the operations of the Lai Sun Group. Lam Kin Ming and Matthew Lam respectively oversaw the businesses of Crocodile Garments and Lai Fung Holdings, whereas Mabel Lam took on jobs in Crocodile Garments and Wing Fook Piecegoods Co Ltd, a cloth trading company established by Mr Lim.[[4]](#footnote-4)
6. In addition to Mr Lim and his children, at the time of the preparation and execution of the 2004 Will, the following individuals were part of the senior management of the Lai Sun Group and/or Mr Lim's trusted assistants:
7. Mark Lee Po On (李寶安) (“**Mark Lee**”), who joined Lai Sun Group in 1987 and served as an executive director of a number of the listed companies within the Group. He worked closely with Mr Lim until his death. He left the Group to take up a position at TVB in 2007.[[5]](#footnote-5)
8. Ho Wing Tim (何榮添) (“**Tim** **Ho**”), who joined Lai Sun Group in 1989. He assisted Mr Lim in business and personal financial matters and reported directly to Mr Lim.[[6]](#footnote-6)
9. Yew Yat Ming, who joined Lai Sun Group in 1991 and was an executive director of Lai Fung Holdings at the time of Mr Lim’s death.[[7]](#footnote-7)
10. Janet Lam, Mr Lim’s personal secretary.

# **B2. Disputes with Madam Koo and Pearl Ling**

1. It is not disputed that Mr Lim fell out with Madam Koo and Pearl Ling in around 2001 or 2002. Their disputes largely arose out of a property development project in Shanghai undertaken by Highfit Development Co Ltd (“**Highfit**”):[[8]](#footnote-8)
2. Highfit was a company incorporated in Hong Kong whose majority shareholders were Madam Koo and Pearl Ling.[[9]](#footnote-9) It held a 60% interest in Shanghai Huifa Property Company Ltd (“**Huifa**”) (with the other 40% held by a Chinese partner),[[10]](#footnote-10) which had acquired a plot of land at 41 Hengshan Road.
3. Between September 1994 and April 2001, Mr Lim made substantial loans totalling between HK$454 million[[11]](#footnote-11) to HK$570 million to Highfit to finance the development project and guaranteed loans extended by Hang Seng Bank to Highfit in excess of HK$150 million.[[12]](#footnote-12)
4. In 2001, Mr Lim made formal demands for repayment of his loans to Highfit and commenced proceedings in HCA ‍1942/2002 against Madam Koo and Highfit in May ‍2002 for recovery of the loans.
5. In the same month, Hang Seng Bank commenced proceedings against Highfit in HCA 1700/2002 for recovery of its loans. After Hang Seng Bank obtained summary judgment against Highfit in February 2002, it recovered against Mr Lim as guarantor and assigned the benefit of its judgment against Highfit to Mr Lim.
6. Madam Koo and Highfit’s defences to the two proceedings were that the monies personally advanced by Mr Lim and the loan from Hang Seng Bank which he guaranteed were intended as gifts to Madam Koo, and he never intended Madam Koo and/or Highfit to repay those sums. This was denied by Mr Lim who contended that they were business arrangements and repayable with interest.
7. In February 2003, Mr Lim claimed against Huifa for the sum of RMB 18,000,000 and froze its bank accounts.[[13]](#footnote-13) In response, Madam Koo caused Huifa to claim against Mr Lim for outstanding management fees.[[14]](#footnote-14)
8. Mr Lim discontinued the proceedings against Huifa in August ‍2003.[[15]](#footnote-15) The other proceedings however remained on foot at the time when Mr Lim made the 2004 Will.[[16]](#footnote-16)
9. Despite the many and varied matters raised by Madam Koo and Pearl Ling in the aforesaid proceedings, there is no suggestion that Mr Lim’s actions in the proceedings were not valid actions of his because, say, he had no capacity.
10. In January 2003, Pearl Ling also commenced proceedings against Mr Lim for defamation in respect of statements which Mr Lim had made in a press conference in May 2002.[[17]](#footnote-17) Pearl Ling claims in her witness statement that these proceedings were not actively pursued and were left dormant, but it is not disputed that these proceedings were not withdrawn and remained on foot until the time of Mr Lim’s passing.[[18]](#footnote-18)
11. It is the defendants’ case in these proceedings that they had reconciled completely and that the above disputes were “in the past”. This is disputed by the plaintiffs’ witnesses in their evidence.[[19]](#footnote-19)

# **B3. Preparation and drafting of the 2004 Will**

1. In broad terms, the evidence as to the preparation and execution of the 2004 Will is as follows.
2. In around mid-2004, Peter Lam became aware of enquiries by various bankers and businessmen as to Mr Lim’s succession plans upon his eventual retirement from the family business. Prompted by these enquiries, Madam U initiated discussions with Peter Lam, Lam Kin Ming, Matthew Lam, Mark Lee and Tim Ho on the transition arrangements for Mr Lim’s business empire.[[20]](#footnote-20)
3. In June or July 2004, Madam U met with Mark Lee and Tim Ho for lunch at Ho Choi Seafood Restaurant (好彩海鮮酒家) in Cheung Sha Wan and they discussed the issue of Mr Lim’s health. At the meeting, Madam U asked Mark Lee and Tim Ho to initiate discussions with Lam Kin Ming, Peter Lam, and Matthew Lam to agree on a succession plan and a plan for distribution of Mr Lim’s assets upon his death.[[21]](#footnote-21)
4. After the lunch meeting, Tim Ho compiled a list of Mr Lim’s assets and prepared a draft distribution proposal (“**Distribution Proposal**”)for discussion by the family. The draft was extensively discussed between Madam U, Lam Kin Ming, Peter Lam, Matthew Lam, Tim Ho and Mark Lee and revised on many occasions.[[22]](#footnote-22)
5. According to Madam U, throughout this period, she regularly kept Mr Lim updated on the latest developments regarding the discussions on the Distribution Proposal. In particular, Mr Lim was very firm that Madam Koo and Pearl Ling were not to share in his estate as they owed him substantial sums of money and he was very displeased with them.[[23]](#footnote-23)
6. The proposed arrangements were also discussed between Mr ‍Lim and Mark Lee, Tim Ho and Peter Lam on a number of occasions:
   1. According to Mark Lee, since August 2004, he and Tim Ho went to Mr Lim’s residence to discuss with him the arrangement for succession on many occasions. At the time, they were still avoiding explicit use of the term “will”.[[24]](#footnote-24)
   2. According to Mark Lee and Tim Ho, on a visit to Mr Lim’s residence in August 2004, they asked Mr Lim for his views as to which of his sons should take over which of his businesses. Mr Lim replied that Lam Kin Ming should run the garment manufacturing and Crocodile Garments’ businesses, as he liked those businesses, whereas Peter Lam should take over the property and entertainment businesses as he was more outgoing and business-minded.[[25]](#footnote-25)
   3. According to Mark Lee, he visited Mr Lim on many occasions in November 2004 to personally explain drafts of the Distribution Proposal, to which Mr Lim indicated his understanding and agreement.[[26]](#footnote-26) He also stated that by that time, the fact that a will was being discussed had become more explicit.[[27]](#footnote-27) He would report to Mr Lim every time there was a change on the draft.[[28]](#footnote-28)
   4. One evening in late November after the Distribution Proposal was finalised, Peter Lam and Mark Lee paid a visit to Mr Lim at his residence in Kowloon Tong. They brought along the final version of the Distribution Proposal and a box of Beef Chow Fun (乾炒牛河), which was Mr Lim’s favourite dish. While Mr Lim was eating, Peter Lam sat next to him and discussed with him the contents of the Distribution Proposal.[[29]](#footnote-29)
   5. According to Peter Lam, Mr Lim appeared to him as usual and listened with good attention. Mr Lim commented that the proposal was good (好好), and reminded Peter Lam that there should not be any disputes amongst the beneficiaries.[[30]](#footnote-30)
7. The finalised Distribution Proposal dated 29 November 2004 was signed by Madam U, Lam Kin Ming, Peter Lam and Matthew Lam on 3 December 2004.[[31]](#footnote-31)
8. Under the Distribution Proposal, Mr Lim’s assets were to be divided amongst Peter Lam (PL), Madam U (YPC), Matthew Lam (KH) and Lam Kin Ming (KM). Madam Koo, Pearl Ling and Eric Ling would not receive any part of Mr ‍Lim’s estate. Madam Lai, Mabel Lam, Lam Shuk Ying, Madam Choy and Lam Shuk Ling (who have not sought to be joined in these proceedings) were not beneficiaries either.
9. In parallel to the ongoing family discussions regarding the distribution proposal, in September or October 2004, Mark Lee approached Vincent Cheung to make arrangements for the drafting of a will. In turn, Vincent Cheung asked Agnes Fung (a partner of his firm) to handle the process.[[32]](#footnote-32)
10. On 15 October 2004, Agnes Fung met with Mark Lee and Tim Ho at Lai Sun Group’s offices in Cheung Sha Wan to take instructions regarding Mr Lim’s will. Mark Lee and Tim Ho provided her with details regarding Mr Lim’s assets and how those assets were to be distributed.[[33]](#footnote-33)
11. On 21 October 2004, Agnes Fung sent the first draft of what later became the 2004 Will to Mark Lee and Tim Ho. Over the course of the next several weeks, the draft underwent several revisions on the basis of instructions and documents which were provided to Agnes Fung by Mark Lee and Tim Ho, including drafts of the Distribution Proposal. Agnes Fung also prepared a Chinese translation of the draft of the 2004 Will.[[34]](#footnote-34)
12. The 2004 Will was finalised on 2 December 2004.[[35]](#footnote-35) The 2004 Will as executedprovided that:
    1. Vincent Cheung was appointed sole executor, whereas Carol Chow and Agnes Fung were appointed as alternative executrices (clause 3);
    2. Peter Lam, Lam Kin Ming, Matthew Lam and Madam U were granted specific legacies of assets as contemplated in the Distribution Proposal (clauses 5 to 8);
    3. The residual estate (after paying off debts and administration expenses) was to be distributed amongst Lam Kin Ming (the first HK$200 million, and 33% of the remainder), Peter Lam (50% of the remainder), and Madam U and Matthew Lam jointly (17% of the remainder) (clauses 10 to 11).
    4. Madam Lai was not entitled to share in Mr Lim’s estate as she was old and already well taken care of by Mr Lim before his death, and that her son Lam Kin Ming is a beneficiary under the will (clause 14(i));
    5. Madam Koo, Pearl Ling and Eric Ling were not entitled to share in Mr Lim’s estate as Mr Lim’s relationship with them had “deteriorated badly”. Specific reference was made to Pearl Ling’s claim for defamation against Mr Lim and Mr Lim’s ongoing litigation with Madam Koo and Pearl Ling (clause 14(ii)).
13. In the 2004 Will, Pearl Ling and Eric Ling’s English names were stated as “Pearl Liang” and “Eric Liang” respectively, and Eric Ling’s Chinese name was stated as “林偉君” instead of “林偉鈞”. However, it is clear from context and not in dispute that these were references to Pearl Ling and Eric Ling.

# **B4. Execution of the 2004 Will**

1. The 2004 Will was executed by Mr Lim at his residence in Kowloon Tong on 3 December 2004.
2. Vincent Cheung arrived at Mr Lim’s residence at around 10 in the morning. Separately, Agnes Fung and two assistant solicitors from Vincent TK Cheung, Yap & Co who were to be the attesting witnesses for the 2004 Will, Connie So and Eva Wong, had also arrived.[[36]](#footnote-36)
3. According to Vincent Cheung, Mr Lim recognised Vincent Cheung immediately and greeted him despite having not met him for over a year. Mr Lim was alert and responsive in conversation. When Vincent Cheung explained that he had come with a will (平安書) for him to sign, Mr Lim confirmed he knew what the document was.[[37]](#footnote-37)
4. Madam U, Lam Kin Ming, Peter Lam, Matthew Lam, Mark Lee, Tim Ho, and Fung Kwok Hung (Peter Lam’s personal assistant) were present that day. Peter Lam explains that they attended as making a will was regarded as a big event for Mr Lim, who was a very traditional Chinese man.[[38]](#footnote-38)
5. Dr Michael Lin (“**Dr Lin**”) (a radiologist, who since 2001 looked after Mr Lim’s general condition and would refer Mr Lim to see other specialist doctors)[[39]](#footnote-39) also briefly attended Mr Lim’s residence that day and brought along two other doctors. Shortly after Vincent Cheung and Mark Lee arrived, and before the execution process began, Dr Lin indicated that he had to leave to attend to other matters. The two doctors brought along by Dr Lin stayed behind.[[40]](#footnote-40)
6. It later transpired that the two other doctors were Dr Chan Pui Hong (“**Dr Chan**”) and Dr Tony Kwok (“**Dr Kwok**”). Neither Vincent Cheung, Peter Lam nor Mark Lee knew the two doctors.[[41]](#footnote-41) How they came to be in attendance will be discussed in more detail below.
7. According to Mark Lee, his understanding was that Dr Lin’s attendance was arranged by Peter Lam, and Dr Lin in turn arranged the attendance of the two other doctors.[[42]](#footnote-42) According to Vincent Cheung, he did not know who instructed Dr Chan and Dr Kwok or why they were instructed, and he believed that they were there just in case Mr Lim needed medical attention.[[43]](#footnote-43)
8. After Dr Lin left, the two doctors asked Mr Lim several questions. Vincent Cheung’s recollection was that they asked Mr Lim no more than 10 questions, and while he could not recall the first few questions, he could recall that Mr Lim answered them correctly and without incident. Mr Lim correctly answered his name and address and recognised those who were sat around the table. He was also able to recall the dates of Mid-Autumn Festival and Lantern Festival (元宵) in the Chinese calendar, but he mistakenly stated that the current US President was “Clinton”. When informed that the US President was in fact President Bush, Mr Lim stated that he had not been following the news for some time.[[44]](#footnote-44)
9. The two doctors left after asking these questions and did not stay to witness the execution of the 2004 Will.[[45]](#footnote-45)
10. In this respect, it is the evidence of Peter Lam and/or Mark Lee that:
    1. Shortly before 3 December 2004, when making arrangements for the execution of the 2004 Will, Vincent Cheung asked Mark Lee if a doctor would be present. Vincent Cheung did not mention the purpose of arranging a doctor to be present, and Mark Lee assumed that this was to look after Mr Lim’s medical condition.[[46]](#footnote-46)
    2. Mark Lee then informed Peter Lam of this.[[47]](#footnote-47) Peter Lam then called Vincent Cheung and asked him what type of doctor he had in mind, and Vincent Cheung asked whether a doctor would be arranged on standby in case medical attendance was required. Peter Lam brought up Dr Lin (because he knew Mr Lim had been seeing Dr Lin),[[48]](#footnote-48) and Vincent Cheung said Dr Lin would be suitable.[[49]](#footnote-49)
    3. Peter Lam then called Dr Lin and asked him to attend on 3 ‍December ‍2004, informing him that Mr Lim would execute a will and asked him to keep an eye on Mr Lim.[[50]](#footnote-50)
11. Peter Lam denies that he asked Dr Lin to attend for the purpose of assessing Mr Lim’s mental capacity. In particular, he made the point that if he had wanted to arrange a doctor to assess Mr Lim’s capacity, he would have arranged for a specialist to attend (instead of Dr Lin, whom he knew was a radiologist).[[51]](#footnote-51) It is also the plaintiffs’ case that Peter Lam (or indeed Dr Lin) would not have arranged for Dr Chan or Dr Kwok (who were both only general practitioners) to come if the purpose was to assess Mr Lim’s capacity to execute the 2004 Will.
12. As Peter Lam did not arrange for Dr Chan and Dr Kwok to be present, on the day on 3 December 2004, he did not know who they were, and Mr Lim did not want them present.[[52]](#footnote-52) The evidence of Peter Lam and Mark Lee is that when the two doctors began asking questions, they felt that Mr Lim was becoming impatient with them after a few questions, and thus the two doctors were asked to leave.[[53]](#footnote-53)
13. Vincent Cheung then proceeded to explain the 2004 Will to Mr Lim. While Vincent Cheung did not recite every word of the 2004 Will to Mr Lim, he went through it paragraph by paragraph in Cantonese explaining each paragraph in detail to him. Vincent Cheung also provided Mr Lim with the Chinese translation of the Will for him to read while following his explanation.[[54]](#footnote-54)
14. According to Vincent Cheung, the process took 15 to 20 minutes. Mr Lim mostly listened attentively to the process. Vincent Cheung found Mr Lim to be in good spirits, observant, attentive and alert throughout the entire process and believed that Mr Lim understood everything said to him. He believed that Mr Lim fully understood that he was leaving his estate to Madam U, Peter Lam, Lam Kin Ming and Matthew Lam, and that Madam Koo, Pearl Ling and Eric Ling were not beneficiaries under the 2004 Will. Mr Lim did not ask any nonsensical questions or give him any cause to believe that he did not comprehend what he was doing.[[55]](#footnote-55)
15. Mark Lee gave a similar account. When Vincent Cheung was explaining the contents of the will to Mr Lim, Mr Lim listened attentively, and had nodded to indicate his understanding, but did not say much. He believed that Mr Lim was already well-aware of the contents because he (Mark Lee) had discussed the contents of the Distribution Proposal with him many times.[[56]](#footnote-56)
16. At the end, when Vincent Cheung asked Mr Lim to sign the 2004 Will, Mr Lim asked whether he should sign on the English document or the Chinese translation, and whether he should use his English or Chinese signature. Vincent Cheung told him to sign both documents, and use whichever signature he wished to use.[[57]](#footnote-57)
17. Ultimately, Mr Lim signed both his English and Chinese signatures on the English language version of the 2004 Will, which were attested to by Connie So and Eva Wong.[[58]](#footnote-58) Mr Lim also signed on the Chinese translation although these signatures were not attested.

# **B5. Previous wills and testamentary scripts by Mr Lim**

1. It appears from the evidence that Mr Lim had executed several testamentary scripts prior to the 2004 Will:
   1. There is a typed English document dated 23 September 1967 (“**1967 Will**”) under which the entire estate was to be sold and was to be divided into 12 equal shares to be held on the following trusts until all his infant children attained the age of 21 years:
      1. 1 share for Madam Lai, 1.5 share for Madam U, and 0.5 share for Madam Koo until their respective remarriages or deaths upon which such shares would pass to what was called the “ching sheung” trust (paragraph (d) below);
      2. 3 shares for Lam Kin Ming, 2 shares for Peter Lam, and 1 share for Eric Ling; and
      3. 0.5 share for each of Lam Shuk Ying, Mabel Lam and Pearl Ling;
      4. The remaining 1.5 shares to be held in a “ching sheung” (蒸嘗) trust to be applied towards ancestral worship, education and maintenance expenses, and charitable purposes.
   2. There is a Chinese manuscript document on Lai Sun Garment letterhead dated 2 February 1973 (“**1973 Will**”) under which the estate was to be divided into 12 equal shares and distributed as follows:
      1. 1 share each for Madam Lai and Lam Kin Ming, and a 0.5 share for Lam Shuk Ying;
      2. 1.5 shares for Madam U, 2.5 shares for Peter Lam and a 0.5 share for Mabel Lam;
      3. 0.5 share for each of Madam Koo, Eric Ling and Pearl Ling;
      4. 0.25 share for Madam Choy and 0.5 share for Lam Shuk Ling;
      5. 0.5 share for Lim Por Him;
      6. The remaining 2.25 shares were to be used to set up a trust fund with income to be applied for charitable purposes and for the provision of financial assistance to relatives and friends.
   3. There is a further Chinese manuscript document on Lai Sun Garment letterhead dated 20 January 1974 (“**1974 Codicil**”) which revoked the gift to Madam Choy and stated that Lam Kin Ming was not to be distributed with Lai Sun shares because he had already been given a substantial number of such shares.
   4. There is also a typed Chinese document described as a “Declaration” (聲明書) dated 18 May 1993 under which Mr ‍Lim granted 15% of his assets plus all his shares in Lucky Omen Ltd to Peter Lam after his death (“**1993 Declaration**”). The 1993 Declaration was prepared by Vincent Cheung on instructions given through Mark Lee, and was witnessed by Vincent Cheung and Tim Ho.[[59]](#footnote-59)
   5. It is Peter Lam’s evidence that he was deciding at the time whether to stay on within the Lai Sun Group (where he had been working for more than 15 years by the time) or to start his own business. The 1993 Declaration was executed by Mr Lim to assure Peter Lam of his position as Mr Lim’s heir and successor in the Lai Sun Group.[[60]](#footnote-60)
2. The 1967 Will, the 1973 Will and the 1974 Codicil were discovered in Mr Lim’s safe deposit box kept with Bank of East Asia which was opened by Vincent Cheung upon Mr Lim’s death.[[61]](#footnote-61) As to the 1993 Declaration, it is Peter Lam and Mark Lee’s evidence that it was well known within the senior management of the Lai Sun Group.[[62]](#footnote-62)
3. It should however be stated that the plaintiffs (being only executrices of the 2004 Will) do not have any interest in relation to the 1967 Will or the 1973 Will and the 1974 Codicil. Accordingly, the plaintiffs take no position as to their validity (which is a matter that forms part of the defendants’ counterclaims, apparently as an alternative to intestacy).

# **B6.** **Mr Lim’s health condition in 2004**

1. Mr Lim was born on 1914. He was 90 years old in 2004.
2. There is no dispute that Mr Lim’s health gradually deteriorated in the last year of his life. The medical evidence regarding Mr Lim’s condition will be considered in more detail below. At this juncture, it is sufficient to note the following important events.
3. Mr Lim was diagnosed with prostate cancer in 2001. He was referred by Dr Lin to Dr Wong Kwok Kee (“**Dr KK Wong**”), an urologist, who treated Mr Lim with hormone therapy and chemotherapy. As a result of his diagnosis, Mr Lim also had to receive repeated blood transfusions.[[63]](#footnote-63) In this connection, he had been seeing Dr KK Wong from 2001 up to his death in 2005.[[64]](#footnote-64)
4. On 1 June 2004, Mr Lim was admitted to Hong Kong Adventist Hospital (“**HKAH**”) for a coronary stenting procedure.[[65]](#footnote-65)
5. Shortly after his discharge from hospital, Mr Lim slipped and fell, sustaining a fracture in his left forearm. On 7 or 8 June 2004, a plaster cast was applied. He was readmitted to HKAH on 10 June 2004 due to a sudden change of his mental condition.[[66]](#footnote-66)
6. On 15 June 2004, Mr Lim was transferred to the Hong Kong Sanatorium and Hospital (“**HKSH**”). Mr Lim was discharged from HKSH on 17 June 2004. In the discharge summary for Mr Lim’s stay at HKSH, it was recorded that he was admitted for recuperation “after acute delirium”.[[67]](#footnote-67)
7. On 2 August 2004, Mr Lim attended the outpatient clinic of Dr Jason Fong (“**Dr Fong**”) for a consultation. Dr Fong first saw Mr Lim during his stay in HKSH in June 2004 (see paragraph 52 above).[[68]](#footnote-68) Dr Fong administered a Mini-Mental State Examination (“**MMSE**”) on Mr Lim for which he gave Mr Lim a score of 8 out of 30. Dr Fong’s evidence is that he considered that Mr Lim had moderate to severe Alzheimer’s Disease. He prescribed a drug for treating Alzheimer’s Disease, and also a sedative to help Mr Lim sleep better.[[69]](#footnote-69)
8. On 2 September 2004, Mr Lim was admitted to HKSH again to treat a pulmonary edema (fluid in lungs) resulting from his blood transfusion.[[70]](#footnote-70) Mr Lim was discharged on 11 September 2004.[[71]](#footnote-71)
9. Mr Lim executed the 2004 Will on 3 December 2004 as described above.
10. During this period, Mr Lim was repeatedly admitted to HKSH for blood transfusions on 8-9, 12-13 November and 13-15 December 2004, and 17-19 January 2005.[[72]](#footnote-72)
11. Mr Lim’s health sharply deteriorated on 20 January 2005, when Mr Lim choked while feeding at about 1 pm. He was admitted to Hong Kong Baptist Hospital (“**HKBH**”)that afternoon where he was diagnosed with suspected aspiration pneumonia.[[73]](#footnote-73)
12. On 31 January 2005, Mr Lim was transferred to Queen Mary Hospital where he was admitted directly to the intensive care unit.[[74]](#footnote-74) Mr Lim eventually passed away on 18 February 2005. Mr Lim’s cause of death was recorded as gangrene of the bowel and septic shock.

# **C. THE ISSUES AND OUTLINE OF THE PARTIES’ RESPECTIVE CASES**

1. The defendants ask the Court to pronounce against the 2004 Will on the following bases:

(1) The defendants aver that Mr Lim, affected by moderate to severe dementia, was not of sound mind, memory and understanding and did not have testamentary capacity at the time of execution of the 2004 Will.[[75]](#footnote-75)

(2) The defendants allege that the 2004 Will was obtained by the undue influence of Madam U and Peter Lam.[[76]](#footnote-76)

(3) The defendants further allege that Mr Lim did not know and approve of the contents of the 2004 Will at the time of its execution.[[77]](#footnote-77)

1. By the Counterclaim,[[78]](#footnote-78)the defendants as their primary position ask that the Court pronounce the 1973 Will and the 1974 Codicilin solemn form. The plaintiffs, being only executrices of the 2004 Will, take no position on the validity of these previous wills.
2. The plaintiffs’ case, in gist, is as follows:
   1. The 2004 Will was duly executed, having been witnessed by a number of persons including Vincent Cheung and the attesting witnesses, all of whom were practising solicitors.[[79]](#footnote-79) Many family members were also present at the execution.
   2. Mr Lim was of sound mind, memory and understanding at the time of the execution of the Will.[[80]](#footnote-80)
   3. The 2004 Will was not obtained by undue influence of Madam U and/or Peter Lam.[[81]](#footnote-81)
   4. Mr Lim knew and approved of the contents of the 2004 Will, which was drafted on his instructions, was explained to him immediately before it was executed and to which Mr Lim indicated his agreement.[[82]](#footnote-82)

# **D. BURDEN AND STANDARD OF PROOF**

1. The principles regarding the burden and standard of proof in probate disputes have been set out by Ribeiro PJ in *Nina Kung v Wang Din Shin* (2005) 8 HKCFAR 387, §§171-178:
   1. A person who propounds a will has the legal or persuasive burden of satisfying the court that it is the will of the deceased.
   2. The standard of proof is the balance of probabilities. The proponent of the will is required to show on the preponderance of the evidence that it is the will of the deceased.
   3. This means that the proponent of the will has the burden of proving on a balance of probabilities that (a) there was due execution of the will, (b) the testator was of testamentary capacity and (c) the testator knew and approved of the contents of the will.
   4. Where a person disputes the validity of a will on the grounds that there is want of due execution, or of testamentary capacity, or of the requisite knowledge and approval, that person bears an evidential burden of putting the relevant ground of challenge in issue. If the evidence adduced by him or otherwise arising in the case is of a sufficient cogency to raise such an issue, the court, when assessing the evidence as a whole at the end of the case, decides whether the proponent of the will has discharged the persuasive burden in relation to the relevant fact in issue on the balance of probabilities.
   5. On the other hand, where a person seeks to challenge a will on the grounds that the testator was induced to make the will by fraud or by undue influence, such person bears the persuasive burden of establishing the fraud or undue influence. This is because these pleas presuppose execution of the will by the testator. The allegation is that such execution was procured by acts of fraud or undue influence.
   6. The person propounding the will has no burden of disproving fraud or undue influence, although he is obviously likely in practice to adduce whatever evidence may be available to counter those allegations. Where those issues are raised (assuming that the court is satisfied as to due execution, testamentary capacity and knowledge and approval), the court asks itself at the end of the day whether, having regard to all the evidence adduced, the person opposing the grant has satisfied the court that it is more likely than not that the testator was induced to make the will by fraud or undue influence, as the case may be.

# **E. LAW ON TESTAMENTARY CAPACITY**

1. The test for testamentary capacity is well-established. The *locus classicus* is *Banks v Goodfellow* (1870) LR 5 QB 549, where Cockburn CJ held at 564-565 that:

“The English law leaves everything to the unfettered discretion of the testator, on the assumption that, though in some instances, caprice, or passion, or the power of new ties, or artful contrivance, or sinister influence, may lead to the neglect of claims that ought to be attended to, yet, the instincts, affections, and common sentiments of mankind may be safely trusted to secure, on the whole, a better disposition of the property of the dead … than could be obtained through a distribution prescribed by the stereotyped and inflexible rules of a general law. …

… to the due exercise of a power thus involving moral responsibility, the possession of the intellectual and moral faculties common to our nature should be insisted on as an indispensable condition. It is essential … that a testator (1) shall understand the nature of the act and its effects; (2) shall understand the extent of the property of which he is disposing; (3) shall be able to comprehend and appreciate the claims to which he ought to give effect; and, (4) with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties – that no insane delusion shall influence his will in disposing of his property and bring about a disposal of it which, if the mind had been sound, would not have been made.” (emphasis and numbering added)

1. Before addressing each of the four criteria in greater detail, several preliminary points regarding this test should be noted:
   1. First, the *Banks v Goodfellow* criteria do not require actual understanding but only the *ability* to understand. As stated by Lewison LJ in *Simon v Byford* [2014] WTLR 1097 at §§39-40:

“… it is important to emphasise that at this stage what we are dealing with is capacity, in other words with potential. … testamentary capacity must not be conflated with knowledge and approval of the contents of the will. The latter requires actual knowledge and approval. But the former ‘requires proof of the capacity to understand certain important matters…

In other words, capacity depends on the potential to understand. It is not to be equated with a test of memory…”

* 1. Second, the question of testamentary capacity is a practical question to be assessed holistically by reference to the whole of the evidence (not merely the medical evidence), and with the application of “judicial common sense”: *Re Estate of Lau Heung* [2020] 2 HKC 19, §19 (Lam VP, as he then was).
  2. In other words, while medical evidence is of course relevant, relevant evidence may often come from factual witnesses (for example, who speak of their dealings with the deceased), and sometimes such evidence may override the medical evidence of the experts. In *Simon v Byford*, *Supra* at §17, Lewison LJ cited with approval the following passage from *Zorbas v Sidiropoulous* (No 2) [2009] NSWCA 197:

“The criteria in *Banks v Goodfellow* are not matters that are directly medical questions, in the way that a question whether a person is suffering from cancer is a medical question. They are matters for commonsense judicial judgment on the basis of the whole of the evidence. Medical evidence as to the medical condition of a deceased may of course be highly relevant, and may sometimes directly support or deny a capacity in the deceased to have understanding of the matters in the *Banks v Goodfellow* criteria. However, evidence of such understanding may come from non-expert witnesses. Indeed, perhaps the most compelling evidence of understanding would be reliable evidence (for example, a tape recording) of a detailed conversation with the deceased at this time of the will displaying understanding of the deceased’s assets, the deceased’s family and the effect of the will. It is extremely unlikely that medical evidence that the deceased did not understand these things would overcome the effect of evidence of such a conversation.” (emphasis supplied)

* 1. Third, in assessing whether the testator had testamentary capacity, the court may properly have regard to the rationality or irrationality of the dispositions in the will. However, the focus of the inquiry must be on testamentary capacity, and not general questions of perceived morality. This is because an irrational, unjust and unfair will must be upheld if the testator had capacity to make a rational and just one. The court must not be “led astray by the drift of the evidence propelled by the underlying current of family rifts and sentiment and becomes lost at the sea of allegations and debates about morality and irrationality without a rudder”: *Re Chiu Yau Chuen* HCAP ‍9/2005 (unrep, 31/01/2012), §§76-79 (Poon J, as he then was).
  2. Fourth and relatedly, the courts are mindful that many wills are made by people of advanced years, and that “slowness, illness, feebleness and eccentricity will sometimes be apparent – more so than in most persons of a younger age. But these are not ordinarily sufficient, if proved, to disentitle the testator of the right to dispose of his or her property by will… Nor will partial unsoundness of mind, which does not operate on the relevant capacities to appreciate the extent of and dispose of the estate, necessarily deprive the testator of testamentary capacity if it is shown that the will was signed during a lucid interval”: *Re Estate of Griffith* (1995) 217 ALR 284, 295 (Kirby P, as he then was).
  3. Fifth, a person who lacks capacity due to defects in memory and comprehension may nonetheless acquire sufficient testamentary capacity if assisted by way of reminder and explanation: *Hoff v Atherton* [2005] WTLR 99, §§35 (Peter Gibson‍ LJ), 58 (Chadwick LJ).

# **F. CREDIBILITY OF FACTUAL WITNESSES**

1. This case largely depends on the credibility of the witnesses. As set out in *Law Ka Yan Thompson v Ho Kang Wing* [2020] HKCFI 513 at §65, the following matters are to be considered in assessing credibility:
   1. The totality of the evidence;
   2. A lie does not necessarily prove the opposite of the lie, even though, depending on the subject matter and its significance in the case, it may indicate a consciousness on the part of the witness that the truth would not have assisted his case, or may amount to evidence that is corroborative of other evidence;
   3. Inherent probabilities aided by contemporaneous documents or records that are not disputed or undisputable, circumstantial evidence tending to support one account rather than the other, and overall impression of the character or motivation of the witnesses; and
   4. The intrinsic value of their evidence upon considering the totality of their evidence against the chronology of events, the available documentary evidence and the inferences based on inherent probabilities and/or undisputed facts.

# **F1. The plaintiffs’ witnesses**

1. The plaintiffs’ witnesses have given inconsistent evidence, particularly in relation to the execution of the 2004 Will on 3 ‍December ‍2004. Dr Chan, whose evidence I find credible as explained below, contradicts all the plaintiffs’ witnesses who attended the occasion. It is also of note that none of the other factual witnesses called by the plaintiffs spoke about dementia in their witness statements, except Dr Fong, and Yew Yat Ming who denied Mr Lim had dementia.[[83]](#footnote-83)

# F1.1 Dr Chan Pui Hong

1. It is Dr Chan’s evidence that, before he was brought by Dr Lin to Mr Lim’s residence on 3 December 2004, he knew nothing about his attendance there. When he was there, Dr Chan observed a mental examination on Mr Lim by Dr Kwok, whom Dr Chan thought was a geriatrician. Unfortunately Dr Kwok has since passed away, and there is no evidence coming from him in the witness box in this case. In any event, Dr Chan says Dr Kwok gave a negative indication after administering the examination on Mr Lim, despite pressure by other persons who were present. Mr Lim then received an injection of vitamin B12 from Dr Kwok. Dr Chan says that, before he left the house, and upon Dr Lin putting pressure on him, he wrote a statement and gave it to Dr Lin but which he did not sign. Sometime later, shortly before Mr Lim’s death, Dr Lin again put pressure on him to make a second statement, which he signed this time.
2. Dr Chanis unrelated to the family, and has no vested interest in the litigation. He had no contact with the plaintiffs’ legal team before giving evidence under subpoena. He can be taken as an independent witness. I find Dr Chan to be a truthful and honest witness and have no hesitation in accepting his evidence.

# F1.2 Dr Jason Fong

1. In the witness box, Dr Fong says he had informed Dr Lin of the 2 August 2004 MMSE test result; and had discussed the issue of testamentary capacity with Dr Lin in the latter half of 2004. Dr Fong accepts that a score of 8 out of 30 was indicative of severe dementia, but explains that he had moderated his assessment to take into account other factors, so that his “overall assessment” was that Mr Lim only had “moderate to severe Alzheimer’s” as of 2 August 2004.
2. According to Dr Fong, Dr Lin indicated in their discussion that Mr Lim was to make a will, and Dr Fong then made it clear that Dr ‍Lin would have to get someone to certify Mr Lim’s testamentary capacity. I accept Dr Fong’s evidence and find it inconceivable that Dr Lin would not have informed Peter Lam or other members of the family about this. It is of note that the plaintiffs commented in closing that “Dr Fong’s evidence was entirely credible”.
3. In his first witness statement, Dr Fong referred to his consultations with Mr Lim, prescribing Reminyl in August 2004, which was later changed to Aricept and Ebixa.[[84]](#footnote-84) Under cross-examination, Dr ‍Fong accepts that the medications would be switched when there was no improvement.
4. On later occasions (19 August, 23 September, 14 October and 21 November 2004), Dr Fong wanted to perform the MMSE again on Mr ‍Lim but was unable to do so, essentially because Mr Lim was uncooperative in that he was covering up a memory deficit, or was not in a suitable physical or mental condition. One such occasion was the home visit around 21 November, when Dr Fong did not conduct any MMSE because Mr Lim was “physically not fit, and mentally not alert enough to repeat another test”.

# F1.3 Dr Michael Lin

1. Dr Lin, on his own admission, has been a friend of Peter Lam for decades. He also was in contact with Madam U, and was closely associated with the Lim family, continuing in his role as their “medical concierge” (effectively a middleman or coordinator) even after Mr Lim’s death.
2. Dr Lin explains that, in his role as “concierge”, he did not have much knowledge about Mr Lim’s treatments or medication, claiming that these were matters for the referred specialists such as Dr Fong or Dr KK Wong. In relation to Dr Fong’s evidence that Mr Lim was referred by Dr ‍Lin for “evaluation of his mental condition”,[[85]](#footnote-85) Dr Lin avoids suggesting in evidence that Mr Lim had mental issues, saying instead it was for “sleeping and behavioural disorder”, though he confirms that he was the person who decided Mr Lim needed a neurologist. Moreover, Dr‍ Lin repeatedly stated that he did not know Mr Lim was taking Alzheimer’s medication. I find this improbable. As I pointed out when Dr Lin was under cross-examination, in order to recommend the appropriate specialist doctors, he surely would have to know about Mr ‍Lim’s condition. The same applies to the types of medications he was taking. I also note that Dr Lin regularly visited Mr Lim, who was consistently listed in the medical records as being under the care of or attended to by Dr Lin.[[86]](#footnote-86)
3. Dr Lin denies relaying information from Dr Fong to the Lim family, explaining that he would leave this to the referred doctor. This is in contradiction with Dr Fong who testified that he had told Dr Lin but not any family member about Mr Lim’s mental condition, because Dr Lin was the contact point and knew the family well. Dr Lin says he cannot recall Dr Fong telling him about the result of the 2 August 2004 MMSE test and did not know what an MMSE test was until “years later”. This is contrary to Dr Fong’s evidence. As for Dr Lin’s denial that Dr Fong had kept him updated about Mr Lim’s visits to Dr Fong, it is again contradicted by Dr Fong’s evidence. I find Dr Lin’s evidence on these matters clearly incredible, as it is inconceivable that Dr Lin would not have known about these matters in his role. Moreover, Dr Lin said he did not know much about psychiatry or neurology, but he gave detailed views on why Dr ‍Fong’s assessment was unreliable. I find Dr Lin knew much more than he claimed.
4. I also find Dr Lin had lied on his discovery affidavit and had failed to give proper discovery. In contrast to the “mile high” pile of medical documents he received regarding Mr Lim,[[87]](#footnote-87) Dr Lin gave discovery only to less than 100 pages of documents unrelated to Mr Lim’s mental condition, and not a single medical record between June and December 2004, except one irrelevant medical report dated 9 July 2004. In his discovery affidavit, there was no mention of the typed sheet of paper Dr Lin said he received from Dr Chan, or the two statements Dr Chan said he had given to Dr Lin, all of which were clearly within the scope of the discovery order.[[88]](#footnote-88) Dr Lin did not give any credible explanation apart from asserting he had never seen the discovery order. This cannot be true as he swore an affidavit pursuant to the order.
5. As for the events on 3 December 2004, Dr Lin says he did not know that a will was being signed. This contradicts Dr Fong’s evidence of telling Dr Lin about the need to certify Mr Lim’s capacity, which Dr Lin said he could not remember. It also contradicts Peter Lam’s evidence that Peter Lam himself told Dr Lin his father would sign a will that morning.[[89]](#footnote-89) I do not find Dr Lin’s evidence on this issue credible.
6. Similarly, Dr Lin denies that he had asked Dr Kwok to perform the mental examination. However, he is the person who brought Dr Kwok along, and Dr Kwok had with him a list of questions for the examination.[[90]](#footnote-90) Dr Kwok would not have brought the list and would not have started to conduct the examination if no one had told him to do so. I find it inconceivable that it was anyone other than Dr Lin.
7. Dr Lin insisted that he had left before the mental examination took place.[[91]](#footnote-91) This is not credible given Dr Chan’s clear evidence that Dr Lin was present until after the end of the mental examination. Moreover, Vincent Cheung stated in the further and better particulars (“**FBPs**”) that Dr Lin was present at the execution.[[92]](#footnote-92) No amendment was made to these FBPs and it remains the plaintiff’s pleaded case that Dr Lin was present.
8. In short, I find Dr Linto be a dishonest witness. In particular, I find his account of the events on 3 December 2004 entirely incredible. He was evasive, giving long rambling answers or responded with his own questions. He was also extremely defensive, suggesting at one stage that he would sue the defendants’ counsel for defamation. Further, when the defendants’ solicitors asked for the names of the other two doctors, Dr Lin tried to extract payment of HK$200,000 of his own fees for compliance with the third party discovery order in addition to his solicitors’ fees, and a verification fee to ‘verify’ the names of the two doctors at HK$25,000 per hour. His explanation was effectively that the HK$200,000 was only a starting point for negotiation. By contrast, he had no qualms about helping the second family and then subsequently Vincent Cheung, to retrieve Mr Lim’s medical records, in 2006 and again in 2012.[[93]](#footnote-93) I regret to note that Dr Lin’s behaviour in this matter was entirely unbecoming of a professional doctor.

# F1.4 Peter Lam

1. I find Peter Lam to be an unsatisfactory witness, whose evidence is evasive and unreliable. He is the head of the Lai Sun Group and was well acquainted with Vincent Cheung, though he says he was not as close to Vincent Cheung as his father was. He is moreover the person funding this action.
2. It is Peter Lam’s evidence that he visited Mr Lim “whenever [he] had time” to make sure that he was “aware of up-to-date information about [Mr Lim’s] health”, such information coming “[c]ertainly from the doctors”. Despite this, he did not notice any mental problems with Mr Lim in June or August 2004, including the delirious episode in June, which the experts agree would have been obvious to those around Mr Lim.[[94]](#footnote-94) Peter Lam maintains that he had not been made aware, until a very late stage, of Dr Fong’s assessment of Mr Lim’s mental condition or the result of the MMSE. Repeatedly pressed, Peter Lam clarifies that it was only after Mr Lim’s death that he was made aware of these matters. Just as I found it inconceivable for Dr Lin not to have known of Mr Lim’s mental problems, I find it equally inconceivable that Dr Lin, who was well known to Peter Lam, would not have told Peter Lam of the same. I find that Peter Lam has not been frank about his knowledge of Mr Lim’s mental condition.
3. Initially, Peter Lam said in evidence that he had “nothing to do with the drafting of [the Distribution Proposal]; it was already presented to [Peter Lam] by Mark Lee and [Peter Lam] simply took it to discuss with [Mr Lim] about it”. He said he was “not personally involved in any discussions about which assets [he was] going to inherit from [his] father”. When it was put to him that what he said contradicted Mark Lee’s first statement,[[95]](#footnote-95) Peter Lam was unable to give any coherent explanation as to why he denied taking part in the discussions.
4. While Mark Lee stated in his witness statement that he had consulted Peter Lam about Mr Lim’s succession plan and that Peter Lam suggested him to speak to Madam U,[[96]](#footnote-96) Peter Lam in evidence denies making such a suggestion, or having knowledge about when and how Mark Lee and Tim Ho would speak to Madam U. I find such a denial to be an attempt by Peter Lam to distance himself, as it is inconceivable that he would not have directed his subordinates Mark Lee and Tim Ho on how to handle such an important matter. Both Madam U and Peter Lam obviously had a central role in the discussions as to how to distribute Mr Lim’s assets from the outset.
5. In relation to the beef noodle dinner, Peter Lam’s evidence is that, prior to this dinner, he had never spoken to his father about the exclusion of the third family. During the dinner, he says he spoke to his father about Highfit and also about Wisdoman. This is inconsistent with his own witness statement, which stated that Mr Lim’s “only comment was that the proposal was good「好好」. He reminded that there should not be any dispute among us”.[[97]](#footnote-97) Peter Lam also says for the first time in evidence that he had brought the Distribution Proposal and a draft of the 2004 Will to the beef noodle dinner. This is inconsistent with his evidence that he had never seen any of the seven drafts of the will prior to the final version. Moreover, when it was put to him that none of what he said was mentioned in his statement, he backtracked by saying that the Distribution Proposal was part of the draft will. Peter Lam’s evidence on the beef noodle dinner is highly unreliable.
6. As for the execution of the 2004 Will, Peter Lam’s evidence is unsatisfactory in the following respects:
   1. In relation to the doctors’ attendance, Peter Lam suddenly remembered in his supplemental statement, 20 years after the events, that Vincent Cheung had asked Mark Lee whether a doctor would be arranged, and later told Peter Lam on the phone that Dr Lin would be suitable.[[98]](#footnote-98) This is inconsistent with Vincent Cheung’s witness statement[[99]](#footnote-99) that he did not know about Mr Lim’s medical problems,[[100]](#footnote-100) giving the impression that he only just happened to know that Dr Lin was Mr Lim’s family doctor. Peter Lam also contradicted himself by saying “Vincent Cheung didn’t find it necessary for the presence of a doctor and he didn’t make a request to me”.
   2. Peter Lam denies knowing about the need to certify Mr Lim’s capacity. This sits uncomfortably with Dr Fong’s evidence that he had told Dr Lin about such a need for the purpose of making a will, as it is improbable that Dr Lin would not have told Peter Lam.
   3. Most importantly, by saying in his supplemental statement that the doctors simply started to ask questions without prompting,[[101]](#footnote-101) Peter Lam sought to conceal Dr Kwok’s mental examination and his view that Mr Lim had failed it, and about Dr Lin being present throughout the whole process and did not leave early.[[102]](#footnote-102) It is inconceivable that Peter Lam could have forgotten such striking matters. His failure to tell the truth about the events on 3 December 2004 can only have been deliberate.

# F1.5 Mark Lee

1. Mark Lee is a central figure in this case. He is not part of the Lim family, but he is a close associate of Madam U and Peter Lam, and was entrusted by them to coordinate the preparation and execution of the 2004 Will.[[103]](#footnote-103) His assistance in matters relating to Peter Lam’s divorce from 1994 to 1995 marks the high degree of trust held in him by Peter Lam.[[104]](#footnote-104)
2. Mark Lee stated in evidence that he “did put down all the important events at the time in [his first witness statement]”. However, his version expanded from his first witness statement in 2014, which was in relatively neutral terms, to his much longer supplemental statement in ‍2021, and a further supplemental statement in 2024. In the witness box, he did not give direct answers in cross-examination, but offered long rambling monologues further expanding his version. He explained that he thought the case would settle and he would not have to give evidence in Court, or that he preferred to prepare succinct documents.[[105]](#footnote-105) In my view, a sophisticated person like Mark Lee would have been well aware of the need to give a full and complete account of the important events in a witness statement for the Court.
3. An example of Mark Lee’s expanding version relates to his discussions with Mr Lim in the final months of his life:
   1. In his first witness statement, there were only 3 references to discussions with Mr Lim: (i) the occasion in August 2004 when Mr Lim said Lam Kin Ming should run the garment businesses and Peter Lam should run the property development and entertainment businesses; (ii) the beef noodle dinner in November 2004; and (iii) the day of execution.[[106]](#footnote-106)
   2. About 7 years later, Mark Lee mentioned in his supplemental statement that “between August and November 2004” he had discussed with Mr Lim “his succession plan and arrangements relating to his will” in the context of a discussion on Wisdoman.[[107]](#footnote-107) Mark Lee also stated in the context of discussing events from “June to August 2004” that he and Tim Ho had “[s]ince August 2004” gone to Mr Lim’s residence to ask him about his thoughts on succession.[[108]](#footnote-108) He also said that in “November 2004”, he went to Mr Lim’s residence “multiple times” to explain to him the Distribution Proposal.[[109]](#footnote-109) I find this version very different from Mark Lee’s first witness statement, presenting significantly more communication with Mr Lim.
   3. When pressed in cross-examination on whether and how he took instructions from Mr Lim, Mark Lee says he saw Mr Lim “almost every week” from August to October 2004, and discussed business, personnel matters, lifestyle and distribution of assets, so that the “major things” for distribution had already been settled before Mark Lee spoke to Agnes Fung. He further says that in around November ‍2004, he actually saw Mr Lim “two times a week, three times a week”. He even says that “whenever there’s a change” to the draft will, Mr Lim would be informed. Given the many changes across the various drafts of the will, I find this unrealistic and a clear exaggeration.
4. On the important matter of choosing an executor, Mark Lee’s evidence is internally inconsistent and incredible:
   1. In his first witness statement, Mark Lee stated that he consulted with Peter Lam and they both thought Vincent Cheung would be a suitable choice of executor; there was no suggestion that Mr Lim had been consulted.[[110]](#footnote-110)
   2. In his 2021 supplemental statement, Mark Lee said he asked Mr Lim “which lawyer he would want to engage if he were to have some documents prepared for his succession”, and Mr ‍Lim said he was “better acquainted” with Vincent Cheung.[[111]](#footnote-111) This was not mentioned in his first statement, and in any event Mr Lim did not say anything about the choice of executor even on this version.
   3. Mark Lee only says in oral evidence for the first time that he had asked Mr Lim “if you have to make some documents and executor has to be found, is Cheung Ting Kau okay?”, to which Mr Lim said yes. Mark Lee’s explanation for the discrepancy was that he did not know the technical difference between an executor and somebody preparing the will. I find this implausible for a sophisticated businessman like him. In §13 of his original witness statement, Mark Lee referred to having to choose an executor, so he plainly understood the difference. Even Peter Lam accepts, after being pressed in cross-examination, that he did not actually ask Mr Lim about the choice of executor, as he felt it was not necessary.
5. I also find Mark Lee’s evidence to be unreliable on the events leading up to and on 3 December 2004:
   1. In his first witness statement, Mark Lee stated that Dr Lin left before the 2004 Will was signed, and the other two doctors asked certain questions but also left before it was signed. After the doctors had left, Vincent Cheung reviewed contents of the will with Mr Lim, who signed it without any questions.[[112]](#footnote-112)
   2. In his 2021 supplemental statement, Mark Lee said he remembered various other details, including Mr Lim being “quite energised”. He also said that Mr Lim was able to point at him and say that he was the one who helped Mr Lim with the “calculations”.[[113]](#footnote-113) However, this is not corroborated by any of the other attendees, and did not feature at all in his first statement.
   3. It was in his 2nd supplemental statement in 2024 that Mark Lee said, for the first time, it was Vincent Cheung who asked for a doctor to be present, to “watch over” Mr Lim.[[114]](#footnote-114) Mark Lee also said Vincent Cheung had told Mr Lim if he “did not feel well, he would not have to worry, as there were doctors present”. This is at odds with Vincent Cheung’s statement.
   4. Most important of all, Dr Chan’s evidence about the mental examination puts it beyond doubt that Mark Lee was concealing the truth of what happened on 3 December 2004.

# F1.6 Agnes Fung

1. Agnes Fung’s evidence is that she did not take any instructions from Mr Lim directly in drafting the 2004 Will, as she only spoke to Mark Lee and Tim Ho and never sought to go behind the instructions given by them. She portrayed herself as merely a ‘drafter’ of the will, whereas Vincent Cheung would be responsible for other matters. She admits that she made no effort to find out whether Mr Lim had made any previous wills, and did not know whether there was anyone being disinherited.
2. It is significant that Agnes Fung accepts she did not make any enquiries about Mr Lim’s health, and did not know that he had been assessed as having moderate to severe dementia. She agrees that this would have been a hugely important matter for her to have known, and would have caused her to “consider the whole position” and “investigate further”. However, she was unable to explain meaningfully why she did not make any relevant enquiries, other than to say that “Mr Lim is still the client… we will have to get Mr Lim’s instructions as to what he wants to do next”.
3. Admitting that she had never discussed the Golden Rule with Vincent Cheung, Agnes Fung cannot deny she did not comply with it. A seasoned solicitor like her, who had drafted quite a few wills before the 2004 Will, could not have been unaware of the Golden Rule, and she does not contend otherwise. Her excuses for non-compliance were essentially that Mr Lim was a special client because of his stature and was well known to Vincent Cheung. These are not acceptable excuses. Her failure to satisfy any of the requirements and obligations of the Golden Rule impacts negatively upon her credibility.
4. On the importance of keeping an accurate and full attendance note, Agnes Fung says that “whatever attendance note would just say ‘execution done’”. This clearly cannot be right. After the execution of the 2004 Will, she did not make any enquiries as to whether anyone in the firm had made an attendance note; and did not ask Vincent Cheung about his attendance note which was subsequently “lost”, and which she herself never saw.
5. As for the events of 3 December 2004, Agnes Fung says that there appeared to be only two doctors present when the mental examination was carried out, and contends that Dr Lin had left earlier, so that Dr Chan could not have given any statement to Dr Lin there and then. Agnes Fung’s evidence on the execution of the 2004 Will is inconsistent with that of Dr Chan. I find her account of what happened unreliable and cannot be accepted.

# F1.7 Other witnesses

1. The evidence of other witnesses called by the plaintiffs can be summarised as follows.
2. Tim Ho assisted Mark Lee on the issue of distribution of Mr Lim’s assets. He says he did not know anything about Mr Lim’s health issues, or about his mental health. When asked in re-examination whether he thought Mr Lim had mental health problems in the second half of 2004, he said “唔清楚”.[[115]](#footnote-115) He says he cannot recall anything about the doctors asking questions or leaving on 3 December 2004. While he denies telling Eric Ling that he could not visit Mr Lim in hospital or that the “Committee” had decided to disinherit Eric Ling, those answers reflect someone trying to distance himself from the family dispute which was “none of [his] business”. I find Tim Ho to be a guarded witness, trying to stay out of the dispute by claiming not to remember much of the relevant events.
3. Mabel Lamdid not seem to know much about Mr Lim’s health condition. Although she lived in the same house, she did not speak much to her father,[[116]](#footnote-116) nor to her mother Madam U about her father’s health. She did not have much involvement in the inheritance issues, and did not even know she had been disinherited in the 2004 Will. She did however comment that Madam U was “very strict” with her children. I find Mabel Lam to be a generally credible witness.
4. Janet Lam admits in cross-examination that there was a difference between Mr Lim’s condition before and after June 2004. Before the coronary stenting operation in June 2004, he had done many more activities; whereas after the operation he did not go back to the office for a long time, spending most of the time reading newspapers when he was in the office, and conducting daily activities such as “seeing the doctors, or calling his driver for car”.[[117]](#footnote-117) She says that after June 2004 he was a bit different (“爭啲”), and “relatively frail”. Janet Lam gave a number of examples of Mr Lim handling documents to show that he was of sound mind. She admitted that, when preparing her witness statement, she was asked to go through Mr Lim’s files to find examples of documents written or dealt with by him after June 2004. These documents show little more than that Mr Lim could sign his own name and write some numbers in Chinese, but they were all that she could find. I do not find these documents supportive of the plaintiffs’ case at all. Overall, I find Janet Lam to be a slightly guarded witness especially when it came to matters relating to Mr Lim’s health.
5. Katty Lam stated in her witness statement that it was Peter Lam who referred Dr Lin to Mr Lim,[[118]](#footnote-118) but her recollections about Mr Lim’s activities and mental condition were expressed in relatively vague terms.[[119]](#footnote-119) She was also unable to remember anything much about the relevant events when cross-examined. I do not find her evidence of much assistance.
6. Yew Yat Mingis still employed in senior management at Lai Fung Holdings. In his witness statement, in particular §§6, 8-9, Yew made it clear that Mr Lim was a very different person before and after the stenting operation in June 2004. His oral evidence is not consistent with this, in particular, he repeatedly tries to resile from his statement that the dinner gatherings between Mr Lim and his staff had “ceased” after the stenting operation. He also says that Mr Lim could remember 10 mobile numbers of his Mainland colleagues, when this was never mentioned in his witness statement, and I find it to be a matter he had made up.
7. As to the Zenbo transaction, Yew’s evidence departed significantly from his witness statement. He says Mr Lim accepted the buyers’ suggestion subject to the addition of a penalty clause Mr Lim imposed himself. In contrast, he stated in §11 of his statement that Mr Lim simply agreed with the buyers’ suggestion and signed. Yew gave evidence about a conversation with Mr Lim regarding the Zenbo transaction, saying that Mr Lim asked questions about the payment terms, and reminded Yew to “deal with the old buyer properly so that there would not be any other dispute”. However, none of this was mentioned in his witness statement. I find it implausible that 20 years after the events Yew could have suddenly remembered this.
8. Given Mr Lim’s mental condition at the time, one would have expected some details to emerge as to how Mr Lim received assistance from others around him. Instead, the evidence given by Yew is “actually more in the opposite direction”, indicating an even greater cognitive challenge than initially presented. As pointed out by Prof Düzel, it is inconceivable that someone with even mild Alzheimer’s disease could have done what Yew described of Mr Lim, let alone moderate to severe Alzheimer’s disease. I do not find Yew to be a credible witness.

# F1.8 Hearsay material

1. The plaintiffs also adduced hearsay material from three witnesses.
2. Vincent Cheung changed his account in relation to the events of 3 December 2004 as to when Dr Lin left.[[120]](#footnote-120) He refrained from disclosing the presence of Dr Chan and Dr Kwok until his witness statement in 2014, and did not mention them at all in his FBPs.[[121]](#footnote-121) Although he gave evidence of a mental examination occurring,[[122]](#footnote-122) he refrained from saying anything about the result of the examination or what Dr Kwok said about the result, which we now know from Dr Chan’s evidence. I find that Vincent Cheung was concealing what actually occurred on 3 December 2004.
3. In his witness statement, Vincent Cheung said he had not seen Mr Lim for over a year and was not aware of his hospitalisations and cancer treatment.[[123]](#footnote-123) Moreover, there was no explanation by him as to the lack of efforts to comply with the Golden Rule or solicitors’ obligations in relation to execution of a will by an aged testator.
4. Mr Lim/Lai Sun was a longstanding client of Vincent Cheung’s firm.[[124]](#footnote-124) He must have known that Peter Lam was Mr Lim’s chosen successor and was in control of the Lai Sun Group. It would be important for him to remain on good terms with Peter Lam, who stood to benefit significantly under the 2004 Will, more so than under the previous wills under which the residuary estate had been divided amongst many more beneficiaries. Peter Lam did not deny that he was friends with Vincent Cheung, merely saying that they were not as close as his father was to Vincent Cheung. I find that Vincent Cheung was not in any sense an independent or disinterested witness, and that his interests and the interests of Peter Lam were aligned in seeking to uphold the 2004 Will.
5. Madam U Po Chu’s witness statement made no mention of the doctors or the mental examination, and instead stated that the execution on 3 December proceeded “smoothly”,[[125]](#footnote-125) in contradiction of Dr Chan’s evidence. In relation to the lunch with Mark Lee and Tim Ho in mid-2004 at Ho Choi Restaurant, Madam U stated that she had expressly told Mark Lee at the lunch that Mr Lim would not leave anything to Pearl Ling. However, this is not corroborated by either Mark Lee or Tim Ho. Madam U also made no mention at all of Mr Lim’s dementia or Alzheimer’s disease. It is inconceivable that, having lived with him throughout the relevant period, she would not have known. I find Madam U’s evidence to be untrue.
6. As Peter Lam said, Madam U did not like Madam Koo, Pearl Ling or Eric Ling, and she prevented Madam Koo from communicating with Mr Lim after September 2004. Given that Madam U’s statement goes to highly contentious matters regarding the preparation of the 2004 Will and the extent of communications with Mr Lim about its contents, it cannot be accepted without cross-examination and must be given no weight in any event.
7. Lam Kin Ming’s witness statement should similarly be accorded little weight in the absence of cross-examination. It deals with contentious matters, such as the execution of the 2004 Will, the funeral and the exclusion of Eric Ling from visiting Mr Lim. It also was provided belatedly in discovery, and was never exchanged as a witness statement.

# **F2. The defendants’ witnesses**

1. Although the defendants were cross-examined at length, their evidence is at best of peripheral relevance. It is only relevant to the issues of (i) irrationality of exclusion, in particular, whether there was a reconciliation with Mr Lim, which is only one part of the defendants’ case on testamentary capacity; (ii) Mr Lim’s mental condition in the 2000s to a limited extent, bearing in mind that the defendants had not seen Mr Lim after late 2003, and in the case of Eric Ling, after June 2004; and (iii) undue influence.

# **G. EXPERT EVIDENCE**

1. The parties each called a psychiatric expert and a neurological expert to give evidence.
2. As accepted by the defendants, the experts are attempting to conduct a retrospective assessment of capacity based on limited materials and without ever seeing Mr Lim. On the other hand, not even the plaintiffs’ experts positively opine that Mr Lim had testamentary capacity.
3. Prof Jacoby, called by the plaintiffs, takes the view that there is insufficient medical evidence to form a firm opinion on Mr Lim’s testamentary capacity, and that it would depend on the non-medical evidence, which is a matter for this Court.[[126]](#footnote-126) He remains of the same view under cross-examination in light of the evidence now available. Prof ‍Jacoby emphasised that he was “not trying to argue that [Mr Lim] did have testamentary capacity”, and that he was simply saying “on the evidence that [he had] seen, [he] could not say that [Mr Lim] did or did not have testamentary capacity…”. Dr Woo, also called by the plaintiffs, opined that there was insufficient evidence to determine whether Mr Lim possessed testamentary capacity when he executed the 2004 Will.[[127]](#footnote-127) He maintains this view under cross-examination, stating “I’m not saying that he can, right, I’m still at the point that eventually, at the end of the day, I say I don’t know, right”. Given that the persuasive burden lies on the plaintiffs to prove testamentary capacity, the expert evidence adduced by them is not enough for them to succeed.
4. The defendants’ experts take the view that Mr Lim had severe dementia at the material time and did *not* have testamentary capacity. Prof Burns opined that on the balance of probabilities, Mr Lim lacked testamentary capacity on 3 December 2004, because of his severe dementia.[[128]](#footnote-128) He takes the evidence of Dr Fong and Dr Chan as strengthening his view. Prof Düzel likewise took the view that Mr Lim did not have testamentary capacity on 3 December 2004, because of his severe dementia.[[129]](#footnote-129) Both Prof Burns and Prof Düzel maintain their views under cross-examination.
5. The following general observations can further be made on the reliability of the expert evidence:
   1. Prof Jacoby and Prof Burns are both well-respected experts in psychiatry. I find that they gave evidence in good faith to assist the Court. As Prof Jacoby stated, they agreed on the principles, and the real question was the Court’s application of those principles to the facts of the particular case. This large measure of agreement is also reflected in the table at §14.6 of Prof Burns’ Report. The difference between them lied principally on the significance to be attached to the result of Dr Fong’s assessment on 2 August 2004, and the fact that he was unable to administer the MMSE on Mr Lim on multiple subsequent occasions. As will be discussed in sections H2 and H3 below, these matters plainly are relevant to the question of capacity, and they support a finding of lack of testamentary capacity.
   2. Dr Woo adopted a fairly neutral stance in his Report and accepted that, on the basis of Dr Fong’s diagnosis on 2 ‍August ‍2004, Mr Lim had moderate to severe Alzheimer’s disease and may not have had capacity to execute a complex will on 3 December 2004.[[130]](#footnote-130)
   3. However, Dr Woo changed his view completely in his Joint Report with Prof Düzel. The defendants’ criticism that Dr Woo did so without justification is in my view valid and justified. Dr Woo attacked Dr Fong’s conduct of the MMSE and clock-face drawing tests, the accuracy of which he had accepted in his first Report. In his attack, he made use of additional medical records which did not concern the assessment on 2 August 2004. His attack was not supported by evidence, for instance, speculating that Dr Fong had not made sure Mr Lim could hear his questions. I find this to be unfair towards Dr Fong, as Dr Woo himself agreed that Dr ‍Fong was an eminent neurologist and had the added advantage of seeing the patient in person many times.
   4. In his oral evidence, Dr Woo places great weight on the fact that Mr Lim had signed a consent form for the stenting operation in June 2004. This was not readily apparent in his reports. For reasons explained in section H4 below, the consent forms cannot bear the weight Dr Woo now put on them.
   5. Prof Düzel’s neurological expertise and understanding in dementia, Alzheimer’s disease and memory loss were superior to Dr Woo, as Dr Woo graciously accepted. Prof ‍Düzel’s evidence was careful and supported by sound and cogent reasoning. He explained convincingly the effect of the delirious episode, and Mr Lim’s co-morbidities, on his underlying dementia, both in terms of whether it could return to “baseline” (ie the pre-delirium state) after the resolution of the delirium, and how the course of progression would be affected. How an expert deals with his weakest points under cross-examination is a telling indicator of his reliability. In this respect, Prof Düzel was fair and balanced, readily accepted the limitations of his opinions,[[131]](#footnote-131) and was also willing to clarify or correct his opinion to the extent they were not expressed clearly or correctly in his reports. I accept Prof Düzel’s evidence.
6. The plaintiffs repeatedly criticised the defendants’ expert evidence, especially that of Prof Düzel, for being mere “theoretical possibilities”, dependant on the individual patient. I find such criticism unwarranted. First, Prof Düzel’s evidence is adduced to dispel the theory put forward by Dr Woo for the plaintiffs, which itself is based on the general progressive rate of dementia (see: paragraph 121 below). Second, the points advanced by Prof Düzel are well reasoned, supported by the objective medical records as explained cogently by him in his reports and in the witness box. They are based on his extensive experience as *both* a research and clinical neurologist who has headed a memory clinic for over a decade and sees up to 10 patients per month in the course of that work.[[132]](#footnote-132) His expertise was clearly superior to that of Dr Woo[[133]](#footnote-133). In any event, as pointed out already, the legal burden falls on the plaintiffs to disprove matters raised by the defendants on a balance of probabilities. Merely asserting that the experts only raised possibilities and that their application to each patient depends on individual circumstances does not take the plaintiffs’ case anywhere. To hold otherwise would be to improperly reverse the burden, when the plaintiffs have fallen short of discharging that burden.

# **H. TESTAMENTARY CAPACITY**

# **H1. Mr Lim’s medical condition by June 2004**

1. The medical records obtained by the defendants show Mr Lim as an elderly and infirm man who was already suffering a host of physical conditions (such as prostate cancer and coronary heart disease), long before June 2004. After June 2004, Mr Lim’s mental condition took a significant turn for the worse.
2. In June 2004, Mr Lim was admitted to hospital a number of times. He was referred by his family physician Dr Lin to a neurologist, Dr Fong, for evaluation of his mental condition,[[134]](#footnote-134) because he was “confused” at the hospital. As reflected in the contemporaneous medical records, Mr Lim was exhibiting visible signs of mental disorder or confusion necessitating the referral:
   1. On 10 June 2004, according to HKAH’s Admission Interview, Mr Lim was “discovered to be dull; slow response, drowsy”.[[135]](#footnote-135) At around the same time, Dr YS Lo recorded that Mr Lim had “2d[ays] h[istory] of ↑ weakness, confusion & disorientation”; and that he was “very lethargic and unable to communicate effectively”.[[136]](#footnote-136)
   2. On the same day, a CT brain scan was done on Mr Lim.[[137]](#footnote-137) The CT scan report noted the existence of periventricular hyperintensity consistent with chronic deep white matter ischaemia. As Prof Düzel explains, this means that there was stiffening of the small arteries (ie small vessel disease) in the brain, causing structural changes to the white matter surrounding the ventricles (holes in the brain), leading to reduced blood flow in these regions (ischaemia). Although Prof Düzel accepts that this is not diagnostic of Alzheimer’s, nevertheless it often appears together, and is consistent, with the clinical picture of Alzheimer’s in a patient particularly of Mr Lim’s age.
   3. Dr Fong first saw Mr Lim at HKAH on 10 June. He noted in the Consultation Record that Mr Lim was suffering from “generalised malaise, [reduction] in alertness for [2 out of 7 days] + disrupted sleep pattern”, and taking into account the CT scan, he said that the clinical picture was “suggestive of metabolic or [infective] encephalopathy”.
   4. On 12 June 2004, Mr Lim was recorded as feeling “alert and orientated” but “claimed had bad memory”.[[138]](#footnote-138) The fact that a patient remains conscious and alert does not exclude dementia, as Prof Düzel explained in the Joint Report; the diagnosis of dementia requires the person to be alert and conscious.[[139]](#footnote-139)
   5. On 14 June 2004, Mr Lim complained of left upper chest pain and was “asking about his sons”, “alert awaked. however bit confuse, keeps on mumbling”; and “[k]eeps on asking for his son. for discharge. try to get out of bed for few times. Unable to recognise date”.[[140]](#footnote-140)
   6. Dr Fong said he saw Mr Lim on a daily basis during this period. On the morning of 14 June, he asked some screening questions to assess Mr Lim’s mental state, but Mr Lim was unable to perform any of the tasks asked of him. Dr Fong noted in his own handwriting that Mr Lim had “poor attention span” and was “unable to construct clock face or perform serial 7 calculations”, and was affected by “nocturnal hallucinations”. He observed that Mr Lim had “[a]cute delirium” and also made a preliminary assessment of “? early Dementia?”.[[141]](#footnote-141)
   7. Various other medical records between 10 and 14 June 2004 noted a “change of mental status” in Mr Lim.[[142]](#footnote-142)
   8. On 15 June 2004, Mr Lim woke up at 05:00 asking people to renovate his office and mumbling.[[143]](#footnote-143)
   9. On the same day, Mr Lim was discharged from HKAH, and transferred to HKSH. The HKAH’s discharge form, presumably signed upon Mr Lim’s discharge, was not signed by Mr Lim himself but by Lester Lam.[[144]](#footnote-144) Dr Fong saw Mr ‍Lim in HKSH for “mental study”,[[145]](#footnote-145) but because Mr ‍Lim’s physical condition was generally not good at the time, he did not conduct any tests of mental condition.[[146]](#footnote-146) Upon discharge on 17 June 2004, it was recorded by Dr KK Wong that Mr Lim had suffered “acute delirium”.[[147]](#footnote-147)

# H1.1 Progression of dementia

1. One key point made by the plaintiffs is that in the normal course of dementia, a patient’s condition would not be expected to worsen as rapidly as what seems to have happened to Mr Lim, given that the evidence before June 2004 suggests no worse than mild or moderate Alzheimer’s. Acknowledging that there are “no definitive means to determine the rate of decline”, Dr Woo says that generally an average annual change of 2 to 4 points in the MMSE is noted in patients with probable Alzheimer’s disease. On this basis, he extrapolates that Mr Lim’s dementia must have begun in 1999 or 2000 if he had severe dementia by August 2004.[[148]](#footnote-148)
2. However, I agree with the defendants that the plaintiffs’ argument breaks down for the following reasons.
3. First, it is well established that the typical Alzheimer’s disease pathology may not be applicable for patients in Mr Lim’s age range:
   1. According to Prof Düzel’s experience, people in this age range who have clinically normal Alzheimer’s disease do not only have the typical Alzheimer’s pathology, but also additional different pathology that one would find in other neurodegenerative diseases. In particular, even if the dementia is caused by Alzheimer’s rather than cerebrovascular causes, at Mr Lim’s age the dementia usually comes with vascular complications and/or microvascular changes. This is supported by the findings of the CT scan referred to at paragraph 120(2) above.
   2. Support for this can be found in the McKhann and Dolan papers referred to in the reports.[[149]](#footnote-149) In essence, the Dolan paper found that the relationship between dementia and Alzheimer’s disease pathology in the oldest subjects is somewhat different than in younger persons. This is illustrated by Figure 2 of the paper, which plots the composite Alzheimer’s disease score (representing the level of Alzheimer’s pathology present) against the dementia rate (which represents the prevalence of dementia, ie how frequently dementia occurs amongst the age group in question). The graph shows that at a given level of pathology (especially in cases of lower pathology), the occurrence of dementia is more likely at the higher age range (90-102) as compared to the lower age range (70-89).[[150]](#footnote-150) Atherosclerosis (ie the thickening or hardening of the arteries) is put forward in the paper as an important aetiology of dementia at the higher age group. Thus, the advent of dementia in the older age group may require lesspathology related to Alzheimer’s disease as in the younger age group.[[151]](#footnote-151) This corroborates the findings of the CT scan, which clearly showed that Mr Lim had small vessel disease in the brain, as Prof Düzel mentioned in both his written[[152]](#footnote-152) and oral evidence.
4. Second, the effect of Mr Lim’s physical illness (ie prostate cancer, anaemia requiring blood transfusions, coronary heart disease requiring the stenting operation, and the fall and fracture of the arm), together with the undisputed episode of delirium in June 2004, was likely to accelerate the course of his underlying dementia, in the light of the various co-morbidities which were suffered by him:
   1. The experts agreed that the delirious episode occurred against a background of underlying dementia.[[153]](#footnote-153) There is no real dispute by the experts that a physical illness, causing delirium, can have the effect of ‘catapulting’ or worsening the underlying dementia. Prof Jacoby and Prof Burns both agree with this proposition in their evidence, as did Prof Düzel. There is no reason to doubt Prof Düzel’s view that the probable cause of the delirium was the pre-existing Alzheimer’s disease plus a trigger in the form of an infection and a fractured arm.
   2. While accepting that a physical illness with delirium could catapult the underlying dementia, Dr Woo says it depended on the severity of the precipitating physical event. He considers it necessary for the physical illness to be a very severe metabolic illness causing a significant loss of neurons, such as cardiac arrest or aspirational pneumonia. In the absence of a physical illness of such severity, Dr Woo opined that Mr Lim would have returned to his “premorbid state” (ie the “baseline”), and that the delirium was a “self-limited reversible illness” which did not aggravate his dementia at all.[[154]](#footnote-154)
   3. However, as Prof Düzel explains, this is too limited a view. Alzheimer’s disease generates toxic proteins (amyloid and tau) which attack the neurons in the brain. Thus, if the patient already has other physical conditions which make the neurons more vulnerable to attack (such as inflammation, anaemia, metabolic dysfunction), so that those neurons are unable to resist the attack and die faster, then that would render the patient unable to return to the premorbid state and would lead to a more rapid progression in his dementia.
   4. In Mr Lim’s case, the relevant co-morbidities included vascular insufficiency in the brain (as shown in the CT scan), prostate cancer, hypertension, inflammation (not necessarily of the brain itself, but of other parts of the body) and anaemia. These conditions would make neurons in the brain more vulnerable to attack, and also disrupt the blood-brain barrier which further exacerbates the vulnerability.[[155]](#footnote-155)
   5. In particular, around the period of November and December ‍2004, Mr Lim’s levels of haemoglobin on various occasions fell well below the normal level of around 8 g/dl, dropping on some occasions to 6.7 g/dl[[156]](#footnote-156) and even 5.5 g/dl,[[157]](#footnote-157) necessitating repeated transfusions. The existence of such anaemia would have affected the supply of oxygen to the brain, and would have left Mr Lim more vulnerable to dementia, with less reserve capacity and ability to cope with the dementia. Dr Woo in his report referred to Mr Lim’s haemoglobin level of 8-9 g/dl on 3 December 2004 and said “[t]his level of anemia should not significantly impair his mental function”.[[158]](#footnote-158) However, (i)there was clearly some cherry-picking of figures of haemoglobin levels by him, omitting for example the significantly lower 5.5 g/dl recorded on 9 November 2004; and (ii)the pertinent question, as Prof Düzel observes, is not whether the anaemia itself affects mental function, but rather how it contributes to the impact of Alzheimer’s disease and dementia, which is not apparently considered by Dr Woo.
   6. As Prof Düzel summarised in his report at §85(g): “Alzheimer’s Disease is a progressive disorder and the speed of progression depends on the overall general health of the individual. The late Mr Lim was a multimorbid patient, notably suffering from coronary heart disease, prostate cancer with metastases, pulmonary problems, and severe anaemia with the need for regular blood transfusions. Hence, Mr Lim was prone to showing a rapid progression of the disease. In addition, it seems likely that there was an acute accelerating incident in early June 2004.”
   7. When the above paragraph was put to Dr Woo in cross-examination, he agreed with most of it, even agreeing generally with the proposition that Mr Lim was “prone to showing a rapid progression of the disease”. He only disagreed with whether the acute accelerating incident in early June was sufficient to generate the rapid progression.
5. Third, given Mr Lim’s various medical complications and co-morbidities, and the accelerating effect of the delirium on the underlying dementia, I find that Prof Düzel was justified to take the view that it was likely that Mr Lim was not undergoing a normal progression of dementia, but an abnormal or atypical course. As to how quick the abnormal rate of decline would be in terms of likelihood, it is something on which Prof ‍Düzel fairly accepts he cannot express a view, because it depends on the circumstances. Nevertheless, Prof Düzel is justified in his view that as a result of his co-morbidities and the episode of delirium, Mr Lim would not be able to recover to the original ‘baseline’, and would have an atypical and accelerated course of progression of dementia, as opposed to the “natural” course.

# H1.2 Prescription of Reminyl by 17 June

1. The HKSH’s discharge records on 17 June 2004 show that Mr ‍Lim had already been prescribed with Reminyl at a dosage of 4 mg twice a day.[[159]](#footnote-159) There is no dispute that Reminyl is a drug indicated to treat Alzheimer’s disease. It is generally for mildAlzheimer’s disease onwards, but there is no upper limit of severity.
2. Dr Fong initially said in evidence that he was the one who had prescribed Reminyl on 17 June 2004, but later acknowledged the possibility that it was some other doctor, because he subsequently prescribed Reminyl at a lower dosage which would be unlikely if he had made the June prescription.
3. If it was Dr Fong who had prescribed Reminyl on 17 June, it would have meant that he was fairly confident of the existence of Alzheimer’s, as the drug is indicated for Alzheimer’s and not other degenerative brain conditions. Prof Düzel said it would at least indicate Dr Fong strongly suspected Mr Lim had Alzheimer’s disease. This is particularly so given the drug has side effects and is not an acute or emergency medication, and therefore some caution would have been applied before prescribing it to someone in Mr Lim’s position. It is even possible that Reminyl may have been begun earlier than June 2004, given the lack of medical records before then.

# **H2. Consultation with Dr Fong on 2 August 2004**

1. Mr Lim consulted Dr Fong on 2 August 2004. After administering both an MMSE and a clock-face drawing test, Dr Fong took into account Mr Lim’s daily functioning to reach an “overall assessment” that he had moderate to severe Alzheimer’s disease. Dr Fong prescribed Mr Lim with Reminyl at 4 mg per day for 1 week, later increasing to twice a day for 3 weeks.[[160]](#footnote-160)

# H2.1 Clinical impression

1. Dr Fong says in evidence that his clinical impression of Mr ‍Lim on 2 August 2004 was that he had “early or mild Alzheimer’s disease” or “mild to moderate Alzheimer’s disease”. This is not to be found in Dr Fong’s contemporaneous notes or witness statements. But assuming this was Dr Fong’s initial impression, by the time he administered the MMSE and clock-face drawing test, his overall assessment, taking those tests into account, was that Mr Lim had moderate to severe dementia. As Prof Düzel explained, the clinical impression is merely the first step of the diagnosis. It informs the clinical assessments that are to be undertaken. The outcome of the assessment is checked against the clinical impression and leads to modification or correction of the clinical impression if needed, resulting in a clinical opinion.
2. When asked in re-examination whether his clinical impression had changed in any significant way between August 2004 to January 2005, Dr Fong said that he did not change his “opinion”. The plaintiffs seek to argue that Dr Fong did not change his clinical impression on Mr Lim until January 2005. But Dr Fong was careful in his choice of wording, and did not say whether he did or did not change his clinical impression. The “opinion” he referred to was the opinion that Mr Lim had moderate to severe Alzheimer’s disease. This is how he used the term “opinion” in the rest of his evidence,[[161]](#footnote-161) and how the term was understood by Prof Düzel. Dr Fong’s prescription in November 2004 of Ebixa, which is for moderate to severe Alzheimer’s, is inconsistent with his clinical impression not changing until January 2005.
3. In any event, irrespective of Dr Fong’s clinical impression, his overall assessment was one of moderate to severe Alzheimer’s, which I accept to be correct.

# H2.2 MMSE

1. The MMSE is in my view highly relevant to the issue of testamentary capacity:
   1. Prof Burns explains that, back in 2004, the MMSE was a very good measure of the degree of cognitive impairment that the person had at the time of examination. The assessment of cognitive function is an important part of the assessment of testamentary capacity. It was similarly accepted by both Prof Jacoby and Dr Woo that such an assessment would be relevant to the assessment of testamentary capacity.
   2. A single score on the MMSE itself is not diagnostic of dementia, in the sense that it does not indicate what is the cause of the cognitive impairment. But such limitation is not pertinent in this case, because there is no dispute that Mr Lim was suffering from dementia in the relevant period of time, the only question was the severity of cognitive impairment. A single MMSE score does give a measure of severity, at the point in time when the examination is conducted.[[162]](#footnote-162)
   3. As the authors in *Frost, Lawson and Jacoby*, *Testamentary Capacity* state at §§14.11-14.13, the MMSE is “more valid in dementia due to Alzheimer’s disease than with other dementias”, and MMSE scores “may be used as an approximate estimate of severity in individual patients for whom there is enough other clinical evidence to confirm a diagnosis of dementia, especially Alzheimer’s disease”. In contentious probate cases, the ‘floor effect’ of the MMSE (ie where a score at the lower end of the scale may not discriminate adequately between highly impaired cases) is “less important, since it is unlikely that anyone scoring lower than 10/30 would have testamentary capacity”.
2. The MMSE was carried out some time after the June hospital admission, when Mr Lim’s overall condition was “better than when he was in hospital at HKSH”.[[163]](#footnote-163) This indicates that it would have been a much better reflection of Mr Lim’s cognitive state than if it had been carried out when he was still hospitalised.[[164]](#footnote-164)
3. The plaintiffs have spent much effort in an attempt to undermine the conduct of the MMSE and its result. In particular, Dr Woo raised numerous issues in the Joint Report, despite accepting the result of the MMSE in his original report. In considering these issues, it is to be borne in mind that the MMSE was not done with a view to being minutely scrutinised in this manner 20 years later. I agree that the plaintiffs’ attacks are unwarranted. As submitted by the defendants:
   1. Compared to the experts who could only conduct an *ex post facto* assessment or reconstruction, Dr Fong was in the best position to assess Mr Lim’s mental condition in August 2004. As Dr Woo himself said, Dr Fong was an “eminent neurologist” who saw Mr Lim regularly and had “the added advantage of seeing Mr Lim in person not once, many times, good days, bad days… I can’t be better than him, I can’t say I can be better”. There is no suggestion that Dr Fong acted incompetently or negligently.
   2. Performing an MMSE, as the experts stated, is often an art, and much depends on the skill and experience of the practitioner administering the test. General practitioners would often be able to do these tests, but specialist practitioners would be more experienced in performing them.
   3. Dr Fong was very experienced in performing the MMSE, having done it many times. He agrees that it would involve making sure the patient could hear what he was saying and that the conditions are right so as to give the patient his best chance. His professional judgement in conducting the MMSE should be accorded due weight, particularly in comparison to the experts trying to reconstruct *ex post facto*.
   4. The document at [CB6/358/1239] is not a contemporaneous document. It only came into existence after 2010, and is a list of questions used by Dr Fong now.[[165]](#footnote-165) This means (i) Dr ‍Fong might not have precisely followed the same list of questions when he performed the test in 2004,[[166]](#footnote-166) and (ii) it is not surprising that there are some variations as compared to the questions in the pro forma questionnaire which came later.
   5. Dr Fong says “normally [he] would ask all the questions in the questionnaire, but [he] could have modified it based on the patient’s response”. Sometimes he would move onto another question if the patient could not concentrate or could not answer the question at all. He would sometimes also ask questions that were outside the MMSE, in order to motivate the patient to continue with the rest of the testing.
   6. Dr Fong agrees that “in order to get a score out of 30, [he] would always have asked all the questions or something very similar to those questions”. He explains that the questions would sometimes be varied according to the patient’s response.
   7. Although Dr Fong says that he “might have skipped some of the questions” when “the patient is not having attention to the questions or has lost attention”, he then agrees that normally, he “wouldn’t have scored [the patient] out of 30 unless [he] had counted when [the patient] answered and what he didn’t”. When it was suggested to him that he “wouldn’t have scored [the patient] in the way [he] did unless [he] had actually been through all the questions with [the patient]”, Dr Fong said “[y]es, that makes sense”, and that he tried his best to administer the full test to Mr Lim. He also clarifies that “if the patient is not responding or not giving…the answers”, implying that he had already asked the question, then he would “quickly jump to the other questions and not to insist on…the same question”.
   8. When the Court asked Dr Fong to clarify whether he had skipped certain questions, Dr Fong explained that some of the questions may have been asked by him “in a different way, to assess the same content”, by which he meant asking Mr Lim to repeat, for example, a different sentence to the one on the score sheet. Dr Fong confirmed as follows:

*COURT: I see. So in your recollection, you have asked -- even taking into account a possibility you might not have asked all the questions on the list, as far as you can recollect, you have asked all the alternative questions which would have given a potential score of 30, is that the gist of your evidence?*

*A: Yes. I think that’s right*.

* 1. In any event, there are variations even among the so-called “questions” of the MMSE. For example, in Dr Fong’s questionnaire, Q1 does not include “season”,[[167]](#footnote-167) whereas in the sample MMSE exhibited to Prof Burns’ report, it does include “season”.[[168]](#footnote-168) And in this case Mr Lim was in fact asked by Dr Fong to name the season.

1. Taking Dr Fong’s evidence as a whole, I accept that he did ask all the questions or in his professional judgment alternatives of the questions, which is what he in the end confirmed when asked by the Court. The plaintiffs’ contrary assertion that Dr Fong “skipped” questions entirely, in the sense that he did not ask a particular question or an alternative question at all, is unlikely:
   1. It would make no sense for him to score Mr Lim 8 out of 30 if he had skipped some questions altogether. As an experienced neurologist who had done many of these tests, Dr Fong would not have scored the test in this way if he had skipped questions, but would instead have reduced the total or would at least have made some notation of what had been skipped.
   2. There is no evidential basis to suggest that Dr Fong would always note down every question he asked in his notes. It is unrealistic to dissect Dr Fong’s rough notes in this manner when it was never Dr Fong’s position that those notes were comprehensive and complete in nature, and when evidently he would not have expected those notes to be examined in minute detail in legal proceedings two decades later.
   3. Dr Fong’s first witness statement, which was much closer in time to the events in question when his memory was fresher, contains no suggestion that he had skipped any of the questions entirely.[[169]](#footnote-169) Such possibility was only raised for the first time in Dr Fong’s 2024 supplemental statement, which was prompted[[170]](#footnote-170) by Dr Fong being shown the expert reports, including no doubt the Joint Report of Dr Woo and Prof Düzel, in which Dr Woo mounts an attack on every possible aspect of the MMSE. The contents of Dr Fong’s supplemental statement were made in response to Dr Woo’s criticisms in the Joint Report. I find it ironic that Dr Woo now referred to Dr Fong’s supplemental statement to support his own unwarranted criticisms of the MMSE.
2. Other criticisms made by Dr Woo in the Joint Report were never raised in his first report. They were speculative and nothing more than making excuses for Mr Lim’s poor performance:
   1. Dr Woo suggested that Dr Fong had not ascertained whether Mr Lim could hear the MMSE questions properly.[[171]](#footnote-171) This is without any evidential basis. As an experienced neurologist, it is unlikely that Dr Fong would not have checked whether his patient could hear his questions. Although Mr Lim might have had hearing difficulties generally, the evidence is that he wore a hearing aid[[172]](#footnote-172) and there is nothing to suggest that he could not hear the MMSE properly.
   2. Dr Woo also said that Dr Fong had not obtained an adequate history, suggesting that there was no information about Mr ‍Lim’s “memory, reasoning or financial ability at work or at his usual activities”, or his “visuospatial ability, language or personality”.[[173]](#footnote-173) Dr Woo then said Dr Fong may not have established “a good rapport” with Mr Lim.[[174]](#footnote-174) These criticisms are unfair. There was a history taken, some of which was recorded at the beginning of Dr Fong’s contemporaneous notes.[[175]](#footnote-175) The patient was well known to Dr Fong and he had been seeing him every day just a month or so before. Dr Fong also says that he has taken into account Mr Lim’s “daily functioning” in reaching his overall assessment of his mental condition. As Dr Fong well knew how to administer an MMSE, he would have known of the need to ensure the conditions were right to give the patient his best chance. After all, he had very properly decided to defer the assessment when he saw Mr Lim in June, as Mr Lim had not been in an appropriate mental state to do the test. The fact that the history recorded in the notes was relatively brief, does not give cause for any real criticism.
   3. When these matters were put to Dr Woo, he said that he was “just looking for reasons why the 8 out of 30 is not in line with the rest of the clinical picture”. I find this to be the wrong approach.
3. As to the individual questions of the MMSE, particularly in relation to Questions 4 and 6, even if the MMSE score should have been higher, it would certainly have remained well within the category of moderate to severe dementia.[[176]](#footnote-176)

# H2.3 Clock-face drawing test

1. The clock-face drawing test is a test of executive function and visuospatial ability.[[177]](#footnote-177) Having said that the clock-face drawing test is a test of executive function, Prof Jacoby elaborated on execution function and explained that it is “the psychological ability to integrate a variety of cognitive abilities in order to carry out goal-directed activity”; and it is responsible for “planning, initiating, correctly sequencing, and carrying through various cognitive skills”; and it “corrects errors and adjusts responses according to circumstances”.[[178]](#footnote-178) Prof Düzel said that the clock-face drawing test screens “a number of cognitive domains including language comprehension, planning, visuospatial abilities, spatial attention, motor execution, numerical knowledge, abstract thinking (semantic instruction)”.[[179]](#footnote-179)
2. Dr Woo contended that the clock-face drawing test was not a “specific test of executive function”.[[180]](#footnote-180) This is contrary to the view of Prof Jacoby,[[181]](#footnote-181) and a large body of work which, as explained by Prof ‍Düzel, indicates that the test can indeed be used to assess executive function.[[182]](#footnote-182)
3. The assessment of the above functions and abilities is clearly relevant to the limbs of the *Banks v Goodfellow* test. While Prof Jacoby in his 2nd Report does not accept that one can draw a “direct connection” between performance on the clock-face drawing test and testamentary capacity,[[183]](#footnote-183) it does not mean the functions which are assessed by the clock-face drawing test are not relevant to the issue of testamentary capacity, nor does Prof Jacoby say so.
4. Prof Jacoby and Prof Burns both agreed that the result of the clock-face drawing test was, in their clinical experience, “typical” of a person with established Alzheimer’s disease.[[184]](#footnote-184) Prof Jacoby added the qualification in his 2nd Report that he has “encountered clock-face errors early in Alzheimer’s disease, especially in patients of high intelligence”,[[185]](#footnote-185) but this was not in his view the “typical” scenario, and he did not suggest that it was anything more than a possibility.
5. As for the result of the test:
   1. There were errors on the clock-face: (i) Mr Lim’s first attempt at drawing the clock-face was far too small (in the bottom left); (ii) the numbers were not distributed correctly and were positioned poorly; and (iii) Mr Lim was completely unable to draw the hands of the clock, but instead wrote the time in digits.[[186]](#footnote-186)
   2. Prof Düzel explained that Mr Lim’s performance revealed a conceptual impairment in understanding what it meant to draw the time on a clock-face. The failure to draw the hands of the clock, writing the time in digits instead pointed towards the existence of a marked impairment in executive function in terms of planning, judgment, decision making.[[187]](#footnote-187) There was no challenge in cross-examination to Prof Düzel’s evidence on the clock-face drawing test.
   3. Given the errors identified above, Dr Fong gave “a maximum score of 5 out of 10” on the clock-face drawing test. He compared the result of the clock-face drawing test with the MMSE “to give a better picture of mental condition”,[[188]](#footnote-188) and said the score “was consistent with what Mr Lim had scored on the MMSE”.[[189]](#footnote-189) As the MMSE score assessed by Dr Fong was indicative of severe dementia, the clock-face was at the very least compatible with moderate to severe Alzheimer’s disease, which Prof Düzel confirmed in evidence.
6. Dr Woo also made strong criticisms of the clock-face drawing test:
   1. He raised the possibility that Mr Lim may not have heard the instruction.[[190]](#footnote-190) This is devoid of evidential basis. If Mr Lim had not heard the instruction properly, it is inconceivable how he would have proceeded to draw the clock-face on two attempts, put in all the numbers, and write down the time in digits.
   2. Dr Woo suggested that Mr Lim had “kept the instruction in his mind and he achieved the goal of indicating the time. At most he had misinterpreted the instruction; he did not have lack of insight”.[[191]](#footnote-191) But this does not assist the plaintiffs, as it still indicated a lack of execution function. As Prof Düzel explained, while Mr Lim understood the basic instructions of the task, the test clearly indicated that he was unable to execute the task correctly.[[192]](#footnote-192) Prof Düzel’s view was unchallenged in cross-examination.
   3. Dr Woo further suggested that the test could have been indicative only of “impaired concentration or frustration tolerance”, because it followed immediately after the MMSE.[[193]](#footnote-193) This criticism is unwarranted, as Prof Düzel explained that these kinds of tests are designed to be simple so as not to pose heavy demands on maintained concentration. If Mr Lim only had mild dementia or cognitive impairment, there would not have been any so-called ‘frustration’, which therefore is indicative of more severe cognitive impairment, as reflected also in the MMSE score.[[194]](#footnote-194)

# H2.4 Overall assessment

1. Overall, while Dr Fong accepted that the score on the MMSE indicated severe Alzheimer’s, he moderated the diagnosis to take into account all the other factors (including the clock-face drawing test and his daily functioning), reaching an assessment of moderate to severe Alzheimer’s disease.[[195]](#footnote-195) This overall assessment was not based on the standard tests alone, but already took into account the clinical impression. It accords with Prof Düzel’s explanation on the process of first forming a clinical impression, then administering the tests, and then forming an opinion taking everything into account. Prof Düzel also supports the view that Mr Lim had moderate to severe Alzheimer’s at that time.
2. There has been a faint suggestion that Mr Lim’s delirium may not have resolved completely by 2 August 2004, and could have affected the reliability of the tests. However, as Dr Fong chose to postpone the test until after Mr Lim ended his stay in hospital in June 2004 (when his delirious episode occurred),[[196]](#footnote-196) it is unlikely that Dr Fong would have gone ahead with the tests on 2 August if he had any serious concerns that there was residual delirium which could materially affect the reliability of the tests. Indeed, Dr Fong mentioned nothing about residual delirium in his contemporaneous notes or either of his two witness statements.
3. Dr Fong was a specialist neurologist who had seen Mr Lim repeatedly, observed him over the relevant period and conducted the assessments in the exercise of his professional judgment. There is no suggestion that he was an unqualified or incompetent or negligent practitioner.[[197]](#footnote-197) In those circumstances, Dr Fong’s judgment should be accorded considerable weight.

# **H3. Mental condition of Mr Lim between August and December 2004**

1. It is not in dispute that Alzheimer’s disease is usually a “steady, irreversible and progressive deterioration”.[[198]](#footnote-198) The neurological experts agree that it is unlikely that Mr Lim’s mental condition on 3 ‍December ‍2004 could have been materially better than on 2 ‍August ‍2004.[[199]](#footnote-199) On the contrary, given Mr Lim’s particular circumstances, including the delirious episode and the co-morbidities he suffered, the progression of dementia in fact would have likely been atypical, and more rapid than would otherwise be normally the case.
2. The medical records since August 2004 indeed demonstrate a worsening, and certainly no improvement, in Mr Lim’s mental condition. In particular:

19 August 2004

* 1. Dr Fong saw Mr Lim for consultation and noted that he “can’t recall meals contents, attempt to cover up memory deficit, slow memory”.[[200]](#footnote-200)
  2. Although Dr Fong says that this phenomenon would generally occur in people with “early or moderate Alzheimer’s disease”, whereas those with severe dementia “might” just have blank or empty thoughts, on the evidence of other experts I find this to be case-specific and would likely to vary from patient to patient.
  3. Prof Jacoby agrees that even those with moderate to severe dementia could sometimes conceal their cognitive impairment, provided that the patient has no language impairment, and he sees no evidence of impairment of language in Mr Lim. Prof ‍Burns also says that in his experience he has seen people with quite severe dementia who still had intact language.
  4. Despite being pressed in cross-examination, Prof Burns declines to say it was unlikely that someone with severe dementia would be able to cover up his memory deficit. Instead he maintains that it would vary from case to case. He also said that whether dementia is observable to people around the patient depends on the particular symptoms, and loss of memory is something which could be covered up, unlike other types of dementias which may lead to extreme behaviours.
  5. On this occasion, Dr Fong was not able to perform the MMSE again because he said Mr Lim was not cooperative, in that he was covering up a memory deficit. He continued to prescribe Reminyl at 4 mg twice a day, the same dosage as before.

23 September 2004

* 1. Dr Fong saw Mr Lim for consultation, but was again unable to perform the MMSE. Dr Fong explained that he asked a screening question about the day of the week, which is one of the questions on the MMSE, but Mr Lim gave an incorrect answer as far as Dr Fong recalled. Therefore, Dr Fong did not think it sensible to complete the MMSE.
  2. In his notes,[[201]](#footnote-201) Dr Fong had marked “Thursday x”, which he said referred to the fact that Mr Lim had given a wrong answer. It transpired that 23 September 2004 was indeed a Thursday; but this was not raised by the plaintiffs with Dr Fong in re-examination. His recollection of Mr Lim giving an incorrect answer remained consistent with “Thursday x” as it may refer to the fact that Mr Lim did not manage to answer “Thursday”.
  3. In contrast with the consultation on 2 August, Mr Lim had at least been able to answer the day of the week correctly (“Monday”).[[202]](#footnote-202)
  4. Dr Fong continued to prescribe Reminyl at 4 mg twice a day.

14 October 2004

* 1. Dr Fong saw Mr Lim for consultation. Again, he could not perform the MMSE, because Mr Lim had “day time malaise”, as he was feeling tired because of his insomnia. Dr Fong did not consider Mr Lim to be in a physically good condition to do the MMSE, as he was troubled by insomnia, and his attention span would be shortened.

1. 8-9 November 2004
   1. Mr Lim consulted Dr Fong when he was admitted to HKSH for anaemia and blood transfusions.[[203]](#footnote-203)
   2. Dr Fong switched Mr Lim’s dementia medication from Reminyl to Ebixa at 5 mg twice a day for 3 weeks. He also prescribed Aricept.[[204]](#footnote-204)
   3. Dr Fong, Prof Burns, Dr Woo and Prof Düzel[[205]](#footnote-205) all agreed that Ebixa is usually indicated for moderate to severe Alzheimer’s disease. The fact that Dr Fong chose to prescribe Ebixa indicates that he regarded Mr Lim as suffering from at least moderate to severe Alzheimer’s.
   4. At the very least, the switching of medications indicates that there was no improvement in Mr Lim’s mental condition. That is what Dr Fong stated as the reason for the switch. Dr ‍Woo also agreed.[[206]](#footnote-206)
   5. More importantly, the neurological experts agreed that Alzheimer’s medications are not generally used to improve cognition but to slow progression.[[207]](#footnote-207) If the patient’s condition remained steady, with no further progression, this itself would not likely be a reason to change the medication. The switch of medication thus indicated a worsening in Mr ‍Lim’s condition. This is consistent with the medical evidence considered above, and not inconsistent with the explanation given by Dr Fong, who did not exclude the possibility that the condition had worsened.[[208]](#footnote-208) It is consistent with Prof Düzel’s opinion.[[209]](#footnote-209) It is also consistent with the broader context, that there was an assessment in August and Alzheimer’s medication was prescribed, the medication was changed, and a drug was initiated which was indicated for moderate to severe Alzheimer’s.
   6. Indeed, Prof Düzel pointed out that a change of drugs is usually motivated by a clinical worry, and is not something which a doctor would do light-heartedly. If Mr Lim’s condition simply stayed the same, it is difficult to see why the medication would have been changed.

21 November 2004

* 1. Dr Fong had a home visit with Mr Lim on this date, and possibly also on other occasions. When asked why in “none of these visits do you seem to do another MMSE”, Dr Fong said Mr Lim was “physically not fit, and mentally not alert enough to repeat another test”.

November to December 2004

* 1. Dr KK Wong’s notes from November to December 2004 also record a deterioration in Mr Lim’s general health and an increase in dementia.[[210]](#footnote-210) Dr KK Wong, though an urologist, was an experienced doctor who had been treating Mr Lim since 2001[[211]](#footnote-211) and thus would have had some familiarity with Mr Lim and his medical condition and history.

1. The medical evidence therefore indicates that on each occasion after 2 August when Dr Fong saw Mr Lim, he was unable to perform the MMSE. Mr Lim’s medication was switched to Ebixa which was for moderate to severe Alzheimer’s disease. Moreover, there were observations by Mr Lim’s longstanding doctor that his dementia had increased. All these are consistent with the opinion of Prof Burns and Prof Düzel that Mr Lim was suffering from “severe dementia” on 3 ‍December ‍2004.
2. The plaintiffs argue that because no tests were administered on any of the occasions after 2 August 2004, nothing is revealed about Mr ‍Lim’s mental condition. Without the test being administered, one cannot discern what actual domains in the brain were impaired. However, I find the fact that Mr Lim was unable or not in a position, in Dr Fong’s professional view, to do the MMSE is not a point in the plaintiffs’ favour. On the contrary, it suggests that Mr Lim was cognitively so impaired that Dr Fong did not think he was able to undergo the testing at all.
   1. Prof Düzel explained in cross-examination that Dr Fong’s evidence indicates Mr Lim’s attentional impairment was so pronounced that he was unable to perform the tests. In other words, there was an inability to attend, ie reduced attention rather than just a disinterest or refusal to attend. Considering Dr Fong’s evidence on the MMSE attempts in context, I find it consistent with Mr Lim not being mentally alert enough to do the test, and at least not inconsistent with attentional impairment in terms of an inability to attend.
   2. As Prof Jacoby acknowledges in cross-examination, the fact that Dr Fong was not able in his judgment to do an MMSE, because of the physical and/or mental state of the patient, is important in terms of assessment of capacity, though subsequently in re-examination he sought to downplay its importance.
   3. As Prof Burns pointed out, if a person could not take part or complete the MMSE or Abbreviated Mental Test Score (“**AMTS**”) on a series of occasions because of inattention or similar reasons, it could indicate a significant degree of cognitive impairment.[[212]](#footnote-212)
   4. Given that Dr Fong had deferred the MMSE in June when Mr ‍Lim was not in a fit mental state to perform the MMSE, his subsequent decisions to defer the MMSE on multiple occasions would likely have reflected a judgment on his part that Mr Lim’s mental condition was not such as would enable him to meaningfully do the MMSE.[[213]](#footnote-213)
   5. In any event, the plaintiffs’ argument does not detract from the general common sense proposition that it must be relevant if the patient cannot even begin to do the test.

# **H4. Consent forms**

1. As for the consent forms signed by Mr Lim, it was a matter Dr Woo referred to heavily in his oral evidence. When it was put to him that the additional medical records provided to the neurological experts for the purposes of their Joint Report showed worsening dementia, Dr Woo countered by relying on the consent form for the stenting procedure. When it was again put to him that in light of all the evidence now available, it looked extremely unlikely that Mr Lim had capacity, Dr Woo still relied on the same consent form to justify why he could not say Mr Lim had no testamentary capacity. However, in my view the consent forms cannot provide an adequate basis to support Dr Woo’s view that Mr Lim only had mild dementia.
2. First, there is no direct evidence on the circumstances in which Mr Lim signed the consent forms, whether his family members were present, and/or to what extent Mr Lim actually showed any signs of understanding or engagement with the contents of the consent forms. Although the doctors in question were reputable and would have been familiar with the need to explain the procedure, this point only goes so far and does not provide an adequate basis for the Court to infer that Mr Lim necessarily understood the explanation before signing the consent forms. Still less are the experts in a proper position to comment on these matters of fact.
3. Second, the following points are to be made on the two consent forms relied on by the plaintiffs:
   1. The first consent form was for the coronary stenting procedure on 3 June 2004. This was before the delirium in June 2004. While Dr Woo explained at length as to what a coronary stent involves, it is not at all clear whether all those details would have been explained by Dr YS Lo to Mr Lim. In any event, this consent form preceded the episode of delirium, which would have set Mr Lim’s dementia on an abnormal and more rapid course of progression for the reasons explained above.
   2. The second consent form was for a plaster cast to Mr Lim’s left forearm, which was a much less complex decision than the stent,[[214]](#footnote-214) as Dr Woo himself acknowledged this in his original Report.[[215]](#footnote-215)
   3. Given that Mr Lim was dependent on continuous care, for example, from private nurses, the fact that he signed consent forms does not provide reliable insight into his capacity to consent.[[216]](#footnote-216)
4. Third, Dr Woo disregarded various other admission forms and other documents which were signed by Mr Lim’s family members rather than him.[[217]](#footnote-217) Dr Woo explained that the admission forms were less complicated than, and did not bear the same significance as, the consent forms. However, I find the admission forms also relevant, as they contain provisions for “Medical and Surgical Consent”.[[218]](#footnote-218)

# **H5. Factual evidence as to Mr Lim’s activities prior to execution of the 2004 Will**

1. In support of their case on testamentary capacity, the plaintiffs seek to rely heavily on factual evidence from their witnesses of Mr Lim’s personal and business activities from June to December 2004. However, on closer analysis, I find that their evidence does not shed light on whether Mr Lim had capacity to make a will on 3 December 2004.
2. There are inherent problems in relying on the evidence of laypeople in relation to mental condition or testamentary capacity. As compared to doctors, it is more difficult for solicitors to detect mental illness, and even more so for laypersons: *Frost, Lawson and Jacoby*, §15.01[[219]](#footnote-219) This difficulty is exacerbated where the person in question conducts his daily living and activities with much support and assistance, for instance, from private nurses as Mr Lim did, because in those cases the signs of dementia is less likely to be picked up by a layperson.[[220]](#footnote-220)
3. In any event, even on the plaintiffs’ own evidence, there was a clear turning point in Mr Lim’s mental condition in June 2004, supporting the argument that the delirious episode in June 2004 ‘catapulted’ Mr Lim’s underlying dementia into a more rapid progression. The following are the main examples pointed out by the defendants.
4. In relation to Janet Lam:
   1. She accepted that there was a contrast between Mr Lim’s condition before and after June 2004. As is apparent from her witness statement, before June 2004 he would make telephone calls, meet staff to receive reports and attend public functions; whereas after the coronary stenting operation, he did not go back to the office for a long time, spent most of the time reading newspapers on the occasions when he was in the office, and conducted simple daily activities such as “seeing the doctors, or calling his driver for car”.[[221]](#footnote-221) She acknowledged that after June 2004 he was a bit different (“爭啲”), and “relatively frail”.
   2. As Prof Jacoby agreed in cross-examination, if a person performed the same simple activity repeatedly for many years, such as calling his driver for a car, it would take less cognitive effort than doing it ad hoc or doing more complicated activities. So even if Mr Lim was able to do simple activities such as calling his driver, that does not support the plaintiffs’ case to any real extent.
5. In relation to Yew Yat Ming:
   1. Yew’s statement also points to a contrast before and after June ‍2004. Prior to June 2004, Mr Lim had dinner with Yew and his closest staff “almost every night”, would “receive verbal reports from his staff on the daily routine of business while having the meal”, and also “liked to test the staff on their business knowledge and awareness of news”.[[222]](#footnote-222) But after the stenting operation in June 2004, they “met less than before as the dinner gatherings had ceased when his health deteriorated”, and after he later broke his arm in June, Yew “seldom met him since then and only paid one or two visits to his house at Kowloon Tong… [and] tried to avoid talking with him on business in order not to give him pressure”.[[223]](#footnote-223)
   2. In evidence, Yew sought to backtrack on his statement and downplay the change in Mr Lim’s condition after June 2004. As explained in paragraphs 102 to 104 above, his evidence was not credible.
6. In relation to Mark Lee:
   1. In his first witness statement, Mark Lee stated that “[f]rom 1997 to early 2004” he had frequent meetings or communications with Mr Lim about areas of business, and about the debt restructuring; and “[d]uring the first half of 2004” Mr Lim was still going to work at the office, and would sign cheques etc.[[224]](#footnote-224) However, after his heart operation in June 2004, Mark Lee said Mr Lim did not go to the office as much, and when Tim Ho and Mark Lee visited Mr Lim, they would “avoid troubling Mr Lim with mundane business matters”.[[225]](#footnote-225) Tim Ho gave a similar description in his first statement.[[226]](#footnote-226)
   2. It was only in Mark Lee’s supplemental statement that he started saying Mr Lim was “exceptionally energised” after his stenting operation and that he was “back in the game” (“回勇”).[[227]](#footnote-227) None of such contrived description had been mentioned in Mark Lee’s earlier statement.
7. As already mentioned in paragraph 100 above, the documentary evidence adduced by the plaintiffs shows little more than that Mr Lim could sign his own name, and write some numbers in Chinese. Overall, I find the factual evidence which the plaintiffs rely upon does not advance their case at all.

# **H6. Complexity of the estate and the 2004 Will**

1. The neurological experts agree that even a person with mild to moderate dementia may be incapable of making a complex will.[[228]](#footnote-228) The question of capacity is therefore to be considered against the complexity of the transaction and the surrounding circumstances. Where the will is complex, or where the family circumstances are complex, or the calls upon the testator’s bounty are subtle, a greater degree of understanding on the testator’s part will be required than where the will and the circumstances are simple.
2. Mr Lim’s estate and assets are in my view complex. This is directly relevant to the second limb of the *Banks v Goodfellow*test. I agree with the defendants’ submission that:
   1. It is necessary for the testator to be able to differentiate between his assets to a sufficient degree to satisfy the Court that he is substantially aware of what he does and does not own, and its general value.
   2. Mr Lim’s estate contains many assets of different types and vastly different values – for example, shares in different companies; sums of money owed by various family members or individuals or companies, pieces of land, car park spaces, apartments, factory units, securities, bank balances, sole proprietorship businesses, in Hong Kong and abroad. This is apparent from the Distribution Proposal,[[229]](#footnote-229) which contains 29 different items, as well as the list of ‘Miscellaneous Assets’ which lists 7 further assets.[[230]](#footnote-230)
   3. The most important assets were held indirectly through corporate structures, rather than straightforwardly held by Mr Lim in his own name. For example, at the time of execution, Mr Lim held through Lai Sun Garment his interest in Crocodile Garments,[[231]](#footnote-231) part but not the whole of his interest in Lai Fung Holdings,[[232]](#footnote-232) part but not the whole of his interest in Lai Sun Development (“**LSD**”),[[233]](#footnote-233) whereas his interest in eSun Holdings Limited (formerly Lai Sun Hotels) was held through Lai Sun Garment and its shareholding in LSD.[[234]](#footnote-234)
   4. Adding to the complexity is the fact that there were restructuring transactions taking place at the time when the distribution of assets was being considered. For example, (i) LSD was undergoing a debt restructuring involving a settlement with eSun Holdings Limited, which would result in a substantial dilution of Lai Sun Garment’s shareholding in LSD,[[235]](#footnote-235) thus affecting the size and value of Mr Lim’s indirect interest in LSD through Lai Sun Garment; and (ii) the Wisdoman transaction was in progress, as a result of which Mr Lim was to transfer away his own shareholding in Lai Sun Garment via Wisdoman to Peter Lam and Madam U. These “moving parts” increased the complexity of Mr Lim’s estate at the material time.
3. Another aspect of complexity is Mr Lim’s family situation. This relates to the third limb of the *Banks v Goodfellow*test, as the existence of complicated family relationships would, in general, make it relatively more difficult to comprehend and appreciate the claims upon the testator’s bounty.
   1. Mr Lim’s family is not a simple family consisting of one spouse and issue, but consists of four branches with four different women. There is additional complexity even within each branch. For example, the second family includes the two natural born children, Peter Lam, who was Mr Lim’s chosen successor in the group, and Mabel Lam, who did not seem to have much of a relationship with Mr Lim at all, as well as the adopted son Matthew Lam, who was effectively entrusted with overseeing the Mainland property investments of Lai Fung Holdings.[[236]](#footnote-236) Within the third family, Mr Lim once had disputes with Madam Koo and their daughter Pearl Ling, but all along had a good relationship with their son Eric Ling.
   2. There were also other family members who had taken care of Mr Lim, for example, Katty Lam, who was his niece and who might have a moral claim to his bounty. This all illustrates the complexity of Mr Lim’s family circumstances which would affect the degree of capacity required.
4. The complexity in the terms of the 2004 Will itself is also highly pertinent. This is essentially a view shared by all of the experts.[[237]](#footnote-237) In this regard:
   1. The experts accept that there may be some cases where a testator can understand a simple will, for instance “I leave all my worldly goods to my two children”, but would not have capacity to understand a more complex will.[[238]](#footnote-238)
   2. The 2004 Will is 14 pages long in English with a dense 6-page Chinese translation. It is in my view extraordinarily complex, and differed significantly from Mr Lim’s previous wills. It contained complex language and long sentences, and provided for at least 43 specific dispositions of many different types of assets to various beneficiaries, as well as the distribution of the residuary estate, which included at least 7 further assets.
   3. The dispositions were not straightforwardly made to a single beneficiary. The Wisdoman shares, for example, were given to Peter Lam and Madam U, with Peter Lam receiving the voting shares and Madam U receiving the same number of non-voting shares, with Peter Lam alone receiving all the monies owed by Lai Sun Garment.[[239]](#footnote-239) The sums owed by Lai Sun Textiles were given to Peter Lam and Lam Kin Ming in unequal shares (20% and 80% respectively).[[240]](#footnote-240) The monies owed by Perfecta,[[241]](#footnote-241) the business of Wah Hing[[242]](#footnote-242) and the shares in Sing Fook[[243]](#footnote-243) were to be split between Peter Lam and Lam Kin Ming.
   4. The distribution of the residuary estate was more complicated.[[244]](#footnote-244) The first HK$200 million was to be given to Lam Kin Ming; and the rest was to be divided in the irregular proportions of 50%, 17% and 33% respectively among Peter Lam, Madam U and Matthew Lam jointly, and Lam Kin Ming. The HK$200 million was to fund a general offer by Crocodile for its shares, but this was not clear on the face of the will, adding further complexity.
   5. The 2004 Will also contained clauses providing for forfeiture of dispositions to a beneficiary if he attempted to challenge the will; and for the exclusion of Madam Lai, Madam Koo, Pearl “Liang” (which was a mistake) and Eric “Liang” (likewise a mistake, as was his Chinese name “林偉君”).[[245]](#footnote-245) These clauses were unprecedented in Mr Lim’s previous wills.
   6. All in all, I find the 2004 Will much more complex than the previous wills, which had essentially only divided up the residuary estate in shares of 12. The executor was changed; and the way in which the assets were to be distributed had also changed significantly from the previous wills.
   7. The issue is whether Mr Lim had capacity to understand the whole of the 2004 Will, its nature and its effects as a whole, including all the terms and dispositions contained therein. The defendants say that the exclusion of Madam Koo, Pearl Ling and, in particular, Eric Ling was irrational and would not have been done if Mr Lim had the requisite capacity, since Madam Koo and Pearl Ling had reconciled with him some time before his death, and Eric Ling always had a good relationship with him. But this is only one part of the defendants’ case. More importantly, it is for the plaintiffs to satisfy the Court that Mr Lim was able to understand the whole of the will, but I find that he was not able to do so.
5. As for the evidence from the cross-examination of the experts, the following aspects are to be highlighted:
   1. Prof Jacoby acknowledges that in his view, understanding a will of this complexity, when it was explained for the first time for 15 to 20 minutes (if Vincent Cheung’s evidence on this is true), even for a person who had normal cognitive facilities, would be a “tall order”. Explaining it to an elderly testator with cognitive impairment would be, in his understated words, “potentially difficult for him to understand”.
   2. In re-examination, Prof Jacoby states that if the assets or business were familiar to Mr Lim, and the contents of the will had been explained to him previously, and “if his cognitive state was not grossly impaired”, then he would probably “in normal circumstances” have had the capacity to understand it. However, the multiple qualifications within this statement renders it largely meaningless.
   3. In cross-examination, Prof Burns was pressed as to whether the complexity of the will would be affected if its contents, as stated in the Distribution Proposal, had been explained to Mr ‍Lim. Even assuming that was the case, Prof Burns points out that the mere fact Mr Lim said “good” does not mean he actually understood the contents, and that “if Mr Lim had – and I think he had some cognitive impairment, it would have been easier for him to agree with something that was given to him, rather than to perhaps interrogate some of the figures”. This is discussed further in paragraph 171(3) below, in relation to the Beef Chow Fun dinner.
   4. Dr Woo accepted that the will was complex. His view seemed to be that, if Mr Lim could understand the stenting procedure for the purposes of the consent form, which Dr Woo says would have been complex to Mr Lim, then he could have understood the will. But it does not follow that the will is not complex, and Dr Woo made no suggestion in his reports that it was not. He merely asserted that Mr Lim only had mild dementia and could therefore make a complex will.[[246]](#footnote-246)
   5. Prof Düzel stated that, given the complexity of the will, there was sufficient medical evidence to show that Mr Lim did not possess testamentary capacity to execute the will on 3 ‍December ‍2004.

# **H7. No instructions taken from Mr Lim prior to execution**

1. I find Mr Lim was not consulted on the distribution of his assets or even on the choice of executor.
2. Vincent Cheung said he had not seen Mr Lim “for over a year” prior to 3 December 2004;[[247]](#footnote-247) and Agnes Fung had not met with or communicated with Mr Lim until she attended his residence on 3 ‍December ‍2004.[[248]](#footnote-248) There is no suggestion that Mr Lim ever communicated with anyone from Vincent Cheung’s firm about the 2004 ‍Will. Nor is there any suggestion that Mr Lim actually saw any drafts of the 2004 Will, until he saw the final version and signed it on 3 ‍December ‍2004.
3. In the first round of witness statements in 2014, the only suggestion from the plaintiffs’ witnesses of any communications with Mr ‍Lim about the will or the distribution of his assets prior to 3 ‍December ‍2004 was as follows:
   1. According to Mark Lee and Tim Ho’s original statements, they had a discussion with Mr Lim in August 2004. Even if true, the discussion was in the most general and simplistic terms, and made no mention of wills or distribution of assets. They only stated they “gently” asked Mr Lim about his views on his sons’ work and who would be suitable to run his businesses, reassuring him that his sons were all diligent and capable. Mr Lim’s reply was that Lam Kin Ming should manage the garment businesses and Peter Lam the property development and entertainment businesses.[[249]](#footnote-249)
   2. Madam U made generalised statements about reporting “everyone’s consensus” to Mr Lim, and explaining to him the “successor arrangement and distribution of assets”.[[250]](#footnote-250) Such statements could not be tested in cross-examination, and Madam U was not reliable for the reasons explained above. In any event, these statements are far too generalised to support a finding of capacity.
   3. In Peter Lam and Mark Lee’s original statements, they referred to the Beef Chow Fun dinner, in which Peter Lam was said to have explained the Distribution Proposal to Mr ‍Lim while he was eating his favourite beef chow fun. All Mr Lim said in response was “good” and “there should not be any dispute”.[[251]](#footnote-251) Even if true, it does not indicate any capacity to understand on Mr Lim’s part, as the fact that a testator passively approves something presented to him is not a good indicator of his cognitive function and understanding: *Frost, Lawson and Jacoby*, §6.20. There is no evidence that Mr Lim could understand all of the 29 items in the Distribution Proposal in isolation, let alone understand and integrate the proportions and percentages across the items.[[252]](#footnote-252) Moreover, the fact that Mr Lim said there should not be any dispute, yet purportedly approved the Distribution Proposal which would have excluded the third family and thus very likely to lead to disputes, itself indicates a lack of understanding.
4. In his witness statement, Vincent Cheung said that Mark Lee had asked him to be executor.[[253]](#footnote-253) Mark Lee agreed with this in his first statement, and said that he had discussed it with Peter Lam,[[254]](#footnote-254) but there was no suggestion that Mark Lee had consulted Mr Lim. If he had done so, it would be surely have been mentioned.
5. All the evidence as at 2014 indicated that the various drafts of the will were never shown to, let alone approved by, Mr Lim. The will and the distribution of his assets was negotiated between Madam U, Peter Lam, Lam Kin Ming and Matthew Lam (the four proposed beneficiaries), with Mark Lee and Tim Ho dealing with Agnes Fung, and the results of the negotiations then reflected in the drafts.
6. By the time of the 2021 supplemental statements, Mark Lee’s version of events had become very different, presenting significantly more communication with Mr Lim. I find the reason for this is the plaintiffs’ becoming aware that their evidence hitherto was not sufficient. By 2024 when the plaintiffs filed further supplemental statements and their witnesses gave evidence in Court, the memory of Mark Lee had grown again, with even more frequent communication with Mr Lim, while Peter Lam also gave evidence on matters in relation to communication with Mr Lim which was not mentioned in his statements.
7. In assessing the credibility of their evidence as to what happened, it is important to bear firmly in mind the fact that these witnesses were untruthful about what happened on 3 December 2004. The contrast between the initial version of events in their 2014 witness statements, their subsequent statements, and finally what they said in the witness box, makes clear that they have been untruthful on other matters as well.
8. Looking closely at how the version of events put forward by Mark Lee and Peter Lam changed and grew by the time they gave evidence, what Mark Lee said belatedly about his frequent communications with Mr Lim on the distribution of assets is but one area where he told untruth to bolster the plaintiffs’ case.
   1. In his supplemental statement, Mark Lee stated that “[s]ince August 2004”, he and Tim Ho had gone to Mr Lim’s residence and started asking him “more directly about his thoughts on his succession and handover of responsibilities” (even though this was in a section covering only the period “June to August ‍2004”).[[255]](#footnote-255) This is not only absent from his first witness statement, but was also not corroborated in Tim Ho’s witness statements.
   2. In oral evidence, Mark Lee makes further additions to his version by saying he saw Mr Lim “almost every week” from August to October 2004, to discuss matters including the distribution of assets. When pressed in cross-examination, he says for the first time that by the “end of August”, he spoke to Mr Lim to obtain “tips” or “directions” about the distribution of assets, none of which was in any of his 3 witness statements.
   3. The above is inconsistent with Mr Lim’s MMSE score in August, the diagnosis of moderate to severe Alzheimer’s by Dr Fong, or the evidence of the plaintiffs’ other factual witnesses which showed that his mental condition was significantly worse after June 2004.
   4. Mark Lee also says in evidence that “whenever there was a change, we would inform the boss… And I have to reiterate, whenever there’s a change, we would certainly inform the boss”. This is a clear exaggeration. There were a huge number of changes across the various drafts of the 2004 Will, both significant and minor ones. It is unrealistic that Mr Lim would have been consulted about every single one of those changes. Mark Lee later backtracked by saying that for the minor changes, he would “save them together and talk about them in one go”. But this then contradicts §5.3(vii) of his supplemental statement, where he stated that “[f]or each revision of the draft, I would report to Mr Lim Por Yen…”.
   5. Mark Lee also says that he had spoken to Mr Lim about the forfeiture provision in the will (clause 13). I find it inconceivable that Mark Lee can now remember whether he had spoken to Mr Lim on this specific issue, some 20 years later, when none of his witness statements mention it at all. I find that Mark Lee would say anything which would in his view bolster the plaintiffs’ case.
   6. Having stated in §5.3(vi) of his supplemental statement that he had gone to Mr Lim’s residence “multiple times to explain to him in person the draft ‘Asset Distribution Table’ [ie Distribution Proposal]” in November 2004,[[256]](#footnote-256) Mark Lee went yet further in his oral evidence and says that, by November 2004, he was seeing Mr Lim “two times a week, three times a week”. He also says that the discussions mentioned in §5.3(vi) of the supplemental statement actually happened not just in November but also at the end of August and in September and October. I find that, if it were true that Mark Lee had spoken to Mr Lim multiple times about the Distribution Proposal, it could not possibly have been omitted from his original statement as a matter of obvious importance.
   7. In his supplemental statement, Mark Lee stated that when discussing with Mr Lim about the distribution of assets in November 2004, Mr Lim specifically mentioned that Madam Koo, Pearl Ling and Eric Ling could be “ignored” because Madam Koo and Pearl Ling owed a lot of money on ‘G Building’, and Eric Ling defrauded him of a lot of money 10 ‍years ago.[[257]](#footnote-257) Again, if this were true, a matter of such crucial importance in explaining why the third family might be excluded from the will, it would surely have been mentioned in his first statement. In any event, the plaintiffs never put to Eric Ling that he had defrauded his father, and it is inconsistent with the fact that Eric Ling continued investing Mr Lim’s monies well after 1994.
9. The evidence on the Beef Chow Fun dinner in late November ‍2004 was another problematic area for the plaintiffs. There is no credible evidence to indicate that Mr Lim showed any capacity at the dinner to understand and approve the proposed distribution of assets, or that he did so understand. As Mark Lee sat some distance away,[[258]](#footnote-258) and Madam U did not participate in the discussion either,[[259]](#footnote-259) what occurred at that dinner essentially turns on the evidence of Peter Lam. However, as has been demonstrated above, Peter Lam’s evidence is unreliable and should be rejected. In particular:
10. In his witness statement, Peter Lam said he and Mark Lee went to Mr Lim’s residence, bringing a box of Beef Chow Funs. While Mr Lim was eating at table, Peter Lam discussed with him the contents of the Distribution Proposal. Mr Lim’s “only comment was that the proposal was good 「好好」. He reminded that there should not be any dispute among us”.[[260]](#footnote-260)
11. In oral evidence, Peter Lam’s account changed, in both subtle and obvious ways, to bolster the idea that Mr Lim did understand and approve the distribution of his assets at this dinner. See paragraph 85 above.
12. Explaining the contents of the Distribution Proposal to Mr Lim was only an assertion by Peter Lam. He confirmed that he did not show any documents to his father, and his father did not read any documents.
13. Even on his own version, Peter Lam did not explain to his father all the intended dispositions which were eventually to make their way into the will. He cannot recall whether he explained the provisions about the residuary estate to his father. Although he initially said that he had explained clause 13 (the forfeiture clause) to Mr Lim, he quickly backtracked and said that he only explained the Distribution Proposal. He also did not say he had specifically discussed the exclusion of the third family with Mr Lim on this occasion. Indeed, prior to the Beef Chow Fun dinner, he had never actually spoken to Mr Lim about why he excluded the third family.
14. Peter Lam says in oral evidence for the first time that he had told his father about the Wisdoman transaction, specifically that the transaction was “already in progress” but did not explain anything more. He says he asked his father whether there was someone else who needed to be taken care of, and his father said no. He also says that he had asked his father how he should handle the Highfit case, and his father just told him to “proceed”. None of these matters were mentioned in his witness statement, which stated that his father’s only comment was the Distribution Proposal was good.
15. Peter Lam also said in his witness statement that Mr Lim “appeared to [him] as usual”. But his comments on Mr ‍Lim’s mental condition are incredible and cannot not be believed. After all, under cross-examination Peter Lam strenuously denies being aware that his father had any mental health issues in June or August 2004. This cannot be true, as both Prof Jacoby[[261]](#footnote-261) and Prof Burns[[262]](#footnote-262) consider that Mr ‍Lim’s delirious episode in June 2004 would have been obvious to those around him. As explained in section F above, it is inconceivable that Peter Lam did not notice even the delirious episode. It only goes to show that Peter Lam’s evidence on his knowledge of Mr Lim’s mental condition is unreliable and should not be accepted.
16. Tellingly, Tim Ho said in his evidence that he had given a list to Mark Lee containing a proposed distribution of Mr Lim’s assets to Madam U and Matthew Lam, so as to make sure the distribution of assets was “acceptable to them”, as “them” meant Madam U and Matthew Lam, but not Mr Lim.
17. I find no credible evidence that Mr Lim had given instructions relating to the distribution of his assets at any time prior to 3 ‍December ‍2004, nor is there any credible evidence that he had capacity to do so. Mr Lim was never consulted about the distribution of assets. There was merely a negotiation between the four beneficiaries, Madam U, Lam Kin Ming, Peter Lam and Matthew Lam about the distribution of the assets. I find that the third family was excluded because the beneficiaries, in particular Madam U wanted it to be so.

# **H8. Circumstances of execution of the 2004 Will**

1. Coming to the events on 3 December 2004, they offer the strongest indication that Mr Lim did not have testamentary capacity to make the 2004 Will.
2. First, the only persons present on the day of the execution were (i) all beneficiaries under the 2004 Will (Peter Lam, Lam Kin Ming, Madam U and Matthew Lam); (ii) persons closely associated with these beneficiaries (Mark Lee, Tim Ho and Peter Lam’s personal assistant Fung Kwok Hung); (iii) the solicitors from Vincent Cheung’s firm (whose engagement was approved by Peter Lam[[263]](#footnote-263)); and (iv) Dr Lin together with the two other doctors whom he brought along. The third family was excluded from the execution, just as they were excluded from the preparation of the will. I find this to be an attempt to hide the process from the scrutiny of “outsiders”.
3. I also find that the execution of the 2004 Will on 3 ‍December ‍2004 was merely a formal occasion,[[264]](#footnote-264) as it had already been decided it was to take place. This is how, for example, Peter Lam expressed it in his witness statement (“it was decided that the 2004Will would be executed on 3 December 2004”[[265]](#footnote-265)). In fact, he was the person who asked Mark Lee to arrange the meeting for the execution.
4. Second, the only reasonable inference relating to Dr Lin’s presence is that he was asked by a member of the family, most likely Madam U or Peter Lam, to attend the residence on 3 December 2004 and to procure the certification of Mr Lim’s testamentary capacity, whether by Dr Lin himself or another doctor brought along by him.
   1. Dr Lin admits that he was friends with Peter Lam and had contact with him, and also with Madam U. In his witness statement, Dr Lin stated that the requests for his attendance on Mr Lim would come “from his family (often from Madam Po Chu U)”.[[266]](#footnote-266)
   2. Dr Lin had told Dr Fong in the latter half of 2004 that Mr Lim would be making a will, and Dr Fong told Dr Lin that he should get someone to certify Mr Lim’s testamentary capacity. Dr Lin’s evidence that he did not recall such conversation is incredible. I find Dr Lin must have known that Mr Lim would execute a will, and that there was a need to have his capacity certified. He must have been charged with procuring the certification of Mr Lim’s testamentary capacity on the date of execution, by members of the family, most likely Madam U or Peter Lam, or through their intermediaries.
   3. Peter Lam and Mark Lee’s latest evidence about the doctors’ attendance cannot be accepted. In their 2024 supplemental statements, they both stated in effect that Vincent Cheung asked for a doctor to be present in case medical attendance was required, and that Peter Lam asked Vincent Cheung if Dr Lin was suitable to which Vincent Cheung said yes.[[267]](#footnote-267) As explained in section F above, this contradicts the tenor of Vincent Cheung’s statement.
   4. I find that Peter Lam and Mark Lee have not been truthful about how Dr Lin came to attend. From their lies, I draw the inference that the reason for their lies is to hide the fact that Dr Lin was asked to attend for the specific purpose of causing certification of Mr Lim’s testamentary capacity, and was not asked by Vincent Cheung to attendto keep an eye on him in case medical attendance was required.
5. Third, despite the efforts of the plaintiffs and their witnesses to conceal the truth, I find that Dr Kwok did perform a form of mental examination on Mr Lim, and that he considered Mr Lim to have failedthe examination and refused to certify his capacity.
   1. From the outset, the plaintiffs and their witnesses tried to hide the fact that a mental examination took place. Vincent Cheung in his witness statement only referred to the two doctors having “asked Mr Lim a few questions”.[[268]](#footnote-268) Mark Lee merely said in his witness statement[[269]](#footnote-269) and supplemental statement[[270]](#footnote-270) that the doctors asked some questions; and even in his 2nd supplemental statement, he was still saying that the doctors only performed “some simple check-ups”.[[271]](#footnote-271) Peter Lam, in his original statement, likewise did not mention any of the doctors. Even in his supplemental statement, Peter Lam merely said the doctors started asking questions “without any prompting”.[[272]](#footnote-272) Agnes Fung did not mention anything about the doctors in her witness statement at all. It was only under cross-examination that Agnes Fung and Peter Lam admit belatedly in their evidence that a mental examination took place.
   2. Dr Kwok must have been instructed to administer the mental examination by Dr Lin, likely on behalf of the family. Dr ‍Lin’s denial of this is incredible. He was the person who had brought Dr Kwok along to Mr Lim’s residence, and Dr ‍Kwok said he had prepared a printed list of questions for the examination.[[273]](#footnote-273) It is inconceivable that he would have prepared the list, had he not been instructed (by Dr Lin) that he needed to conduct the test.[[274]](#footnote-274) Dr Kwok must also have known that the examination was for the purpose of assessing Mr Lim’s capacity to make a will, as he must have been told by Dr Lin (who knew from Dr Fong) about the purpose of the examination, or at least he would have found out when he arrived at Mr Lim’s residence on 3 December and the people present discussed the fact that Mr Lim was about to make a will.
   3. There is some uncertainty as to which test was administered by Dr Kwok. In his own affirmation, Dr Kwok said it was the AMTS.[[275]](#footnote-275) But Dr Chan says in evidence that it was probably the MMSE, which is consistent with the reference in his affirmation to the question “what is 100 minus 7”.[[276]](#footnote-276) Dr Chan also says that Dr Kwok asked “probably 21 standard questions”, which is more than the number of questions in either test, and may possibly indicate that Dr Kwok asked more than just the questions from a single test.
   4. Both the MMSE or AMTS are tests of cognitive function. While it is fair to say that the MMSE tests more aspects than the AMTS, both tests nevertheless do test for memory, orientation, attention, concentration and the expressive aspect of language, which are relevant to capacity to make a will. Regardless of whether it was the MMSE or AMTS, the test conducted by Dr Kwok was relevant to and form part of the assessment of Mr Lim’s testamentary capacity.
   5. The test was carried out in Mr Lim’s residence, an environment familiar to him. Dr Kwok was someone who had previously consulted with Mr Lim on 1 ‍December ‍2004,[[277]](#footnote-277) and would not have been a stranger to him.
   6. I find Dr Kwok had concluded that Mr Lim failed the mental examination. On Dr Chan’s evidence which I accept, Dr ‍Kwok said “唔得” (“cannot”) repeatedly after he finished administering the examination, and despite coming under some pressure from others present (who asked Dr Kwok “得唔得?” (“whether he can or cannot?”), and “得啦，咁都唔得?” (“surely it’s fine, how can it not be fine?”)), Dr Kwok refused to change his view. Dr Chan said he believed Dr ‍Kwok’s comment on Mr Lim’s performance. Thus, the only sensible inference is that Dr Kwok believed Mr Lim had failed the mental examination. Mr Lim was not certified to have testamentary capacity, and no certificate was produced.
   7. What ‘failure’ means depends on what test was administered. But given that Dr Kwok was so insistent (in the face of contrary pressure) that Mr Lim “唔得”, it can only be inferred that he did very poorly in the examination. If it was the MMSE as Dr Chan recalled, then the ‘failure’ may refer to a score below 10, which is a generally accepted cut-off below which there would almost invariably be no testamentary capacity.[[278]](#footnote-278) If it was the AMTS, the score would also likely have been a low one.
6. Fourth, as for the questions asked by Dr Kwok and Mr Lim’s answers:
   1. Dr Chan, the only person present on 3 December 2004 who gave credible evidence, could not recall Mr Lim’s answers. What Dr Kwok said in his affirmation implied that he asked the questions in the AMTS.[[279]](#footnote-279)
   2. In the Answers to Interrogatories, Vincent Cheung gave an account of the questions and Mr Lim’s answers.[[280]](#footnote-280) But Vincent Cheung’s evidence is highly unreliable in key respects, such as changing his version as to when Dr Lin left the residence. His evidence is not accepted, as he has not given a truthful account.
   3. Vincent Cheung’s Answers to Interrogatories in any event do not purport to be a full list of Mr Lim’s answers. There is no documentary evidence of such a list. Further, what Vincent Cheung said in his witness statement and Answers to Interrogatories is inconsistent with Dr Chan’s evidence to the effect that, after administering the test, Dr Kwok said Mr Lim failed the test and he did not certify capacity. At best, what Vincent Cheung said is highly selective and hence unreliable.
7. Fifth, as for the plaintiffs’ attacks on the conduct of the test, I accept the defendants’ submission that they ring hollow, and do not give rise to any points in favour of the plaintiffs.
   1. The mental examination must have been arranged by or with the concurrence of the family members (eg Madam U and/or Peter Lam). It is a matter of significance that instead of a specialist, a GP was asked to do the test. I find the reason for this is that they thought it would be easier to obtain certification.[[281]](#footnote-281)
   2. The Golden Rule was not complied with. While the attempt to have a doctor certify Mr Lim’s capacity failed, there was no attempt to discuss earlier wills with Mr Lim or to take instructions from him in the absence of beneficiaries or those who may influence him. In fact, no instructions were taken from Mr Lim by the solicitors at all. Vincent Cheung and his colleagues must have been aware of the importance to do so. The Golden Rule was already well established and had been referred to in a number of authorities in this jurisdiction by then.
   3. I find the truth to be that there was no intention from the start to comply with the Golden Rule by seriously putting Mr Lim through an assessment of capacity, as it would have made the execution of the will much harder. So when Mr Lim was unable to pass the test which had been arranged for him, the plaintiffs turned around to attack its adequacy. The plaintiffs’ criticisms are disingenuous and ironic, and do not weigh in the plaintiffs’ favour at all.
   4. Even Prof Jacoby acknowledged in cross-examination that, just because Dr Kwok did not go any further in his assessment after administering the MMSE or AMTS, one cannot discount his opinion that Mr Lim was not in a fit state to make a will. This follows from the undisputed proposition that the results of such tests would be relevant to the assessment of testamentary capacity. Indeed, if Dr Kwok had said that Mr ‍Lim ‘passed’ the test, then the plaintiffs would not be making any criticism of the way the test was conducted.
8. Sixth, in the absence of contemporaneous documents, the plaintiffs have been able to raise criticisms about the events of 3 ‍December ‍2004. However, the absence of documentation is not a point against the defendants but rather against the plaintiffs, not least because the burden rests on the plaintiffs to prove capacity. Therefore, the following gaps in the documentary record work against rather than in favour of the plaintiffs.
   1. Dr Chan gave evidence that, immediately after the mental examination was completed, he was moved into a side room and was essentially pressured by at least two persons standing behind him, including Dr Lin, to write a paragraph about Mr Lim’s mental condition (“**1st Statement**”). Although Dr Chan gave an unsigned statement to Dr Lin, that document has not been disclosed, and was not even mentioned in Dr Lin’s discovery affidavit.
   2. Dr Chan also said that in the period after 3 December 2004 and before Mr Lim’s death, Dr Lin kept calling him and asking him to write another statement. Eventually, Dr Lin threatened legal consequences, whereupon Dr Chan went to his office and made another statement (“**2nd Statement**”), this time more conservative than the 1st Statement. The 2nd ‍Statement has not been disclosed either, and was not mentioned in Dr Lin’s discovery affidavit.
   3. Dr Lin himself mentioned that sometime after 3 December, Dr Chan had given him a “one page typed paper about the attendance of Mr Lim with no signature”.[[282]](#footnote-282) I find it incredible he would remember that it was “typed” and “with no signature”. In any event, even this document was never mentioned in Dr Lin’s discovery affidavit.
   4. I accept Dr Chan’s evidence and find that Dr Lin was lying. It is inconceivable that Dr Lin could have possibly forgotten the fact that he had intimidated Dr Chan into writing the 1st ‍Statement and thereafter the 2nd Statement. As these are matters which Dr Lin could not have forgotten about, the fact that Dr Lin refused to disclose even the existence of such documents in his discovery affidavit points strongly to the documents having been suppressed.[[283]](#footnote-283) It is also telling that when asked about the two statements in 2019, Dr Lin’s solicitors did not deny their existence, but sought to deflect the question by redirecting it at Dr Chan.[[284]](#footnote-284)
   5. Despite the presence of four solicitors from Vincent Cheung’s firm on the day of execution, no attendance note from the plaintiffs has been produced. Then some 4 years after the commencement of litigation, Vincent Cheung revealed by a solicitors’ letter dated 11 March 2015[[285]](#footnote-285) that he had made an attendance note, but it was “lost” in an “office move”.[[286]](#footnote-286)
   6. The implications of the missing documents in terms of adverse inference are addressed in paragraph 193 below.
9. Seventh, seen against Dr Chan’s credible account of events, all of the plaintiffs’ main witnesses in relation to the occasion on 3 ‍December ‍2004, including Peter Lam, Mark Lee, Vincent Cheung and Agnes Fung, cannot have been telling the truth. They all must have known that Dr Kwok had conducted a mental examination and had said that Mr Lim had failed the examination, but none of them said a word about this. On the contrary:
   1. Every one of them painted a picture that Mr Lim was fine and that his mental condition was normal. Vincent Cheung said in his statement that Mr Lim was “alert” or “attentive” or “responsive” on 3 December 2004.[[287]](#footnote-287) Agnes Fung maintains that Mr Lim understood and had capacity and that he knew what was going on. Peter Lam said that his father “fully understood what he was doing and did not behave any differently compared with my interactions with him on previous occasions”.[[288]](#footnote-288) Mark Lee said that that Mr Lim was “energised”[[289]](#footnote-289) and that he believed “there was no problem with Mr Lim Por Yen’s mental state”.[[290]](#footnote-290)
   2. Further, they all presented a false picture of how and why the examination concluded. Peter Lam, in his supplemental statement, said that Mr Lim was able to answer the questions without much issue, but that after a few questions he started becoming impatient, and Vincent Cheung asked the doctors to leave.[[291]](#footnote-291) Mark Lee made similar statements in his 2nd ‍supplemental statement.[[292]](#footnote-292) Agnes Fung gives evidence to similar effect, and says that there was “no big commotion” when the doctors left. This was contrary to Dr Chan’s evidence that the examination was completed with Dr Kwok repeatedly saying “cannot” despite being pressured to change his view. Yet none of the witnesses said a word about this.
   3. I find the refusal of the plaintiffs’ witnesses to tell the truth about Mr Lim’s mental condition, and about what happened during and after the mental examination, a deliberate cover-up.
10. Their evidence about when Dr Lin left the residence was also untrue:
    1. It was twice mentioned in the FBPs dated 23 April 2012 that Dr Lin was present at the time of execution of the 2004 Will.[[293]](#footnote-293) The FBPs were never amended. Thus, it remains the plaintiffs’ pleaded case that Dr Lin was still present at the time of execution.
    2. This then changed in the witness statements. Vincent Cheung said Dr Lin had left because of other commitments before Mr Lim came into the living room and Vincent Cheung greeted him.[[294]](#footnote-294) Mark Lee said in his first witness statement that Dr Lin had left before the will was signed, without specifying whether he had left before the two doctors asked questions;[[295]](#footnote-295) and in his supplemental and 2nd supplemental statements, he said that Dr Lin left before anything substantive happened.[[296]](#footnote-296) In his own witness statement, Dr Lin also said that he had left shortly after arriving and greeting Mr Lim.[[297]](#footnote-297)
    3. This was also the version given in evidence by Peter Lam, Mark Lee, Agnes Fung and Dr Lin who further says that he did not even know a will was being executed by Mr Lim.
    4. I find this incredible even without Dr Chan’s evidence. It is inconceivable that Dr Lin would have attended Mr Lim’s residence and then left so quickly, when, according to Peter Lam himself,[[298]](#footnote-298) the purpose of Dr Lin’s attendance was related to the execution of the 2004 Will. Moreover, Peter Lam stated he was the one who contacted Dr Lin to ask him to attend,[[299]](#footnote-299) yet he also says in evidence that Dr Lin did not tell him that he would have to leave early. I find it all implausible. Dr Chan’s credible evidence put beyond doubt that it is untrue.
11. Eighth, in light of the complexity of Mr Lim’s estate, family situation and the terms of the will, I find it inadequate to explain the 2004 Will to Mr Lim for “15 to 20 minutes” prior to execution,[[300]](#footnote-300) as Vincent Cheung said he did.
12. Given what happened on 3 December 2004 is now apparent, and that the evidence from the persons present was not truthful, there is real doubt as to whether Vincent Cheung actually “explained” the will to Mr Lim for 15 to 20 minutes. With Dr Kwok concluding that Mr Lim had failed the mental examination, and declining to certify his capacity, it would seem a surprising thing to do.
13. However, even if one assumes that Vincent Cheung did so, it was still inadequate to prove capacity for the reasons given at paragraph (4) below.
14. There was no independent solicitor who explained the will to Mr Lim. Vincent Cheung could not in any sense be described as independent, for the reasons explained in paragraph 108 above.
15. Vincent Cheung said “Although I did not recite every word of the will to him, I went through it paragraph by paragraph explaining in detail each paragraph to him”.[[301]](#footnote-301) I find it difficult to see how this will, in 6 dense pages of Chinese translation and containing some 43 dispositions, could be meaningfully explained “in detail” within 15 to 20 minutes. It is all the more difficult for a testator of Mr Lim’s age and condition, let alone with significant cognitive impairment, to have understood such an explanation. On Vincent Cheung’s version, Mr Lim was not even explicitly asked whether he understood the will, and was not given the opportunity to have it read and explained to him one more time, making the explanation all the more inadequate.
16. Indeed, as mentioned in paragraph 168 above, Prof Jacoby agrees that even for a person who had normal cognitive facilities, it would be a “tall order” for him to understand the 2004 Will after a 15-20 minute explanation. Explaining it to an elderly testator with cognitive impairment would be “potentially difficult for him to understand”.
17. This is particularly inadequate in circumstances where Mr Lim himself had not given any instructions to the solicitors for preparation of the 2004 Will; he had not seen any drafts of the will before seeing the final version on 3 December 2004; and the contents of the 2004 Will had never been explained to Mr Lim before 3 December 2004.
18. On the basis of all the matters above, I find the evidence that Mr Lim had no testamentary capacity to execute the 2004 Will on 3 ‍December ‍2004 is overwhelming. There is ample basis to support the factual findings on a balance of probabilities that Mr Lim had no testamentary capacity, rather than his having testamentary capacity.
19. The authorities have established that the medical evidence of a practitioner who assesses capacity, having met a testator, should be given considerable weight when determining whether that testator had testamentary capacity: *Hughes v Pritchard* [2022] Ch 339, §89. With Dr ‍Kwok passing away, Dr Chan’s evidence is the “next best thing” and should be accorded great weight.
20. As to the drawing of adverse inferences where there had been destruction of documents, the relevant principles had been discussed by the English Court of Appeal in a case cited by the plaintiffs, namely, *Malhotra v Dhawan* [1997] 8 Med LR 319. In that case the plaintiff, a qualified accountant, carried out work for the defendant’s accountant firm and claimed remuneration for them, but the defendant had already destroyed some of the relevant client files. Morritt LJ made the following points:
    1. It was noted that the plaintiff (Mr Malhotra) placed reliance on the principle expressed in the Latin maxim *omnia praesumuntur contra spoliatorem* (or “*all things are presumed against the wrongdoer*”) (and the well-known case of *Armory v Delamirie* (1722) 1 Stra 505 being an example of its application). Importantly, it was accepted that “the true principle was not as extensive as the maxim would suggest for not everything is to be presumed against the destroyer.”: 321 (col 2).
    2. He referred to the trial judge’s statement of principle that where one party is responsible for the unavailability of relevant evidence, the Court should not be slow to make such inferences or assumptions against that party’s interests as are consistent with other available evidence: 322 (col 1).
    3. He identified at 322 (col 2) certain limits to the principle:
       1. First, if it is found that the destruction of the evidence was carried out deliberately so to as hinder the proof of the plaintiff’s claim, then such finding will obviously reflect on the credibility of the destroyer. In such circumstances it would enable the court to disregard the evidence of the destroyer in the application of the principle.
       2. Second, if the court has difficulty in deciding which party’s evidence to accept, then it would be legitimate to resolve that doubt by the application of the presumption.
       3. But, thirdly, if the judge forms a clear view, having borne in mind all the difficulties which may arise from the unavailability of material documents, as to which side is telling the truth, the application of the presumption does not require the judge to accept evidence he does not believe or to reject evidence he finds to be truthful.
21. In the context of the present case, the Court is clearly entitled to disregard the evidence of Vincent Cheung as to the exchange between Dr Kwok and Mr Lim (see paragraph 185(2) above), and to make such inferences against the plaintiffs’ interests as are consistent with other available evidence, namely, that Mr Lim was suffering from “severe dementia” and lacked “testamentary capacity” to make the 2004 Will.

# **H9. Factual findings relevant to testamentary capacity**

1. To sum up on the issue of testamentary capacity, for the reasons set out above, I make the following factual findings contended for by the defendants:
   1. Mr Lim was an elderly and infirm man who was suffering various medical conditions (including coronary heart disease, hypertension, prostate cancer, anaemia, fracture of the arm, pulmonary oedema, pneumonia and other conditions),[[302]](#footnote-302) and who spent much of his last months in and out of hospital receiving treatment.
   2. By June 2004, Mr Lim was already suffering from dementia and taking Reminyl, an Alzheimer’s medication. As a result of his physical conditions (in particular, his fall and arm fracture on 7 June), Mr Lim suffered an episode of delirium in that month. This delirious episode, combined with his co-morbidities, is more likely than not to have ‘catapulted’ his underlying dementia into a worsened state (instead of returning to ‘baseline’), and caused the progression of his dementia to be accelerated.
   3. During the month of June, Mr Lim was in hospital, suffering from delirium and was not in a fit state to do an MMSE. On 2 August 2004, when Mr Lim recovered, Dr Fong assessed his mental condition at his clinic. Dr Fong administered an MMSE to Mr Lim. He also administered the clock-face drawing test on Mr Lim, who was unable to do it properly. Although the MMSE score itself would have indicated severe Alzheimer’s, Dr Fong took into account other factors such as the clock-face drawing test and his clinical impression and reached the overall conclusion that Mr Lim had moderate to severe Alzheimer’s disease. Although the plaintiffs seek to undermine Dr Fong’s conduct of the assessments (in particular the MMSE), it is entirely unrealistic to subject the assessments to minute scrutiny 20 years later, and in any event the criticisms are largely unwarranted. What is important is that an eminent and experienced neurologist brought Mr Lim into his clinic specifically to assess his mental condition, and having administered his assessment (which did not consist solely of the MMSE), came to a considered view and diagnosed Mr Lim with moderate to severe Alzheimer’s.
   4. Thereafter, Dr Fong wanted to administer the MMSE on Mr ‍Lim again, but there was no subsequent occasion (in August, September, October or November) when Mr Lim was in a proper condition to do it. Further, Dr Fong decided to change Mr Lim’s Alzheimer’s medication to Ebixa, a drug indicated for moderate to severe Alzheimer’s disease. This all indicated a worsening in his dementia and mental condition, rather than an improvement. Mr Lim’s longstanding urologist Dr KK Wong also noted a deterioration in his general health and increase in dementia in November to December 2004.
   5. Despite the denials by the plaintiffs’ witnesses, Dr Lin (Mr ‍Lim’s family doctor) clearly did know about Mr Lim’s mental condition at the relevant time, including the result of the MMSE on 2 August 2004. He clearly informed the family (Peter Lam and presumably Madam U) about the same.
   6. Meanwhile, earlier in around July 2004, upon Madam U’s direction and with the coordination of Mark Lee and Tim Ho, Madam U, Lam Kin Ming, Peter Lam and Matthew Lam began to negotiate amongst themselves as to how Mr Lim’s estate should be distributed upon his death.
   7. Mark Lee consulted Peter Lam about the choice of executor. Mr Lim was not consulted. Mark Lee and Peter Lam agreed that Vincent Cheung should be chosen.
   8. In August, Mark Lee started to have discussions with Vincent Cheung about the preparation of Mr Lim’s will. From October onwards, Agnes Fung had meetings with Mark Lee and Tim Ho regarding the 2004 Will. The changes in the drafts of the 2004 Will reflected the negotiations between Madam U, Lam Kin Ming, Peter Lam and Matthew Lam, without consultation with or approval by Mr Lim.
   9. Mr Lim never communicated with or gave instructions to anyone from Vincent Cheung’s firm regarding the 2004 Will. Mr Lim never saw any drafts of the 2004 Will before 3 ‍December ‍2004, and none of them were signed or initialled by him. Contrary to what Mark Lee said, Mr Lim was never kept updated about the distribution or the various drafts of the 2004 Will from August to November 2004. Mr Lim did not have capacity to understand and did not give any meaningful instructions about the Distribution Proposal at the ‘beef noodle dinner’ in late November 2004.
   10. In the latter half of 2004, Dr Lin told Dr Fong at least one time that Mr Lim would be making a will, and Dr Fong said a doctor would be needed to perform a mental test or certify his testamentary capacity. Dr Fong said he was not asked to certify Mr Lim’s testamentary capacity. He suggested that this was because Dr Lin was aware that if an expert is required, it would usually be a psychiatrist.
   11. Dr Lin was asked by a member of the family, most likely Madam U or Peter Lam, to attend Mr Lim’s residence on 3 ‍December ‍2004. Contrary to Dr Lin’s explanation, the purpose was to certify Mr Lim’s testamentary capacity for the execution of a will.
   12. On 3 December 2004, Dr Lin attended the residence with two other doctors, Dr Kwok (whose clinic was next to Dr Lin’s), and Dr Chan (a junior doctor of 5 years’ qualification looking for a job, who had been introduced to Dr Lin shortly before then). Dr Lin chose to bring along Dr Kwok who was a GP (or as Dr Chan described, a geriatrician), as opposed to finding a specialist. Dr Lin did not tell Dr Chan any details about the attendance, and Dr Chan was simply picked up by a van at an MTR station, with Dr Lin inside. The van carried them to Mr Lim’s residence, a detached house.
   13. Dr Kwok performed a mental examination on Mr Lim in the living room of his residence (consisting of an MMSE and/or AMTS). Dr Kwok was instructed by Dr Lin (likely on behalf of the family) to perform the examination. He must have known (from Dr Lin, and/or from discussions amongst those present on 3 December) that the examination was for the purpose of ascertaining the capacity of Mr Lim to execute a will.
   14. In the examination, Dr Kwok asked Mr Lim a number of questions. After the examination was completed, Dr Kwok said “唔得” (“cannot”) repeatedly. There were at least two other persons present who repeatedly asked Dr Kwok, “得唔得?”, and “得啦，咁都唔得?”; but Dr Kwok did not change his answer. Dr Chan said he believed Dr Kwok’s comment on Mr Lim’s performance. Dr Kwok did not certify Mr ‍Lim’s capacity, nor did any of the other doctors. It is to be inferred that, Dr Kwok, having administered the test, was of the view that Mr Lim had failed it, and that Mr Lim’s mental condition was such that he did not have capacity to execute a will.
   15. By this time, Mr Lim’s dementia would have worsened since August, and had become severe.
   16. Contrary to what Dr Lin said, he had not left before the mental examination was administered by Dr Kwok. In fact, Dr Lin was present in the residence throughout. After the failed mental examination, Dr Chan was asked to move to another room, and was asked by Dr Lin to write a statement about Mr ‍Lim’s condition. There were two people standing behind him, one of whom was Dr Lin. Dr Chan felt pressure and perhaps some intimidation, as he did not feel he could leave the house without writing the statement.
   17. Dr Chan wrote a paragraph to describe Mr Lim’s condition (which he said may not have been entirely true), but he did not sign it because he did not want to take medical responsibility for it. He gave the statement to Dr Lin, who said “good, that’s good”. Dr Chan did not keep any copies. He then left the house and was driven away in one of the Lim family’s cars.
   18. Despite all of the above, Mr Lim executed the 2004 Will on that occasion. The plaintiffs assert that prior to the execution, the will was explained by Vincent Cheung to Mr Lim within 15 to 20 minutes prior to execution, although Dr Chan did not see the explanation or the execution of the 2004 Will. Even if true, such limited explanation was inadequate. Madam U, Lam Kin Ming, Peter Lam and Matthew Lam, but notably not Mr Lim, also signed the Distribution Proposal, according to them on the same occasion.
   19. In the period after 3 December, Dr Lin phoned Dr Chan from time to time, requesting him to write another statement as the first one had not been signed. When Mr Lim was nearing death,[[303]](#footnote-303) Dr Lin contacted Dr Chan again and in a stronger tone, asked him to write another statement and threatened him with legal consequences if he did not do so. Therefore, Dr ‍Chan went to Dr Lin’s office and wrote another statement, which was more cautious and more conservative than his first statement. He gave the statement to Dr Lin and did not keep a copy.
   20. The two statements of Dr Chan have not been disclosed by the plaintiffs, or by Dr Lin in response to the third party discovery order against him (an order which Dr Lin said he had never seen before he gave evidence). I find it likely that Dr Lin has destroyed and suppressed the two statements to avoid them coming to light.
2. I further find that there is a clear and admitted failure to comply with the Golden Rule.[[304]](#footnote-304) There are two main aspects to the Golden Rule: (i) the making of the will should be witnessed or approved by a medical practitioner who has satisfied himself of the capacity and understanding of the testator, and records and preserves his examination and findings; and (ii) earlier wills should be considered and discussed with the testator, and instructions should be taken from him in the absence of anyone who may stand to benefit or who may influence him. Insofar as (i) is concerned, there was an attempt to comply with it by having Dr Kwok assess and certify Mr Lim’s capacity, but that attempt failed because Mr ‍Lim did not pass the mental examination administered by Dr Kwok and he did not certify Mr Lim’s capacity. But there is no evidence as to any attempt to comply with (ii) at all.
3. In any event, in a case such as the present, where there is a lack of relevant and reliable evidence, where not even the plaintiffs’ experts are able to positively opine that Mr Lim did have testamentary capacity and the defendants’ experts opine that there was no testamentary capacity, and where there was an admitted failure by the plaintiffs to comply with the Golden Rule, the burden of proof becomes important. It is the plaintiffs who have the persuasive burden of proving testamentary capacity, knowledge and approval on the balance of probabilities. On the present facts, I find that the plaintiffs have not discharged their burden.

# **H10. Banks v Goodfellow test**

1. Applying the limbs of *the Banks v Goodfellow* test, I find Mr ‍Lim clearly could not have had testamentary capacity to make the 2004 Will.
2. On the first limb, I find that Mr Lim could not understand the nature of the act of making the 2004 Will and its effects. Given the severity of Mr Lim’s dementia by 3 December 2004, the complexity of the 2004 Will, and the lack of adequate explanation, especially in circumstances where Mr Lim had never given instructions and never seen the will before, Mr Lim could not have understood its nature and effects.
3. On the second limb, I find that Mr Lim could not understand the extent of the property which he was disposing. His estate was very complex and consisted of many different assets, of many different types. His family situation was also complex, with multiple competing branches of the family. Given the severity of his dementia, he could not have understood the complexity of his estate by the time he executed the will. Even if the will had been explained to him over 15 to 20 minutes, that would not have been adequate to enable Mr Lim to understand what property he had and was disposing of.
4. In this regard, Prof Jacoby said in his 1st Report that Mr Lim would probably have understood he was head of the Lai Sun Group and that this comprised a number of different companies with assets in Hong ‍Kong and the PRC.[[305]](#footnote-305) That would surely not have been possible if Mr Lim had severe dementia; but even if it was, such knowledge would plainly be insufficient. After all, Mr Lim has assets outside the Lai Sun Group. Besides, there is nothing to suggest he was able to differentiate between his assets to a sufficient degree to satisfy the Court that he is substantially aware of what he did and did not own and its general value.
5. On the third limb, I find that Mr Lim was unable to comprehend and appreciate the claims to which he ought to give effect, and did not have the ability to decide between the competing claims, or to inform himself of the claims.
6. On the fourth limb, there is no dispute that Mr Lim did suffer from a disorder of mind, namely dementia probably due to Alzheimer’s disease. His dementia was at least moderate to severe by 2 August 2004, and I find that it worsened to severe dementia by 3 December 2004. I also find that Mr Lim would not have made the dispositions in the 2004 Will if his mind had been sound.
7. In any event, the plaintiffs have not discharged their persuasive burden of proving testamentary capacity. The Court cannot be satisfied that the 2004 Will did have capacity on the balance of probabilities, in the light of the manifest evidential inadequacies and the plaintiffs’ failure to put forward proper reliable or satisfactory evidence to show he did have capacity. Thus, on the basis of the burden alone, the plaintiffs would fail on the issue of testamentary capacity as well.

# **I. KNOWLEDGE AND APPROVAL**

1. As Mr Lim did not have testamentary capacity, that is the end of the matter and there is, strictly speaking, no need for this Court to consider whether there was knowledge and approval. Nevertheless, I also find that the plaintiffs fail on knowledge and approval.
2. The plaintiffs do not dispute that the second rule of *Barry v Butlin* is engaged, namely, if a party prepares a will under which he takes a benefit, it is a circumstance that ought generally to excite the suspicion of the Court. As A Cheung J (as he then was) explained in *Re Estate of Yip Keung*, HCAP 15/2004 (unrep, 19/12/2007), §72, the triggering event which arouses the suspicion of the Court must be circumstances attending or relevant to the preparation and execution of the will itself. But once its suspicion is aroused, the Court would look at the entire evidence (including matters not attending or relevant to preparation and execution) with the appropriate degree of vigilance and jealousy, in order to determine whether the testator knew and approved of the contents of the actual will.
3. In *Devas v Mackay* [2009] EWHC 1951 (Ch), §§74-75, Deputy Judge Asplin QC (as she then was) held that the following circumstances (among others) excited the suspicion of the Court: the will was executed without professional advice; there were spelling mistakes in it; it contained a radical change in dispositions without rational explanation; the will was executed at a time when the isolation of the deceased from her friends and family increased; the evidence suggested the deceased would not have been able to understand the content of the will; the disinherited children and daughter in law were not informed when the deceased was dying by the defendant and his mother and associates, who were obstructive after her death; and the defendant had failed to produce records of the deceased’s care at the time and claimed (without foundation) that they had been “shredded”.
4. In my view, the facts of this case excite the suspicion of the Court to the highest possible degree. This overlaps to a significant extent with the matters already mentioned above. As the defendants submitted:
   1. The 2004 Will was radically different from the previous wills. The assets were dealt with in an entirely different manner, namely by specific dispositions in part rather than merely the division of the residuary estate; the executor was different; the beneficiaries were different; and an entire branch of Mr Lim’s family was excluded.
   2. Mr Lim had never seen any drafts of the will before the date of execution. He had never communicated with anybody from Vincent Cheung’s firm about the will, nor given any instructions to them. Such instructions only came from Mark Lee (who was plainly answerable to Peter Lam as the person effectively in charge of Lai Sun Group) assisted by Tim Ho. According to Vincent Cheung, Mr Lim had not even seen him in the past year before 3 December. Agnes Fung had never seen Mr Lim before 3 December 2004.[[306]](#footnote-306)
   3. Mr Lim did not even choose his own executor. Peter Lam and Mark Lee did.
   4. Even on the plaintiffs’ own case, it was Madam U and Peter Lam who initiated the preparation of the 2004 Will. It is clear, that the 2004 Will was the product of negotiations and jockeying between the beneficiaries (Madam U, Peter Lam, Lam Kin Ming and Matthew Lam), with no involvement of Mr Lim. Mark Lee’s evidence was that Madam U chose the “main characters” (ie the four of them) to discuss the distribution of Mr Lim’s assets and come up with a “rough cut” of the proposed distribution, before there was any consultation with Mr Lim.[[307]](#footnote-307)
   5. The evidence of the plaintiffs’ witnesses (in particular, Peter Lam and Mark Lee) as to Mr Lim’s knowledge of the dispositions was incredible. For example, Mark Lee’s evidence that he had constantly updated Mr Lim was incredible and at odds with his original statement. Peter Lam’s evidence as to the Beef Chow Fun dinner also shifted significantly from his witness statements and was unreliable.
   6. Even if the Distribution Proposal had been explained to Mr ‍Lim, he was merely presented with a proposal and asked to agree, as opposed to being asked open-ended questions. In other words, this is not evidence of Mr Lim’s unprompted testamentary intentions, and in such circumstances more stringent proof of intention would be required.
   7. There is no dispute that Mr Lim did suffer from dementia. But almost none of the plaintiffs’ witnesses even mentioned it in their statements.[[308]](#footnote-308) Peter Lam’s evidence that he did not know Mr Lim had any mental problems even in June (when Mr Lim had delirium which would have been obvious to those around him), and that he did not know Mr Lim suffered dementia until after his death is incredible.
   8. The circumstances of execution on 3 December 2004 are highly suspect, including: (i) only those benefitting from the will and persons associated with them were present, and the third family were excluded; (ii) Dr Kwok carried out the mental examination and took the view that Mr Lim had failed it; (iii) Dr Lin and the plaintiffs’ other witnesses obviously lied about and covered up his presence during the mental examination; (iv) Dr Chan was pressured and intimidated to write the two statements by Dr Lin and others; (v) there was no certificate of capacity; (vi) the will was allegedly explained within 15 to 20 minutes with no repetition and no questions from Mr Lim; (vii) the will contained various mistakes (such as the fact that Wisdoman owned the Lai Sun Garment shares, and the mistakes in Pearl Ling and Eric Ling’s names); and (viii) the will was signed wrongly by Mr Lim.
   9. The absence of contemporaneous documents regarding the preparation and execution of the 2004 Will, and in particular the disappearance of Vincent Cheung’s attendance note and the two statements from Dr Chan which were handed to Dr Lin, must clearly also factor into the suspicious circumstances.
   10. The same applies to the fact that the plaintiffs had all along resisted calling the doctors to give evidence, and even opposed the inclusion of the doctors’ affidavits as evidence before this Court, until after the start of trial. This clearly indicated an expectation, since proven, that the doctors’ evidence would not assist the plaintiffs’ case.
   11. The exclusion of Madam Koo and Pearl Ling was clearly irrational in light of their reconciliation with Mr Lim; and the exclusion of Eric Ling, all the more so when there had never been a falling out between them.
5. In light of all of the above, there were highly suspicious circumstances arousing the suspicion of the Court. The plaintiffs have fallen short of adducing affirmative proof of knowledge and approval to dispel the suspicion. I find that there was no knowledge and approval of the 2004 Will.

# **J. UNDUE INFLUENCE**

1. As I find the 2004 Will invalid by reason of lack of testamentary capacity and knowledge and approval, that is the end of the matter and there is no need to consider undue influence. I shall only discuss this topic briefly for the sake of completeness.
2. There is no dispute between the parties that the proper approach to testamentary undue influence is that set out in *Re Estate of Edwards* [2007] WTLR 1387 at §47 (Lewison J, as he then was), applied by Poon J (as he then was) in *Li Chi Loy v Li Lai Lan Candice* [2008] 5 HKLRD 74 at §83:

“(i) In a case of a testamentary disposition of assets, unlike a lifetime disposition, there is no presumption of undue influence;

(ii) Whether undue influence has procured the execution of a will is therefore a question of fact;

(iii) The burden of proving it lies on the person who asserts it. It is not enough to prove that the facts are consistent with the hypothesis of undue influence. What must be shown is that the facts are inconsistent with any other hypothesis. In the modern law this is, perhaps no more than a reminder of the high burden, even on the civil standard, that a claimant bears in proving undue influences as vitiating a testamentary disposition;

(iv) In this context undue influence means influence exercised either by coercion, in the sense that the testator’s will must be overborne, or by fraud.

(v) Coercion is pressure that overpowers the volition without convincing the testator’s judgment. It is to be distinguished from mere persuasion, appeals to ties of affection or pity for future destitution, all of which are legitimate. Pressure which causes a testator to succumb for the sake of a quiet life, if carried to an extent that overbears the testator’s free judgment discretion or wishes, is enough to amount to coercion in this sense;

(vi) The physical and mental strength of the testator are relevant factors in determining how much pressure is necessary in order to overbear the will. The will of a weak and ill person may be more easily overborne than that of a hale and hearty one. As was said in one case simply to talk to a weak and feeble testator may so fatigue the brain that a sick person may be induced for quietness’ sake to do anything. A ‘drip drip’ approach may be highly effective in sapping the will;

…

(ix) The question is not whether the court considers that the testator’s testamentary disposition is fair because, subject to statutory powers of intervention, a testator may dispose of his estate as he wishes. The question, in the end, is whether in making his dispositions, the testator has acted as a free agent.”

1. I agree with the submissions of the plaintiffs that in this case, there is no basis for any finding that Madam U and Peter Lam had coerced or pressured Mr Lim into making the 2004 Will. There is no evidence that Mr Lim was ill treated by them in any way – not even evidence that they had talked to Mr Lim in such a manner that he was induced to execute the 2004 Will for quietness’s sake (being one of the “subtle” ways in which it is said that undue influence may be exerted).
2. The defendants’ case of undue influence must therefore be rejected.

# **K. DEFENDANTS’ COUNTERCLAIM**

1. By the Counterclaim,[[309]](#footnote-309) the defendants ask as their primary position, the Court to pronounce the 1973 Will[[310]](#footnote-310) and the 1974 Codicil[[311]](#footnote-311) in solemn form.[[312]](#footnote-312) The plaintiffs, being only executrices of the 2004 Will, take no position on the validity of these previous wills.
2. Insofar as due execution is concerned:
   1. The 1973 Will and the 1974 Codicil are on their face testamentary in nature and executed in accordance with the formalities under section 5 of the Wills Ordinance (Cap 30), as it stood when the documents were executed.
   2. The 1973 Will and the 1974 Codicil, being Chinese documents, were both executed by Mr Lim. It follows that due execution is satisfied: *Nina Kung, Supra* §175.
3. As for testamentary capacity, where the will is duly executed and appears rational on its face, the Court will presume capacity. The evidential burden lies on the objector to raise a real doubt about capacity: *Nina Kung*, §176. In respect of the 1973 Will and the 1974 Codicil, no doubt about capacity has been raised.
4. Similarly, in relation to knowledge and approval, that is rebuttably presumed by proof of due execution and testamentary capacity: *Nina Kung*, §206. In respect of the 1973 Will and the 1974 Codicil, nothing has been raised to rebut the presumption.
5. As for the 1993 Declaration,[[313]](#footnote-313) it does not give rise to any issues as it has no bearing on the above analysis:
   1. Neither the plaintiffs nor the defendants have pleaded reliance on the 1993 Declaration in this probate action. Neither party seeks to propound it as a will.
   2. Notices under Order 15, rule 13A of the Rules of the High Court were served by Vincent Cheung on the beneficiaries (including Peter Lam) in 2013, pursuant to leave granted by Master Levy on 21 February 2013;[[314]](#footnote-314) and in any event, the beneficiaries undoubtedly knew of the existence of this probate action. However, neither Peter Lam nor any other beneficiary applied to join this probate action to contend that the 1993 Declaration should be pronounced as a will. The beneficiaries (including Peter Lam) would be bound by the judgment in this probate action anyway, because it is an action *in rem*. This has been made clear by the CFA in *Li Cheong v Lee Kwai Tai*(2020) 23 HKCFAR 116, §42 (Fok PJ).
   3. In any event, it is doubtful that the 1993 Declaration embodied testamentary intention: *Williams on Wills*, §10.4. For example, Peter Lam confirms in evidence that he did not think the document was a will. His evidence was that its purpose was merely to provide an assurance to him that he would be successor to the business.[[315]](#footnote-315)
6. The 1973 Will clearly revoked the 1967 Will: section 13(1)(b) Wills Ordinance. The 1973 Will states that it is Mr Lim’s “last will”, it post-dates the 1967 Will, and provides for a distribution of assets which is obviously inconsistent with the 1967 Will (as the shares of the residuary estate and the residuary beneficiaries are both different). The mere fact that the 1973 Will does not contain an express revocation clause does not change this conclusion: *Williams on Wills,* §§18.8-18.10.

# **L. CONCLUSION**

1. For all the reasons set out above, I dismiss the plaintiffs’ claims, and pronounce in solemn form the 1973 Will and the 1974 Codicil as the true last Will and Codicil of Mr Lim.
2. I order that the costs of these proceedings (including all costs reserved, if any) be paid by the plaintiffs to the defendants, such costs are to be taxed if not agreed with a Certificate for two counsel.
3. The above order as to costs is *nisi* and shall become absolute in the absence of any application within 21 days to vary the same.
4. Lastly, I express my gratitude to counsel on both sides for their helpful assistance in this matter.

(Wilson Chan)

Judge of the Court of First Instance

High Court

Mr Bernard Man, SC, leading Mr Keith Lam and Mr Jonathan Fung, instructed by Messrs MinterEllison LLP, for the plaintiffs

Mr Charles Hollander and Mr Keith Chan, instructed by Messrs Holman Fenwick Willan, for the defendants

1. Mabel Lam WS §6, Janet Lam WS §§5, 9, Yew Yat Ming WS §8, Mark Lee WS §6. [↑](#footnote-ref-1)
2. Peter Lam WS §§2-6. [↑](#footnote-ref-2)
3. Peter Lam WS §§9-12. [↑](#footnote-ref-3)
4. Peter Lam WS §10, Mabel Lam WS §§3, 4. [↑](#footnote-ref-4)
5. Mark Lee WS §§1-3. [↑](#footnote-ref-5)
6. Mark Lee WS §5, Tim Ho WS §1. [↑](#footnote-ref-6)
7. Yew Yat Ming WS §2. [↑](#footnote-ref-7)
8. Vincent Cheung WS §18. [↑](#footnote-ref-8)
9. Madam Koo WS §34. [↑](#footnote-ref-9)
10. Madam Koo WS §32. [↑](#footnote-ref-10)
11. Madam Koo WS §45. [↑](#footnote-ref-11)
12. Madam Koo WS §43 says the facility was up to HK$140 million. [↑](#footnote-ref-12)
13. Madam Koo WS §54. [↑](#footnote-ref-13)
14. Madam Koo WS §56. [↑](#footnote-ref-14)
15. Madam Koo WS §57. [↑](#footnote-ref-15)
16. Vincent Cheung WS §20. [↑](#footnote-ref-16)
17. Vincent Cheung WS §17, Pearl Ling WS §§30-31. [↑](#footnote-ref-17)
18. Pearl Ling WS §31. [↑](#footnote-ref-18)
19. Mark Lee Supp WS §6, Tim Ho Supp WS §2. [↑](#footnote-ref-19)
20. Peter Lam WS §§17-18, Mark Lee WS §8. [↑](#footnote-ref-20)
21. Madam U WS §§1-3, Mark Lee WS §§9-11, Tim Ho WS §§5-7. [↑](#footnote-ref-21)
22. Peter Lam WS §18, Mark Lee WS §11, Tim Ho WS §§8-9, 11. [↑](#footnote-ref-22)
23. Madam U WS §§3-5, Madam U Supp WS §§7-10. [↑](#footnote-ref-23)
24. Mark Lee Supp WS §5.2(vii), (viii). [↑](#footnote-ref-24)
25. Mark Lee WS §12, Tim Ho WS §10. [↑](#footnote-ref-25)
26. Mark Lee Supp WS §5.3(vi). [↑](#footnote-ref-26)
27. Mark Lee Supp WS §5.3(vi). [↑](#footnote-ref-27)
28. Mark Lee Supp WS §5.3(vii). [↑](#footnote-ref-28)
29. Peter Lam WS §§20-21 [↑](#footnote-ref-29)
30. Peter Lam WS §22. [↑](#footnote-ref-30)
31. Mark Lee WS §11. [↑](#footnote-ref-31)
32. Mark Lee WS §14; Mark Lee Supp WS §5.3(iii); Vincent Cheung WS §§14-15, Agnes Fung WS §2. [↑](#footnote-ref-32)
33. Agnes Fung WS §§9-11. [↑](#footnote-ref-33)
34. Agnes Fung WS §§11-26; Mark Lee Supp WS §5.3(vii); Tim Ho WS §11. [↑](#footnote-ref-34)
35. Agnes Fung WS §26. [↑](#footnote-ref-35)
36. Vincent Cheung WS §23; Agnes Fung WS §29. [↑](#footnote-ref-36)
37. Vincent Cheung WS §27. [↑](#footnote-ref-37)
38. Agnes Fung WS §30, Mark Lee WS §17, Peter Lam WS §24; Tim Ho WS §12. [↑](#footnote-ref-38)
39. Katty Lam WS §§9, 11, 13, 14, 18, 25; Peter Lam Supp WS §7. [↑](#footnote-ref-39)
40. Vincent Cheung WS §§25, 28, Mark Lee WS §17, Mark Lee Supp WS §5.4(iii). [↑](#footnote-ref-40)
41. Vincent Cheung WS §25; Mark Lee Supp WS §5.4(iii); Peter Lam Supp WS §10. [↑](#footnote-ref-41)
42. Mark Lee Supp WS §5.4(iii). [↑](#footnote-ref-42)
43. Answer to Interrogatories §1(c); Vincent Cheung WS §25. [↑](#footnote-ref-43)
44. Answer to Interrogatories §1(f). [↑](#footnote-ref-44)
45. Vincent Cheung WS §28, the plaintiff’s Answer to Interrogatories §1(g), Mark Lee WS §17, Mark Lee Supp WS §5.4(iii). [↑](#footnote-ref-45)
46. Mark Lee 2nd Supp WS §4. [↑](#footnote-ref-46)
47. Mark Lee 2nd Supp WS §5; Peter Lam Supp WS §5. [↑](#footnote-ref-47)
48. Peter Lam Supp WS §7. [↑](#footnote-ref-48)
49. Peter Lam Supp WS §6. [↑](#footnote-ref-49)
50. Peter Lam Supp WS §6. [↑](#footnote-ref-50)
51. Peter Lam Supp WS §8. [↑](#footnote-ref-51)
52. Peter Lam Supp WS §§10, 11, 12. [↑](#footnote-ref-52)
53. Peter Lam Supp WS §11; Mark Lee 2nd Supp WS §8. [↑](#footnote-ref-53)
54. Vincent Cheung WS §§30-31, Peter Lam WS §25, Mark Lee Supp WS §5.4(iv). [↑](#footnote-ref-54)
55. Vincent Cheung WS §§31-32. [↑](#footnote-ref-55)
56. Mark Lee Supp WS §5.4(iv). [↑](#footnote-ref-56)
57. Vincent Cheung WS §31, Lam Kin Ming WS §6. [↑](#footnote-ref-57)
58. See also their statutory declarations on their attestation of Mr Lim’s execution. [↑](#footnote-ref-58)
59. Vincent Cheung WS §§7-13; Mark Lee Supp WS §6. [↑](#footnote-ref-59)
60. Peter Lam WS §§11-13. See also Mark Lee Supp WS §6. [↑](#footnote-ref-60)
61. Peter Lam WS §§27-28. [↑](#footnote-ref-61)
62. Peter Lam WS §12, Mark Lee WS §8. [↑](#footnote-ref-62)
63. Dr Woo Report §2, Dr Jacoby 1st Report §25; Prof Burns Report §8.1. [↑](#footnote-ref-63)
64. Dr Woo and Prof Düzel Joint Report §B.9 (Dr Woo), §B.2 (Prof Düzel). [↑](#footnote-ref-64)
65. Dr Woo Report §3, Prof Jacoby 1st Report §26; Prof Burns Report §8.2. [↑](#footnote-ref-65)
66. Dr Woo Report §3, Prof Jacoby 1st Report §26, Dr Woo and Prof Düzel Joint Report §§B.3, B.4, B.5 (Dr Woo); Prof Burns Report §8.2. [↑](#footnote-ref-66)
67. Dr Woo Report §6, Prof Jacoby 1st Report §26. [↑](#footnote-ref-67)
68. Dr Jason Fong WS §§3, 5. [↑](#footnote-ref-68)
69. Dr Jason Fong WS §§7, 18, 21-22. [↑](#footnote-ref-69)
70. Dr Woo Report §9, Prof Jacoby 1st Report §35. [↑](#footnote-ref-70)
71. Dr Woo Report §9 , Prof Jacoby 1st Report §35; Prof Burns Report §8.4. [↑](#footnote-ref-71)
72. Dr Woo Report §§12-14, 16, 20; Prof Burns Report §§8.4, 8.7. [↑](#footnote-ref-72)
73. Dr Woo Report §§24-28; Prof Burns Report §8.7. [↑](#footnote-ref-73)
74. Dr Woo Report §39; Prof Burns Report §8.8. [↑](#footnote-ref-74)
75. AD&CC §§9-10. [↑](#footnote-ref-75)
76. AD&CC §§11-13. [↑](#footnote-ref-76)
77. AD&CC §14. [↑](#footnote-ref-77)
78. AD&CC §§18-20. [↑](#footnote-ref-78)
79. AR&DCC §6. [↑](#footnote-ref-79)
80. AR&DCC §7. [↑](#footnote-ref-80)
81. AR&DCC §8. [↑](#footnote-ref-81)
82. AR&DCC §9. [↑](#footnote-ref-82)
83. Yew WS §14. [↑](#footnote-ref-83)
84. Fong WS §§21-25. [↑](#footnote-ref-84)
85. Fong WS §3. [↑](#footnote-ref-85)
86. See eg in the period from June to December 2004. [↑](#footnote-ref-86)
87. He later sought to change his evidence and say the “mile high” pile referred to HKSH’s records. [↑](#footnote-ref-87)
88. In particular, “[n]otes made by any other persons treating the Deceased under the supervision or instruction of the Respondents”: see order of Master J Wong dated 11 December 2014. [↑](#footnote-ref-88)
89. Peter Lam Supp WS §6. [↑](#footnote-ref-89)
90. Dr Kwok Aff §11. [↑](#footnote-ref-90)
91. Lin WS §§13-14. [↑](#footnote-ref-91)
92. FBPs answers (1) + (2), (14). [↑](#footnote-ref-92)
93. Medical report from Dr KK Wong dated 27 December 2006 re Mr Lim; invoice from Dr KK Wong to Dr Lin dated 29 December 2006 for the medical report; letter from Dr KK Wong to HKSH dated 30 April 2012 giving permission for Dr Lin to review Dr Wong’s hospital notes of Mr Lim. [↑](#footnote-ref-93)
94. See eg Jacoby 1st Report §82; Burns Report §14.6. [↑](#footnote-ref-94)
95. Mark Lee WS §11. [↑](#footnote-ref-95)
96. Mark Lee WS §8. [↑](#footnote-ref-96)
97. Peter Lam WS §22. [↑](#footnote-ref-97)
98. Peter Lam Supp WS §§5-6. [↑](#footnote-ref-98)
99. Vincent Cheung WS §25. [↑](#footnote-ref-99)
100. Vincent Cheung WS §27. [↑](#footnote-ref-100)
101. Peter Lam Supp WS §11. [↑](#footnote-ref-101)
102. Even in his Supp WS §11 where he recounted the doctors asking questions in some detail, and in oral evidence, Peter Lam made no mention of this. [↑](#footnote-ref-102)
103. For example, Mark Lee was the one who first spoke to Madam U and consulted Peter Lam about the question of succession; who (with Tim Ho) liaised with Agnes Fung about the drafting of the will; who went with Peter Lam to the beef noodle dinner; and who attended Mr Lim’s residence for the execution of the 2004 Will. [↑](#footnote-ref-103)
104. Mark Lee Supp WS §6. [↑](#footnote-ref-104)
105. Mark Lee Supp WS §3; Mark Lee 2nd Supp WS §3. [↑](#footnote-ref-105)
106. Mark Lee WS §§12, 16, 17. [↑](#footnote-ref-106)
107. Mark Lee Supp WS §8. [↑](#footnote-ref-107)
108. Mark Lee Supp WS §5.2(vii). [↑](#footnote-ref-108)
109. Mark Lee Supp WS §5.3(vi). [↑](#footnote-ref-109)
110. Mark Lee WS §13. [↑](#footnote-ref-110)
111. Mark Lee Supp WS §5.2(viii). [↑](#footnote-ref-111)
112. Mark Lee WS §§17-18. [↑](#footnote-ref-112)
113. Mark Lee Supp WS §5.4(iii). [↑](#footnote-ref-113)
114. Mark Lee 2nd Supp WS §4. [↑](#footnote-ref-114)
115. Translated as “It’s not clear to me”. [↑](#footnote-ref-115)
116. Mabel Lam WS §6. [↑](#footnote-ref-116)
117. Janet Lam WS §§6, 8-9. [↑](#footnote-ref-117)
118. Katty Lam WS §9. [↑](#footnote-ref-118)
119. See for example, Katty Lam WS §19. [↑](#footnote-ref-119)
120. FBPs answers (1) + (2), (14); *cf* Vincent Cheung WS §28. [↑](#footnote-ref-120)
121. FBPs answers (1) + (2), (14). [↑](#footnote-ref-121)
122. Answer to Interrogatories (e)-(g). [↑](#footnote-ref-122)
123. Vincent Cheung WS §27. [↑](#footnote-ref-123)
124. Vincent Cheung WS §2. [↑](#footnote-ref-124)
125. Madam U WS §7. [↑](#footnote-ref-125)
126. Joint Report of Jacoby and Burns; 1st Jacoby Report §90; 2nd Jacoby Report §31. [↑](#footnote-ref-126)
127. Joint Report of Woo and Düzel p.91 §15.3; Woo Report §117. [↑](#footnote-ref-127)
128. Joint Report of Jacoby and Burns; Burns Report §§14.4, 15.2. [↑](#footnote-ref-128)
129. Joint Report of Woo and Düzel pp.90-91 §§15.4-15.5; Düzel Report conclusion §§1, 2. [↑](#footnote-ref-129)
130. Woo Report §113. [↑](#footnote-ref-130)
131. For example, Prof Düzel accepted that while he could say it was likely that Mr Lim had an abnormal rate of decline in his dementia, he could not say how quick the abnormal rate of decline would be in terms of likelihood, because it depended on many factors and circumstances. [↑](#footnote-ref-131)
132. Prof Düzel’s CVs. [↑](#footnote-ref-132)
133. As Dr Woo fairly accepted. [↑](#footnote-ref-133)
134. Fong WS §§1-3. [↑](#footnote-ref-134)
135. [CB3/122/559]; [CB3/130/572]. [↑](#footnote-ref-135)
136. Transcript of Patient History Notes by Dr YS Lo. [↑](#footnote-ref-136)
137. [CB3/125/562]. [↑](#footnote-ref-137)
138. [CB3/132/583]. [↑](#footnote-ref-138)
139. Joint Report of Woo and Düzel p.16 §12, p.21 §1.9. [↑](#footnote-ref-139)
140. [CB3/132/586]. [↑](#footnote-ref-140)
141. [CB3/132/586]. [↑](#footnote-ref-141)
142. [E2/115/230], [E2/133/270-271]; see also [CB3/125/562]. [↑](#footnote-ref-142)
143. [CB3/132/588]. [↑](#footnote-ref-143)
144. [CB3/128/565]. [↑](#footnote-ref-144)
145. [CB3/145/612]. [↑](#footnote-ref-145)
146. Fong WS §3. [↑](#footnote-ref-146)
147. [CB3/149/616]. [↑](#footnote-ref-147)
148. Joint Report of Woo and Düzel p.69 §10.2. [↑](#footnote-ref-148)
149. See eg Joint Report of Woo and Düzel p.69 §10.6. [↑](#footnote-ref-149)
150. Mr Lim was on the cusp, as his birth date was 21 December 1914. [↑](#footnote-ref-150)
151. Düzel Report, Appendix 7. [↑](#footnote-ref-151)
152. Joint Report of Woo and Düzel p.15 §10, which states clearly that “[h]is CT scan also showed vascular lesions suggesting that in addition to his comorbidities, vascular disease in the brain could have accelerated his dementia”. [↑](#footnote-ref-152)
153. Jacoby 1st Report §47; Woo Report §§87, 90; Düzel Report §85(c); Joint Report of Woo and Düzel p.18 §1.5. [↑](#footnote-ref-153)
154. Joint Report of Woo and Düzel p.20 §§1.3-1.4. [↑](#footnote-ref-154)
155. Düzel Report §§82 - 83. [↑](#footnote-ref-155)
156. Eg on 13 December 2004. [↑](#footnote-ref-156)
157. Eg on 9 November 2004; 13 November 2004. [↑](#footnote-ref-157)
158. Woo Report §84. [↑](#footnote-ref-158)
159. [CB3/150/617]. [↑](#footnote-ref-159)
160. Fong WS §21. [↑](#footnote-ref-160)
161. See eg Dr Fong said he based his “opinion” not only on the MMSE but also on the clock-face drawing test. [↑](#footnote-ref-161)
162. Burns Report §14.5. [↑](#footnote-ref-162)
163. Fong WS §5. [↑](#footnote-ref-163)
164. Burns Report §14.5. [↑](#footnote-ref-164)
165. Fong Supp WS §6. [↑](#footnote-ref-165)
166. Fong Supp WS §7. [↑](#footnote-ref-166)
167. [CB6/358/1239]. [↑](#footnote-ref-167)
168. [C1/4/100]. [↑](#footnote-ref-168)
169. Fong WS. [↑](#footnote-ref-169)
170. According to Dr Fong himself: see his Supp WS §§3-4. [↑](#footnote-ref-170)
171. Joint Report of Woo and Düzel p.43 §8.5, p.55 §8.14. [↑](#footnote-ref-171)
172. Pearl Ling WS §41. [↑](#footnote-ref-172)
173. Joint Report of Woo and Düzel p.44-45 §8.6. [↑](#footnote-ref-173)
174. Joint Report of Woo and Düzel p.45-46 §8.6; Day 19, p.116 line 1 to p.120 line 14. [↑](#footnote-ref-174)
175. It follows that Prof Jacoby’s criticism that “it appears that no history was taken from either the patient or from a suitable informant” is misplaced. [↑](#footnote-ref-175)
176. As stated in *Frost, Lawson and Jacoby*, §14.14, 10 to 15 out of 30 indicates moderate to severe dementia, and 10 or below indicates severe dementia. [↑](#footnote-ref-176)
177. Fong WS §19; Jacoby 1st Report §31. [↑](#footnote-ref-177)
178. Jacoby 1st Report §31. [↑](#footnote-ref-178)
179. Düzel Report §35. [↑](#footnote-ref-179)
180. Joint Report of Woo and Düzel p.52 §8.11. [↑](#footnote-ref-180)
181. Jacoby 1st Report §31. [↑](#footnote-ref-181)
182. Joint Report of Woo and Düzel p.42-43 §8.22. [↑](#footnote-ref-182)
183. Jacoby 2nd Report §30. [↑](#footnote-ref-183)
184. Jacoby 1st Report §33; Burns Report §12.7; Jacoby 2nd Report §30. [↑](#footnote-ref-184)
185. Jacoby 2nd Report §30. [↑](#footnote-ref-185)
186. Fong WS §20; Jacoby 1st Report §33; Burns Report §12.7; Düzel Report §68. [↑](#footnote-ref-186)
187. Düzel Report §68. [↑](#footnote-ref-187)
188. Fong WS §19. [↑](#footnote-ref-188)
189. Fong WS §20. [↑](#footnote-ref-189)
190. Joint Report of Woo and Düzel p.51 §8.10. [↑](#footnote-ref-190)
191. Joint Report of Woo and Düzel p.53 §8.12. [↑](#footnote-ref-191)
192. Joint Report of Woo and Düzel p.47 §8.30. [↑](#footnote-ref-192)
193. Joint Report of Woo and Düzel p.54 §8.13. [↑](#footnote-ref-193)
194. Joint Report of Woo and Düzel p.47-48 §8.31. [↑](#footnote-ref-194)
195. Dr Fong mentioned this for the first time in oral evidence. [↑](#footnote-ref-195)
196. Fong WS §§3-4. [↑](#footnote-ref-196)
197. Indeed, even Dr Woo expressly disavowed that suggestion in cross-examination. [↑](#footnote-ref-197)
198. Joint Report of Woo and Düzel p.10 §§4-5. [↑](#footnote-ref-198)
199. Joint Report of Woo and Düzel p.11 §7. [↑](#footnote-ref-199)
200. [CB6/349/1218], [CB6/350/1222]. [↑](#footnote-ref-200)
201. [CB6/350/1222]. [↑](#footnote-ref-201)
202. Fong WS §8. [↑](#footnote-ref-202)
203. [CB4/198/727], [CB4/200/731-733]. [↑](#footnote-ref-203)
204. Fong WS §25. [↑](#footnote-ref-204)
205. Joint Report of Woo and Düzel p.12 §3, p.16 §14, p.28 §3.9. [↑](#footnote-ref-205)
206. Woo Report §76; Joint Report of Woo and Düzel p.28 §3.3. [↑](#footnote-ref-206)
207. Joint Report of Woo and Düzel p.10 §5. [↑](#footnote-ref-207)
208. He merely said that the switch did not necessarily indicate a rapid progression. [↑](#footnote-ref-208)
209. Joint Report of Woo and Düzel p.27 §§3.7-3.8. [↑](#footnote-ref-209)
210. [CB5/301B/1044.22, 1044.45]. [↑](#footnote-ref-210)
211. Dr KK Wong Aff §5. [↑](#footnote-ref-211)
212. In cross-examination, Prof Burns was asked about individual instances where the MMSE could not be conducted, and agreed that each instance did not say much about Mr Lim’s mental condition. But when one examines an overall consistent pattern of inability to do the MMSE over a period of time despite multiple attempts, due to inattentiveness or similar reasons, this plainly provides a stronger reason to conclude that Mr Lim was the ‘problem’, ie that he suffered some mental difficulty which prevented him from performing the test. [↑](#footnote-ref-212)
213. Fong WS §§3-4. [↑](#footnote-ref-213)
214. Joint Report of Woo and Düzel p.33 §5.5. [↑](#footnote-ref-214)
215. Woo Report §100. [↑](#footnote-ref-215)
216. Joint Report of Woo and Düzel p.33 §5.6. [↑](#footnote-ref-216)
217. See eg HKAH’s in-patient admission form (signed by Fung Kwok Hung),HKAH’sregistration form (signed by Fung Kwok Hung),HKAH’s in-patient admission form signed on 8 June 2004 (signed by one Chan Man Kwong),HKAH’s in-patient admission form signed on 15 June 2004(signed by Lester Lam) and various HKSH’s preliminary assessment sheets(signed by relatives). [↑](#footnote-ref-217)
218. Including that “The undersigned consents to x-ray examination; laboratory procedures, anesthesia, medical or surgical treatment, and hospital services rendered under the general and special instructions of the attending physician”. [↑](#footnote-ref-218)
219. Prof Jacoby expressed a similar view. [↑](#footnote-ref-219)
220. Joint Report of Woo and Düzel p.14 §9. [↑](#footnote-ref-220)
221. Janet Lam WS §§6, 8-9. [↑](#footnote-ref-221)
222. Yew WS §6. [↑](#footnote-ref-222)
223. Yew WS §§8, 9. [↑](#footnote-ref-223)
224. Mark Lee WS §§4, 6. [↑](#footnote-ref-224)
225. Mark Lee WS §7. [↑](#footnote-ref-225)
226. Tim Ho WS §§2-3. [↑](#footnote-ref-226)
227. Mark Lee Supp WS §§5.2(ii), (v), 5.3(i), (vi). [↑](#footnote-ref-227)
228. Joint Report of Woo and Düzel p.11 §8. [↑](#footnote-ref-228)
229. [CB2/29/285-286], [CB2/40/315-317]. [↑](#footnote-ref-229)
230. [CB2/30/287]. [↑](#footnote-ref-230)
231. [CB2/19/266]. [↑](#footnote-ref-231)
232. Mr Lim held 1.96% of the Lai Fung Holdings shares in his own name. [↑](#footnote-ref-232)
233. Mr Lim held 5.28% of the LSD shares in his own name. [↑](#footnote-ref-233)
234. [CB2/19/270]. [↑](#footnote-ref-234)
235. See eg which states that LSG’s interest in LSD was to be diluted from 42.25% to 12.4%. [↑](#footnote-ref-235)
236. Peter Lam WS §10. [↑](#footnote-ref-236)
237. Jacoby 1st Report §17; Burns Report §9.1; Woo Report §§108-113; Düzel Report §89(e). [↑](#footnote-ref-237)
238. Joint Report of Woo and Düzel p.11 §8. [↑](#footnote-ref-238)
239. Clauses 5(a) and (b), 6(d). [↑](#footnote-ref-239)
240. Clauses 5(q), 7(m). [↑](#footnote-ref-240)
241. Clause 5(k), 7(n). [↑](#footnote-ref-241)
242. Clauses 5(o), 7(k). [↑](#footnote-ref-242)
243. Clauses 5(p), 7(h). [↑](#footnote-ref-243)
244. Clause 11(ii). [↑](#footnote-ref-244)
245. Clauses 13 and 14. [↑](#footnote-ref-245)
246. Joint Report of Woo and Düzel p.88 §§14.5-14.6. [↑](#footnote-ref-246)
247. Vincent Cheung WS §27. [↑](#footnote-ref-247)
248. Agnes Fung Aff §4(c); letter from Messrs Reed Smith Richards Butler (“**RSRB**”) to Messrs Stephenson Harwood dated 11 March 2015. [↑](#footnote-ref-248)
249. Mark Lee WS §12; Tim Ho WS §10. [↑](#footnote-ref-249)
250. Madam U WS §§4-5. [↑](#footnote-ref-250)
251. Peter Lam WS §§21-22; Mark Lee WS §16. [↑](#footnote-ref-251)
252. As Prof Düzel pointed out, such understanding and integration would be required for Mr Lim to understand how much each beneficiary was to benefit. [↑](#footnote-ref-252)
253. Vincent Cheung WS §14. [↑](#footnote-ref-253)
254. Mark Lee WS §§13-14. [↑](#footnote-ref-254)
255. Mark Lee Supp WS §5.2(vii). [↑](#footnote-ref-255)
256. Mark Lee Supp WS §5.3(vi). [↑](#footnote-ref-256)
257. Mark Lee Supp WS §6. [↑](#footnote-ref-257)
258. Mark Lee WS §16; Mark Lee Supp WS §5.3(viii). [↑](#footnote-ref-258)
259. Madam U WS §6. [↑](#footnote-ref-259)
260. Peter Lam WS §22. [↑](#footnote-ref-260)
261. Jacoby 1st Report §82. [↑](#footnote-ref-261)
262. Burns Report p.25. [↑](#footnote-ref-262)
263. Mark Lee WS §13. [↑](#footnote-ref-263)
264. Peter Lam WS §24; Peter Lam Supp WS §4**.** [↑](#footnote-ref-264)
265. Peter Lam WS §23. [↑](#footnote-ref-265)
266. Dr Lin WS §9. [↑](#footnote-ref-266)
267. Peter Lam Supp WS §§5-6; Mark Lee 2nd Supp WS §§4-5. [↑](#footnote-ref-267)
268. Vincent Cheung WS §28. [↑](#footnote-ref-268)
269. Mark Lee WS §17. [↑](#footnote-ref-269)
270. Mark Lee Supp WS §5.4(iii). [↑](#footnote-ref-270)
271. Mark Lee 2nd Supp WS §8. [↑](#footnote-ref-271)
272. Peter Lam Supp WS §11. [↑](#footnote-ref-272)
273. Dr Kwok Aff §§10-11. [↑](#footnote-ref-273)
274. *Cf* Peter Lam Supp WS §11. [↑](#footnote-ref-274)
275. Dr Kwok Aff §§10-11. [↑](#footnote-ref-275)
276. Dr Chan 2nd Aff §10. [↑](#footnote-ref-276)
277. Dr Kwok Aff §3. [↑](#footnote-ref-277)
278. *Frost, Lawson and Jacoby*, §14.13. [↑](#footnote-ref-278)
279. He said that he printed out the list of questions of the usual AMTS, and wrote down the scores he gave to Mr Lim’s answers: Dr Kwok Aff §11. [↑](#footnote-ref-279)
280. Answers to interrogatories (e)-(f). [↑](#footnote-ref-280)
281. Nevertheless, as Prof Burns explained, the MMSE and AMTS are fairly straightforward and one would expect a GP to be able to administer them. [↑](#footnote-ref-281)
282. Dr Lin WS §14. [↑](#footnote-ref-282)
283. The documents fall under “[n]otes made by any other persons treating the Deceased under the supervision or instruction of the Respondents”: see order of Master J Wong dated 11 December 2014. [↑](#footnote-ref-283)
284. Letter from Messrs Kennedys to Messrs Holman Fenwick Willan dated 4 September 2019. [↑](#footnote-ref-284)
285. Letter from RSRB to Messrs Stephenson Harwood dated 11 March 2015. [↑](#footnote-ref-285)
286. Vincent Cheung 5th Aff §7. [↑](#footnote-ref-286)
287. See eg Vincent Cheung WS §§27, 32. [↑](#footnote-ref-287)
288. Peter Lam Supp WS §12. [↑](#footnote-ref-288)
289. Mark Lee Supp WS §5.4(iii). [↑](#footnote-ref-289)
290. Mark Lee 2nd Supp WS §10. [↑](#footnote-ref-290)
291. Peter Lam Supp WS §11. [↑](#footnote-ref-291)
292. Mark Lee 2nd Supp WS §§8-10. [↑](#footnote-ref-292)
293. Further and Better Particulars (1) + (2), (14). [↑](#footnote-ref-293)
294. Vincent Cheung WS §28. [↑](#footnote-ref-294)
295. Mark Lee WS §17. [↑](#footnote-ref-295)
296. Mark Lee Supp WS §5.4(iii); Mark Lee 2nd Supp WS §7. [↑](#footnote-ref-296)
297. Dr Lin WS §§13-14. [↑](#footnote-ref-297)
298. Peter Lam Supp WS §6. [↑](#footnote-ref-298)
299. Peter Lam Supp WS §6. [↑](#footnote-ref-299)
300. Vincent Cheung WS §31. [↑](#footnote-ref-300)
301. Vincent Cheung WS §31. [↑](#footnote-ref-301)
302. As summarised in Düzel Report §7. [↑](#footnote-ref-302)
303. Mr Lim died on 18 February 2005. [↑](#footnote-ref-303)
304. The Golden Rule is cited in full in *Frost, Lawson and Jacoby*, §6.13. [↑](#footnote-ref-304)
305. Jacoby 1st Report §85. [↑](#footnote-ref-305)
306. Agnes Fung Aff §4(c); letter from RSRB to Messrs Stephenson Harwood dated 11 March 2015. [↑](#footnote-ref-306)
307. Mark Lee WS §§8-11; Day 4 p.96 line 19 to p.98 line 5. [↑](#footnote-ref-307)
308. Only Dr Fong mentioned dementia in his statements; Yew Yat Ming mentioned it in his WS §14 to deny that Mr Lim had any dementia. [↑](#footnote-ref-308)
309. AD&CC §§18-20. [↑](#footnote-ref-309)
310. [CB2/44/325-326]. [↑](#footnote-ref-310)
311. [CB2/46/329-330]. The codicil amends the 1973 will by (i) revoking the share of Choi Yin Hung which instead was to be given to social welfare; and (ii) stipulating that Lam Kin Ming shall not receive any of Mr Lim’s Lai Sun shares as he already had a substantial number of shares in Lai Sun. [↑](#footnote-ref-311)
312. Alternatively the 1967 Will, alternatively intestacy. [↑](#footnote-ref-312)
313. [CB2/49/334-336]. [↑](#footnote-ref-313)
314. Specifically, the notices were served on Lam Kin Ming, Peter Lam, Matthew Lam, Mabel Lam, Madam U, Lam Shuk Ying and Eric Ling. None of them sought to join this action. [↑](#footnote-ref-314)
315. Peter Lam WS §§12-13. [↑](#footnote-ref-315)