



# Leading Estates Cases: Disputes Between Beneficiaries

Produced in partnership with Alfred Ip of Hugill & Ip



Do millionaires weep more loudly? Remembering the infamous Nina Wang and others.

In previous articles – such as “[Unauthorised or Unfair Transfers During the Life of the Deceased](#)” and “[Testamentary Capacity: Update](#)” – we have discussed some of the most high-profile contentious estate cases in Hong Kong, which often contain guidance from the Courts. Today we remember landmark Contentious Estates’ cases in Hong Kong involving well-known and heavily publicised disputes relating to the Wills and estates Nina Kung, Henry Fok Ying-tung, and Anita Mui.

## The Estate of Teddy Wang: *Nina Kung v Wang Din Shin* (2005) 8 HKCFAR 387

The founder of Chinachem Group and husband to Kung Yu Sum (Nina Wang) (“Nina”), Teddy Wang Teh-huei (王得輝) (“Teddy”) was kidnapped for ransom in 1990. In 1999, his body never found, the Courts declared Teddy legally dead, prompting a legal battle between Nina and his father, Wang Din Shin (“Mr. Wang”) regarding Teddy’s last will and testament. Mr. Wang claimed probate in solemn form of a Will dated 15 March 1968 (“the 1968 Will”) which named Mr. Wang as the sole beneficiary to Teddy’s estate. Nina counterclaimed for probate in solemn form of a homemade Will, allegedly written by Teddy in Chinese, dated 12 March 1990 (“the 1990 Will”), which named Nina as the sole beneficiary. Mr. Wang alleged that the 1990 Will was a forgery.

The 1968 Will was “*typed in English and prepared by solicitors ... signed by [Teddy] using his English signature and witnessed by two partners*”. The 1968 Will was kept in a safe deposit box at the Bank of Canton. Teddy had named Mr. Yih (Mr. Wang’s nephew) as his agent, authorising him to keep the Will safe and liaise with Mr. Wang senior if requested by him. On the other hand, a copy of the 1990 Will was lodged into the High Court Registry by Nina in a sealed envelope that contained three other documents, with two of the documents also written in Chinese and signed by Teddy and a witness (Mr. Tse) leaving all of Teddy’s property to Nina, with the third document purportedly reading that “[Nina] shall manage all [my] property, but shall never deliver or give any monetary benefit or property to any others of my Wang’s family.” The fourth document was signed, again by Teddy and Mr Tse, but consisted of four English words, “*One life one love*” arranged diagonally on the page. Nina affirmed that the sealed envelope was given to her for “safe-keeping” and that she was instructed that it “*should not be opened until after his death.*” The 1990 Will bore three signatures: Teddy’s Chinese signature (王得輝); the signature of a Mr. Tse in Chinese, intended as an attesting witness; and a third signature in English of someone surnamed Lee, which is not fully legible, as the second attesting witness.

In the lower Courts, the trial judge held that both Teddy and Tse's signatures were forged on the 1990 Will. While Yeung JA in the Court of Appeal upheld both findings, Yuen JA agreed that Teddy's signatures were not genuine, but was not satisfied to the required standard of proof that they had been proved to be forged; Waung J disagreed, stating that both of the signatures were genuine. Due to the Court of Appeal's 2-1 ruling against Nina, Teddy's estate was awarded to Mr. Wang. Nina was charged with forgery in early 2005.

The matter was appealed to Hong Kong's highest court, the Court of Final Appeal. The ultimate factual issue for it to determine was whether Teddy had signed the 1990 Will.

As Mr. Wang "*positively pleaded in forgery in circumstances necessarily implying the existence of a broader conspiracy*", he has the evidential burden proving the forgery. However, as proponent of the 1990 Will, Nina bore the "*legal or persuasive burden to prove its execution by [Teddy] on the balance of probabilities. She [had] to satisfy the Court at the end of the day that it is more likely than not that the 1990 Will was in fact signed by [Teddy].*"

The Court of Final Appeal reviewed in detail the handwriting evidence of the courts below; Teddy's handwriting in both the [script] of the Will and his signature was compared to that of previous documents including the 1968 Will. Although Mr. Tse could not be cross examined because he has died, the Court considered his affirmations in which he "*clearly and unequivocally*" stated that he "*saw [Teddy] sign on the 1990 documents*".

The Court of Final Appeal allowed Nina's appeal, and ordered the 1990 Will to be admitted to probate as Teddy's last will. Charges of forgery against Nina were also officially dropped following the Court of Final Appeal's ruling.

### **The Estate of Nina Kung: Chinachem Charitable Foundation Limited (華懋慈善基金有限公司) v Chan Chun Cheun (陳振聰) & Ors [2010] HKCU 273**

After inheriting her husband's estate, Nina became one of the richest women in Asia. However, in 2007, only two years after winning her Court of Final Appeal case into her father's estate, she died aged 70. As the sole ultimate owner and chairwoman of the Chinachem Group, the estimated value of her estate was US\$4.2 billion at the time of her death. In an act of history repeating itself, Nina's last Will and testament was contested following her death.

Tony Chan Chun-Cheun ("Tony") contacted Nina's family members through his lawyers after her death, stating that he had in his possession a document purported to be Nina's last Will, made on 16 October 2006 ("the 2006 Will"). The 2006 Will allegedly bequeathed the remainder of Nina's estate to Tony. This was contested by the Chinachem Charitable Foundation Limited ("the Foundation") – a charitable organization set up by Nina and Teddy in 1998 – that was to inherit Nina's entire estate. It is also notable that Nina mentioned to the press that she was leaving her estate to charitable purposes after her death following her execution of the 2002 Will.

The Court questioned the likelihood of Nina bequeathing her entire estate to Tony with no provisions for the Foundation whatsoever, stating that "*if Nina had revoked the 2002 Will and replaced it with a will giving her entire estate to [Tony], that would be a complete departure from her publicly avowed charitable intention. It would also be a complete turnaround of what she had led her siblings and those in Chinachem to believe to be her testamentary wish.*" Tony, Nina's personal Fung Shui master and later her alleged lover, submitted that:

- I. her bequest in the 2002 Will was merely a "*public image enhancement exercise and her [charitable] donations to Chinese entities were her efforts to garner assistance from the Central Government concerning the probate dispute [of Teddy's last will]*"; and
- II. that "*she loved him so much that she wanted to give him everything.*"

The Court rejected his first argument, holding that Nina's charitable works begun well before the probate dispute with her father-in-law and continued afterwards. There was also "*worldwide recognition of Nina as a philanthropist*"

before the dispute. Though Tony provided the Court with many details of his and Nina's relationship, the Court found him "*tailoring his case to suit his own purposes rather than giving evidence of the truth.*"

While there was no dispute that a document was executed by Nina on 16 October 2006 with attesting witnesses Winfield Wong and Ng Shun Mo, the Foundation contended that the document was merely a Will making a specific bequest of around HK\$10 million to Tony ("the Specific Bequest Will"). The Specific Bequest Will could not be found upon Nina's death, and the Court questioned whether the aforementioned document executed by Nina on the 16 October 2006 was the 2006 Will or whether it was the Specific Bequest Will. In the case that the document executed was the Specific Bequest Will, the 2006 Will would be a forgery, as there was no suggestion of more than one document executed by Nina and attested by the two abovementioned persons on 16 October 2006.

The Court established in the Estate of Teddy Wang that "*there are cases where the Court can properly hold that the evidence of attesting witness prevails over the evidence of handwriting expert*" with regards to forgery. The Court gave significant weight to the testimonies given by the two attesting witnesses of the document – which stated that the document they attested on 16 October 2006 was a partial Will – in addition to factual and circumstantial evidence. Based on the evidence given at trial, the Court concluded that the document attested to by Winfield Wong and Ng Shun Mo was not the 2006 Will. In reviewing the opinion evidence of handwriting experts, the Court concluded that "*the 2006 Will was not signed by Nina and it was not attested to by Winfield Wong and Ng Shun Mo.*"

The Court ultimately held that "*the document executed on that occasion was the Specific Bequest Will*", and that the 2006 Will had been forged by Tony. The 2002 Will was upheld, leaving Nina's estate to the Foundation. Shortly after the trial, Tony was convicted of two counts of fraud and sentenced to spend 12 years in jail. His appeal was refused by the Court of Appeal in 2015.

## **The Estate of Henry Fok Ying-tung: Fok Chun Yue Benjamin v Fok Chun Wan Ian & Ors [2015] HKCU 328**

Businessman and philanthropist Henry Fok Ying-tung ("Henry") died in 2006, leaving behind a multi-billion dollar estate and 13 children from three different wives. A dispute first arose in 2011, with his third son by his first wife, Benjamin Fok Chun-yue ("Ben") as plaintiff, against his siblings, with the first defendant being his older brother, Ian Fok Chun-wan ("Ian"), originally seeking to remove Ian and their aunt as co-executors of Henry's estate. The parties reached a settlement on 3 August 2012 ("the Settlement").

Pursuant to the Settlement Agreement, Ben (and his siblings Nora and Patricia) in 2013 found – by way of a private accounting firm that was appointed to investigate the estate – that there were documents supporting the view Ian had deliberately withheld information regarding a buy-back option to acquire a share of a development project in Nansha (Guangdong Province, China), which had an estimated value of approximately HK\$38 billion ("the Development"). The buy-back option would have given the siblings each a 25% stake of the Development for the nominal price of HK\$1 from the family's charitable Foundation. However, the option expired in 2007, which meant that the Development had been excluded from the estate. Ben contended that he would not have agreed to the Settlement had he known about the Development buy-back option.

However, when challenged at the Court of First Instance, Poon J said the option had expired, and made an order on the 3 January 2014 for the indefinite stay of the action save for the purposes of enforcing the Settlement. In essence, Poon J was ordering for the parties to proceed with the terms of the Settlement. Ben applied to appeal the order, submitting that the stay order should be temporary, as the Settlement was also in dispute.

The Court of Appeal allowed the appeal, setting aside Poon J's order, and urged the family to come to an amicable agreement, giving Ben, Nora, and Patricia 28 days to file a new lawsuit regarding the Settlement. The Court also held that Poon J erred in his order, which was made with Poon J's acceptance of the fact that "*he could not resolve*

[certain] disputes without a trial ... [and] considered that it would not matter for the purposes of determining the applications before him.” It was noted that “there are limits to what a judge could achieve in light of the situation before him”.

## The Estate of Anita Mui Yim-fong

### 1: Tam Mei Kam v HSBC International Trustee Ltd & Ors [2010] HKCFA 10

Beloved Cantopop singer and actress Anita Mui Yim-fong (梅艷芳) (“Anita”) passed away from cervical cancer-related complications on 30 December 2003 at the age of 40. She was survived by her mother, Tam Mei-kam (“Madam Tam”) and two elder brothers. Following her death, Madam Tam brought a series of legal challenges against Anita’s Estate.

Anita’s Will, executed on 3 December 2003, left her residuary estate to a discretionary trust (“the Trust”), which was set up by deed executed on the same day as her Will. Her Will appointed HSBC International Trustee Ltd (“HSBC”) as the sole executor of the Will, and trustee of the Trust. The beneficiaries to her estate included a friend, Eddie Lau, who was bequeathed two properties; “some funds to subsidise the tertiary education of her nephews and nieces”; and provide her mother, Madam Tam, with “a monthly allowance of HK\$70,000 until her death to maintain her then life style with one chauffeur and two domestic helpers”. Anita was adamant that her mother should not be given any lump sum.

In [2004], Madam Tam brought a challenge to the validity of the Will and the Trust, and sought “a declaration that [Anita] had died intestate, and that she, [Madam] Tam, be granted letters of administration of the Deceased’s estate.” In the Court of First Instance, Cheung J dismissed her claim, finding that “the Will was duly executed by [Anita], that she had testamentary capacity at the time of execution and that she had due knowledge and approval of the contents of the Will.” Madam Tam’s appeal was dismissed with the Court of Appeal; leave was then granted to Madam Tam to appeal to the Court of Final Appeal.

In addition to Madam Tam’s submission that Anita did not have full knowledge and approval on the Trust due to the discretionary powers given to the Trustee (i.e. HSBC), she raised four matters:

- I. claims of collusion and conspiracy by Sheila Ho and Doris Lau, who were involved in preparing and executing the Will and Trust deed;
- II. “new evidence” sought to be adduced that shed light on the allegedly poor relationship between Anita and her brothers;
- III. that the lower Courts did not make concurrent findings against her;
- IV. that the “lower courts had erred in holding that Clause 33 of the Karen Trust does not vitiate the discretionary Trust”.

The Court of Final Appeal saw no merit to any of the points raised by Madam Tam, and dismissed the appeal, upholding the validity of Anita’s Will and Trust deed.

### Re: Tam Mei-kam (CACV 87/2012)

Following the first action brought by Madam Tam, she was subsequently declared bankrupt in April 2012 with debts of over HK\$2 million. Madam Tam’s appeal to the Court of Appeal was dismissed; she subsequently sought for leave to appeal to the Court of Final Appeal, which was also dismissed.

The bankruptcy order was eventually discharged in April 2016.

## Tam Mei Kam v HSBC International Trustee Ltd and Others [2017] HKCU 348

In 2004, shortly after Anita’s death, Madam Tam issued a claim under section 4 of the Inheritance (Provision for Family and Dependents) Ordinance, Cap. 481 (“Cap. 481”) for reasonable financial provision out of Anita’s estate. “Between October 2004 and August 2015, a series of orders were made for interim payments to her ... The initial sum of monthly

*maintenance of HK\$63,000 was increased over the years until it became HK\$228,500 ... the Court [also] authorized payment to her for all reasonable medical expenses she had incurred.*” In March 2015, Madam Tam issued a summons for a lump sum payment, which was dismissed by L Chan J. However, due to confusion regarding L Chan J’s order, the Court of Appeal allowed an appeal and remitted the matter to L Chan J for directions. The judge refused to make a lump sum order and instead made an order for periodic payments. Madam Tam appealed, stating that the judge should have made a lump sum order instead, contending that a lump sum order is the norm, and that the matters considered by L Chan J was “*beyond the scope of matters that the court is enjoined to have under section 5*”.

The Court of Appeal considered the statutory power conferred on the Court by section 4 of Cap. 481 to make “reasonable financial provision”, and considering the matters listed under section 5 which provide guidance to make reasonable financial provision for what the applicant “requires” for their maintenance. The Court rejected Madam Tam’s submissions, including her submission that a lump sum order is the norm. Madam Tam’s appeal was dismissed.

## Conclusion

High-profile cases cast a spotlight on the confusion that exists in Estate Planning – be it beneficiary designations, Wills or Trusts – as well as improper behaviour and actions of the beneficiaries, even without huge wealth or complex family ties (i.e. multiple marriages or many children), fierce disagreements can and often do arise.

The maxim of an ounce of prevention is worth a kilogram of cure is especially relevant to Estate Planning. Proper Estate Planning should mean that disputes between beneficiaries do not happen. Estate Planning is not a one-off exercise that people should do when they get older, but rather an ongoing process that gets reviewed and revised to be in line with changing situations and family dynamics.

Seeking advice from your Probate lawyer is key to identify how complex or straightforward your situation might be and decide the best course of action regarding your claim.





## AUTHOR

### Alfred Ip

Partner, Hugill & Ip

A qualified solicitor in Hong Kong since 2000, Alfred's speciality is dispute resolution, an area in which he is ranked by Chambers & Partners Asia Pacific as a 'Leading Individual'. Until recently he was partner in the Dispute Resolutions team and head of Private Client at a leading Hong Kong law firm.

Alfred is skilled in helping individuals and their families manage personal and wealth-related matters, including trust and probate (both contentious and non-contentious), family office, and mental capacity issues.

He is vastly experienced in all areas of probate and can help clients with estate planning, ranging from the proper drafting of a will to constructing complicated trusts, airtight from any potential perils.

Alfred is appointed by court as an administrator in estate disputes, and advises professional administrators on legal aspects of estate administration, both in Hong Kong and internationally.

In contentious cases, he acts for clients in probate actions, ranging from propounding the Will to having an executor removed. For clients requiring help in estate administration problems such as declaratory relief or disclosure of account, Alfred will apply to Court for the necessary directions and orders.

Alfred's professional skills are enhanced by his membership of the Society of Trust and Estate Practitioners ("TEP"), and of the Chartered Institute of Arbitrators. He is a CEDR accredited Mediator and a Notary Public.

In 2012, he won the Law Society of Hong Kong's Gold Award for services to the community for his pro bono initiative, "FreeWill", and he has received several pro bono service awards since.

In addition to his Private Client practice, Alfred has 20 years of experience in commercial litigation and dispute resolution. Moreover, he helps clients with issues regarding family law.

In March 2017, Alfred was appointed to sit as a Deputy District Judge.

Alfred is Director of Pink Alliance.

---

***This document is available on Lexis Advance® Hong Kong Practical Guidance.***

*Lexis Advance® Hong Kong Practical Guidance provides up-to-date practice notes, precedents and know-how from specialist solicitors and barristers so you can work efficiently and provide advice with confidence. Lexis Advance® Hong Kong Practical Guidance contains exclusively written content by trusted experts in the field. Hugill & Ip is one of our many expert contributors from a range of Hong Kong legal leaders.*

Discover Lexis Advance® Hong Kong Practical Guidance today by registering for a demonstration at

[www.lexisnexis.com.hk/lahk-pg](http://www.lexisnexis.com.hk/lahk-pg)