



Why Evidence Makes All the Difference in Will Disputes

A Comparative analysis of *Packer v Packer* and *Choi Cheung Hung* as a Professional Development Insight for Hong Kong Legal Practitioners

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When families face disputed Wills, the difference between winning and losing often comes down to one crucial factor: the quality of evidence supporting or challenging the deceased's true testamentary intentions. Understanding the importance of corroborating evidence is fundamental to successful probate litigation practice.

Two recent landmark cases – *Packer v Packer* [2025] EWHC 461 (Ch) from the United Kingdom and *Choi Cheung Hung v. Leung Fung Ha* [2023] HKCFI 2822 from Hong Kong – provide compelling insights into what determines success in Will challenges. Despite involving similar scenarios of disputed Wills and questionable testamentary documents, these cases reached dramatically different outcomes, offering invaluable lessons for practitioners.

Legal Frameworks: UK Rigidity vs Hong Kong Flexibility

The United Kingdom Approach

The United Kingdom operates under strict formality requirements of the Wills

Act 1837. Section 9 requires that a Will be in writing, signed by the testator, and witnessed by two witnesses present simultaneously when the testator signs or acknowledges his signature. The UK system offers no dispensing provision for informal Wills failing technical requirements.

Where a Will is missing, as in *Packer v Packer*, the presumption of revocation applies unless rebutted by clear evidence. This presumption had not been successfully applied for almost two decades before the *Packer* decision, highlighting stringent evidential requirements in English probate law.

Hong Kong's Flexible Framework

Hong Kong presents a more flexible approach through section 5(2) of the Wills Ordinance (Cap. 30), which allows courts to validate documents failing formal requirements if they clearly embody the deceased's testamentary intentions:

"A document purporting to embody the testamentary intentions of a deceased person shall, notwithstanding that it has not been executed in accordance with the requirements under subsection (1), be deemed to be duly executed if, upon application, the court is satisfied that there can be no reasonable doubt that the document embodies the testamentary intentions of the deceased person."



The standard under section 5(2) requires satisfaction beyond reasonable doubt – more stringent than ordinary civil standards. However, as these cases demonstrate, having favorable legal frameworks is insufficient without quality evidence.

Case Study 1: *Packer v Packer* – When Will Challenges Fail

The English case of *Packer v Packer* [2025] EWHC 461 (Ch) serves as a cautionary tale for practitioners considering Will challenges without sufficient evidence. Stephen Packer, a frugal man who died in July 2022 after battling cancer, was claimed by his sister Lynn to have executed a will leaving his estate to her rather than his widow Debra.

- The Factual Matrix

Stephen was described as reserved, shy, and parsimonious, disliking spending money on solicitors. Despite terminal cancer, he expressed only vague wishes to make a Will "at some point," showing no urgency expected from someone genuinely intent on formal estate planning.

- Evidential Failures

Lynn's case suffered multiple critical flaws:

Inconsistent Testimony: Lynn's story evolved throughout proceedings – from vague allusions to a possible Will, through suggestions it was with a solicitor, to claims she helped create it, finally asserting Stephen signed it before Lynn's partner and son as witnesses. This constantly changing narrative raised immediate reliability concerns.

Interested Witnesses:

Both witnesses were family members with potential interests, providing contradictory testimony about crucial execution details. Their

evidence was internally inconsistent and failed to provide necessary independent corroboration.

Absence of Independent Evidence: Most damaging was the complete absence of independent evidence supporting Stephen's alleged testamentary intentions – no communications from Stephen, no independent witnesses, no conduct consistent with Will-making.

Character Evidence: Evidence of Stephen's character directly contradicted Lynn's claims. His reserved nature, reluctance to spend on legal services, and lack of urgency despite terminal illness created context undermining rather than supporting alleged testamentary intention.

- The Court's Analysis

Hugh Sims KC found Lynn failed to establish Stephen had ever signed the alleged Will. The judge was not satisfied the document accorded with Stephen's instructions or that he had requisite testamentary intention. The presumption of revocation applied, as Stephen's character was more consistent with dying intestate than making formal testamentary arrangements.

Case Study 2: *Choi Cheung Hung* – Successful Will Validation

The Hong Kong case of *Choi Cheung Hung v. Leung Fung Ha* [2023] HKCFI 2822 demonstrates how strong evidence can overcome technical execution defects. When Cheng Wai Yee Shirley died in April 2022, she left a handwritten note stating her intention to leave all assets to Choi Cheung Hung, her de facto husband of over forty years. Despite failing formal witnessing requirements, the court validated it under Hong Kong's dispensing provision.

- The Factual Foundation

The relationship began in 1979 when she worked as his secretary. They lived together as husband and wife for over four decades, undergoing a traditional Chinese wedding ceremony in 1980. In October 2020, she had asked Choi



Cheung Hung to accompany her to make a formal will, expressing wishes to leave all assets to him — evidence of earlier expressed intentions proving crucial.

- Multiple Sources of Evidence

Unlike the failed Packer challenge, this case presented compelling evidence from multiple independent sources:

Primary Written Document: A handwritten and signed document dated 27 March 2019, stating intention to leave all assets to Choi Cheung Hung. Handwriting and signature were authenticated by the plaintiff, intimately familiar with her writing after decades together.

Electronic Corroboration: An identical note on her mobile phone dated 1 June 2019 but last saved 7 June 2021, demonstrating deliberate intent and providing independent corroboration.

Oral Communications: In August 2021, she specifically told Choi Cheung Hung about both documents, confirming she made no other Will. In October 2021, she mentioned to family members having made a Will leaving all assets to him.

Conduct Evidence: She stored the handwritten document safely in a metal box with other important papers, demonstrating she treated it seriously and intended legal effect.

- The Court's Assessment

Madam Justice Mimmie Chan found all evidence sources consistent with each other and natural expectations. The forty-year de facto marriage made the bequest logical, providing supportive context. The

court was satisfied beyond reasonable doubt that both documents embodied testamentary intentions, noting clear and cogent evidence from all witnesses.

Critical Success Factors: Lessons From Both Cases

Multiple Independent Sources of Evidence

The Hong Kong case succeeded because intentions were evidenced through handwriting, electronic communications, oral statements to multiple people, and conduct demonstrating document importance. Each source independently supported the same conclusion, creating compelling evidence difficult to challenge.

The Packer case failed because it relied primarily on interested witnesses whose testimony was internally inconsistent and lacked independent corroboration. Successful challenges require evidence beyond interested party testimony.

Absolute Consistency Across Evidence Sources

In the successful Hong Kong case, every

evidence piece pointed toward the same testamentary intention without contradictions, giving the court confidence evidence reflected genuine intent rather than post-death reconstruction.

The failed English case was plagued by contradictions between Lynn's evolving story, contradictory witness testimony, and character evidence. These inconsistencies created doubt about evidence reliability.

Natural Context and Logical Disposition

Courts consider whether alleged testamentary intentions make sense given the deceased's circumstances, relationships, and preferences. The Hong Kong court found the deceased's intention to leave everything to her forty-year de facto husband natural and logical.

The English case presented context ultimately undermining Lynn's challenge. Stephen's character and preferences were more consistent with dying intestate than making formal testamentary arrangements.

Practical Implications for Hong Kong Practitioners

- Evidence Gathering and Preservation

Gather and preserve all available evidence quickly, including documents created by the deceased, conversation records about intentions, witness statements from people knowing their wishes, and character evidence. More evidence from independent sources strengthens positions.





- Consistency and Credibility

Ensure evidence consistency and explain apparent contradictions. Courts are suspicious of evidence changing over time or containing internal inconsistencies. Address problems honestly rather than hoping they go unnoticed.

- Contextual Assessment

Consider context and whether claims make sense given what people knew about the deceased. Unusual disposition claims need strong evidence to overcome natural skepticism.

- Professional Standards

Seek professional legal advice early. Will challenges require careful preparation and presentation. Experienced probate lawyers help evaluate case strength, gather appropriate evidence, and present challenges effectively.

- The Dispensing Provision in Practice

The Hong Kong case provides valuable guidance on section 5(2) practical application. The provision requires satisfaction beyond reasonable doubt that documents embody testamentary intentions — higher than usual civil burden. However, this standard can be met with compelling, consistent evidence from multiple sources.

The dispensing provision doesn't lower evidential requirements but provides alternative validity routes where formal execution requirements aren't met. Evidence quality remains paramount,

and courts scrutinize carefully whether alleged testamentary intentions are genuine and clearly established.

Comparative Analysis: Universal Principles

While legal frameworks differ significantly between Hong Kong and the United Kingdom, both cases demonstrate that fundamental evidence evaluation principles transcend jurisdictional boundaries. Whether operating under flexible dispensing provisions or rigid formality requirements, courts must determine deceased persons' true intentions based on available evidence.

Both cases turned on the same fundamental issue: evidence strength supporting alleged testamentary intention. In Hong Kong, multiple consistent independent evidence sources created compelling cases. In England, weak, contradictory evidence from interested parties failed to establish necessary foundations.

This reveals that while legal frameworks may provide different success pathways, underlying requirements for credible, consistent evidence remain constant. Practitioners must focus on building strong evidential foundations rather than relying solely on procedural advantages.

Final Thoughts

The contrasting outcomes in *Packer v Packer* and *Choi Cheung Hung* demonstrate that in Will challenges, evidence truly is everything. While legal frameworks may differ between jurisdictions, fundamental requirements for strong, consistent, and credible

evidence remain constant across all Will disputes.

For practitioners, these cases show success depends not merely on legal arguments or procedural advantages, but on careful gathering and presentation of compelling evidence. The difference between winning and losing often lies not in courtroom advocacy, but in evidence quality collected and preserved during the deceased's lifetime.

Whether contesting invalid Wills or defending against challenges, the lesson is clear: multiple sources of consistent, independent evidence supporting positions are essential for success. Courts must determine deceased persons' true intentions based solely on available evidence, making evidence quality and credibility the decisive factor in most will disputes.

These cases show that with proper evidence and legal preparation, seemingly insurmountable obstacles can be overcome. However, they also demonstrate devastating consequences of proceeding with weak or inconsistent evidence. In Will challenges and probate disputes, preparation, consistency, and credible evidence remain success keys.

For Hong Kong practitioners, these cases provide valuable insights into both dispensing provision application under section 5(2) of the Wills Ordinance and universal principles governing will disputes across jurisdictions. Understanding and applying these principles effectively will enhance legal service quality for clients facing challenging and emotional probate litigation terrain. ■

References:

1. *Packer v Packer* (Re Estate of Stephen George Packer) [2025] EWHC 461 (Ch) - <https://www.bailii.org/ew/cases/EWHC/Ch/2025/461.html>
2. *Choi Cheung Hung v. Leung Fung Ha and Another* [2023] HKCFI 2822 - <https://vlex.hk/vid/choi-cheung-hung-v-972877501>
3. Wills Act 1837
4. Wills Ordinance (Cap. 30)