



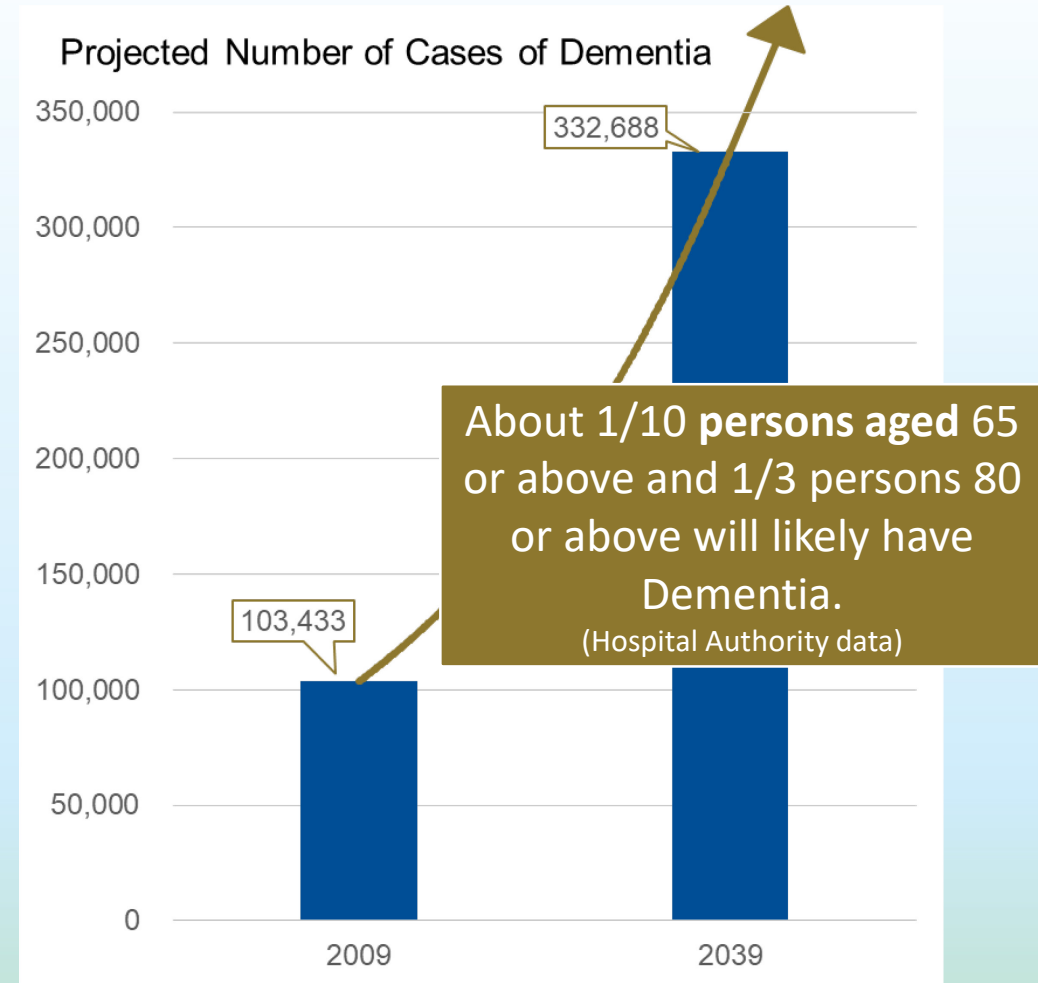
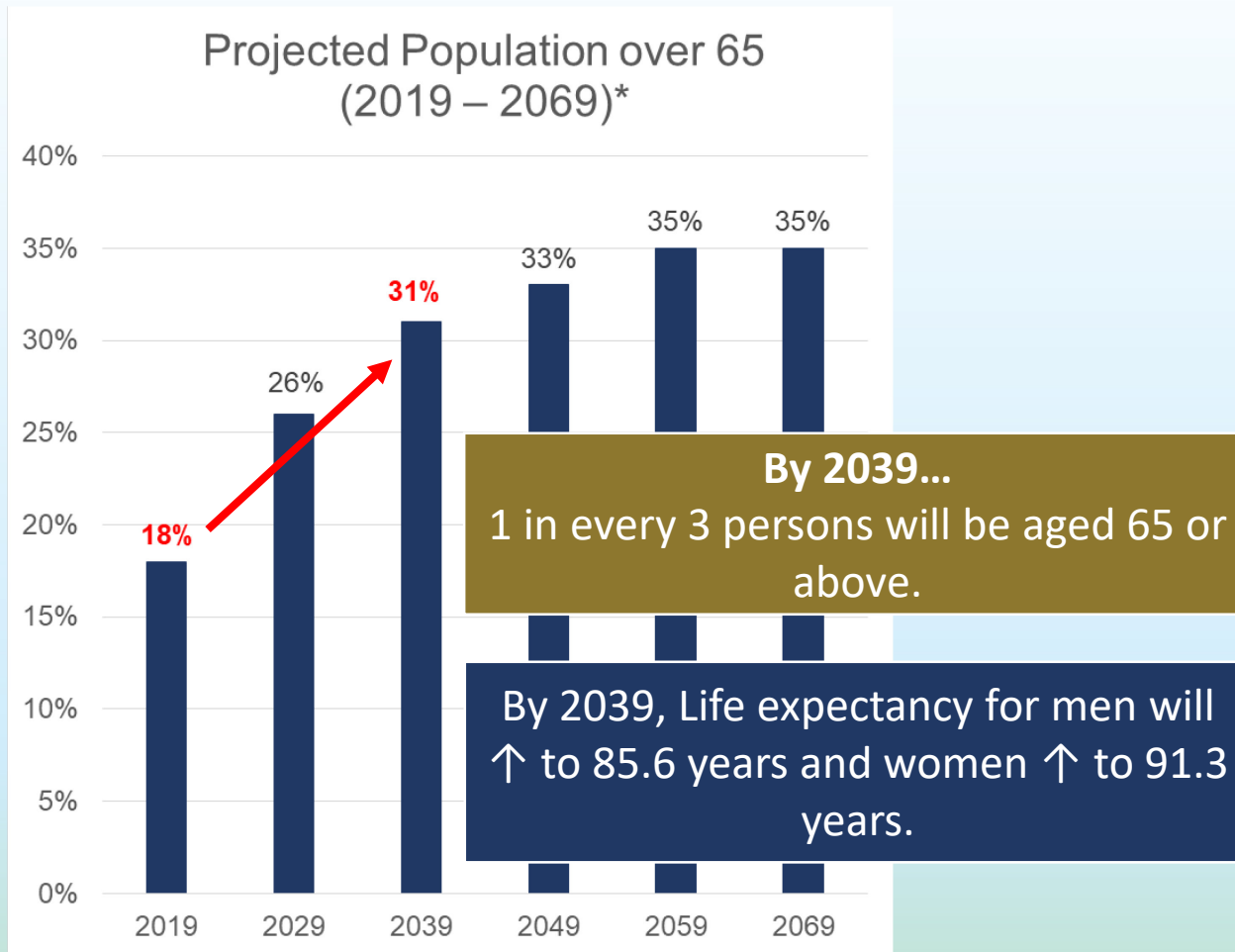
Challenges of Family Wealth – Mediation of Inheritance and Mental Capacity Disputes

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(Family and Vulnerable Client Practice)

Outline of Talk

- 1** Trends of Aging Population and Dementia
- 2** Challenges of Family Wealth
- 3** Disputes Surrounding Mental Capacity and Family Wealth
- 4** Case Sharing involving Vulnerable Persons
- 5** Mediating Inheritance and Mental Capacity Disputes

Trends of Aging Population and Dementia



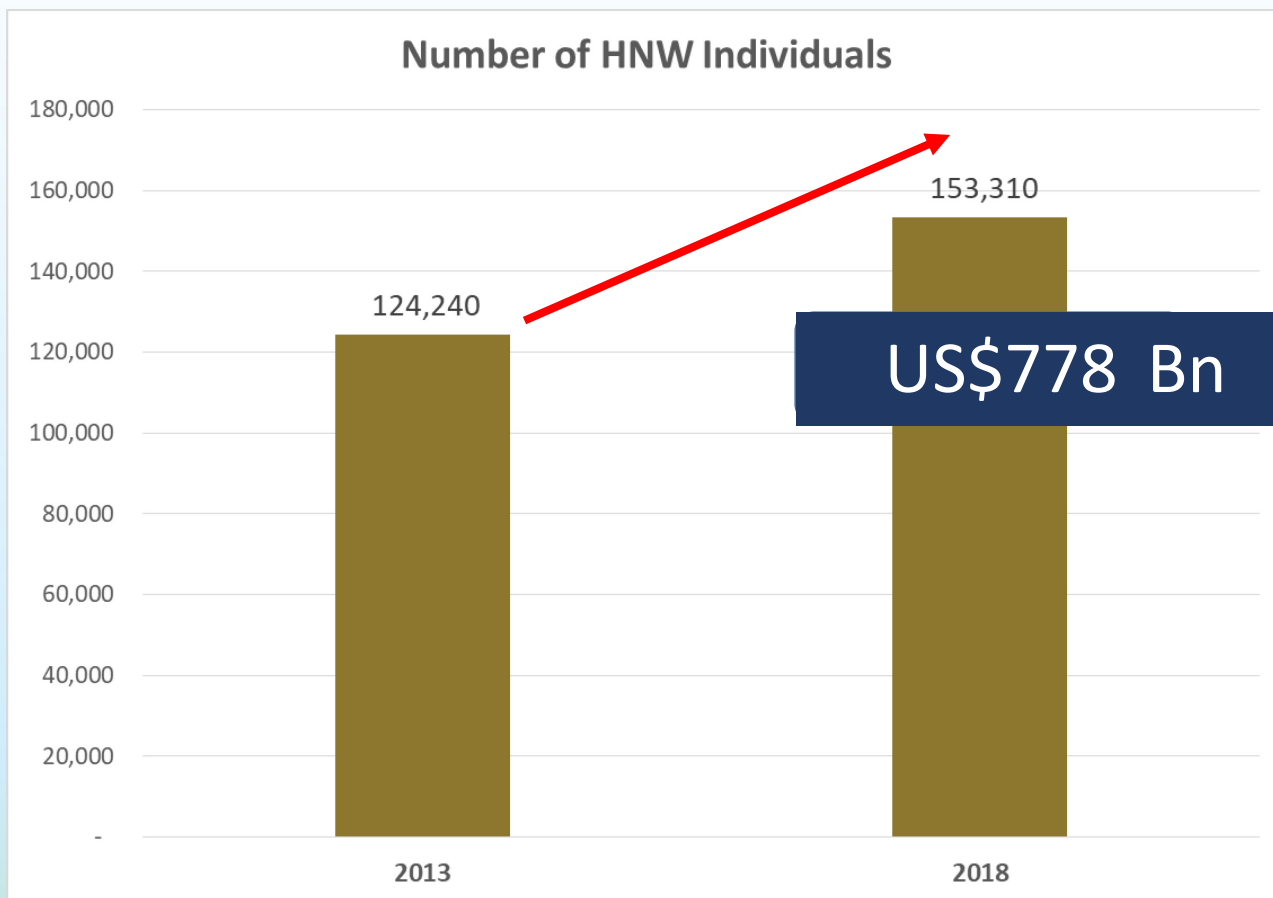
*Excluding foreign domestic helpers

Data extracted from the Hong Kong Population Projections 2020 - 2069 by the Census and Statistics Department HKSAR, 2020

Data extracted from "Trends in Prevalence and Mortality of Dementia in Elderly Hong Kong Population: Projections, Disease Burden, and Implications for Long-term Care" jointly written by Ruby Yu, Pui Hing Chau, Sarah M. McGhee, Wai Ling Cheung, Kam Che Chan, Sai Hei Cheung and Jean Woo, 2012.



Challenges of Family Wealth





Challenges of Family Wealth

Vulnerability of Aged Wealth Owners (AWO) to financial abuse

Memory lapse and asset management risks

Loss of Mental Capacity/Decision-making ability in succession planning

Fairness and equality of gift distributions

Preserving family legacy, catering individual needs and shared dreams



Disputes Surrounding Mental Capacity


Mental Capacity generally refers to the mental competence of an individual to make a particular decision, undertake certain acts or engage in a particular activity



What happens to one's assets when s/he suddenly loses mental capacity?



Who can manage the finances of a person without mental capacity?



If a person suffers a stroke in the middle of a property transaction or business deal, what can be done?



Disputes Surrounding Mental Capacity

Committee Applications under Part II of Mental Health Ordinance (Cap. 136)

Mentally Incapacitated Persons (MIP)

Where a person is incapable by reason of mental incapacity of managing and undertaking his/her property and affairs

Who can be appointed as Committee of the MIP by the Court?

- Family members
- Office Solicitor
- Professionals (e.g. Accountants and/or Solicitors)



Disputes Surrounding Mental Capacity

Case Study 1 – Re: L (2004)



POA
Sep 2003



Certified as MIP
Nov 2003



Nov 2003

Director of social welfare appointed as public guardian*

Aug 2004

Official solicitor appointed as committee

*Section 59O Part IVB of MHO

*Section 10D of MHO



Common Disputes Involving Family Members of Vulnerable Persons

Exclusion from management of family business

Adult sibling rivalry

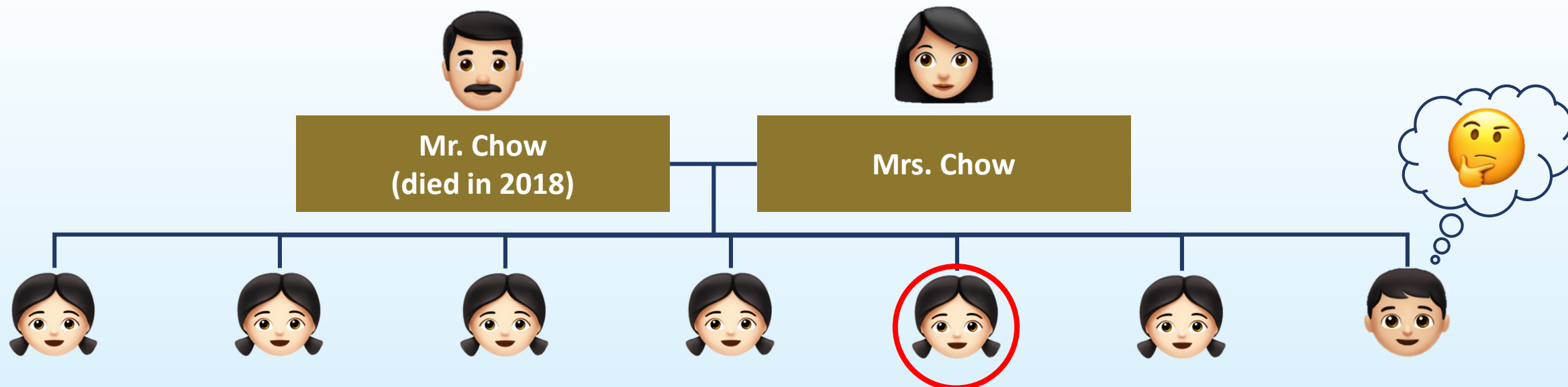
Inter vivos gifts

Unequal distribution to children under Will

Claims under the Inheritance (Provision for Family and Dependents) Ordinance (Cap. 481)



Case Study 2 – Re: Chow (2020/2021)



2015 Will*

1. Specific bequest of shares in list co. to 5th daughter
2. Residuary Estate to Mrs. Chow and daughters

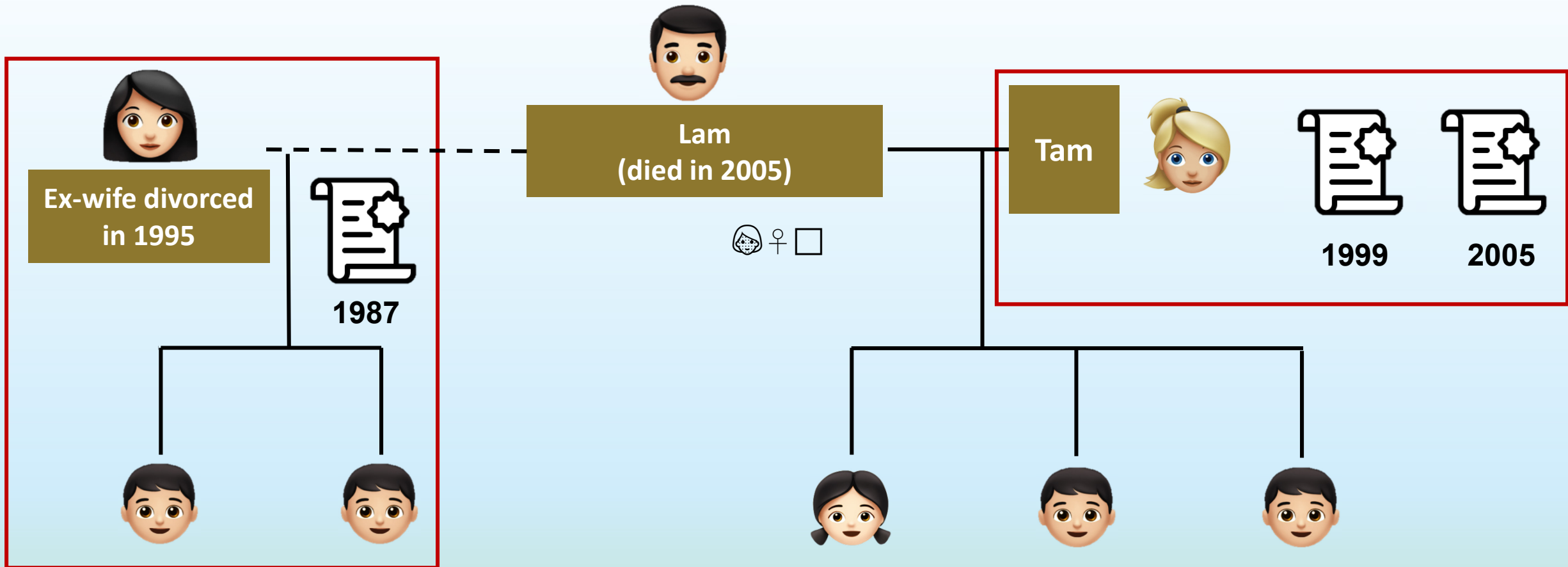
*Testamentary capacity of Mr. Chow challenged by 1st daughter

Undertaking by the 5th daughter

1. Transfer all shares to a Family Trust to be set up for the Chow Family including mother and younger brother
2. Transfer ½ entitlement under residuary estate to brother

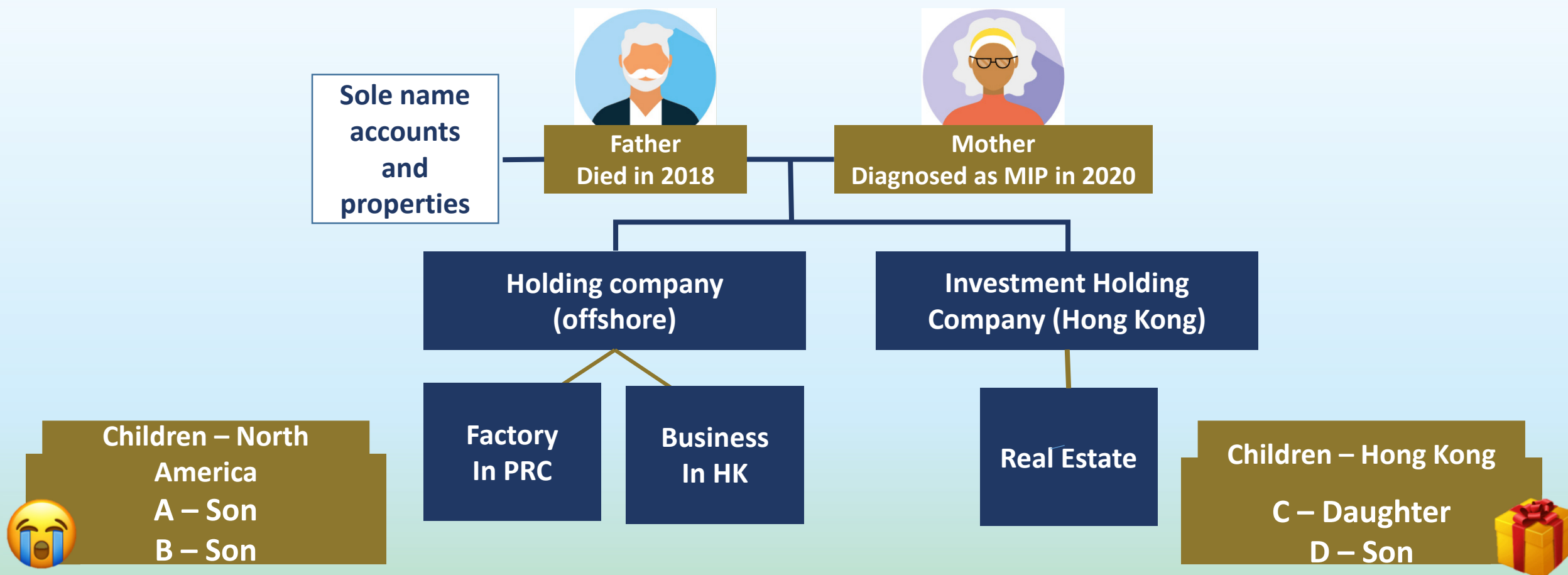


Case Study 3 – In Re Lam Chok Wai (2020)





Mediating Inheritance and Mental Capacity Disputes



Issues in Dispute

- 1 Mental Capacity of Mother
- 2 Care and financial arrangements for Mother
- 3 Who will continue to operate Father's business
- 4 Who will administer late Father's estate
- 5 Validity of Deed of Gift

Benefits of Mediation

Underlying issues/concerns identified

Parties explored common goals

Inter-generational views respected

Creative Options Generated

A clear timetable and roadmap was set



Helpful Mediation tools in complex family wealth disputes

Neutralize

Mutualize

Normalize

Independence

Creativity

Active Listening and the 5A's of
Healthy Communication*

Attention

Appreciation

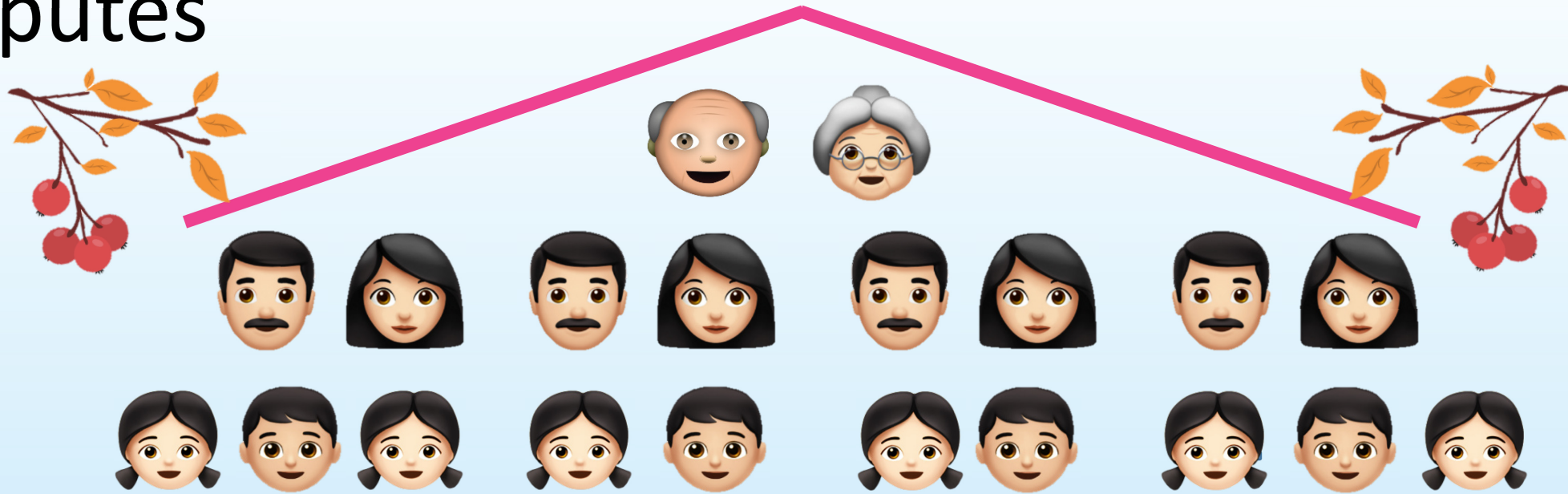
Ask

Affection

Affirm

*Extracted from Positive Words Powerful Results: Simple Ways to Honor, Affirm, and Celebrate Life, by Hal Urban

Mediating Inheritance and Mental Capacity Disputes



All Families Can Do With More TLC!

Transparency

Long-term Planning

Communication



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