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Goodwill for legal purposes – from the High Court

One of the most common questions in family law property matters is what is the value of the goodwill of the business carried on by (one or more of) the parties?

This is an issue because the goodwill of a business, other than "purchased goodwill", it is commonly not brought to account[1] and, hence, its value (to a party / the parties) is uncertain.

A recent decision of the High Court (Commissioner of State Revenue v Placer Dome Inc [2018] HCA 59 (**the Placer Dome decision**)) provides guidance on what is goodwill for legal purposes.

The Placer Dome decision concerned whether a Western Australian gold mining company (**Placer Dome Inc**) was "land rich", meaning, broadly, that its land represented more than 60% of its assets. This may not have been the case if the company had sufficient goodwill. The High Court found that Placer Dome did not have significant goodwill and, therefore, was land rich, leading to the payment of a significant amount of stamp duty.

The Placer Dome decision made extensive reference to an earlier decision of the High Court (Commissioner of Taxation (Cth) v Murry [1998] HCA 42 (**Murry's case**)) concerning whether, for the purpose of a capital gains tax exemption, the sale of a taxi licence included the sale of goodwill.

The Placer Dome decision describes **Murry's case** as a watershed, and its legal and factual context to be significant [65]. In addressing those matters, the majority in Murry's case considered the nature of goodwill, goodwill as property, sources of goodwill and value of goodwill [67].

Added value approach?

The Placer Dome decision found that Murry's case did not broaden the legal concept of goodwill to include sources which did not generate or add value (or earnings) to the business by attracting custom. The "typical sources" of goodwill acknowledged in Murry's case were typical sources because "*they motivate service or provide competitive prices that attract customers*", and Murry's case and a decision which proceeded it[2], recognised that in the modern world, patronage – in the sense of customers through the door – was no longer the sole means of generating or adding value (or earnings) to a business by attracting custom. In both decisions[3], the recognition that there were other sources of goodwill was itself considered in terms of the ability of those other sources to attract custom [87].

Conclusion on goodwill for legal purposes

The majority in the Placer Dome decision found that goodwill for legal purposes does not extend to every possible advantage, and *whatever adds value*, including privileges or advantages that differentiate an established business from a business just starting out. Goodwill for legal purposes *does* extend to those sources which generate or add value (or earnings) to the business by *attracting custom*, whether that be from the use of identifiable assets, locations, people, efficiencies, systems, processes, or techniques of the business, or from some other identifiable source. And those sources of goodwill for legal purposes have a unified purpose and result - to generate or add value (or earnings) to the business by attracting custom [91].

Significance for family law valuations

The Placer Dome decision is significant for business valuations for family law purposes by providing clarity about what is goodwill for legal purposes. Good business valuations will identify the sources of goodwill and describe how those sources generate or add value (or earnings) to a business by attracting custom.

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1. Australian Accounting Standards prohibit the recognition of internally generated goodwill (AASB 138 *Intangible Assets*, paragraph 48).

2. Box (1952) 86 CLR 87 at 395 – 397 (**Box**)

3. Box and Murry's case