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Let's chat

Case Dump – Some 2024 cases I never got to – February 2025

With:

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Information provided is general in nature; precise application depends on specific circumstances

Dalziel v Gott & Ors

[2024] QSC 276



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Issue

- Whether the gift of the house property described as "Florida" in the Will of John Edward Gott includes one parcel of land or two adjoining parcels

Rule

- For the proper construction of a Will, the court must determine the testator's intention by considering:
 - The plain meaning of the words used in the Will.
 - The surrounding circumstances at the time the Will was executed.
 - The "armchair principle," which allows the court to consider the testator's habits, family, property, and acquaintances.

Dalziel v Gott & Ors

[2024] QSC 276



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Application

- In this case, the Will of John Edward Gott, executed on 29 August 2012, included a clause (clause 3) that gifted the house property known as "Florida" to his brother, Terrence Michael Gott. The issue was whether this gift included only the parcel of land on which the house was constructed (Lot 5) or both the house and the adjoining gardens (Lot 6).
- The court considered the following factors:
- Both parcels were purchased by the testator in 1979, and the house and gardens were designed as two parts of a whole.
 - The house was positioned to maximize the view over the gardens, and the gardens included permanent structures and interconnected pathways linked to the house.
 - The testator referred to the property as "Florida" and took immense pride in the gardens, considering them an integral part of his home.
 - The prior Will executed by the testator in 2007 included both parcels of land under the same street address.

Dalziel v Gott & Ors

[2024] QSC 276



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Conclusion

- The court concluded that the testator intended to gift both parcels of land (Lots 5 and 6) to Terrence Michael Gott. The court ordered the proper construction of clause 3 to include both parcels, allowing them to pass to the first respondent. This case highlights the importance of considering the testator's intentions and the surrounding circumstances when interpreting the language used in a Will.
- This case underscores the significance of thorough review and clear communication when drafting legal documents to avoid unintended consequences and the need for rectification.

Dalziel v Gott & Ors

[2024] QSC 276



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Extra Tidbits:

- The clause under consideration – clause 3 – relevantly provides as follows:
 - *“I give and devise all my right, title and interest in and to house property ‘Florida’, 487 Main Western Road, Mount Tamborine (‘my residence’) PROVIDED HOWEVER should my residence have been sold during my lifetime then in lieu thereof I GIVE a sum of money (which is the same amount as the amount of the proceeds of sale of my residence, after deduction of commissions, legal and like expenses of sale) together with all furniture and other articles and effects of domestic, household and garden use or ornament (without limiting the generality same to include paintings and carpets and to exclude motor vehicle) to my brother ...” – [4]*

Dalziel v Gott & Ors

[2024] QSC 276



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Extra Tidbits:

- *Either way, I am persuaded that, by the words used in clause 3, as considered in the light of the surrounding circumstances, the testator was referring to both parcels of land. – [10]*
- *First, both parcels were purchased by the testator and others in 1979. A house and garage were constructed on one parcel – Lot 5. On the adjoining parcel – Lot 6 – what are described as “intricately-planned gardens” were constructed. The house and gardens were, together, designed as two parts of a whole and in accordance with a contour plan of the overall property. For example, the house was positioned on Lot 5 to maximise the view over the gardens and, to that end, the bedrooms, verandah and kitchen were positioned accordingly. Indeed, the building contract for the construction of a “residence” on the land specified that land to be Lots 5 and 6, and the testator appears to be one of the signatories to that contract....[11]*

Dalziel v Gott & Ors

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Extra Tidbits:

- *Second, although the street address for Lot 6 is different to that for Lot 5, the mention in clause 3 of only the street address for Lot 5 is hardly determinative. That is a common practice among owners of multiple blocks in the part of Main Western Road where “Florida” is situated. Also, the testator made a prior Will through a different solicitor on 12 November 2007. Although caution is required because that Will was of course revoked, by clause 4 of it, the testator gifted the land and residence located at the street address for Lot 5 and then spelt out the real property descriptions for both Lot 5 and Lot 6, the point being that the street address incorporated in clause 3 of the operative Will was the same street address used in the prior Will as the location for both parcels of land. – [12]*

Dalziel v Gott & Ors [2024] QSC 276



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Takeaway

- Clear drafting in a Will can avoid ambiguity.
- Even where ambiguity exists, if the surrounding circumstances and facts are clear, certainty can be determined and gifts may not necessarily fail.

Staley v Hill Family Holdings Pty Ltd [2024] QSC 176



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Issue

- Whether the Deed of Variation executed by Hill Family Holdings Pty Ltd, which purported to remove Kerin Anne Staley as the Appointor of the Hill Family Trust, is valid.

Rule

- For a Deed of Variation to be valid, it must be established that:
 - The power to vary the terms of the Trust Deed includes the power to change the identity of the Appointor.
 - The variation must be consistent with the fundamental purpose of the Trust Deed.
 - The variation must not destroy the substratum of the Trust Deed.

Staley v Hill Family Holdings Pty Ltd [2024] QSC 176



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Application

- In this case, the Trust Deed of the Hill Family Trust included a clause (14.01) that allowed the Trustee to revoke, add to, release, delete, or vary all or any of the trusts, powers, or provisions declared or included in the Trust Deed. Hill Family Holdings Pty Ltd, as the Trustee, executed a Deed of Variation on 28 March 2024, which inserted a new clause (22.04) allowing the Trustee to remove Kerin Anne Staley as the Appointor and appoint a new Appointor.
- The court examined whether the power to vary the terms of the Trust Deed under clause 14.01 extended to changing the identity of the Appointor. The court found that the language of clause 14.01 was broad enough to include such a variation. Additionally, the court considered whether the variation was consistent with the fundamental purpose of the Trust Deed and whether it destroyed the substratum of the Trust Deed. The court concluded that the variation did not destroy the substratum of the Trust Deed and was consistent with its fundamental purpose.

Staley v Hill Family Holdings Pty Ltd [2024] QSC 176



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Conclusion

- The court held that the Deed of Variation executed by Hill Family Holdings Pty Ltd was valid, and the removal of Kerin Anne Staley as the Appointor was effective. This case highlights the importance of carefully drafting trust deeds and the potential for broad variation powers to include changes to the identity of key roles within the trust.
- This case underscores the significance of understanding the scope of variation powers in trust deeds and the need for clear and precise language to avoid disputes over the interpretation of such powers.

Staley v Hill Family Holdings Pty Ltd [2024] QSC 176



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Extra Tidbits:

- The case of “*an unfortunate factional family dispute developed over the lawful identity of both the Appointor and the Trustee*” whereby one daughter was pitted against the other daughter’s daughter (the granddaughter of the original trust creators).
- Dispute regarding at [3]:
 - *a Deed of Variation of the Trust Deed signed by Hill Family Holdings dated 28 March 2024 purporting to remove her as Appointor is invalid; and*
 - *a Deed of Removal and Appointment dated 19 June 2024 signed by her (as Appointor) replacing Hill Family Holdings with the second applicant (“Staley Management”) as Trustee is valid.*

Staley v Hill Family Holdings Pty Ltd [2024] QSC 176



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Extra Tidbits:

- Variation wording:
 - *22.04 Special Removal of Appointor*
 - *(a) This clause 22.04 only applies where Kerin Anne Staley is the Appointor.*
 - *(b) The Trustee may in its absolute discretion remove Kerin Anne Staley as the Appointor, provided that the Trustee nominates a person (other than the Trustee) to become the replacement Appointor.*
- Variation deed noted:
 - *“H. Pursuant to clause 14.01 of the Trust Deed, The Trustee may revoke, add to, release, delete or vary all or any of the trusts, power or provisions declared or included in the Trust Deed or any trust, powers or provisions declared by or included in any revocation, addition, release, deletion or variation made to the Trust Deed.*
 - *I. Clause 14 of the Trust Deed does not require the Trustee to obtain prior consent from the Appointor before exercising the powers in clause 14.01.”*

Staley v Hill Family Holdings Pty Ltd [2024] QSC 176



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Extra Tidbits:

- *“Mrs Staley was not told at the time about either of the attempts to remove her as Appointor. She only became aware of the Deed Poll in late May 2023 after she requested information about her mother’s estate. It was only then that Mrs Staley also became aware that she (and her kin) had been removed as beneficiaries under the Trust Deed. This prompted Mrs Staley to execute the Deed of Removal and Appointment of Trustee of the Trust (on 19 June 2024). About a week later (on 27 June 2024), Mrs Staley found out through the solicitors for Hill Family Holdings that she was apparently no longer the Appointor of the Trust due to the existence of the Deed of Variation, prompting this application.” At [13]*

Staley v Hill Family Holdings Pty Ltd [2024] QSC 176



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Extra Tidbits:

- Case includes discussion on relevant legal principles and noted:
 - *The rules applicable to the construction of agreements also apply to deeds and trusts.[1] The construction of a written agreement requires a consideration of the entire document to ascertain what a reasonable person would have understood the parties to the agreement to mean. – [15]*
 - *The rights and liabilities of the parties are to be determined objectively with consideration given not only to the language of the agreement, but also to the apparent purpose and object of any transaction created by or evidenced in the agreement.[3] The search for intention is as revealed by the words used in the trust instrument.[4] – [16]*

Staley v Hill Family Holdings Pty Ltd [2024] QSC 176



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Extra Tidbits:

- Case includes discussion on relevant legal principles and noted (cont):
 - *Some courts have been prepared to confine broad powers of variation so they do not extend to a variation altering the “substratum of the trust”.[8] But for trusts that are discretionary (such as the present), which are drafted to provide maximum flexibility in the use of the trustee’s powers, the substratum is often hard to identify beyond the conferral of benefits on the beneficiaries pursuant to the terms of the trust.[9] In some cases, even a “fundamental reorganisation” of a trust does not necessarily destroy its substratum.[1] – [18]*
 - *Whether the power of the Trustee under clause 14.01 of the Trust Deed extends to amending the terms of the Trust Deed to change the Appointor is a matter of construction.[11] In interpreting the words as they appear in clause 14.01, it is therefore necessary to ascertain the natural and ordinary meaning of the words in the context in which they appear in the Trust Deed having regard to all of the provisions of the Trust Deed and with a view to achieving “harmony” among them.[12] – [19]*

Staley v Hill Family Holdings Pty Ltd [2024] QSC 176



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Extra Tidbits:

- References to *Jenkins v Ellet* where the variation power did not allow changes to the principal:
 - “[16] Clause 2, in declaring that the trustee holds the trust fund “upon the trusts subject to the powers and provisions contained in this Trust”, highlights the link to cl. 11’s power to amend the “Trusts declared”. The language of cl. 2 also makes the declaration of trust subject to the power, for example, vesting in the Principal to appoint new trustees in cl. 12. The power to amend in cl. 11 is not to amend “the trust constituted by and comprised in this Deed and the Schedule” but the “Trusts declared”, namely those declared in cl. 2. The difference between the singular and plural forms of the word “trust” is significant. It would have been easy for the drafter of the deed to provide the trustee with a broad power of amendment of “this Trust”, which is defined in cl. 1 to mean “the trust constituted by and comprised in this Deed and the Schedule” or of the deed and the schedule as a complete document if that were intended.”

Staley v Hill Family Holdings Pty Ltd [2024] QSC 176



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Takeaway

- Care must be taken when undertaking variations to a trust instrument that may result in disputes arising from the parties to the trust instrument and beneficiaries.
- Where such variations are contentious, a detailed and considered analysis of the variation is required to ensure any purported variations are able to withstand scrutiny.



Anderson v Yongpairojwong [2024] NSWCA 220

Issue

- Whether the Thai Will executed by Amy Chanta on 24 June 2020 is valid, given the circumstances surrounding its execution and Amy's testamentary capacity at the time.

Rule

- For a will to be valid, the testator must have testamentary capacity, which includes understanding the nature of the act, the extent of the property being disposed of, and the claims to which they ought to give effect. Additionally, the testator must know and approve of the contents of the will, and there should be no suspicious circumstances surrounding its execution.



Anderson v Yongpairojwong [2024] NSWCA 220

Application

- In this case, the primary judge found that Amy had testamentary capacity when she executed the Thai Will. The judge considered the evidence of Amy's mental state, including her ability to communicate clearly and her understanding of the will's contents. The judge also took into account the absence of medical records suggesting a lack of capacity and the testimony of witnesses who interacted with Amy around the time of the will's execution.
- The appellant, Palisa Anderson, argued that Amy lacked testamentary capacity and did not know and approve of the contents of the Thai Will. However, the court found that the evidence presented by the appellant, including expert medical reports, did not sufficiently prove that Amy lacked capacity. The court also found no suspicious circumstances surrounding the execution of the Thai Will.



Anderson v Yongpairojwong [2024] NSWCA 220

Conclusion

- The court dismissed the appeal and upheld the validity of the Thai Will. The court concluded that Amy had testamentary capacity when she executed the will, knew and approved of its contents, and that there were no suspicious circumstances surrounding its execution. This case underscores the importance of clear evidence and thorough documentation when challenging the validity of a will based on the testator's capacity and knowledge of its contents.



Anderson v Yongpairojwong [2024] NSWCA 220

Extra Tidbits:

- The deceased is survived by her son (Pat) and daughter (Palisa)
- The reason for the dispute was because the ‘Thai Will’ (being the later executed Will) reduced the amount that Palisa would receive. Under the older Will, Palisa received a greater share of the residuary estate as well as share of the deceased’s interest in the Chat Thai group of companies.
- *Palisa and Pat did not see “eye to eye” in relation to the operation of the Chat Thai business, which concerned Amy. – paragraph 17*
- The earlier Will was executed in 2017 (which Palisa shared in equal shares with Pat), whilst the Thai Will was executed in 2020.



Anderson v Yongpairojwong [2024] NSWCA 220

Extra Tidbits:

- Tensions arose within the family such that the deceased called Palisa not to use the name 'Chat Thai' for a new restaurant being opened by Palisa (and her husband) in Neutral Bay NSW.
- There were substantial voice messages of the deceased which reflected her desire for Pat to take over the running of Chat Thai following the execution of the Thai Will (including comments made wishing particular staff happy birthday).



Anderson v Yongpairojwong [2024] NSWCA 220

Takeaway

- Ultimately determined that the deceased satisfied the following:
- *Amy understood the nature and significance of the act of making a will*
 - *On the day that she executed her will, she explained to the two witnesses that she had cancer and did not have much time left; that she had previously made a will; and that she now wished to update that will. Consistently with this, and subsequent to executing her will, she explained to Bob that she would like to transfer the shares to Pat now to “finish it”, as she was giving those shares to him in her will in any event.*
- *Amy understood the extent of her estate*
 - *Furthermore, Amy expressed her wish to transfer her shares in the CT Group to Pat shortly after making her Thai Will, which also contemplated bequeathing such shares to him: PJ [218(b)]. Amy’s involvement in the Chat Thai businesses, and her expressed intention for Pat to become the “leader” of the business, suggested Amy’s knowledge that she controlled the CT Group, and that she intended to pass control to Pat through bequeathing her shares: PJ [218(d)]. Such evidence suggested to the primary judge that Amy was aware of the extent of her estate.*



Anderson v Yongpairojwong [2024] NSWCA 220

Takeaway

- *Amy could comprehend and weigh competing claims to her estate*
 - *His Honour held that there was “no doubt” that Amy appreciated that Palisa and Pat had a claim to her estate, and that Palisa’s children might also have a claim: PJ [219]. Whilst the Thai Will did not refer to Palisa’s children, the primary judge held that it was reasonable to infer that Amy was content to trust that Pat would carry out her intention that Palisa’s children would obtain an interest in the Hua Hin Farm once they reach the majority age: PJ [219].*
- The importance to retain appropriate evidence in circumstances where amendments to a client’s existing estate plan is substantial (even off hand comments made during advisory meetings with the client from a range of persons).

Zec Family Investments Pty Ltd v Zecchini [2024] QSC 173



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Issue

- Whether the rectification of the Zecchini Family Trust Discretionary Trust Deed is effective in allowing the first and second respondents to receive trust distributions, despite a clause that prohibits trustees from receiving such distributions.

Rule

- Rectification is an equitable remedy that corrects a written document to reflect the true intentions of the parties involved. For rectification to be granted, it must be shown that:
 - There was a common intention between the parties.
 - The written document does not accurately reflect that intention due to a mutual mistake.
 - Clear and convincing evidence supports the claim for rectification

Zec Family Investments Pty Ltd v Zecchini [2024] QSC 173



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Application

- In this case, the Zecchini Family Trust Discretionary Trust Deed, executed in 2013, included a clause (11.2) that prohibited trustees from receiving trust distributions. This clause was inconsistent with the intentions of the first and second respondents, who were both trustees and class A beneficiaries. The evidence presented showed that the respondents always intended to receive trust distributions and that the inclusion of the prohibitive clause was a mistake. The solicitor who drafted the trust deed confirmed that there were no instructions to include such a clause, and the respondents did not appreciate its impact when reviewing the draft.

Zec Family Investments Pty Ltd v Zecchini [2024] QSC 173



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Conclusion

- The court ordered the rectification of the trust deed by deleting the prohibitive clause, thereby allowing the first and second respondents to receive trust distributions as intended. This case highlights the importance of ensuring that legal documents accurately reflect the parties' intentions and the role of rectification in correcting mutual mistakes.
- This case underscores the significance of thorough review and clear communication when drafting legal documents to avoid unintended consequences and the need for rectification.

Zec Family Investments Pty Ltd v Zecchini [2024] QSC 173



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Extra Tidbits:

- Family trust held shares in a company operating the business known as Griffin & Associates.
- In 2013, the solicitor was instructed to establish the trust and written and oral instructions were provided. Documentary instructions included advice that Mr Zecchini and Ms Anderson would be the trustees and A class beneficiaries of the trust. The solicitor was the settlor of the trust.
- In 2020, a change of trustee occurred and Zec Family Investments Pty Ltd became the new trustee.

Zec Family Investments Pty Ltd v Zecchini [2024] QSC 173



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Extra Tidbits:

- Clause 11.2 noted: *“Notwithstanding anything to the contrary contained in this deed, income or capital of the trust, other than remuneration permitted under subclause (2) of this clause shall not, in any circumstances, be paid or transferred beneficially to or applied for the benefit of the settlor or the trustee or any person who, at the time, has been a trustee.”*
- *The remedy sought is rectification. The proposed draft order before me would do that by deleting the words, “or the trustee or any person who, at any time, has been a trustee” from the clause I have mentioned. Evidence justifying an order for rectification ought be clear and convincing. It seems to be especially so here. – paragraph 7*
- *The deed is nonsensical. It clearly nominates Mr Zecchini and Ms Anderson as class A beneficiaries, yet the words of concern literally mean that they are excluded from receiving any distribution of trust income or capital. The concepts cannot stand, sensibly, together. There has plainly been an error that needs to be rectified. – paragraph 8*

Zec Family Investments Pty Ltd v Zecchini [2024] QSC 173



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Extra Tidbits:

- There were no instructions provided to the solicitor to exclude current or past trustees of the trust as beneficiaries, and, when reviewing the draft, it is obvious they simply did not appreciate the impact of a clause that had been included inconsistently and without their instructions. The solicitor acknowledges he did not receive instructions of the kind which support the inclusion of the clause, which is unremarkable, given the purpose of the exercise. – *paragraph 10*
- The solicitor was, obviously, such a person, although it is clear enough that he joined in the common mistake that occurred. It seems obvious that the offending words must have existed in some other document that the solicitors' firm used from time to time and had, erroneously, been left in the document, with which this application is concerned, when formatted, the error not being detected by anyone until recent times. – *paragraph 14*

Zec Family Investments Pty Ltd v Zecchini [2024] QSC 173



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Takeaway

- Errors can be rectified and going to Court is an option and can be straightforward (the decision is 17 paragraphs long) albeit not the most cost-effective.

Commissioner of Taxation v Liang [2025] FCAFC 4



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Issue

- Whether the taxpayers discharged their burden of proof under section 14ZZK of the Taxation Administration Act 1953 (Cth) in proving that the unexplained deposits received by their trust were not ordinary income.

Rule

- The taxpayers bear the burden of proving that the Commissioner's amended assessments are excessive. The criteria for establishing this include demonstrating that the deposits in question are not ordinary income as defined by the Income Tax Assessment Act 1997 (Cth).

Commissioner of Taxation v Liang [2025] FCAFC 4



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Application

- In this case, the Commissioner issued amended assessments by including the value of unexplained deposits into the bank account of the Property Trust as ordinary income. The taxpayers contended that these deposits were either loans or equity contributions from their parents, but the Tribunal rejected this evidence, finding no satisfactory explanation for the source of the deposits.
- The primary judge initially sided with the taxpayers, concluding that the Tribunal had erred by not adequately considering whether the deposits could be seen as not ordinary income, despite rejecting the taxpayers' evidence. However, upon appeal, the Full Court found that no error had been shown in the Tribunal's conclusion that the taxpayers failed to discharge their burden of proving that the deposits were not income.

Commissioner of Taxation v Liang [2025] FCAFC 4



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Conclusion

- The appeal by the Commissioner of Taxation was allowed, and the orders of the primary judge were set aside. The Full Court held that the taxpayers had not discharged their onus of proving that the amended assessments were excessive. This case highlights the importance of providing clear and convincing evidence to rebut the presumption of income, emphasizing that unexplained deposits into a trust's account can be considered ordinary income unless effectively proven otherwise.
- This case underscores the rigorous standards required to overturn the Commissioner's assessments and the necessity for taxpayers to provide compelling evidence when challenging such assessments.

Commissioner of Taxation v Liang [2025] FCAFC 4



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Extra Tidbits:

- [3] *In the 2017 and 2018 income years, deposits were made into the bank account of the Property Trust by Ms Li depositing sums of cash and one bank cheque derived from a cash deposit, totalling \$735,825 (Deposits).*
- [43] *As a general rule, a taxpayer proves an amount is not assessable as income under ordinary concepts by proving what the amount represents and demonstrating that what the amount represents is not ordinary income. It would be a very rare instance where a taxpayer was able to prove an amount was not income under ordinary concepts without positively establishing the source and character of the amount. As a matter of logic, it is difficult to prove a negative by proving a series of other negatives unless those other negatives represent the entire universe of possibilities.*
- [44] *Income according to ordinary concepts is not confined to categories of dividends or rent or interest. Those amounts have the character of income as income from property, as do amounts of royalties. As the High Court said in Commissioner of Taxation v McNeil [2007] HCA 5; 229 CLR 656 at [21] (Gummow ACJ, Hayne, Heydon and Crennan JJ):*
as a general proposition, a gain derived from property has the character of income ...
- [45] *It is not the label attached to the amount but its relationship to the taxpayer's underlying property (in the sense that they are amounts that are severed from that property) that gives these amounts the character of income. The categories of income from property are not closed, as the facts in McNeil demonstrate. It follows that an amount may be income according to ordinary concepts even though it may not be described as interest, rent or dividends.*

Commissioner of Taxation v Liang [2025] FCAFC 4



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Extra Tidbits:

- *[47] It is well-established that “[i]n considering whether a profit arising from a transaction is of an income or capital nature, it is necessary to make both a wide survey and an exact scrutiny of the taxpayer’s activities”: Western Gold Mines (NL) v Commissioner of Taxation [1938] HCA 5; 59 CLR 729 at 740 (Dixon and Evatt JJ). The application of that principle requires the identification of the transaction giving rise to the profit or receipt and an understanding of the relationship or connection between that transaction and the taxpayer’s activities.*
- *[48] The Tribunal in the present case was not satisfied that the accounts of the Property Trust were reliable and rejected the evidence of the taxpayers as not sufficiently reliable (at TR [80]–[84]). Reading the Tribunal reasons as a whole, it is apparent that it was the entirety of the written and oral evidence of the three witness that was rejected.*
- *[49] The material before the Tribunal did not enable the wide survey and exact scrutiny of the activities of the Property Trust. Absent a concession from the Commissioner that the Property Trust conducted no activity beyond the acquisition of property and the leasing of those properties, the material before the Tribunal could not support findings of the precise scope and nature of the activities of that trust. As explained above, we are not satisfied that the Commissioner made such a concession before the Tribunal.*

Commissioner of Taxation v Liang [2025] FCAFC 4



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Extra Tidbits:

- *[50] On the evidence that was accepted by the Tribunal, the taxpayers did not establish the source of the Deposits beyond establishing that Ms Li was the individual who physically deposited the cash into the Property Trust's bank account. The basis for the Deposits and the legal nature of the transaction by which the Property Trust became entitled to receive the Deposits was not explained.*
- *[51] Accordingly, the Tribunal did not err in law in concluding that the taxpayers in this case had not discharged the onus of proving the Deposits were not ordinary income of the Property Trust.*

Commissioner of Taxation v Liang [2025] FCAFC 4



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Takeaway

- The importance of retaining appropriate record keeping in evidencing the nature of transactions to:
 - To positively prove what the receipt is; and
 - Give enough to allow for a wide and exact survey of a taxpayer's activities

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