

Week 3 and 4- Dispositions in Equity

A declaration of trust is not an assignment of property

An assignment of property is a transfer of an existing proprietary right from an assignor to an assignee

For a valid assignment to occur there must be an intention to assign on the part of the assignor

Disposition by assignment

Disposition is an assignment of property to another with the intention of ceasing to have any interest in the property.

Can be legal or equitable disposition.

If intention is not present, may be another disposition (e.g declaration of trust - where settlor retains legal ownership of property).

Critical aspect is intention and result, not the mechanism by which intention is fulfilled (*Pty Ltd v Merchancy Pty Ltd*)

If legal assignment fails, equitable assignment may still have occurred but interest of assignee will be equitable only - important for priority disputes.

Assignments at Law

Land: As for Old system (Deed) and TT land (Registration) (*Breskvar v wall*)

Goods: s 22 Sale of Goods Act. Sale goes through when intended by the parties, s 23 if not stated.
Gift - delivery w/ intention

Debts & Choses in Action (CIA):

Choses in action are 'personal rights of property which can only be claimed or enforced by action, and not by taking physical possession' Channell J, *Torkington v Magee*

What is assigned is the chose, the thing, the debt or damages to which the assignor is entitled" – *Lord Hoffman in Investors comp scheme ltd v west bromwhich building society*

Can be legal or equitable.

Equitable: e.g. an interest in a partnership

Legal: e.g. a debt or assignable right to sue. Were historically not assignable at law except if recognised by the Crown

Mercantile convenience and necessity led equity to recognise legal choses in action could be assigned.

Equity intervenes on behalf of the assignee and enables the assignee to obtain the benefit of the assignment

Generally, requires assignor to lend his/her name to any suit to recover the debt/enforce the chose in action, so would be bound by the result and precluded from suing.

However, if assignee fails to join assignor, it does not nullify proceedings s 21.

s12 CA allows assignee full rights to sue on debt (without having to join assignor)

Condition for legal assignment of CIA:

- 1) intention to make an immediate and irrevocable transfer (*Norman v Federal Comm of Taxation 1963*)
- 2) assignment is absolute

can only be so if assignee can give good discharge for the debt

debtor must have certainty who debt is to be repaid to *Durham Bros v Robertson*.

This is to ensure the assignor does not have an interest. If assignor has an interest then can't assign.

This does not preclude where assignment provides for or implies re-assignment to assignor s12

Part of a debt cannot be assigned because an assignor still has an interest in the debt and so cannot be assigned to the action. But part of a debt can be assigned in equity.

Part of a debt or CIA can only be assigned in equity - because assignor still have some interest - so not really an 'assignment'

- 3) in writing and signed by assignor &

cannot be signed by another person under s 12 even if they have authority (*Technocrats Int v Fredric land UK*)

No particular form of words is necessary, just clear that the debt or chose in action is being assigned

- 4) express notice given to debtor or other person in writing by the assignor or assignee

notice by implication or constructive notice not sufficient, assignment not effective until notice received *Consolidated Trust co v Naylor*

Notice can only be given at time of or after assignment

Unsure if s12 applies to eq int. *Everret v Com of Taxation* HCA 1980- partnership, although eq int, may be assigned under s12 CVA as legal chose in action may be referred to as 'lawfully assignable chose in action'

However, Austin argued s 12 does not apply to assigning equitable choses in action as eq rights are not part of com law jurisdiction, want to ensure you don't have to join party to proceedings in debts