

Week 3: Dealings with Property in Equity

Property: Legal & Equitable Interests

An interest in property may be dealt with at law and also in equity:

- Legal interests are recognized at law and also in equity
- Equitable interests are recognized only in equity. There are different requirements that need to be satisfied in order to achieve an effective dealing with an interest at law or in equity. * Subject to statutory amendments

Distinction between Legal and Equitable Property:

- A legal interest is a right recognised at Common Law and Equity
- An equitable interest is a right recognised only in Equity

Property Incapable of being dealt with:

- Property unable to be dealt with in law:
 - Rights under a contract for personal services, and,
 - A bare right to litigate a legal wrong.

However, fruits of the activities can be dealt with, including:

- Proceeds from a contract of personal services; and,
- The potential proceeds from litigation.

E.G.

- ***Glegg v Blomley [1912] 3 KB 474***: the potential proceeds from a defamation action were dealt with
- ***Trendtex Trading Corp. v Credit Suisse [1982] AC 679***: the insurance company (not the applicant) brought the matter before the court.

FIRST QUESTION: What is the nature of the property?

1. Legal or Equitable	Legal	Equitable
2. Presently Existing or Future Property	Present	Future
3. Real or Personal	Real	Personal
4. Consideration	Consideration	Voluntary

1. Legal or Equitable?

2. Presently Existing or Future Property?

An assignment **IN LAW** may only occur if the interest is presently existing and not an interest that may come into existence at a later date.

IN EQUITY: An assignment of future property for value achieves nothing immediately BUT the presence of value means that Equity regards that which ought to be done ('binds the conscience') and treats the purported assignment for value with this result.

Future Property: a right/title once has not yet acquired but one might acquire in the future. But which one has no right to acquire, also called a 'mere expectancy'. Eg: an interest under a will and the person is still alive OR future royalties.

Equity enforces dealings of future property for VALUE because the assignor, having received value his conscience is bound and as soon as the property comes into his hands the equitable interest passes to the assignee.

3. Real or Personal?

4. Consideration?

If you are looking at **an equitable dealing** then the presence of valuable consideration simplifies the process, since equity regards the 'conscience as bound'.

Valuable consideration = consideration sufficient to support a simple contract *Meagher, Gummion & Lehane*

SECOND QUESTION: What is the form of dealing I have before me?

1. Assignment
2. Agreement to Assign
3. Declaration of Trust
4. Direction to a Trustee

Assignment:

Norman v Federal Commissioner of Taxation (1963) 109 CLR at 26: an assignment is the **immediate transfer** of an **existing proprietary right, vested or contingent, from the assignor or the assignee.**

- The interest must be in existence at the time the purported assignment is made. It cannot be contingent in something else happening.

Voluntary Assignment at Law:

In the absence of valuable consideration, **a voluntary assignment at law must comply with the statutory requirements of writing.** Non-compliance renders the purported dealing ineffective at law:

Property Law Act 1958 (Vic) s 53.

- The requirement does not affect resulting implied or constructive trusts.

Intangible Personal Property:

An effective legal assignment of a chose in action will be achieved if the following requirements are satisfied:

- The assignment is absolute (part of a chose in action cannot be assigned in law).
- The assignment is in writing
- Written notice is provided to the **debtor.**

Agreement to Assign:

An agreement to assign is the **transfer of an interest in property that is contingent on something else occurring.**

- A voluntary agreement to assign achieves nothing at common law or in equity.
- An agreement to assign for value achieves an equitable assignment of the equitable interest in equity.
- The decision in *Oughtred v Inland Revenue Commissioner [1960] Ch 383* is unclear with respect to the need for writing where, in the presence of valuable consideration, a constructive trust arises if an agreement to assign company shares (chose in action) is specifically enforceable.