

# 2019 T1 JURD 7285 Equity and Trusts Comprehensive Notes

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*Some abbreviations:*

*AP = account of profits*

*BoP = Burden of proof*

*CA = counter-argument*

*CL = common law*

*Cf. = contrary to*

*EC = equitable compensation*

*FO = fiduciary obligation*

*FR = fiduciary relationship*

*tt = trustee; bb = beneficiary*

*RT = resulting trust; CT = constructive trust*

**Blue highlights are class notes taken from the convenor's classes.**

# Equitable Assignment

## Exam tip:

'transfer' is a neutral word – can be gift or as consideration or loan; 'give' is contextual, can be a gift.

CL view: legal transfer will not occur unless and until all formal requirements have been met.

Equity: where CL regards the transfer as incomplete, equity may regard such transfer as complete; Equity may regard a transfer as effective even if the property is not assignable at CL (Equitable chose of action).

## Terminology

1. Chose in possession & Chose in action  
Former: thing that can be physically held (ie tangible property)  
Latter: asset that cannot be possessed and **can only be enforced by legal action**. (ie intangible property)
2. Legal property & equitable property  
Former: property that CL recognises. (eg: chose in possession – land; chose in action – **debt/shares**)  
Latter: right recognised in equity court prior to the judicature reforms and was unknown to CL. (eg: **bb's interest in trust/ partner's interest in partnership**)  
(Note: all equitable property are **equitable choses in action**)

## LEGAL PROPERTY

### Step 1. Property assignable or not?

List of non-assignable property:

- Bare rights of bringing action
- Benefit of contracts of personal service
- Contract rights stipulated by contract as unassignable
- Statute: superannuation pensions
- Bare power of assignment

Exception: a holder of a contractual right can, by self-declaration, hold that right on trust for another.

### Step 2. Future property? (if any)

1. Refer to (i) property that has not yet come into existence (eg unborn foal in a pregnant horse); or (ii) existing property the would-be assignor do not own yet.
2. **Rule:**
  - 1) FP is not assignable at CL;
  - 2) Equity will recognise assignment of FP **only if it is for valuable consideration**. → Once FP comes into the hands of the assignor, equity regards the assignor as holding it on constructive trust for the assignee.
3. In cases where no consideration has passed, **(CA)** the party relying on the assignment has to argue that he attempts to assign presently existing property, rather than future property. ('income case' – assign income yet to be earned, or property generating income.)

#### ➤ *Norman v FCT*

[taxpayer tried to assign two items of property (income) by the deed of assignment: 1) dividends to be earned on shares; 2) interests to be earned on a loan. Feature of the loan: interest becomes payable on an annual basis, but borrower can repay the loan to taxpayer at will.]

- Dividends are FP in that they don't yet exist and may never be declared by the company.
- In terms of the loan, if borrower repays the loan in a particular year, no interest would be payable in the following year. → FP
- Therefore, in the absence of consideration, neither is effective.

### Step 3. CL methods of transfer of legal property