

Assignments

① Definition: X and Y entered an agreement/it is an outright transfer of personality or reality/this assignment takes effect by way of declaration of trust/takes effect as a direction to a trustee [] to transfer the trust property [] to a third party [] whereby..., which is an immediate transfer of an existing proprietary right, vested or contingent, from an assignor to assignee (*Norman*). The contract must be **capable of SP** (*Holroyd v Marshall*).

⑤ Equity will **not** allow a statute to be used as a **cloak for fraud**, e.g., a fraudulent party **cannot** rely on an **absence of writing** to enforce either an oral disposition of an interest in land or an oral trust of an interest in land that flouts the **Conveyancing Act** (*Last v Rosenfeld*)

② nature of the property: present property:

Present/future property: After considering the nature of the assignor's right and the date of assignment, the right is **present** property because it is **an existing contractual right** (tree) **OR** the right is **future** property because it is a right to an unrealised future income stream (fruit) (*Shepherd*). Assuming that the property assigned is **present** property, the right to be paid **royalties/shares/debt** is a chose in action.

Present property:

- **Legal right to future payment:** a legal right to payment **at a future date** is a **present** chose in action (i.e., even if the debt is not presently recoverable because it is not due and payable) and is assignable (minority approach in *Norman*).-requires **consideration**

OR

Mere expectancies: the purported assignment is the **loan that is repayable in full on a day's notice**, which was considered by the majority to be an expectancy in *Norman*, the right to the loan and its interest is regarded as future property. It is only capable of assignment in equity and only for consideration (*Holroyd*).

--an object of a discretionary trust or power of appointment only has a mere expectancy (*Kenyon v Spry*)

- **Present assets:** assignments of presently existing assets that may produce income in the future can be made without consideration (*Shepherd*).
- **Present equitable choses in action:** an assignment of a partner's share in a partnership, or part of that **share**, is an assignment of an equitable chose in action and hence an equitable assignment of present property, not an assignment of future income or future property (*FCT v Everett*).

Not Assignable property:

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--**Bare rights to litigate:** are generally **not** assignable; **unless**, an assignee who is co-defendant and can show that he has a **genuine commercial interest in the enforcement** of another's claim and the terms of that assignment doesn't fall foul of the law of champerty (*Trendtex*). So this is an outright transfer of personality (a chose in action) and there was no subsisting equitable interest, **CAs 23C(1)(c)** does not apply (*Vandervell*). So the assignment could have been oral.

--**Modes of transfer:** if an assignment is intended to be effectuated by one mode, then it will **not** be enforced by treating it as having been intended to be effectuated by another mode: e.g., a **declaration of trust** will not be inferred from an **invalid** attempt to make a **gift** (*Milroy v Lord*); however, if, although the words used may indicate one method, the **circumstances** (e.g., the donee has no legal existence apart from as created by a trust deed, or the putative settlor was themselves one of the intended trustees) entail the **only possible meaning** of what seem to be words of outright gift are words of gift on trust, the latter will be adopted (*T Choithram v Pagarini*).

③ Writing requirements: (whether s23C apply, if applies but oral→SP) **CAs 23C(1)(c)** encompasses equitable interests in **both land and personality** (*Grey*).