

EQUITY & TRUSTS

**RMIT UNIVERSITY
2024 SEMESTER 2**

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Legend

Australian Case

UK Case

Foreign Case/Legislation

REMEDIAL CT	INSTITUTIONAL CT
A personal liability	Typically Vendors/Purchasers of land
Remedy to prevent unjust enrichment by the defendant	Operation of established legal rules when specific events occur
Awarded as a matter of discretion by the court (not retrospective)	Proprietary interest pre-exists the court's judgment
Does not affect 3rd party rights in the property if they were acquired before the court order	Does affect 3rd party interests which were acquired after the events

Equitable Assignments

ASSIGNMENT PRINCIPLES

- If an assignment is not recognised there will be no equitable or statutory recognition.
- Consider if the assignee has given valuable consideration. If consideration has been given, recognition is to be given
- No consideration, must determine if the property being assigned is legal or equitable property

Norman v Federal Commissioner of Taxation (1963) 109 CLR 9

An equitable assignment is the immediate transfer of existing proprietary right.

Tailby v Official Receiver (1988) 13 AC

Where significant consideration has been given equity may be present.

METHODS OF TRANSFER

- Ownership of bank notes generally passes with possession
- Title to chattels (in the absence of statutory input) passes either by deed, or by delivery with the intention to confer ownership.
- Company shares sold off-market require a transfer form signed by the transferee and transferor to be registered in the company books, new methods such as CHESS register Corporations Act 2001 s1070A
- Legal choses in action could not originally be assigned at law

Statutory Assignment

Property Law Act 1958 (Cth) s 134

LEGAL ASSIGNMENTS OF THINGS IN ACTION

Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which **express notice in writing** has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, shall be and shall be deemed to have been effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—

- (a) the legal right to such debt or thing in action;
- (b) all legal and other remedies for the same; and
- (c) the power to give a good discharge for the same without the concurrence of the assignor:

Provided that, if the debtor, trustee or other person liable in respect of such debt or thing in action has notice—

- a. that the assignment is disputed by the assignor or any person claiming under him; or
 - b. of any other opposing or conflicting claims to such debt or thing in action—
- he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the Trustee Act 1958.

Property Law Act 1958 (Cth) s 53

INSTRUMENTS REQUIRED TO BE IN WRITING

1. Subject to the provisions hereinafter contained with respect to the creation of interest in land by parol—
 - a. no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorized in writing, or by will, or by operation of law;
 - b. a declaration of trust respecting any land or any interest therein must be manifested and proved by some writing signed by some person who is able to declare such trust or by his will;
 - c. a disposition of an equitable interest or trust subsisting at the time of the disposition must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.
2. This section shall not affect the creation or operation of resulting, implied or constructive trusts.

Gifts

Milroy v Lord (1862) 45 ER 1185

TEST

Has the assignor completed all relevant requirements to transfer the property?

Re Rose, Rose v IRC [1952] EWCA Civ 4

Where the transfer has done everything in their position to make the transfer but there is a delay, there can be an assignment present.

Anning v Anning (1907) 4 CLR 1049

LAST WILL & TESTAMENT STRICT REQUIREMENT

Equity will only be present when the transferor has done everything to effect a transfer.

Corin v Patton (1990) 169 CLR 540

The intentions of the transfer will be viewed in equity however they will not perfect an imperfect gift.

Non-assignable Rights & Future Property

Norman v Federal Commissioner of Taxation (1963) 109 CLR 9

FUTURE PROPERTY INTEREST DIVIDENDS

Future property will not be an assignable assignment.

Shepherd v Federal Commissioner of Taxation (1965) 113 CLR 385

ROYALTIES

The right to assign royalties exists not the actual royalties.