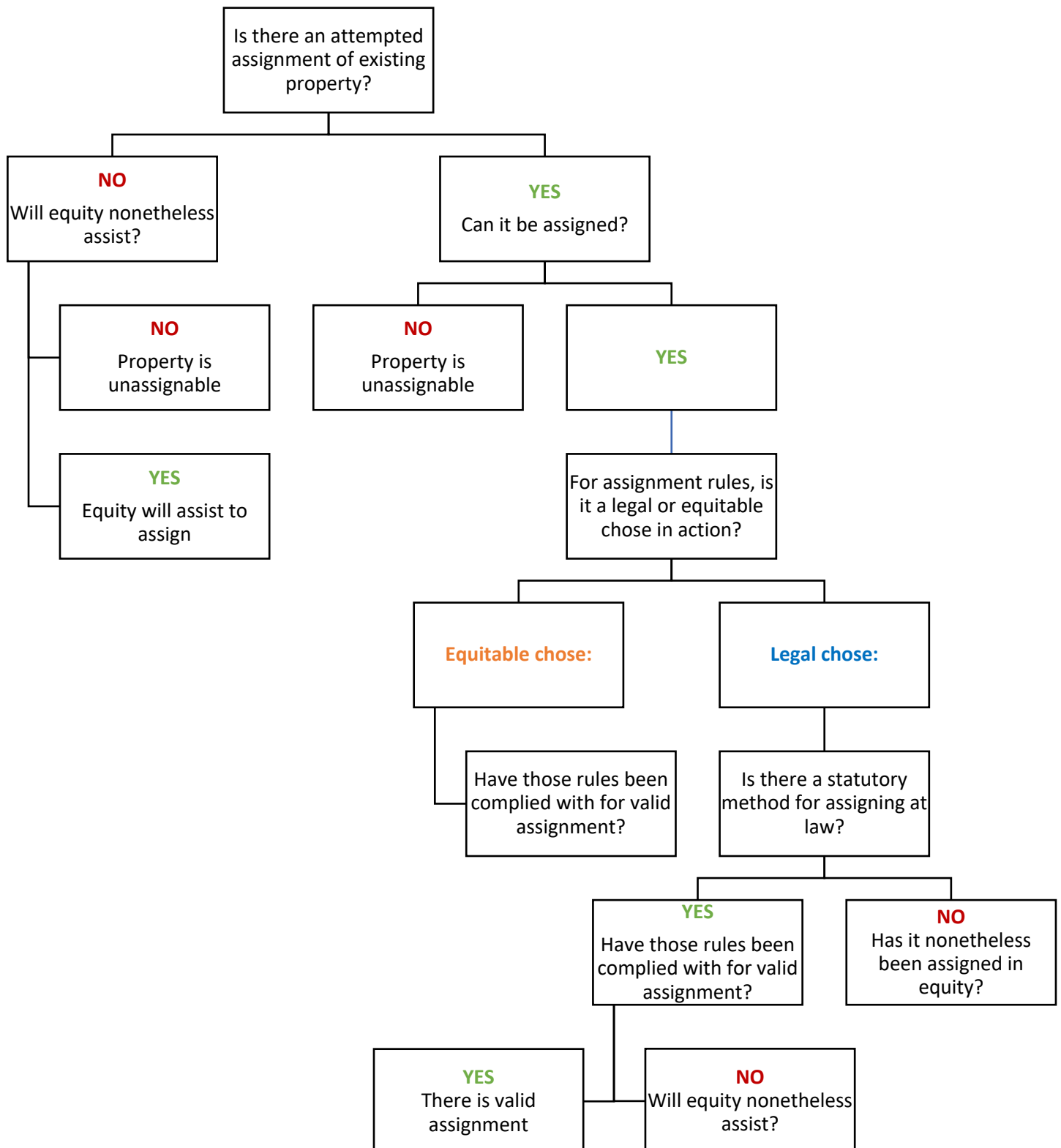


## ASSIGNMENTS IN EQUITY



## A: Is there a purported assignment of existing property?

### 1: Is there an assignment?

An assignment is the immediate transfer of an existing proprietary right from the assignor to an assignee (Windeyer J in Norman).

### 2: Does the property exist?

Whether a present right or an expectancy is being assigned depends on the drafting of the assignment itself (Norman).

**Advise:** It is integral to have precise drafting that clearly evidences you are assigning a present right.

**Cannot be expectancy:** It is not possible to assign property an expectancy, namely a right that one has not yet acquired but which they may acquire in the future (Windeyer J in Norman).

Therefore, regardless of how sure **X** may be that **a thing** will come into existence, it is impossible to assign property that does not yet exist.

### Examples:

**Dividends:** Dividends are an expectancy until they are declared by the company (Norman). In Norman, an assignor failed to assign the right to dividends on shares in a future year as there was no guarantee to dividends as the company retains discretion to declare them.

**Interim period:** If dividends have been declared but have not yet been paid, this constitutes a right to existing property.

In Norman, an assignor failed to assign the contractual right to interest that would be derived in a future financial year from a loan that was repayable without notice because it was an expectancy. Since the loan was repayable at any time, there was no guarantee that interest would be accrued in the future year, so there was no existing property to assign (Menzies J in Norman).

A general contractual right to be paid interest constitutes present property (Windeyer J in Norman). **[Distinguishable from right to interest in a particular year]**.

Interest on a loan is an expectancy until the payment is actually made (Norman).

**Norman Dissent:** However, in dissent, Windeyer J argued that there was a present contractual right to pay a sum of money in the future under the loan agreement, such that interest had to be paid and the right was not an expectancy.

In Shepherd, a transfer to five assignees of 90% of the contractual right to royalties for a period of three years was held to be the assignment of existing property.

The assignor was assigning a contractual right rather than an expectancy of income being generated.

Although there was a possibility that there may be no sales or royalties, the fact that there was an existing licence agreement allowed for assignment (Shepherd).

Whether a promise is fruitful or not does not make it incapable of assignment (Barwick CJ in Shepherd).

In Shepherd, the majority distinguished the facts at hand from those in Norman which concerned a loan that was not fixed. The assignor in Shepherd had a vested right to be paid interest on casters for a period of three years. (Loan in Norman was repayable without notice – if it was repaid early, there would be no interest at all).

**Conclusion:**

**NO:** There is an attempted assignment of an expectancy.

**YES:** There is clearly an attempted assignment of existing property.

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**NO: Purported assignment of expectancy**

**B: Will equity nonetheless assist?**

Equity will assist the purported assignment of an expectancy if consideration was given by the assignee.

**Cannot be a gift:** Equity will not assist a volunteer. Rather, (assignee) must have given something in return for the purported assignment.

1: Was there consideration?

Consideration must have been paid in order for equity to fasten upon the property (Dixon J in Palette Shoes).

**Examples:**

In Norman, equity did not assist a husband purporting to assign an expectancy to his wife as it was a gift and no consideration was given.

**Conclusion:**

**Consideration:** Since consideration was given by the assignee, equity will treat this as an agreement to assign the property at a future point in time. If the property comes into existence, equity will impose a constructive trust on it for the benefit of (assignee) since value has been given and the conscience of (assignor) has been bound (Dixon J in Palette Shoes).

**No consideration:** Since there was no consideration given, equity will not assist the assignment and it will be ineffective (Norman). Therefore, (assignee) is not entitled to the expectancy.

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## YES: Purported assignment of property

### B: Is the property assignable?

Certain forms of property are incapable of assignment even though they are a chose in action.

- It is not possible to assign a right to remuneration of the holder of a public office.

Generally covered by statute.

- It is not possible to assign 'bare' rights to litigate (Equuscorp). However, there is an exception if the assignee has a genuine commercial interest in the enforcement of the claim (Trendtex affirmed in Equuscorp).

In Equuscorp, an original lender in a restitution claim regarding unenforceable loan contracts was permitted to assign its right to litigate to one of its creditors, as the creditor was involved in the scheme and had a legitimate commercial interest in the lender getting its money back.

### Conclusion:

## NO: Property cannot be assigned

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## YES: Property is assignable

### C: Based on the property, what assignment rules apply?

A chose in action is a right of property that can only be claimed or enforced by action (Channel J in Torkington).

Equitable chose in action	Legal chose in action
<ul style="list-style-type: none"><li>▪ Beneficiary's interest under fixed trust</li><li>▪ Partner's interest in assets of partnership</li><li>▪ Legatee's right to an unadministered state (deceased person's will, specific legacies but property has not yet been distributed in accordance with will)</li></ul>	<ul style="list-style-type: none"><li>▪ Debt owed by a debtor to a creditor</li><li>▪ A company share (dividend)</li><li>▪ Contractual rights (e.g., to interest)</li><li>▪ IP rights</li></ul>