

TOPIC 1 - HISTORY OF EQUITY (Chapter 2)

Law Reform (Law and Equity) Act 1972 (NSW) s 5

s 5 → Rules of equity to prevail

In all matters in which there was immediately before the commencement of this Act or is any conflict or variance between the rules of equity and the rules of common law relating to the same matter, the rules of equity shall prevail.

Topic 5 - The Law of Assignment (Chapter 5)

Conveyancing Act 1919 (NSW)

s 7(1) → stipulates that “conveyance” includes any assignment, appointment, lease, settlement, or other assurance by deed of any property.’ Thus, an ‘assignment’ of property is a ‘disposition’ of property.

12 → assignment of debt and chose in action

1. There must be a clear intention to make an immediate and irrevocable of a debt or chose in action to the assignee (Norman v Federal of Taxation)
2. **Absolute** – must be an outright assignment, not by way of charge only.
3. **In writing** – under the hand of the assignor.
4. **Express notice** – must be given to the debtor, trustee, or other obligor.
 - Legal title passes only from the date of notice.
 - Until notice, the assignment is only equitable.

23C(1)(c) → It needs to be considered in the case of declaration/ transfer / direction [creation of a trust]

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 the person's will, or by the person's agent thereunto lawfully authorised in writing.

(2) This section does not affect the creation or operation of resulting, implied, or constructive trusts.

The disposal of a subsisting equitable interest or trust must be contained in writing or in a will. => ‘subsisting’ at the time of the assignment (applies to both realty and personality), only applies to subsisting equitable interests in property, so if the assignor has both legal and equitable interest in property, this section does not apply.

Real Property Act 1900 (NSW)

s 97 → SEVERANCE OF JOINT TENANCY BY UNILATERAL ACT

(1) A joint tenant can sever unilaterally by registering a transfer of their own interest to themselves. Registrar-General must give notice of lodgement of a severing dealing to all other joint tenants (s 97(5)), unless exceptions apply.

Topic 6 - Dispositions of Equitable Interests and the Requirement of Writing (Chapter 6)

Conveyancing Act 1919 (NSW)

s 23C →

- s 23C(1)(a) [LAND] it involves legal and equitable interest in land. The creation or disposal of an interest in land must be contained in writing or in a will.
- s 23C(1)(b) [LAND] The declaration of a trust over an interest in land must be contained in writing or in a will
- s 23C(1)(c) [LAND AND PERSONALTY] The disposal of a subsisting equitable interest or trust must be contained in writing or in a will. => ‘subsisting’ at the time of the assignment (applies to both realty and personality), only applies to subsisting equitable interests in property, so if the assignor has both legal and equitable interest in property, this section does not apply.

Topic 12 Creation of Express Private Trusts (Chapter 21) -

Succession Act 2006 (NSW)

s 10(3) → witness/ beneficiary of a will disposition

If a witness to a will is also a beneficiary, the gift/disposition is void as to that witness (or anyone claiming through them). Exception:

- Two other independent witnesses signed the will (s 10(3)(a)), OR
- All persons who would benefit from avoidance consent in writing (s 10(3)(b)), OR
- Court approval – satisfied testator knew, approved, and acted freely/voluntarily (s 10(3)(c)).

43 → Dispositions to unincorporated associations of persons

Removes uncertainty of common law (where such gifts risked being void for uncertainty)

A gift to a non-charitable unincorporated association is treated as a disposition to the association's general funds.

Effect is that Property must be:

- Paid into the association's general fund, OR