LAW5008 PRINCIPLES OF EQUITY EXAM NOTES

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ASSIGNMENT OF PROPERTY RIGHTS IN EQUITY

Assignment is the immediate transfer of an existing proprietary right, vested or contingent from the assignor to the assignee (Norman). To ascertain who [owns/is entitled to] each asset it must be determined whether the assignment has been successful at law or in equity.

→ Apply below to each asset separately.

1. Present or future right?

As relevant:

- **Dividends/interest:** Interest that will accrue on a loan that could be repaid at will and dividends that might be declared on certain company shares is future property, so cannot be assigned (Norman – assigned expected dividend (w/o declaration) and loan repayable at will – future interests). → Future
    - C.f. declared dividend – the shareholder is owned a debt and it is existing property. → Present
- **Trust income:** A trust beneficiary's gift of trust income from future years is an assignment of future property, as the future years hadn't arisen yet (Williams – assigned trust income he wasn't entitled to yet). → Future
- **Right that already exists / right to tree v fruit:** Assignment of a right that already exists is the transfer of an existing proprietary right. A right that may bear no fruit is still assignable (Shepherd – assigned right to royalties). → Present

The property is:

- **Present:** present property as [reason, e.g. it already exists / is owned by assignor].
- **Future:** future property as it is [not yet in existence, not yet owned, transferor does not have rights in it yet].

2. Present property right

2.1 Value given

Assignment will be enforced like a contractual right. Property has passed at law.

2.2 No value given (gift)

Whether the assignment was good depends on the kind of property.

2.2.1 Legal property

The [property] is legal property, as it is [land, shares, chattels, legal debts etc].

Is the assignment complete according to the relevant transfer rules below?

- **Yes:** Successful legal assignment has passed at law.
- **No:**
    - Equity will not perfect an imperfect gift. It will look at what was actually done and intended (Milroy). Equity may regard the assignment as complete, provided the donor has done everything that is necessary for the donor alone to do (Corin v Patton – Patton meant the gift, signed the transfer but did not produce duplicate certificate of title).
    - Has the donor done all alone they can do?

- **Yes:** Assignment recognised by equity. Property in the asset has passed in equity.
- **No:** Assignment fails.

- **Part chose:** As [party] did not complete all the legal steps per s134 [e.g. transferred part of the debt], legal title has not passed. However, equity may recognise the assignment. → Go to equitable property.

2.2.1.1 Transfer rules

Legal property	**Legal requirements**
Torrens land	1. Proper instrument of transfer, signed + 2. Produce the duplicate certificate of title + 3. Registration with the titles office
Chattel	Delivery of the chattel with intention of transferring legal ownership OR Deed of assignment
Legal chose in action	Per s134: 1. Outright transfer of the whole debt, not by way of security or conditional + 2. In writing, signed by assignor + 3. Express written notice to the debtor of assignment.

2.2.2 Equitable property

2.2.2.1 Part chose in action

Equity will recognise a partial transfer of a legal chose in action where the assignor has to manifest an intention to make an immediate and irrevocable transfer. For part choses in action, there is no requirement for transfer to be in writing as s 53(1)(c) PLA does not apply.

2.2.2.2 Not part chose in action

The [property] is equitable, as it is [shares held on trust, partnership interest, beneficial interest under trust, equitable mortgage/lease]. This property cannot be assigned at law, but may be assigned in equity.

The requirements are that (1) the assignor has to manifest an intention to make an immediate and irrevocable transfer and (2) the transfer must be assigned in writing, signed by the assignor or their agent (s53(1)(c) PLA). [Apply 2 requirements].

- **2 requirements met:** Assignment recognised by equity. Property in the asset has passed in equity.
- **2 requirements not met:** Assignment fails.

3. Future property right

3.1 Value given

Where future property is assigned for value, equity gives effect to it the instant it exists (Norman; Tailby – assigned debts). This relates to the equitable maxim 'equity treats as done that which ought to be done'. The assignment fastens onto each item of property the moment

it comes into existence and can be identified, with no need for any fresh act of transfer (Holroyd v Marshall).
3.2 No value given (gift)
Fails – cannot assign future property right for value. Equity will not recognise any voluntary transfer of future property rights due to the equitable maxim 'equity will not assist a volunteer'.
4. Mere personal right
Fails – cannot be assigned.