

## ASSIGNMENT OF PROPERTY RIGHTS IN EQUITY

### ASSIGNMENT OF LEGAL PROPERTY FOR VALUABLE CONSIDERATION

**Principle:** An assignment for value which fails at law to assign legal property effects an equitable assignment when consideration is paid or executed (*Tailby v Official Receiver 1888*) [Future property, possibilities, and expectancies are all assignable in equity for value >> the mode or form of assignment is absolutely immaterial provided the intention of the parties is clear > to effectuate the intention on assignment for value, in terms present and immediate, has always been regarded in equity as a contract binding on the conscience of the assignor and so binding the subject-matter of the contract when it comes into existence, if it is of such a nature and so described as to be capable of being ascertained and identified]

**What is assignment?**

Transfer of an existing proprietary right

**Why might equitable title be significant?**

Allows for assignment; and right to dividends (*Re Rose (1952)*) [Mr Rose executed shares and died during process **Court Held:** once the share certificates had been signed and delivered in the proper form by Mr. Rose then the gift was complete in equity even though it was not complete at law. >>> Mr Rose had done “**everything that was necessary**” to satisfy *Milroy v Lord 1862* therefore, all that was needed to do was for the transferees to register the shares, which they did.

**If equitable title passes:** Held on **constructive trust** for assignee

### VOLUNTARY ASSIGNMENT OF LEGAL PROPERTY IN EQUITY

**Overarching Test for equitable title under rule in *Corin v Patton (1990)*** [*Ms Patton was terminally ill and didn't want husband to succeed her as joint tenant > wanted to give interest to children > Tried to sever JT to brother however died before completion > ISSUE; had she done enough? > Mason CJ and McHugh JJ > pursuant to Milroy v Lord 1862 she HAD NOT DONE “all that was necessary” in order to effect a transfer since she had not authorized the mortgagee to hand the*

certificate of title to the transferee. **Also did get consent from Mr Patton to sever JT**

**Test:** Has assignor done **everything necessary** for her to do to transfer title?

**Consider:** Is further action on part of assignor required?

Is there an attempt to assign an **interest in land**?

### Legal Requirement

Instrument of transfer signed by both parties and certificate of title; and  
**S23c Conveyancing Act** [Instruments required to be in writing] > **S 54A CA** [contract for sale of land to be in writing]

Registration (ultimately dependent on Registrar)

### **Sufficient at equity** (*Corin v Patton (1990)*)

Instrument of transfer in registrable form;

Delivered to donee along with certificate of title

**Delivery:** Note principles from *Thomas v National Australia Bank Limited & ors (2000)* regarding constructive delivery [there is no need for the notice of assignment to be first given]

### Examples where donor has not done enough

*Corin v Patton (1990)*: Failing to request certificate [ask permission from JT]; *Milroy*: *Milroy v Lord 1862* Wrong form of transfer [‘equity will not assist a volunteer’ > [Turner LJ ... three ways to give something were (1) legal transfer of title to the recipient (2) transfer of title to a trustee for a beneficiary (3) a self-declaration of trust] > [Turner LJ: the cases I think go further to this extent, that if the settlement is intended to be effectuated by one of the modes to which I have referred, the court will not give effect to it by applying another of those modes] > [‘Equity will not perfect an imperfect gift’]

**If solicitor acting for both parties holds key document** (*Marchest v Apostolou 2007*) [FACTS; Solicitor... acting for transferor and transferee in attempted gift of land to trustee > transfer of documents were taken, held with solicitor, no other steps were taken. HELD; As solicitor acting for both parties ... solicitor would not hold the transfer documents on behalf of the transferee until he had the transferors authority to treat them as the property of the transferee... on the facts the solicitor did not have this authority]

Who was correspondence sent to? What did response letters say?

Requirement to return documents when instructed not to proceed

**Is there an attempt to assign shares off-market?**

**Legal requirements**

Signed transfer;

Delivered to transferee;

Transferee signs transfer and it is delivered to company;

Company registers transfer (**s 1071B Corporation Act 2001**)

**Sufficient at equity:** To execute transfers and hand over certificates (*Milroy v Lord 1862*) [right mode] [sub sect 3; instrument show the details, specified in the regulations, in relation to the company concerned] [sub sect 4; sufficient transfer of the securities under the regulations made for the provisions of that division]

**Assignment does not change inherent character of chose in action**

Shares: Dividend entitlements unaltered (*Bluebottle UK Ltd v Deputy Commissioner of Taxation (2007)*) [‘If A, when contracting to pay money to B, makes it clear that his undertaking to B is of a personal character and that payment will be made to B alone, there is no reason why he should be compelled to accept a variation of the contract by being required to pay B’s assignee, C’. **equity follows the provisions of the company law and the constitution of Virgin blue which create and define the nature and scope of the rights with which equity deals under the assignments**]

**Is there an attempt to assign a complete chose in action? Or a debt**

- Choses in action are: ‘personal rights of property which can only be claimed or enforced by action, and not by taking physical possession’
- The method of transferring choses in action at law is prescribed by **s 12 Conveyancing Act 1919 NSW**
  - Assignments of debts and choses in action  
‘absolute...writing...express...notice’

**Examples:** Absolute debts

**Legal Requirements**

Assignment must be written and signed by assignor;

Express notice in writing must be given to the person from whom the assignor would be able to claim (ie bank)