

Equity Exam Notes

Breach of Confidence

Is the information defined with sufficient specificity?

- **Opening sentence:** The information must be defined with sufficient specificity (*O'Brien*) so that it can be particularised in pleadings (*Ocular*).
- On the facts _____

Does the information have the necessary quality of confidence?

- Firstly, the information must not be 'trivial' (*Hello! per Baroness Hale*)
 - However, it need not be commercial in nature (*Giller*)
- Secondly, the information must have a confidential or secret character/flavour
 - General idea may be known/generic but "commercial twist" or "particular slant" on a generic/publicly known idea is capable of producing confidential information (*Talbot*)
 - Attempts to secure/protect (*Hello!; Franklin*)
 - Application of skill and expertise to create it (*Saltman; Ocular*)
 - Info obtained from reverse engineering is not confidential (*Saltman*)
 - Some info is inherently confidential (*Giller; Lenah*)
 - Sex = inherently confidential (*Giller*)
- Thirdly, the information must not have entered the public domain (*Spycatcher; Jane Doe*)
 - Public domain' means the information is so generally accessible that, in all the circumstances, it cannot be regarded as confidential. In *Spycatcher*, the information had been published around the world, released in TV interviews and by other agents
 - "Speculative gossip" and "innuendo" (e.g. internet fora) does not mean information enters the public domain (*AFL v Age*)
 - Publication to a limited audience (e.g. friends, family and police) does not destroy confidence (*Jane Doe*)
 - The fact that court proceedings are public doesn't mean information stated in Court enters the public domain (*Jane Doe*)

Do the circumstances import a duty of confidence?

- Central to the action for BOC is that the defendant must be conscience bound to maintain the confidence
- **Test:** Circumstances import duty of confidence if a reasonable person in the shoes of the recipient have realised that the information conveyed to them was being given in confidence (*Coco v Clark per Megarry J*)
- **Information imparted to D:**
 - It may be so obvious it goes without saying (*Giller*)
 - Consider:
 - The communications btwn the parties (*Smith Kline*)

- Nature of the information itself (*Spycatcher*)
 - Some info is 'obviously confidential' (*Spy*)
 - Past practice btwn parties (*Smith Kline*)
 - Is the information sensitive (*Smith Kline*)
 - Has the confider expressed a limited purpose (*Smith*)
 - Tension between 'blurring' (*Coco*) and the nature of the information itself which may be 'obviously confidential' (*Spycatcher*) – e.g. diary or docs marked top secret (*Spycatcher*)
 - **Information improperly taken:**
 - Thief who steals trade secret is under obligation of confidence (*Franklin per Dunn J*)
 - Although the manner in which information is obtained does not transmogrify ordinary information into confidential information, it may give rise to a duty of confidence (*Lenah*)
 - **Obtained by another and passed onto a third party:**
 - Third party is under obligation if they knew or ought to have known about the confidentiality of the original communication (*Hello!*)
 - In *Hello!*, Hello! magazine knew of the circumstances importing the duty when they acquired the photographs from Mr Thorpe and they were accordingly bound by obligations of confidence
 - **Accidentally obtained:**
 - Inadvertently finding an 'obviously confidential' documents such as a diary or 'secrets of importance to national security' would attract a duty of confidence (*Spycatcher per Lord Goff*)

Is there a breach of duty?

- Breach exists where there is 'unauthorised use' of the information (*Coco*)
- This includes 'threatened' or anticipated breach (*Moorgate*)
- Where any use is prohibited the P simply needs to show use – this applies best for taking cases (*Franklin*)
- Where disclosure is made for a limited purpose P needs to show use fell outside the permitted scope (*Castrol*)
- In *Castrol* the report was provided for purpose of whether advertising was okay; use to prosecute for other consumer law outside scope
- In *Smith* restriction on use did not extend to exercise of statutory functions but regulator could not pass on to a 3P for instance
- D__ will argue that their use did not cause detriment (*Coco per Megarry J*)
- P__ will counter-argue that detriment is not required (*Smith per Gummow J; Moorgate*) because the obligation is to 'respect the confidence' not to refrain from causing detriment
- D__ will try to rebut that the statements about detriment in *Smith Kline* and *Moorgate* were only obiter

Was disclosure/publication in the public interest (PI)?

- In the UK BOC can be defended by showing an overriding PI (*Spycatcher*) but Australian Courts have been more restrictive (*Smith per Gummow J*)
- Defence in Australia is not 'clear and settled' (*AFL per Kallem J*)

- Some say it is not a stand alone defence (*Smith per Gummow*)
- If there is another way to achieve the PI w/o breaching confidence then it is difficult to argue PI defence is made out (*Castrol; AFL*)
 - In *AFL* the AFL dealt with drug use as part of a well-researched 3 strike drug policy so PI was in allowing this process to run
- PI needs to be serious and more than public curiosity and it is high threshold (*Kumar*)

Does publication/disclosure expose an iniquity?

1. Does disclosure expose an iniquity which is a crime or serious misdeed of public importance? (*AFL*)
 - The defence is high-threshold and will only apply if it concerns serious wrongdoing (*AFL*) – isolated drug use is not sufficiently serious to justify breach of confidence and mass publication
2. Is the iniquity one that affects the community as a whole? (*AFL*)
3. Is it disclosed to someone with a 'real and direct' interest in redressing the wrong? (*AFL*)
 - The Age disclosed the purported iniquity to the general public who did not have a 'real and direct' interest
 - Age published b/c to increase readership not redress iniquity

Remedies

- Can only be personal
- Injunction is key remedy
- Awards have included various personal remedies:
 - Orders for destruction and/or delivery up (*Franklin v Giddins*)
 - Equitable compensation
 - Equitable damages
 - Account of profits

Breach of Fiduciary Duty (BOFD)

Existence of a Fiduciary Relationship (FR)?

- Accepted categories:
 - Partners (*Chan v Zacharia*)
 - Trustees and beneficiaries (*Keech v Sandford; Boardman*)
 - Employees and employers (*VUT*)
 - Directors and companies (*Regal Hastings*) – in addition to directors' duties under *Corporations Act*
 - Solicitors and clients (*Farrington; Bolkiah; Spincode*)
 - Bankruptcy trustees and creditors
 - Agents and principals
 - Bailor entrusts bailee goods for a limited purpose bailment (*HP per Mason*)
 - Joint Venturers (*UDC v Brian Pty Ltd*) – In *UDC* they analogised to partnerships – uncertain whether this is accepted category – Joyce did not recognise this as an accepted category

- Outside of the accepted categories, judicial practice has varied considerably on what gives rise to FRs. Accordingly, it is preferable to look for indicia or 'critical features' (*HP per Mason J*) of FRs on the facts.
- Indicia:
 - D 'undertakes' to perform a task on behalf of someone else or in their interests (*HP per Mason J*)
 - Contract can help show this (*HP per Mason J*)
 - Inequality of bargaining power (*HP per Mason J*)
 - Dependency or vulnerability of P (*HP per Mason J and Dawson J*)
 - Trust and confidence is not a necessary or conclusive indicator of fiduciary relationships (*HP per Gibbs CJ*).
 - 'Relationship of ascendancy or influence' (*Breen per Brennan CJ*)
 - Scope to unilaterally exercise discretion or power which will affect the P (*HP per Mason J*)
 - E.g. Custodianship of goodwill (*HP*)
 - E.g. Scope to receive information and profit-making opportunities from position indicate a fiduciary relationship exists (*See, eg, Boardman*)
- Factors which may point away from FR:
 - Courts have been traditionally less likely to recognise fiduciary relationships in commercial contexts and this concern prevailed in the majority decision in *Hospital Products*
 - Just because a relationship is 'commercial' does not mean it won't be fiduciary if 'it manifests the characteristics of a fiduciary relationship' (*HP per Mason J*)
 - Parties are able to protect themselves (*HP per Gibbs CJ*)
 - USSC could have included protective clauses in K (*HP*)
 - Arms-length transaction (*HP per majority*)
 - Ability of D to profit (*HP per majority*)
 - K in *HP* allowed HP to profit
 - The relationship is workable without fiduciary obs (*Breen*)
 - Doctor-patient works fine under tort and K
- *Habib* also shows that it is possible to adopt the language of a fiduciary relationship without necessarily fulfilling the claim
- **ANALOGISE** – *UDC* Court analogised JVs to partnerships
 - Can analogise advisor relationships to legal advisors

What is the scope of the FR?

- The scope of the fiduciary obligations must be 'moulded' to the facts (*HP per Mason J*) and is therefore a fact-dependant exercise (*Birtchnell*)
- Look to function and responsibility of the fiduciary (*HP*)
- Scope takes into account contractual regime (*HP*)
- Look to actual course of dealings btwn parties – substance over form (*Birtchnell*) – can be wider than K
- In *Breen Gummow J* found fiduciary relationship but did not think it extended to obligation to provide medical records

Was there a BOFD?

- **Conflict rule:** Fiduciary must not act where there is a 'real sensible' (*Boardman per Lord Upjohn*) or 'significant' (*Chan*) possibility of conflict.
- **Profit rule:** Fiduciary must not use position to make unauthorised profit (*Chan*)
- Conflict can be: Interest-duty; or Duty-Duty
- **Interest-duty:**
 - Identify the personal interest
 - E.g. profitable investment/transaction (*Boardman*); commission/bribe (*Grimaldi*)
 - Traditionally it has been said that the conflicts rule is 'strictly pursued' (*Keech*) and 'inflexible' (*Boardman*) although Deane J in *Chan* warned against such strict application.
 - Analogue:
 - Using information gained in a fiduciary capacity to profit personally (*Boardman*; *Equity Trustees*) notwithstanding the fact F's actions benefit the principal also and are performed in good faith (*Boardman*)
 - Conflict between personal interest in obtaining property, rights or opportunities vs. duty to let those flow to the partnership/principal – e.g. in *Chan* the defendant blocked renewal of the partnership's lease and then secured the lease for himself
 - Interest in receiving bribe, spotters fee or commission to do something not in principals best interests (*Grimaldi*)
 - Joint venturer pursuing or retaining for itself any collateral advantage in relation to the project without the knowledge of the others (*UDC*)
 - Using fiduciary position to give advice which is in your interests or in a way which brings you profit (*Nocton*)
- **Duty-duty:**
 - Identify whether there are two fiduciary duties owed
 - Are those two duties in conflict or possible conflict?
 - Solicitors loyalty must be undivided at all times (*Farrington*)
 - *Bolkiah* says fiduciary obligations end when retainer ends, *Spincode* says they survive – each party will use different case
 - F may be restrained from acting on basis of confidential information (*Bolkiah*; *Spincode*)
 - F can always be prevented from acting under the Court's inherent jurisdiction to police its own officers if it would harm the administration of justice for F to act (*Spincode per Brooking JA*)
 - Analogue:
 - Concurrent conflict = *Farrington*
 - Accountant/financial advisor giving expert report is not in BOFD if report is not sound (*Pilmer*)
 - Successive conflict = *Bolkiah* and *Spincode*
- **Profit rule:**
 - 'Inflexible' rule (*Boardman*)

- Irrelevant whether P acted in good faith and P suffered no loss (*Boardman*) or P could not have obtained it (*Regal*)
- Breaches include:
 - Exploiting knowledge gained in fiduciary capacity (*Boardman*; *Regal Hastings*)
 - One partner diverting an opportunity due to partnership (*Chan*)
 - JV acquiring undisclosed benefit (*UDC*)
 - Bribes (*Reid*) & secret commissions (*Grimaldi*) (*c.f. Sinclair*)

Defence of consent?

- No BOFD if D consents or ratifies the breach after full and frank disclosure
 - D's action must be 'duly authorised' (*Chan per Deane J*)
- All principals must consent (*Boardman*)
- Generally directors cannot consent to their own breach of fiduciary duty (*Regal*) and a shareholder GM would be required. However, if directors and shareholders are substantially the same, as in *Queensland Mines* then board consent would suffice even if the board was not meeting as shareholders.

Third party liability?

- Knowing assistance (*Barnes v Addy 2nd limb*)
 1. 3P must assist in the breach
 - Low threshold given that sitting in on meetings to set up a trust to defraud the principal = assistance in *Quince v Varga*
 2. With knowledge of D's 'dishonest and fraudulent design'
 - Level 4 or higher *Baden* knowledge required (*Farah*; *Westpac*)
 - 'dishonest and fraudulent design' means fraudulent on equitable principles and a breach which would not be excused (*Westpac*) – However, in *Hasler* the Court said it means a transgression of ordinary standards of honest behaviour'.
 - Knowledge of a director is attributed to company (*Grimaldi*)
 - In *Consul*, Clowes had no knowledge that the fiduciary was engaged in a fraudulent design; he had undertaken independent research and concluded that P was unable to pursue the development itself due to financial difficulties.
- Knowing receipt (*Barnes v Addy 1st limb*)
 1. Third party received trust/fiduciary property;
 - Must have beneficial receipt
 - What is property?
 - Information is not property (*Farah*)
 - BUT Court in *Farah* said trade secrets may have a sufficient proprietary flavour to enliven KR
 - Choses in action are property (*Westpac*)
 2. Third party knew or had reason to know of the circumstances constituting the breach (*Grimaldi*)
 - *Baden* level 4 knowledge required (*Grimaldi*)
 - Knowledge of a director is attributed to company (*Grimaldi*)

- Underlying breach need not be dishonest or fraudulent because we are stricter on those who actually receive (*Westpac*)
- *Baden* scale:
 1. Actual knowledge
 2. Wilfully shutting eyes to the obvious
 3. Wilfully/recklessly failing to make enquiries an honest/reasonable person would make
 4. Knowledge of circumstances that would indicate facts to honest/reasonable person [Sufficient for 3P liability]
 5. Knowledge of circumstances that would put an honest/reasonable person on enquiry [Not enough for 3P liability]
- Corporate alter-ego liability:
 - As an alternative basis of liability, 'where the third party is the **corporate creature, vehicle, or alter ego** of wrongdoing fiduciaries who use it to secure the profits of, or to inflict the losses by, their breach of fiduciary duty' then the third party company is fully liable to account or pay compensation and it is 'artificial' to use *Barnes* to explain this liability (*Grimaldi*)

Personal Remedies

Specific Performance

- Specific performance is a court order directing a party to a contract to perform the obligation it imposes on them
- An order for specific performance is not available if:
 - The continued supervision of the court is necessary to ensure the fulfillment of the contract: *Williamson v Lukey & Mulholland*
 - Performance of the contract is impossible
 - The contract is one for personal services (*Lukey per Dixon J*)
 - Damages would be an adequate remedy
 - Performance of the contract is illegal or contrary to public policy – e.g. contract for provision of services by prostitute
 - Where there is no consideration there is no enforceable contract and therefore there can be no SP
- It also appears from Dixon J's judgment in *Lukey* that there must be mutuality of SP. If the D could not obtain SP against the P then it would be 'contrary to principle' to award P SP.

Injunction

- Injunction can be mandatory or prohibitory
- Interim Injunction: Gleeson CJ in *Lenah Game Meats* P must show:
 1. A serious question to be tried (prima facie case)
 2. He will suffer irreparable damage if the injunction is not granted; and
 3. Balance of convenience favours granting an injunction – Consider:
 - Balance potential harm to P if not granted vs inconvenience to D if granted when it shouldn't have been
 - Delay
 - Effect on third parties

- Whether other compensation would be adequate
 - Effect of business
- What if injunction amounts to forcing SP:
 - In *Lumley* the Court was willing to enforce the restraint clause as the D bound herself voluntarily
 - In *Atlas Steels* the court refused to grant an injunction against breach of a contractual clause, declaring an injunction to be an attempt to enforce the contract indirectly
- Discretionary factors:
 - Damages must not be an adequate remedy
 - Applicant must come to equity with clean hands
 - Applicant must not delay
 - Injunction must not cause undue hardship

Specific Delivery

- Courts can also make order for specific delivery of chattels (*Atkins; Franklin*)
- An order for specific delivery of property can also be used in conjunction with a prohibitive injunction
- *Atkins v Cooper*: interlocutory injunction granted restoring possession of dog to plaintiff

Declarations

- A declaration can only be sought by a person with a 'real interest'
- Per **Supreme Court rule 23.05** a declaration can be sought without consequential relief
- Declarations may be sought in relation to proposed activities: *Cth v Sterling Nicholas*

Equitable Rescission

- Aim is to do what is 'practically just' between the parties (*Vadasz*)
- Equity can do partial rescission and monetary adjustments (*Vadasz; Makaronis*)
- If a court would have granted rescission but it is no longer possible (e.g. there is a BFPFVWN) then the court may grant monetary rescission (*McKenzie v McDonald*)

Account of profits

- Aim is not to punish but to strip the wrongdoer of profit (*Warman*)
- Any reasons for refusing AoP:
 - Election of compensation (*Warman*)
 - Might be unconscionable for P to assert AoP in the circumstances (*Chan per Deane J*)
 - Delay: If P delays because D is doing good job profiting and wants profit to rack up before claiming they may be denied (*Warman*)
- The 'cardinal principle' is that the remedy must be fashioned to the facts of the case (*Warman*)
- How do you calculate it?

- Approach 1: Give a full account of profit and then an offset to compensate the D for their capital, skill, labour, etc (*Boardman*)
- Approach 2: How much of the profits generated by P were referable to the breach? (*Warman*)
- AoP can be secured by equitable charge (*Warman*)
- Can get AoP from multiple wrongdoers (*Michael Wilson*)

Equitable compensation

- Equitable compensation is strictly an **alternative** claim to AoP because it is an inconsistent remedy
- **Aim:** The aim is 'restitution' (*Re Dawson*) and this means to put P in position they would have been in before breach (*Nocton*)
- 'But for' test (*Youyang*) and no requirement of remoteness (*Re Dawson*)
- P can get compensation for purely mental distress and emotional harm (*Giller; Jane Doe*)
- No requirement to mitigate losses or doctrine of contributory negligence (*Pilmer*) per se but if P has clearly contributed to their losses then Courts can exercise discretion in relation to the amount of compensation (*CBA v Smith*)
- Compensation for future loss (*W v G*)
- Can get aggravated but not exemplary damages (*Giller*)
- In some cases both remedies may be available (where there is more than one D):
 - Can seek AoP from multiple wrongdoers and quantum differs depending on what each wrongdoer profited (*Michael Wilson*)
 - Cannot have equitable compensation against each wrongdoer because that is double recovery
 - Can seek equitable compensation from one wrongdoer and AoP from another wrongdoer (*Club of the Clubs; Michael Wilson*)

Lord Cairns Act (LCA) Damages?

- P can get damages in lieu of an injunction under s 38 SCA
- Can be awarded despite discretionary factors (*Giller per Neave JA*)
- *Mills v Ruthol* explains that the question is whether the facts give rise to the possibility of an injunction or specific performance
- Damages will be reduced if plaintiff sits on rights and does not take steps to mitigate, although there is no strict duty to mitigate (*Mills*)
- Can get aggravated damages (*Giller*) but not exemplary (*Harris*)

Are there any equitable defences?

- **Laches:** If the P unreasonably delays in bringing an action the court may refuse equitable relief pursuant to the doctrine of laches (*Baburin*)
 - Court will look to the effect of the delay (*Baburin*) – consider:
 - Acts done in the interim – people change position?
 - Would evidence be difficult to obtain? (*Baburin*)
- **Hardship:** Where a remedy may cause hardship to a D, the court has discretion to refuse it (*Patel*)

- Not every disadvantage or hardship will be sufficient e.g. financial inability not hardship
- **Unclean hands:** Equity may deny a remedy if P has unclean hands
 - Must have nexus with equity being sought (*Black Uhlands*)
 - Proportionality: If P's conduct is minor and D's breach is egregious clean hands will be no bar (*Argyll*)

Proprietary Remedies

Can (P) assert a CT over _____ (the asset)

- Where P appropriates trust/fiduciary property a CT arises from the time the property is taken on an institutional basis (*Foskett*)
- Where P diverts an opportunity properly due to the principal (*Boardman; VUT*) then a CT arises at the time of breach on an institutional basis
- Exploitation of knowledge gained by virtue of fiduciary position is
- In *Reid* the Court held an institutional CT arose in bribe/secret commission cases but more recent Australian authority suggests this is incorrect and a CT in bribe cases shall be remedial (*Grimaldi*)
 - D will argue that the court should adopt the *Lister* and *Sinclair* reasoning which posits that no CT can arise in relation to a bribe because that money would never flow to the principal
 - P will rebut that this is not good law in Australia nor the UK anymore post *FHR*
- CT is discretionary remedy (*Giumelli*) – e.g. third parties and is lesser remedy sufficient
- Not available for *Barnes v Addy* liability
- Can get a trust over trade secrets (*Farah*)

Can (P) assert an equitable lien over _____ (the asset)

- Can be awarded to secure AoP (*Warman*)
- Does not capture increased value but is preferable if asset depreciates
- P should seek lien over CT where:
 - The asset has dropped in value;
 - The asset is mixed with defendant's asset (discussed in tracing); or
- Third party interests make a CT inappropriate

Can (P) trace into _____ (the new asset or asset with third party)?

- Tracing is a process (*Foskett per Lord Millet*) whereby a P can identify property in the hands of the defendant or a third party
- P can claim against the original wrongdoer for the trust/fiduciary property or its traceable proceeds or anyone who derives title from the original wrongdoer except for a BFPFVWN (*Foskett*)
- Where D mixes the fiduciary property with their own and subsequently spends some it is presumed they spent their own money first and preserved the fiduciary property (*Re Hallett; Brady*) unless the D profitably invests and then dissipates the remainder (*Re Oatway*) – the

overriding principle is that D is presumed to preserve the fiduciary property (*Re Oatway*)

- Where D mixes the fiduciary property with their own and then purchases a single indivisible asset the Court can order a proportionate CT (*Foskett*; c.f. *Scott*) given proportionate CTs have been recognised by courts of equity since the 1985 case of *Dodds*
- Can get CT + personal monetary remedy if CT doesn't cover whole breach because D has dissipated the remainder of the money
- Cannot get CT + personal monetary remedy if CT doesn't cover the whole breach because the asset D purchased has declined in value
- Where multiple fiduciary property is mixed the original rule was 'first in first out' (*Clayton's Case*) but it is more likely to be rateably distributed now (*Foskett per Lord Millet*)
- P may be able to trace into property in hands of third party if they are not BFPFVWN (*Re Diplock*)
 - If third party dissipates you cannot trace (*Re Diplock*)
 - If third party mixes funds to purchase a new asset only entitled to lien (*Re Diplock*) and lien will not capture increase in value but will rateably share in decline in value (*Re Diplock*)
 - P may argue this predates *Foskett* and proportionate CT would be ordered today
 - Where the money is used to paid secured or unsecured debts, tracing ends as there is no identifiable property in the hands of the volunteer and the creditor is a BFPFVWN (*Re Diplock*)
 - P may argue this is bad policy
 - Where the money is used to renovate/improve an existing asset it is treated as dissipated (*Re Diplock*). The Court in *Re Diplock* held this to be so because one cannot tell if the asset actually increases in value.

Equitable Assignment

Was the property validly assigned at law?

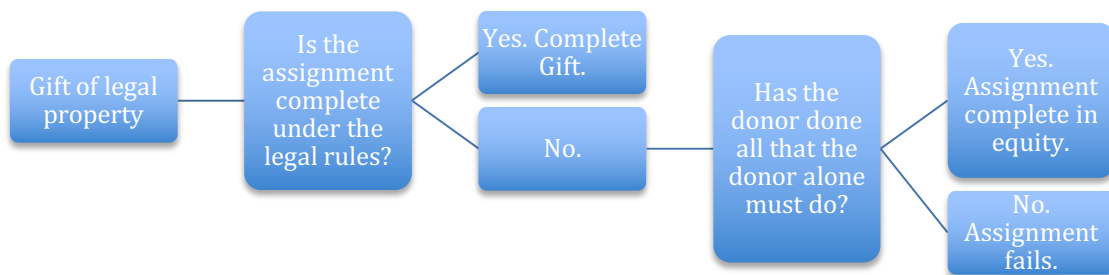
- NA for equitable property such as beneficial interest under trust or partnership interest
- NA for legal property that cannot be assigned at law like part chose in action
- S 134 *PLA* requires:
 - Absolute assignment
 - Writing and signed by assignor
 - Notice given to debtor
 - Can be from either party (*Anning*)
- Right to assign may be affected by contract (*Bluebottle*)

General law land	Deed: <i>PLA 1958 s52(1)</i>
Torrens system	Registration of executed instrument of transfer with

land	duplicate CT: TLA 1958 ss27E, 40
Choses in possession	Delivery with intention of transferring legal ownership, or deed of assignment
Shares sold off-market	Transfer form signed by assignor + Registration in books of company of an instrument in prescribed form + share certificates: Corporations Act 2001 s1071B
Life Insurance Policy	Memorandum of transfer endorsed on policy, signed by both and registered by policy issuer: LIA 1995 s200
Cheques	Made out to 'bearer' and 'cash' by delivery. Made out to a person by endorsement & delivery: Cheques Act 1986 s40
Other bills of exchange	Endorsement & delivery: Bills of Exchange Act 1909 ss36(3), 95
Debts or other legal choses in action	Writing signed by the transferor and notice to the debtor or other party of the transfer: PLA 1958 s134

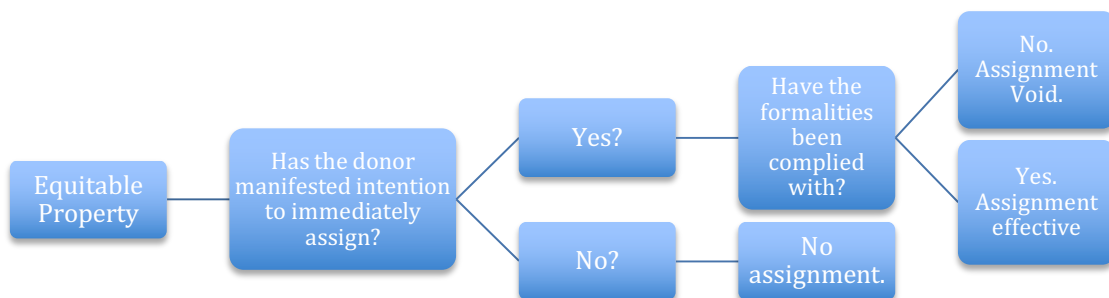
Was the property validly assigned in equity? (Legal property)

- Equity will not perfect an imperfect gift (*Milroy; Jones*) but will regard the assignment as complete if the donor's conscience is bound. The donor's conscience will be bound where they have done everything they alone must do (*Anning per Griffith CJ; Corrin v Pattin*)
- Deane J in *Corrin* stated that the transfer must also be 'beyond the recall' of the donor for equitable title to pass
- In cases where a solicitor or agent acts for both parties the question is whether the solicitor can take instructions from the donee to complete the transfer – this is a question of authority (*Marchesi*)
- For shares the point at which the executed transfer forms are sent to the company in order for the company to change the record in their books is the point at which equitable property passes because the donor has taken all steps that they alone must take (*Re Rose*)
- If consideration has been given by the assignee then equity regards the assignor's conscience as bound and they will hold the property on CT
- Title to chattels will pass when delivery and intention to transfer coincide (*Stoneham; Thomas*)
 - Order does not matter (*Thomas*)
 - Constructive delivery is acceptable (*Thomas*)



Was the property validly assigned in equity? (Equitable property)

- **Test:** Gift of equitable property is complete in equity when the assignor has **manifested an immediate and irrevocable intention to assign the property** (*Norman*)
- Despite equity's acceptance that beneficial title has passed the transfer may still be subject to writing requirements under **s 53(1)(c) PLA**
- Writing is not necessary for a part chose in action because it is not equitable property



Is the property present or future property?

- Cannot assign future property voluntarily (*Norman*)
- Certain property is capable of being characterised as either present or future property and therefore it will turn on how the donor has described the property (*Norman; Shepherd*)
- Does the deed describe a present right or the money/property itself which does not yet exist (*Williams; Norman; Shepherd*)
- A present right to future income may be assigned: *Shepherd*
- It doesn't matter whether that right actually results in any income or not; if it is a presently existing right it can be assigned: *Shepherd*
- Conversely an attempt to assign income that has not yet accrued will fail: *Williams*
- If the contract under which the right exists can be unilaterally terminated there is no present assignable right: *Norman*
- Can assign a declared dividend but not undeclared dividend (*Norman*)