

EQUITY AND TRUSTS

SUMMARY



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01 General Principles

1.1 History and nature of equity

Equity was developed from the Court of Chancery as a result of the need to deal with the deficiencies and strictness of common law. Equitable decision-making by courts is therefore characterised by two things: 1) the exercise of the court's discretion; and 2) the fact the court of equity is a court of conscience. 'Conscience' does not mean judges decide according to his or her personal convictions. Rather, equity is based on certain principles (or "maxims"). These will be referred to in italics where relevant.

Although the administration of equity law was formerly limited to the Court of Chancery, the *Judicature Acts* of 1873 and 1875 (Imp) and similar reforms in Australia now mean equity and the common law are administered together. However, they remain separate bodies of law which can conflict. In the case of conflict, it is an important principle that the rules of equity will prevail.

Fiduciary and trust law are a particular subset of equity which are particularly important and will be discussed separately. This summary will first deal with the assignment of equitable rights and general equitable remedies arising from unconscionable conduct. Fiduciary and trust obligations and their remedies will then be dealt with separately.

02 Equitable assignment

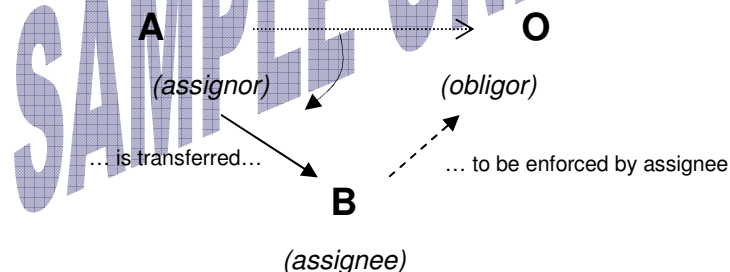
Equitable and legal choses in action can, in some cases, be assigned to a third party. Equitable assignment kicks in when the transfer is not legally effective (i.e. hasn't complied with formalities etc).

2.1 Issues and Background

- This deals with the question of how **choses in action** are successfully transferred from one party (the assignor) to another (the assignee). **Choses in action** = 'all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession': *Torkington v Magee* [1920].

E.g. debts, right to dividends in a company, royalty rights, etc.

Equitable assignment always involves a **third party**, because these rights must be enforced against someone – i.e:



Originally, CL did not allow choses in action to be transferred, as it was contrary to public policy. Equity, however, allowed assignment from an early stage.

Now, assignment of rights can be achieved through **statute** or through **equity**.



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