

# Assignment of future property expectancies mere expectancies law equity essay

Law



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## **Introduction**

Equity is a system of doctrines, rules and remedies which developed at the same time as, but separately from, the common law. Therefore, it is not law, as such, but rather a complementary and often remedial jurisdiction, which operates parallel to the common law system.[1]Equity's principle contribution to property law is the trust, which imposes obligations on a title holder of property to manage the property for the benefit for other individuals or for legally approved purposes. The nature of equity was established in *Dudley v. Dudley* (1705).[2]Equity can be referred to as a set of principles that originated and exercised from the English High Court of Chancery before 1873. Through discussions on the history of equity, assignment of property, expectancies and mere expectancies a more detailed definition of equity and its principles can be established. Several principles derived from case laws throughout the history of equity make it easier to understand how it affects the nature of modern law today. Whether it is a present or future right, equity provides a system of law which sets out to provide a more equitable and effective system of justice in modern society. Over a period of time equity has lead to changes which is to be expected due to the changing nature of society.

## **Assignment of Future Property, Expectancies, Mere Expectancies**

Future property is property which the assignor has a right to attain in the future but does not have to that property at the time of the assignment to the assignee. Future property cannot be assigned at common law because the assignor has no title to assign. Future property cannot be effectively assigned without consideration in equity. Therefore the absence of consideration renders an assignment of future property completely inadequate. An assignment is the immediate transfer of an interest in property. Property, for this purpose, includes intangible property, such as a chose in action, for example the right to enforce a contract. Common law and statute prescribe formalities for the transfer of most forms of property. Equity enables property to be assigned where the method of assignment does not comply with these rules. It also enables 'future property', meaning property to which the transferor does not at present have a title to be assigned. This does not mean that equity disregards form or adopts an anything goes approach to the assignment of property. Equity applies its own requirements, in some cases by requiring the assignee to provide valuable consideration for the assignment, and in other cases by requiring the assignor to have taken all legal steps necessary for him to complete the assignment, even if other legal steps have not been taken by the assignee or by a third party. Lord Macnaghten stated in the case of *Tailby v Official receiver* (1888)[3]" it has been long settled that future property, possibilities and expectancies are assignable in equity for value". This case has been cited for the common intention that an assignment of future property for consideration is successful to pass an equitable interest in the property to <https://assignbuster.com/assignment-of-future-property-expectancies-mere-expectancies-law-equity-essay/>

the assignee once the property comes into the assignor's hands. The assignment of future property in this way does not need to be 'specifically enforceable' in order for equity to intervene. If there is a legal method prescribed for the assignment and it has been completed, the effect is to transfer both legal and equitable ownership to the assignee and there is no need to turn the rules of equity, but if it has not been completed, the assignment is not valid at law but an equitable interest may arise (although it fails in law, it may still apply in equity). It is clear that the assignment of property is a distinctive area of the law which needs careful analysis on its above principles. The leading case in the area concerning all of the above is *Norman v Federal Commissioner of Taxation*[4] whereby a taxpayer tried to assign income. The deed of assignment voluntarily assigned dividends to be earned on shares. The High Court held unanimously that the yet to be declared dividends were future property and could not be assigned without consideration.[5] They were future in that the dividend did not yet exist and indeed might never be declared by the company. Another clause of the deed of assignment attempted voluntarily to assign interest to be earned on a loan. The loan has some unusual features. Interest only became payable on an annual basis but the borrower could repay the loan at will. This meant that if the borrower chose to repay the loan in a particular year, no interest would become payable in the following year. It could not be said at the same time of the assignment that the interest would ever be payable.[6] A majority of the high court held that this was therefore an assignment of future property and, as it was not for consideration it was ineffective. Future property must be distinguished from expectancy and a mere expectancy.

Under expectancy, the holder has a right to receive something at some time in the future, but the "something" may or may not eventuate. Only the right to receive the expectancy is assignable voluntarily. The actual property can be assigned in equity but not voluntarily. It must be assigned with consideration. Some examples include the royalties due in intellectual property, dividends on shares and interest on a loan repayable at will (two elements: 'present right to receive' and 'actual property in the future'). A mere expectancy is where the person expecting to receive the property has no existing right to receive it. A mere expectancy cannot be assigned in equity because there is nothing to assign. Examples include an interest under the will of a person who is still alive and the interest of a person who is a beneficiary under a discretionary trust. The case of *Norman v Federal Commissioner* can be contrasted with *Shepherd v Federal Commissioner of Taxation*.<sup>[7]</sup> The inventor of a furniture castor granted a license to produce the castors to a manufacturer who was to pay him royalties based on the number produced. He attempted to assign voluntarily a percentage of royalties. Royalties are defined as "a payment made for the right to take materials or substances, and calculated on the quantity taken or the value of the material or substance taken, or the occasions on which the right is exercised."<sup>[8]</sup> The commissioner argued that this was an assignment of future property. As the manufacturer was not obliged to produce any castors at all, it could not be said with certainty that any royalties would be earned under the agreement. However, the High Court held by majority<sup>[9]</sup> that the transaction here was an assignment of part of the contractual right to receive royalties, rather than an assignment of the yet unearned royalties

themselves. Shepherd and Norman are difficult to reconcile and ultimately turn on the wording of the assignments. However Shepherd appears good authority for the proposition that assignments of assets that may produce income in the future can be made voluntarily.[10]A person who has a mere expectancy or an interest that is future property may attempt to assign it to another for valuable consideration; equity treats this transaction as a contract to assign. If and when the assignor receives the property, equity deems done that which ought to have been done, and regards the property as owned beneficially by the assignee. This is because the assignee has given consideration, and the assignor's conscience is bound. The main distinction between Shepherd and Norman is that Shepherd assigned his right to receive the expectancy, whereas Norman assigned the expectancy itself. Whilst a mere expectancy does not give the holder a proprietary interest enforceable directly against property, as does an equitable proprietary interest, it does confer a right to apply to equity for a remedy that would lead to the acquisition of a proprietary interest and arises out of the holders dealings with a particular property. Therefore, a mere equity may be described as a stepping stone in gaining an equitable proprietary interest. The case of Giumelli v Giumelli[11]was important in determining and understanding the concept of mere equity. This case involved two parties the parties and their son. The parents in this matter made an oral agreement with their son that if worked on the farm continuously in return he would receive part of that land (sub-divided). This part of the land would have the title transferred into the son's name. The son continued to work on the land and eventually got married. A Fall out occurred between the sons wife and



the parents leading to the son wanting to move of the property for the sake of his marriage. He asked his parents for the property to be transferred in his name. The parents refused to commence such an action. Proceedings were brought against the parents by the son and a declaration of a constructive trust was sought over the property. A mere equity was held in favour of the son. Overall a mere expectancy is not assignable under common law or equity because it concerns something that is inexistent as shown above.

## **History and Nature of Equity**

These above principle reflect the nature in which the history of equity[12]has developed and provided equality within the modern day Australian jurisdiction. Overall equity looks to the intent and not the form of a legal transaction.[13]There are however differences between legal and equitable interests in property. Legal interests in property provide for the owner a legal interest whereas in equity the interest provided is that of an equitable nature and may even make an assignment valid even if it fails a certain formality of equity such as a written form.[14]It is the maxims[15]of equity which have changed the nature in which equity has been used today. These maxims of equity are the general statements of basic equitable principles in which the doctrine of equity is founded. Although maxims gives us an insight into the nature and history of equity they are not rules of law and cannot give explicit answers to specific problems encountered under equity. The importance of the maxims lays on the fact that they reflect certain fundamental ideas and values within the equitable jurisdiction. Equity sends several confusing messages that it is above the law and provides for a different means to loop-hole the system. What must be understood is that equity ' follows the law' as

shown by being the first maxim of equity. In the context of this maxim the term follow does not mean to do as you are told or replicate, but rather it means to accept and recognise. In other words equity recognises the intent, interests and titles of the common law. Thus, in a dispute involving a legal right, equity cannot terminate or even refuse to recognise this right. It simply only provides a remedy that links to or in some way enhances the legal estate. Equity aims to provide remedies for only those who have given considerable value in the assignment of property. The maxim of equity will not assist a volunteer is an example of equity looking beyond this form but merely to the substance of the assignment. An assignment according to *Norman v FCT (1963)* is the immediate transfer of an existing proprietary right from the assignor to the assignee for value or a gift.[16] This important principle in equity sets out that it will not grant a remedy to a plaintiff who was a volunteer. What is important to understand in this maxim as it affects modern issues today is that the plaintiff suffered a detriment in loss of time, effort and or money. This can argue the point made in *Shepherd v Commissioner* where a present right to receive property in the future may be assigned in equity voluntarily. Therefore as shown above on the basis of this maxim equity will not enforce a promise to a gift of property, since the party receiving will not have given consideration to the benefactor. The nature of these maxims is just a mere example of the principles[17] equity forms in order to provide equality. It can be concluded through this analysis of the history that equity can only be determined by reference to legal history and cannot be logically deduced from general propositions. Also large parts of the law including contract law and property are drawn from both common

law and equity.[18]Whether or not history provides us with a question on merging these two entities together or dealing with them by parts, is just a matter of question for those interested in the developed of law to consider.

## **Conclusion**

In conclusion it is evident to say with reference to the above principles that equity sets out to provide justice to those who have been denied equality. As for those who believe even with careful reference to the above principles that they are continuously treated unfairly it is broken down to the interests of the property affected and what dictates as an assignment of property. Equity can simply allow for the assignment of property whether it is of future or a voluntarily nature that may not be covered under common law. It is evident there is a distinction between the above principles. To briefly sum up all of the above, the assignment of future property is fixed in terms of certainty of what the assignee receives, expectancy is when a party will receive something but is uncertain as to what it may be and A mere expectancy is where the person expecting to receive the property has no existing right to receive it. Equity does not set out to destroy the law nor does it aim on creating it but has mere principles on ways to assist it. Overall it is important to understand through all of the above that equity is not law, it is a set of principles.