

THE ASSIGNMENT OF CONTRACTUAL RIGHTS by  
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This is the first treatise on the assignment of contractual rights centred on Anglo-Australian law since that talented work of condensation, J G Starke's *Assignment of Choses in Action in Australia*, was published in 1972. The previous three treatises to deal with English law on that subject were O R Marshall's *The Assignment of Choses in Action*, published in 1950, F C T Tudsbery's *The Nature, Requisites and Alteration of Equitable Assignments*, published in 1912, and W R Warren's *The Law Relating to Choses in Action*, published in 1899. Although by a curious coincidence a substantial English work appeared shortly after the work under review, the subject is plainly not one which either authors or the public have felt to call for frequent attention. Yet while its fundamental principles do not change radically or quickly, it has complexities and profundities, and immense importance in commercial practice. These aspects demand that it be given a type of close analysis which it has not often received. However, it has now received it, and in exemplary fashion, in this masterly work. While in some respects it and the other five works referred to deal with different aspects of choses in action and their assignment, this work has superseded its predecessors, and not just because it takes into account more up-to-date authorities. It operates at a deeper level of penetration and significance.

The work is divided as follows. Two introductory chapters explain the structure of the book and give a brief history of assignment of choses in action. Chapter 3 analyses assignment as dependent on the concept of transfer: this is consistent with a central theme of the work, namely that the cases have treated choses in action as proprietary rights, and hence have treated their assignment as being in the nature of a transfer of property. That is, assignment is not seen as a mere extinction of the assignor's right and the creation of new rights in the assignee. Chapter 4 then examines the extent to which the characterisation of assignments as transfers is reflected in the equitable assignment of equitable interests, the equitable assignment of legal interests assignable at law, the equitable assignment of legal interests not assignable at law, and the assignment of future interests. Chapter 5 deals with statutory or 'legal' assignments, i.e. those effected under legislation similar to and deriving from s 25(6) of the *Judicature Act 1873* (Imp). Chapter 6 — a very lengthy chapter — examines which contractual rights are assignable, namely *choses in action* which are *present property* not subject to public policy and other *restrictions* on assignment. Chapter 7 discusses the requirements — described as formal, although some are more than merely formal — with which an assignment must comply under the general law. And Chapter 8 describes the remedies available to the obligor, assignor and the assignee — that is, as between assignor and obligor, assignor and assignee, and assignee and obligor.

In point of subject matter, the work has the following limits. It concentrates on the willed assignment of *contractual* rights: it does not deal with the assignment of debts so far as they do not originate in a contract, and it does not deal with such involuntary assignments as those which occur by operation of law on death, bankruptcy, liquidation or the replacement of trustees. Nor does it deal with whether an assignment should be set aside on the bankruptcy or insolvency of the assignor. And it does not deal with those aspects of assignment by way of security which relate to the form or structure of receivables financing, or with the perfection of security interests or the priority of security interests.

Within the boundaries which the author has so marked out, his method of analysis, employed in considerable detail, but with a clear style and appropriate internal cross-referencing, is to expound the existing law — critically, but not in so destructive a fashion as to demand its jettisoning. He seeks ‘to explain as many of the important authorities as possible while keeping suggestions that leading cases be overruled to a minimum’ (p 9). His goal is to understand the law, not change it. The authorities so explained include not only relevant English and Australian cases, but cases from the United States, Canada and New Zealand. They are explained by reference to a wealth of professional and academic writing, ancient and modern, from those jurisdictions. Recourse is also had to relevant international conventions, to the Uniform Commercial Code and to the Restatement. This mass of material has been acutely analysed in order to extract the principles it yields. The principles so derived have been applied to a wide range of problems. The author has not shirked the job of propounding answers to the most difficult problems, or of choosing between conflicting authorities. Some of the problems are narrowly doctrinal in the sense that they do not necessarily relate specifically to practical problems and have not commonly vexed practitioners, their clients or the courts. Others are problems which have been generated out of day-to-day dealings in commerce as examined in the courts; they have triggered in the present author close refinement of thought. The author has had the advantage of having been able to concentrate on and ponder the issues thrown up in well-known cases over some years spent in writing and revising the doctoral dissertation from which the work springs. But he has also had the equally great advantage of being able to respond to the unpredictable and stubbornly insistent problems which legal practice tends to generate: for it is in dealing with the remorseless and unforgiving pressure which the latter problems give rise to that a harder rigour of analysis can develop, so that the furnace which burns in the analyst’s mind tends to refine the materials thought about and to produce purer metal.

The author’s methods, then, share the following characteristics — a close anchoring of analysis in the case law, a goal of explaining the thinking employed in that case law, a concern to promote coherence of principle in expounding that law, a reliance on detailed scholarship, and an unusual sensitivity to a wide range of problems, considered at a high level of sophistication. While that level of sophistication means that the work goes beyond the needs of undergraduate students of law, or at least most of them, it is essential reading for their teachers, especially those who teach contract, equity and personal property. Above all, it

should always be consulted — read carefully, slowly and repeatedly — by any practitioner facing an assignment problem.

Some would regard its approach as excessively traditional. In many ways it is traditional. It belongs to the tradition which finds the sources of the law in the decisions made by judges in deciding particular cases — a tradition which naturally appeals to those who have to appear before those judges in seeking a resolution to controversies in which their clients have become involved. Much modern legal writing sees that tradition as contemptible or, worse, irrelevant. Within that broad tradition, however, this work achieves an unusual level of distinction and value. It is not only the best book ever written on its subject, but among the best monographs dealing with legal doctrine published in recent years.

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