



## ASSIGNMENT OF CHOSSES IN ACTION: WHEN DOES EQUITY AID THE VOLUNTEER?

<sup>\*a</sup> A. M. Bokani PhD

<sup>a</sup> Department of Private Law, Faculty of Law, Ahmadu Bello University, Zaria. Kaduna State, Nigeria,  
Corresponding author email: <sup>\*</sup> [ambokani@abu.edu.ng](mailto:ambokani@abu.edu.ng); [ambokani8@gmail.com](mailto:ambokani8@gmail.com)

### Abstract:

Common law does not permit choses in action to be assigned without the consent of the debtor. However, equity intervened to water down the rules of common law in respect of assignment of choses in action. The Judicature Act of 1873-75 subsequently introduced statutory assignment of legal and equitable choses and also provided for requirements for statutory assignment. The article relied on doctrinal research method to examine assignment of choses in action and the rules governing statutory and equitable assignments. However, the approach of equity to assignment is still shrouded in uncertainty as there is ambiguity in certain requirements for creation of equitable assignment and effect of equitable assignment. Thus, the research question is, to what extent will equity aid a volunteer and enforce a promise that is not supported by consideration in assignment of equitable chose in action? This paper found the attitude of equity to absolute assignment of a legal or equitable chose is inconsistent with the maxim 'equity does not aid the volunteer.' It is doubtful whether the assignee who has not furnished consideration will be able to enforce the assignment, and the assignor can be prevented from going back on his promise. In view of the foregoing finding, it is argued that the assignor does not have the right to revoke an assignment where it is a statutory assignment, absolute assignment (not by way of charge only), where the assignment is for value, and where notice of assignment is given to the debtor.

**Keywords:** Assignment, Choses, Equitable, Legal, Volunteer

### 1.1 Introduction

Ownership of property and the extent to which property can be transferred impact on the socio-economic development of the society. It is for this reason that common law permitted properties to be transferred and alienated.<sup>1</sup> Property is broadly classified into realty or personality based on the distinction between land and other movable properties.<sup>2</sup> Personality can further be classified into tangible and intangible. While a tangible property can be physically possessed i.e. choses in possession, intangible property cannot be physically possessed i.e. choses in action.

Choses in action are product of the application of rules of common law and intervention of equity. Although choses in action can be found in other jurisdictions such as United States, Australia, and England, the application of the rules governing assignment of choses in action vary in relation to

<sup>1</sup> Festus Emiri, and Ayuba Giwa, *Equity and Trust in Nigeria*, (Malthouse Press Ltd, Lagos, 2012) p. 161

<sup>2</sup> J.O. Fabunmi, *Equality and Trusts in Nigeria*, (Second Edition, Obafemi Awolowo University Press Ltd, 2004), p. 87.

the circumstances in which choses in action can be assigned. As a result, trade, commerce, investment and labor rights are adversely affected because of absence of clearly defined rules governing assignment of choses in action.<sup>3</sup> In Nigeria, Assignment of Choses in action is now governed by various statutes such as Property and Conveyancing Law, 1959, Asset Management Corporation of Nigeria Act, and Copyright Act, 2022. However, contractual rights are still assignable by virtue of the provision of section 25(6) of the Judicature Act and principles of equity.<sup>4</sup>

Assignment of choses in action confer the assignee with right to sue for the debt or the chose in action even if the assignee failed to furnish consideration for the assignor's promise. It is trite that consideration is an essential requirement for formation of a simple contract.<sup>5</sup> Thus, for a promise under a simple contract to be enforceable, it must be supported by consideration.<sup>6</sup> A gratuitous promise not under seal is not contractually binding since the promise is made without consideration.<sup>7</sup> However, it appears there are circumstances in which consideration will not be required for equitable assignment of a legal or equitable chose in action. The research questions are as follows: first, what extent will equity aid a volunteer to enforce a gratuitous promise made by the Assignor? Second, what is the nature of the interest transferred to the assignee by Assignor in equitable assignment? The aim of this paper is to examine the rules governing statutory and equitable assignment with the objective of proffering answers to the foregoing questions.

## 1.2 Concept of Assignment of Choses in Action

A Chose in action is a personal right in property which is intangible. It has been defined as a proprietary right in personam. It denotes all personal rights of property, which can only be claimed or enforced by action, and not be taking physical possession.<sup>8</sup> Choses in action include debts, shares, negotiable instruments, policies of insurance, Bills of Lading, Patents, Copyrights, rights under a trust, and legacies. Choses in action are defined in contra distinction to choses in possession which may be taken possession of without recourse to a court of law.<sup>9</sup> This definition of choses in possession is misleading as it presupposes that the chose can be forcefully recovered from the adverse party.<sup>10</sup> It is submitted that choses in possession, just like choses in action, can only be recovered by recourse to court. The law frowns at self-help and therefore a person entitled to a chose in possession should not be allowed to take the law into his hands to forcefully recover possession. Prof. Kyuka thus defined chose in action as a corporeal property which has only monetary value residing outside while chose in possession is a corporeal property with both

<sup>3</sup> Kevin Sobel-Read, *et al*, "The Critical Roles of Choses in Action: A Call for Harmonization Across Common Law Jurisdictions", *Fordham International Law Journal*, Vol.45:3, p.516.

<sup>4</sup> I.E. Sagay, *Nigerian Law of Contract* (Third Edition, Spectrum Books Limited, 2018) p.602.

<sup>5</sup> Aloba Eni Eja, *Law of Contract* (Second Edition, Princeton & Associates Publishing Co. Ltd, Lagos 2016), p.62.

<sup>6</sup> Veronica Ekundayo, *Vera's Law of Contract*, (Princeton & Associates Publishing Co. Ltd, Lagos, 2023) p.103; Jamie Glistler and James Lee, *Modern Equity*, (Twenty-Second Edition, Thomson Reuters, 2021) p.724.

<sup>7</sup> Roger Brownsword, *A CaseBook on Contract*, (Fourteenth Edition, Sweet & Maxwell, 2021) p.287.

<sup>8</sup> *Multichoice (Nig.) Ltd v. M.C.S.N Ltd/Gte* (2020)13 NWLR pt.1742,415,p.524,paras.G-H.

<sup>9</sup> Adamu Kyuka Usman, *Law and Practice of Equity and Trust* (Malthouse Press Ltd, 2017), p.43.

<sup>10</sup> *Ibid*,43-45

monetary and user value in it.<sup>11</sup> However, a chose may be a legal chose in action or an equitable chose in action. A legal chose in action (e.g. debt, bill of exchange, insurance policy, shares in a company, patent right and copyright) is a right of action which is enforceable at common law. Equitable choses in action are such rights which can only be enforced in equity. Examples of equitable choses include interest in a trust fund or legacy in a will.

Assignment entails the transfer of a right in a chose in action. Suppose, Musa is owing Moses a certain amount of money, Mose's right to recover the debt from Musa is a chose in action. Thus, if Moses (assignor) assigns his right to recover the debt to Fatima (assignee), Fatima can enforce it against Musa. Musa's consent to such assignment is not necessary. However, the position at common law was that choses in action could not be assigned without the debtor's consent. Even legal choses were unassignable at common law unless consent was obtained.<sup>12</sup> Some reasons accounted for this harsh and rigid position at common law. First, choses in action were regarded as strictly personal. Thus, assignment was viewed as an interference with the dispute before the two parties. This is based on privity of contract. Secondly, it was thought that assignment would encouraged maintenance.<sup>13</sup> Thus, it was feared that of would cause flood of litigations and could oppress the people and subvert the due administration of justice.<sup>14</sup> Third, any rule that allows the assignment of a right by the assignor to an assignee and did not equally allow the debtor to assign his liability under the claim was not mutual in effect.<sup>15</sup> Fourth reason was that it was thought impossible to assign a property which was not in possession.<sup>16</sup> Finally, another reason was advanced by Akolokwu for non-assignability of choses in action at common law unless the debtor consent on the basis that before the fusion of law and equity, the common law recognized only legal choses in action and only legal rights could confer cause of action for suits to be commenced at the common law court.<sup>17</sup> However, it is argued that the reason does not explain why common law did not permit the assignment of choses in action without the debtor's consent. The reason advanced by the learned author only explains the common law attitude to equitable choses in action, and not legal choses which were non-assignable unless the debtor consents.

In view of these restrictions, an alternative method of assignment was achieved by a letter of Attorney by virtue of which the creditor appointed the recipient (assignee) to sue in the name of the debtor who is entitled to recover the debt. This way, the restriction at common law was avoided. However, assignment of choses in action was recognized in some exceptional situations, namely:

- a. By assignment, the king could grant and receive choses in action.

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<sup>11</sup> *ibid*, p.46.

<sup>12</sup> (f,n 1) p.163.

<sup>13</sup> *Ibid*.

<sup>14</sup> Adewale Taiwo and Oluwatoyin Akintola, *Introduction to Equity Trust in Nigeria*, (Princeton and Associates Publishers Limited, 2006) p. 89.

<sup>15</sup> (f,n 1) p.61.

<sup>16</sup> Briggs, L. L. (1930) "Assignment of Choses in Action," *Journal of Accountancy*, Vol. 49: Iss. 5 , Article 2, p.330. Available at: <https://egrove.olemiss.edu/jofa/vol49/iss5/2>

<sup>17</sup> Grace O. Akolokwu, *Understanding equitable principles and the Law of Trusts*, (Princeton & Associates Publishing Co. Ltd, Lagos, 2022) p.121.

- b. Mercantile choses in action e.g. bills of exchange such as cheques were not only assignable not negotiable. Negotiable instruments were transferable by endorsement and in some cases delivery.
- c. Assignment of one or two particular choses in action was possible under special statutes.

However, the Court of equity was liberal in approaching assignment choses in action and considered the choses in action as new type of right in a property that is assignable. Thus, equity unlike common law, was not averse to assignment of choses in action. Therefore, in the exercise of its exclusive jurisdiction, equity recognized assignment of choses in action and also recognized assignment of legal choses in the 18<sup>th</sup> Century.<sup>18</sup> Equity considered the common law doctrine of non-assignability to be unfair and absurd. As a result, equity did not follow the law on non-assignability of choses. In this respect, through the doctrine of assignment of choses in action, equity recognized and enforce not only equitable choses in action but also legal choses in action. Where they chose in action was equitable, the assignee could bring his proceedings to recover it in the court of chancery in his own name.<sup>19</sup> However, if it was legal choses in action, the proceeding in the common law courts had to be taken in the name of the assignor since the assignment was not recognized at law. This position of the Common law was harsh, rigid and absurd, therefore equity in its usual style, interfered by restraining the assignor from objecting to the use of his name, either as co-plaintiff or co-defendant, subject to the assignee giving proper indemnity against cost.<sup>20</sup>

The old common rule against assignment of choses in action has been watered down. This was achieved by means of the Judicature Act of 1873-1875 which abolished the rule against assignment. Sections 25 (6) says that: “any debt or legal things in action may be assigned at law”. According to Taiwo and Akintola, the provision has been interpreted to include both equitable and legal choses in action.<sup>21</sup> Due to statutory intervention, there are four categories of assignment namely:

- a. Statutory assignment of legal choses
- b. Statutory assignment of equitable choses
- c. Equitable assignment of legal choses
- d. Equitable assignment of equitable choses

The above categories of assignment can be reduced to two main types of assignments: Statutory Assignment and Equitable Assignment. Therefore, notwithstanding the type of chose in question, assignment can be effected by statute or by equity. The question, however is what is transferred to the Assignee by the assignor? What title does the assignor have which is transferred or assigned?

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<sup>18</sup> Walsh, Xavier, ‘Voluntary Assignments of Legal Choses in Action in England and Australia After the Judicature Act 1873’ (2023) 17 *Journal of Equity* 59, p. 5. Available at SSRN: <https://ssrn.com/abstract=4561540>. Accessed on 16/2/25 at 11am

<sup>19</sup> (f,n 14) p. 90

<sup>20</sup> *ibid*, p. 90

<sup>21</sup> *Ibid*, p. 91

Suppose they chose in action is debt, what is the nature of the jural relations that make up the 'debt'? It has been opined that the creditor has a right *in personam* against the debtor on the basis of which the debtor is under obligation to pay the creditor. If the debtor does not pay, the creditor will acquire a cause of action of debt that will enable him recover the debt from the debtor. This aspect of ownership of the 'debt' does not represent complete ownership transferred to the Assignee. Another important aspect of the ownership is the right of the owner or creditor to extinguish the debt.<sup>22</sup> This can be done by executing a release under seal or accepting payment.

### 1.3 Statutory Assignment under the Judicature Act 1873

The common law rule against assignment of choses in action was repealed with the Judicature Act which has a statutory provision permitting assignment of choses in action. For statutory assignment to be effective, certain conditions stated in the Judicature Act must be satisfied. Section 25(6) of the Judicature Act 1873-75 provides:

Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of chose only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignees) to pass and transfer from the date of such notice:

- a. The legal right to such debt or thing in action,
- b. All legal and other remedies for the same; and
- c. The power to give a good discharge for the same without the concurrence of the assignor.

Provided that if the debtor, trustee or other person liable in respect of such debt or thing in action has notice-

- i) That the assignment is disputed by the assignor or any person claiming under him; or
- ii) Of any opposing or conflicting claims to such debt or thing in action; he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into Court.

Any assignment which fails to comply with the above conditions will not be valid as legal assignment but may take effect as equitable assignment. The Property and Conveyancing Law has similar provisions to section 25(6) of the Judicature Act which also enables chose in action to be

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<sup>22</sup> Walter Wheeler Cook, "The Alienability of Choses in Action," 29 *Harvard Law Review* 816 (1916), p.819.

assigned and enforced without joining the assignor provided the requirements of the law are complied with.<sup>23</sup> The requirements for statutory assignments of both legal and equitable choses are as follows:

### **1. The assignment must be in writing and must be signed by the assignor.**

There must be an existing debt or a legal thing in action, the existence of a right arising out of contract which is being assigned. The assignment must be in writing and signed by the assignor but it need not be under seal.<sup>24</sup> Some statutes provide for similar requirement for assignment of specific choses. For instance, assignment of copyright or exclusive license, must be in writing in order to be effective.<sup>25</sup> Therefore, writing is essential for creation of a statutory assignment of a chose in action either legal or equitable. However, by this requirement, assignment need not be for value. The question as to the form necessary for a valid assignment under the statute arose in *Udakason Enterprises Ltd v. Olisa*<sup>26</sup> In this case, a partnership firm (Udukason (Nig.) Enterprises) sold and delivered goods to the defendant. The defendant made some payments leaving the balance of ₦5, 320.00. Later the partnership was incorporated into limited liability Company on the name Udukason Enterprises (Nig.) Ltd. The partnership by agreement dissolved the partnership and assigned all the assets and liability of the partnership to the limited liability company. By another letter, the partnership notified the defendant of this agreement.

The company sued the defendant to recover the sum of ₦5, 320.00. In defence, the defendant contended that the agreement did not constitute a valid assignment of a legal choses in action and the letter to him was not a valid notice. The court held *inter alia* that an assignment of legal chose in action is valid if it is absolute, in writing under the hand of the assignor and if express written notice to the debtor was given. Thus, the assignment though poorly drafted with the letter to the defendant satisfied the requirements of the Act.

### **2. The Assignment must be absolute, not purporting to be by way of charge only**

This means at the entire chose must be transferred by an absolute assignment of the entire interest of the assignor in the chose. Where a part of a chose is assigned, the assignment is not statutory but equitable. In *Tancred v. Delagda Bay Rly Co*,<sup>27</sup> the court held that a Mortgage of debts due to the mortgagor, made in the ordinary form with a proviso for redemption upon payment to be an absolute assignment. That means, an assignment by way of mortgage whereby the whole debt is assigned to the mortgagee with a provision for re-assignment on payment of the money lent is

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<sup>23</sup> Section 150(1) of the Property and Conveyancing Law, Laws of Western Nigeria, 1959.

<sup>24</sup> Section 25(6) of the Judicature Act 1873

<sup>25</sup> Section 30(3) of the Copyright Act, 2022.

<sup>26</sup> (1972) 2 E.C.S.L.R. 177

<sup>27</sup> (1889)23 Q.B.D. 239



absolute. But assignment of a definite part of a debt is not absolute, and thus can only qualify as an equitable assignment. In *Western Nigeria Finance Corporation v. West Coast Builders Ltd & Ors*<sup>28</sup>, it was held that assignment of a part of the chose is not absolute and therefore is ineffective to create legal assignment. It only operates as equitable assignment and consequently, the assignee could not sue without joining the assignor.

### 3. Notice must be given to debtor

This requires that an express written notice must be given to the debtor. This means that a constructive or imputed notice is not acceptable. It is by giving the requisite notice that the right of action can be transferred and the transfer is effective as from the date of notice. Thus, in statutory assignment, notice is essential to the validity of a statutory assignment. Where there is failure to give notice, the assignment is neither statutory nor legal. At best, it would be equitable assignment.<sup>29</sup>

Notice needs not be in a formal language but it must be sufficiently plain to make it clear to the debtor that the debt has been assigned. Although notice is not invalidated by omitting to specify the date of assignment, a wrong date will invalidate the notice as such will lead parties away from the true transaction. The notice must be in writing even if the debtor cannot read or write, and it may be given by either the assignor or the assignee.

Notice given after death of the assignor is valid but a notice after the action has begun is invalid. A notice takes effect from the moment it is received by or on behalf of the debtor. Where there are two or more joint debtors, notice must be given to both of them. If no notice is given, the assignment becomes an equitable one. However, in assignment of certain choses subject to statutory provisions, failure to give notice to debtor will not render the assignment ineffective. By the AMCON Act, failure of Asset Management Corporation of Nigeria (AMCON) as assignee to give notice of the acquisition or assignment to the debtor will not vitiate the assignment.<sup>30</sup>

An assignment which complies with the statute as to the notice and otherwise is effectual in law to pass and transfers from the rental of notice:

- a. The legal rights to sue for such debt or thing in action.
- b. All legal and other remedies for the same.
- c. The power to give a good discharge for same without the concurrence of the assignee.
- d. The assignee becomes the owner of the chose of law and may sue the debtor without making the assignor a party to the action.<sup>31</sup>

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<sup>28</sup> (1971) 1 UILR 93.

<sup>29</sup> *Laibru Ltd v. Building and Civil Engineering Contractors* (1962) 1 All NLR p. 387

<sup>30</sup> Section 33(2) of the Asset Management Corporation of Nigeria Act, 2010

<sup>31</sup> Gilbert Kodilinye, *An Introduction to Equity in Nigeria*, (Spectrum Books Ltd, Ibadan, 1975) p. 48

It is important to examine the effect of statutory assignment on a contract with a clause on non-assignability. It is been held that assignment in breach of clause on non-assignment is ineffective.<sup>32</sup> However, an assignment in breach of a clause against assignment will operate as a declaration of trust by the assignor in favour of the assignee.<sup>33</sup> Notwithstanding the foregoing, assignment of debt by a commercial bank to AMCON is effective inspite of a contractual restriction.<sup>34</sup>

#### 1.4 Nature of Equitable Assignment: Does Equity Aid the Volunteer?

The Chancery developed a mechanism by which existing choses (legal or equitable) can be voluntarily assigned or for value before Judicature Act 1873.<sup>35</sup> An assignment which does not comply with the statutory requirement is not *ipso facto* inoperative; it can operate as an equitable assignment. An assignment may be equitable, but when the requisite notice is given, it becomes a statutory one. However, equitable assignment has been said to have two conceptions with different consequences. On one hand, there is a view that equitable assignment involves transfer of right held by the assignor to the assignee, and as a result, the assignee steps into the assignor's shoes as holder of the right.<sup>36</sup> However, this view has been criticized for three reasons. First, it offends privity of contract in assignment of contractual right as the assignor will be able to bind the debtor to assignee to whom he has not agreed to be bound.<sup>37</sup> Second, in the context of contractual rights, the transfer of contractual rights by the assignor does not seem to be sensible.<sup>38</sup> Suppose the chose is a debt, what is transferred to the assignee? If the debtor or trustee is not aware of the assignment, on what basis can the assignee demand the debt of the debtor? Thirdly, it is difficult to find historical justification for assignment as transfer of right considering the nature of debt as a legal chose.<sup>39</sup> Before the Judicature Act, how could the Chancery have held that a common law right had been transferred to the assignee, enforced the legal right and granted a common law remedy against the debtor or trustee? If it was not possible, it is very unlikely that is the position today.

On the other hand, the 'encumbrance' conception of equitable assignment considers the right held by the assignor as being encumbered by a new right held by the assignee as new rights are created by instrument of trust.<sup>40</sup> It has been submitted that the requirement for creation of trust correspond

<sup>32</sup> *Linden Garden Trust Ltd v Lenesta Sludge Disposals Ltd* [1994] 1 AC 85.

<sup>33</sup> [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3593432](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3593432). Accessed on 12/2/25 at 10am

<sup>34</sup> Section 34(2) AMCON Act, 2020

<sup>35</sup> THAM, Chee Ho. Understanding Assignments: English, Comparative and Private International Law: Some Possible implications. (2020). Butterworths Journal of International Banking and Financial Law. 2020, p. 314. Available at: [https://ink.library.smu.edu.sg/sol\\_research/3249](https://ink.library.smu.edu.sg/sol_research/3249). Accessed on 10/2/25 at 11:40pm

<sup>36</sup> James Edelman and Steven Elliot, Two Conception of Equitable Assignments, Paper presented to the Current Legal Issues Seminar Series 2013, Banco Court, Supreme Court of Queensland, 6 June 2013, p. 5. Retrieved from: [https://www.supremecourt.qld.gov.au/\\_files/Two\\_Conceptions\\_Equitable\\_Assignment\\_%20EdelmanJ.pdf](https://www.supremecourt.qld.gov.au/_files/Two_Conceptions_Equitable_Assignment_%20EdelmanJ.pdf) Supreme Court of Queensland, 6 June 2013. Accessed 10/2/25 at 1:15am

<sup>37</sup> *ibid.*

<sup>38</sup> *ibid.*

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*



with the requirements for creation of equitable assignment. It can be argued that such an assignment is a declaration of trust and it based on understanding that the assignor will permit the assignee to use his name to recover the debt. However, for the equitable assignment to be created, the following points must be considered:

## 1. Intention to Assign

There is no special form required for equitable assignment. Thus, oral agreement will suffice unless a statute prescribes that it should be in writing. For instance, the Copyright Act provides that a non-exclusive license may be written, oral or even inferred from conduct of the owner of the copyright.<sup>41</sup>

For equitable assignment to arise, specific instruction must have been given as to how the property is to be disposed. This must involve transfer of some rights or interest in the property to a Third party.<sup>42</sup> In *Williams Brandt's sons and Co. v. Dunlop Co.*,<sup>43</sup> the merchant had an agreement with the bank that goods sold by the merchant would be paid for by the purchaser to the bank. The bank informed the purchaser of its right to the money. Unfortunately, the purchaser through their error paid the money to the wrong person. The Court held that the agreement was an equitable assignment and the purchasers were held liable to pay despite the erroneous payments. Lord McNaghten said:<sup>44</sup>

An equitable assignment does not always take that form; it may be addressed to the debtor. It may be couched in the language of command. It may be a courteous request. It may assume the form of mere permission. The language is immaterial if the meaning is plain. All that is necessary is that the debtor should be given to understand that the debt had been made over by the creditor to some third person. If the debtor ignores such as notice, he does so at his peril. If the assignment be for valuable consideration and communicated to the third party, it cannot be revoked by the creditor or safely disregarded by the debtor.

In *Thomas v. Harris*<sup>45</sup>, a father gave his son certain assurance policies on his life requesting the son to build a tombstone in his memory out of the policy monies. No notice was given to the insurance company, nevertheless, the Court held that it was valid equitable assignment because there was binding oral contract between the father and the son, the father intended to give the son a charge on certain life assurance policies and that such a charge amounted to an assignment in equity of the policies to the extent of the charge on them. In equitable assignment, all that is

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<sup>41</sup> Section 30(4) of the Copyright Act, 2022

<sup>42</sup> (f,n 14) p.95

<sup>43</sup> (1905) A.C 454.

<sup>44</sup> *ibid*,p.462.

<sup>45</sup> (1947) All ER, p.444.

necessary to be proved is intention to assign; it does not matter the form in which the assignment is done.

However, there is an exception to the rule that there is no particular form for equitable assignment. Thus, by statutory provision, oral assignment of an equitable interest or trust subsisting at the time of the disposition is not effective. In *Grey v. I.R.S.*,<sup>46</sup> certain shares in a company were held in trust for B who orally directed that the share be held for another person. It was held that such oral assignment was ineffective as it was contrary to the statute which requires such assignment to be in writing.

## **2. There must be an Identified Chose**

The chose or part of it to be assigned must be sufficiently identified. If the assignor requests the debtor to pay a sum of another to the assignor, it will not constitute assignment of the sum. However, where assignor request debtor to pay assignee out of the money you owe me, it will be considered as assignment. Thus, where the chose or part of it is not sufficiently identified, it only shows lack of intention to assign. The first and second requirements are interrelated.

## **3. Notice to the Debtor**

Notice is not necessary for creation of a valid equitable assignment. Thus, failure to give notice to the debtor does not affect the validity of an equitable assignment. However, it is advisable to give notice of an assignment to the debtor or person who is to discharge the liability for the following reasons:

### **i. To ensure payment to the assignee**

Notice enables the debtor to know about the creation of the assignment and make the necessary payment to the assignee. Until the debtor receives notice thereof, a payment to the original debtor (assignor) is a discharge of the debt. Thus, giving notice of the assignment to the debtor may prevent the debtor from paying to the assignor. The purpose is to secure the assignee's title against the debtor. In *Brice v. Bannister*<sup>47</sup> and *William Brandts Sons & Co v. Dunlop Rubber Company Ltd*<sup>48</sup> where the debtors paid to assignor after notice of assignment was given to them, they were held liable to pay the debt again to the assignee.

### **ii. To Protect against new Rights arising between the Debtor and the Assignor**

Since the assignee takes subject to equities existing between the Debtor and Assignor, the assignee will not be affected by new rights or interest created after debtor has received notice of the assignment.

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<sup>46</sup> (1959) 3 W.L.R 758

<sup>47</sup> *ibid*

<sup>48</sup> (1878) 32 BD. 569, p. 578

### iii. To Protect the Priority of the assignee's interest against subsequent assignees under the rule in *Dearle v. Hall*.<sup>49</sup>

Where there are successive interests in pure personality, the rule in *Dearle v. Hall*<sup>50</sup> priority among equitable assignees depends upon the order in which notice in writing is giving to the debtor or trustee.<sup>51</sup> However, if notice is received substantially simultaneously, priority will depend upon the order in which the interest was created.<sup>52</sup>

For the foregoing reasons for the desirability of notice, notice is so important that it ought to be essential for the validity of an equitable chose in action. After all, notice is one of the doctrines of equity which aids a right and determines when a person cannot assert his right if he has certain knowledge of facts that will make it inequitable or unconscionable to do so. Nevertheless, it can be argued that it is better to consider notice as essential rather than desirable since equity looks at the intent rather than the form.

### iv. Consideration

Consideration is not a requirement for creation of an equitable assignment since equitable assignment without consideration is valid.<sup>53</sup> However, in certain assignments, equity requires consideration for creation of equitable assignment. Thus, consideration is required in the following instances:

- i) The assignment of an expectancy or a future chose: an assignment of a right over a property such as a legacy or copyright that is not yet in existence is permitted. The Copyright Act allows assignment or license of a copyright in respect of a future work or an existing work in which copyright does not subsist.<sup>54</sup> The law however, does not permit a copyright owner to transfer all the rights in the future work of an author.<sup>55</sup> Nevertheless, Consideration is required in this situation because the assignment is based on a contract that the property will be assigned in future. Therefore, for the contract to be valid and enforceable, consideration is required. It is on the basis of consideration that the assignee can sue the debtor or obtain order of specific performance against the assignor where the assignor has promised to assign a future chose or expectancy.<sup>56</sup>
- ii) Where the assignment is not absolute or complete but by way of charge only: consideration is required where there is assignment of legal or equitable chose that is

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<sup>49</sup> (1823) 3 Russell, p. 11

<sup>50</sup> (supra)

<sup>51</sup> (f,n 14)p.100.

<sup>52</sup> *ibid.*

<sup>53</sup> *Tailby v. Official Review* (1888) 13 App Cas 523,

<sup>54</sup> Section 30(10) of the Copyright Act, 2022.

<sup>55</sup> *ibid.*

<sup>56</sup> Steven Serafin, 'The Contractual Basis of the Assignment of Contractual Rights,' *Alberta Law Review*, (2024) 62:1, p.169.

not absolute or complete. The assignee is considered as a volunteer in equitable assignment of legal or equitable chose that is not absolute or complete. A person is not a volunteer if (i) the person has given valuable consideration in the eyes of the law (ii) the person is “within the marriage consideration” which implies that an assignment made or agreed to be made in consideration of marriage is regarded as having been made for value; such persons as husband, wife, and issue of marriage are not regarded as volunteers.<sup>57</sup>

The reason is that in the above situations, such assignments being contractual with understanding that the property will be assigned or charged as the case may be, equity will not enforce a contract unsupported by consideration. This is on the basis of the maxims, ‘equity does not aid the volunteer’ and ‘equity will not perfect an imperfect gift’.

Prof. Kodilinye stated that consideration is not required for other equitable assignments whether of legal or equitable chose where the assignor has done all that he is required to do to transfer the chose. Therefore, a voluntary equitable assignment of a legal chose which failed to meet the statutory requirement because of absence of notice to the debtor is valid although it is not supported by consideration.<sup>58</sup> However, it seems there is inconsistency in the approach of equity to assignment of equitable choses considering the maxim ‘equity does not aid a volunteer’.

An assignment is complete when everything has been concluded by the Assignor to pass title in the subject matter to the assignee. Put another way, the assignor must have done all that he is required to do to put the assignee in a position of the owner of the chose in action. But an assignment by way of charge only cannot constitute a complete assignment. Equitable assignment of a chose in action does not require consideration provided the assignment is complete. The principle is that an assignor who has made a complete though gratuitous assignment of a chose in equity cannot go back on the assignment after transferring the benefit to the assignees.<sup>59</sup>

Another question that arises that requires determination is the ability of the parties to restrict assignment of chose in action. In other jurisdictions, parties to a contract cannot restrict each other’s right to assignment of a chose that arises out of breach of the contract as the right to assign the chose is independent of the contract. Therefore, assignment of chose in action is valid despite an agreement not to assign the resulting chose in action from the contract.<sup>60</sup> However, the debtor or trustee can sue the assignor for breach of contract.

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<sup>57</sup> Gilbert Kodilinye, *Introduction to Equity in Nigeria*, (Spectrum Books Ltd, Ibadan, 1975), p.75.

<sup>58</sup> Tham, Chee Ho (2023). ‘Section 25(6) of the Judicature Act 1873 : A ‘Procedural’ Approach’, In Ben McFarlane & Steven Elliot (eds.), *Equity today: 150 years after the judicature reforms*. New York: Hart., p.63. [https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=6276&context=sol\\_research](https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=6276&context=sol_research). Accessed on 10/2/25 at 11:30pm.

<sup>59</sup> THAM, Chee Ho. ‘Notice of assignment and discharge by performance’, *Lloyd's Maritime and Commercial Law Quarterly*, Research Collection School Of Law [2010], (1), p.48. Available at: [https://ink.library.smu.edu.sg/sol\\_research/1072](https://ink.library.smu.edu.sg/sol_research/1072). Accessed on 10/2/25 at 1:35am

<sup>60</sup> Keven Sobel-Read *et al*, ‘Recalibrating Contract Law: Choses in Action, Global Value Chains, and the Enforcement of Obligations Outside of Privity’, *Tulane Law Review*, (2018), p.33.

Finally, the effect of equitable assignment is that the assignee can sue in his own name without joining the original creditor/ assignor where the whole interest is assigned. But where part of the chose is assigned or is equitable assignment of a legal chose, the assignee or the original creditor cannot sue for the chose without joining the other either as co-plaintiff, if he consents or as co-defendants, if he does not.<sup>61</sup> However, the exact effect of equitable assignment is still debatable though 'assignment' suggests that a transfer of right. It has been argued that equitable assignment does not involve transfer of right, either legal or equitable. This argument is hinged on the following premises: first, equitable assignment does not result to absolute transfer of rights like statutory assignment. Therefore, the effect of equitable assignment is different from the effect of statutory assignment. Second, the assignor still holds the legal title to the chose though subject to the encumbrance in favor of the assignee.<sup>62</sup> According to Walton, the effect of equitable assignment is to create a trust by way of equitable charge.<sup>63</sup> Thus, the exact effect of equitable assignment is not certain.

## 1, 5 Conclusion

This article has examined assignment of choses in action and the rules governing assignment of both legal and equitable choses. Although common law did not recognize the assignability of choses for some reasons, Section 25(6) of the Judicature Act and some legislation in Nigeria such as section 150(1) of the Property and Conveyancing Law recognize and enforce assignment of choses in action. Similarly, equity also provides certain requirements for validity of equitable assignment such as intention to assign, existence of identified chose and consideration. However, this article has found that although equitable assignment does not transfer legal rights as in the case of statutory assignment, the exact effect of equitable assignment is not clear. More so, the attitude of equity to absolute assignment of a legal or equitable chose clearly shows inconsistency in the application of the principle of 'equity does not aid the volunteer'. It is therefore doubtful whether the assignee who has not furnished consideration will be able to enforce the assignment and the assignor cannot go back on his promise.

In the light of the above findings, it is argued that the assignor does not have the right to revoke an assignment where it is a statutory assignment, absolute assignment (not by way of charge only) and where the assignment is for value. However, if notice of the assignment is given to the debtor, or trustee, the assignor should be considered as having no right to revoke the assignment in the case of equitable assignment which is not supported by consideration. This can be regarded as another reason why notice to debtor or trustee is desirable in the case of equitable assignment. By such notice, the position of the assignee can be said to be altered which will render it inequitable for the assignor to revoke despite absence of consideration. Finally, it is suggested that although

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<sup>61</sup> *Halt v. Healtherfield Trust Ltd* (1942) 2 KB 1., p.5

<sup>62</sup> Peter Walton, Assignment of Book Debts – Outright Transfer of Rights or Unregistered Securities? *Wolverhampton Law Journal*, p.8. retrieved from: <https://www.wlv.ac.uk/media/departments/faculty-of-social-sciences/documents/wolverhampton-law-journal/4.-P-Walton.pdf>. Accessed 12/02/25 at 2:30pm.

<sup>63</sup> *Ibid.*

the assignee of equitable assignment does not enjoy the rights of an assignee of statutory assignment, the position to be adopted is that the assignee's interest is an equitable one (right *in personam*) which imposes certain equitable obligations on the assignor by virtue of which the assignor is constituted as trustee of the legal title to the chose for the assignee.