

STATUTORY ASSIGNMENT VS EQUITABLE ASSIGNMENT

This article attempts to provide a brief overview of the differences between statutory assignment and equitable assignment. The actual application of the general rules described here would be subject to the applicable distinct facts and circumstances.

What is Assignment?

An assignment is a transfer of rights or liabilities such as those that arise under an instrument, chose in action^[1], or debt. An assignment can either be a statutory assignment or an equitable assignment.

In Malaysia, an assignment complying with Section 4(3) of the Civil Law Act 1956 was described as a 'statutory assignment' and an assignment not complying with Section 4(3) of the Civil Law Act 1956 was a 'non-statutory assignment' i.e., an equitable assignment.^[2] The conditions of a statutory assignment are as follows:^[3]

- (a) it must be absolute and did not purport to be by way of charge only;
- (b) the assignment was in writing under the hand of the assignor; and
- (c) express notice in writing thereof had been given to the debtor or trustee.

Meanwhile, an equitable assignment gives the assignee a right enforceable only in equity. The mode or form of assignment is absolutely immaterial provided the intention of the parties is clear.

Rules that Govern Assignments

(a) Notice

Written notice is an essential part of a statutory assignment. Therefore, it is ineffective unless strictly accurate – accurate, for instance, as regards the date of the assignment and the amount due from the debtor.[5]

However, notice is not necessary to perfect an equitable assignment. Even without notice to the debtor the title to the assignee is complete, not only against the assignor personally, but also against the persons who stand in the same position as the assignor, as, for instance, his trustee in bankruptcy, a judgement creditor or a person claiming under a later assignment made without consideration.[6]

In regard to the form of notice, as mentioned earlier, a statutory assignment must comply with the form of notice required under Section 4(3) of the Civil Law Act 1956, whilst for an equitable assignment, no particular form is required to constitute a valid equitable assignment.

Additionally, it must be noted that although notice is not required for equitable assignments, an assignee must give notice to the debtor in order to get priority over other assignee(s). In this regard, the *Federal Court in Public Finance Bhd v Scotch Leasing Sdn Bhd (In Receivership)* (Perwira Habib Bank Malaysia, Intervener) [1996] 2 MLJ 369 explained in detail about the importance of notice:

"We need to say a few words more about the great desirability of giving notice of assignment of a debt by an assignee to the debtor, even though absence of such notice does not affect the validity of the equitable assignment as between the assignor and the assignee. If notice is not given, the assignee must give credit for any payment made to the assignor by the debtor. This rule means that, by extension, even if the assignor assigns once more the debt to another person in fraud or otherwise on the earlier assignee, and that other person gives notice to the debtor; and if the debtor pays that other person or the second assignee, then the earlier assignee must still give credit to the debtor for his payment thus, for the debtor cannot be blamed for doing lawfully in ignorance of the title of the earlier assignee who has failed to give notice of the assignment to the debtor. Notice to debtor is for the protection of the assignee himself. It is this effect of what the debtor does lawfully as described that dims the view of the true role of the nemo dat rule in the resolution of disputed claims to a same debt. The money paid to the 'second assignee' can, of course, be recovered by the earlier assignee on the nemo dat principle."

(b) An assignee takes subject to equities

For both statutory assignment and equitable assignment, the assignee takes 'subject to equities', that is, subject to all such defences as might have prevailed against the assignor.

The general rule, both at law and in equity, is that no person can acquire title to a chose in action...from one who has himself no title to it.[7] In other words, the assignee can be in a no better position than the assignor was prior to the assignment.[8]

(c) Rights incapable of assignment

Some choses in action are not assignable, and not every right which arises under or out of a contract can be assigned.[9] An example of rights incapable of assignment is where the nature of the contract is intended to be personal, therefore, it will be meaningless if it is assigned to another person.

Effect of Assignment

A statutory assignment has the sole intended effect of facilitating an assignee to sue in his own name directly irrespective of whether the chose in action is an equitable chose in action or a legal chose in action.[10]

Meanwhile, the effect of an equitable assignment depends on whether the assignment is absolute or not. An absolute assignment of an equitable chose in action entitles the assignee to bring an action in his own name.[11] But a non-absolute assignment of an equitable chose in action does not entitle the assignee to sue in his own name but requires him to join the assignor as a party.[12]

1. 'Chose in action' is a known legal expression used to describe all personal rights of property which can only be claimed or enforced by action, and not by taking physical possession (Associated Tractors Sdn Bhd v Woo Sai Wa [1997] 5 MLJ 441 (High Court)).

2. MBF Factors Sdn Bhd v Tay Hing Ju (T/A New General Trading) [2002] 5 MLJ 536 (High Court).

3. Ibid.

4. Williams Brandt Sons & Co v Dunlop Rubber Co [1905] AC 454 (House of Lords).

5. Leong, A. P. B. (1998). Cheshire, Fifoot and Furmston's Law of Contract (2nd ed.). Butterworths Asia, at page 861.

6. Ibid.

7. Guest, A. G. (1984). Anson's law of contract, at page 400.

8. Meagher, R. P., Heydon, J. D., & Leeming, M. J. (2022). Meagher, Gummow and Lehane's Equity Doctrine and Remedies (4th ed., p. 284). Butterworths LexisNexis.
9. Guest, A. G. (1984). Anson's law of contract, at page 402.
10. Lim Chon Jet @ Lim Chon Jat & Ors v Wee Ai Hua & Anor [2022] 6 MLJ 243 (Court of Appeal).
11. Ibid.
12. Ibid.

Written by:



Nur Izzatie Azlan
Senior Associate 2
nurizzatie@azmilaw.com



Narina Aireen Hilmy Zaini
Associate
narina@azmilaw.com

Corporate Communications

Azmi & Associates

28 November 2023