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Understanding assignments: English, comparative and private international law: some possible implications

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Feature

KEY POINTS

- Just as equitable leases are not leases, equitable assignments are not assignments.
- An assignment entails a substitution of the assignee in place of the assignor such that the assignor "drops out". *Equitable* (as opposed to statutory) assignments of legal choses do not have such effect.
- An equitable assignment simulates a substitutive transfer by constituting a trustee/beneficiary-like relationship between the assignor and assignee, but where the assignee is also delegated the assignor's powers against the obligor.
- This may mean that an anti-assignment clause may be effective to safeguard an obligor's desire to deal only with his obligee, but without barring the obligee's power to encumber her own entitlements against the obligor for the benefit of another.

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Understanding assignments: English, comparative and private international law: some possible implications[1]

It is not always appreciated that equitable assignment is not "assignment", the latter being a mode of transfer which involves substitution of the assignee in place of the assignor as obligee to the obligor of the chose in action which has been assigned. This article explains how the "substitutive transfer" conception of equitable assignment is contradicted by well-accepted features of assignment law, and suggests an alternative, non-substitutive account of equitable assignment which provides for a much better "fit". This article will then suggest some of the implications which may arise from looking at equitable assignment in this non-substitutive manner.

INTRODUCTION

Understanding the law of assignment of choses in action (choses) is hard. Historically, the class of choses would include only those assets whose intangibility meant they might be "possessed" by action. For example, money debts are intangible: literal possession is thus impossible. But, if not "reduced into possession" through payment, debts may be "reduced into possession" through an action in debt.[2] However, actions *at law* are not always available. Liabilities arising from, say, breach of trust are prosecuted within the court's *equitable* jurisdiction: these entail "equitable" choses. Further, there are "choses" which may not be reduced into possession through legal proceedings in quite the same way (eg copyright).

Then, there are two broad categories of assignment. Presently existing choses (legal or equitable) may be "equitably assigned" (by gift or for value) via an equitable institution devised by the Court of Chancery, prior to the administrative fusion effected by the Supreme Court of Judicature Act 1873. But that statute also created a form of "statutory assignment", where additional requirements as to writing and written notice (now stated in the Law of Property Act 1925 (LPA 1925), s 136(1)) were satisfied.

Drawing on a fuller account in CH Tham, *Understanding the Law of Assignment*,[3] this short article deconstructs present (not "future") equitable (not "statutory") assignments (and not other modes of dealing) of legal (not "equitable") choses as described above. Regrettably, specialist forms of chose such as copyright will be left aside. But notwithstanding its narrow focus, it is hoped that this article will prompt a wider conversation about the workings of equitable assignments under English law, and how these insights may affect other parts of legal practice.

The section which immediately follows points out how much of the phenomena encountered in this corner of English law cannot be explained by conceiving equitable assignment as entailing a "substitutive transfer" by which the assignee substitutes for and replaces the assignor as obligee to the obligor of the chose assigned. The section which follows on, sets out a different, non-substitutive account which has a better "fit" with the detail of the law.

EQUITABLE ASSIGNMENTS ARE NOT ASSIGNMENTS

Terminological difficulties in this area abound. Just as an "equitable lease" of an interest in land is not quite the same thing as a lease at law, "equitable assignment" is not assignment (as Justice Edelman of the High Court of Australia noted: Tham, p ix).

Suppose L, holding the fee simple in Blackacre, leases it to T for five years. This grant vests T with a leasehold estate of five years in Blackacre. T may "assign" this lease to C, though compliance with various formalities is mandatory for the assignment to take effect *at law*. Once complied with, the assignment of a lease *conveys* T's leasehold estate to C: L's tenant is no longer T – it is C (see, eg *Burton v Camden LBC* [2000] 2 AC 399 (HL)): T "drops out". Thus, T's assignment to C effects a "substitutive transfer" of the leasehold estate such that C replaces T as holder of the benefits (and burdens) of that estate.

The present "assignment" of a leasehold estate cannot be equitable. As the common law provides for a mode of present "assignment" of a lease (ie by conveying the leasehold estate), equity has no work to do. However, this is not so for personal choses. For one, English common law has yet to extend the doctrine of estates to them. For another, though the common law courts had from an early period accepted that assignments of personal choses to and by the Crown was possible, "common law" assignment of such choses went no further: *Master v Miller* (1791) 4 TR 320, 340. Accordingly, as common law declined

to make more general provision for it, equity stepped into the gap by providing for *equitable* assignments of personal choses.

Suppose A lent B £10,000, to be repaid in a year's time, and then, rather than, say, create a trust or a charge over the chose arising from B's debt, A "assigned" it to C. Where certainty of intention, subject-matter, and identity of the assignee are present,[4] A will have *equitably* assigned to C the benefit of B's indebtedness: the relationship of equitable assignor and assignee will have been fully constituted as between A and C, notice to B being unnecessary as equitable assignments are valid as between assignor and assignee without obligor notification.[5]

Some might think that in the same way that the assignor of a leasehold estate "drops out", so, too, the assignor of a personal chose such as A, above. But that cannot be.

First, suppose that, having lent B £10,000, A borrowed £500 from B. This creates a cross-claim between B and A. Given this, if B were sued for the £10,000 borrowed previously from A, B would be entitled to raise the cross-claim arising from A's indebtedness to B for £500, thereby reducing the judgment sum which B might ultimately be ordered to pay.

Assuming A's solvency and leaving the assignment aside, B could set-off A's cross-indebtedness of £500 against B's own indebtedness of £10,000 under the Statutes of Set-off. The rule that "equities run until notice" means that B could assert such set-off even if the cross-debt arose after A's equitable assignment to C. But this "equity" would be unavailable if the cross-debt with A arose after B had received notice of the assignment to C.

This cannot be explained if A had "dropped out" following the equitable assignment to C. If that were true, B's creditor would be C (even if B had no notice of that fact), and A would have become a stranger to the debtor-creditor relationship between *them* as regards the £10,000 loan. Why would B's subsequent cross-claim with a stranger like A over the £500 have any significance when B is sued for the £10,000, the creditor of which is C? (Indeed, as was recognised in *Phipps v Lovegrove* (1873) LR Eq 80, the rule that equities run until notice of assignment is *also* applicable where an *equitable* chose has been equitably assigned – suggesting that it may not be quite right to conceive of such assignment as entailing a substitution of assignee in place of assignor, either).

Second, suppose notice had *not* been given, and B tendered payment to A whilst ignorant of the assignment. Such tender *is* a good discharge of the debt (*Williams v Sorrell* (1799) 4 Ves Jun 389); though C might "defeat" the defence if notice had been given to B prior to B's tender to A (*Brice v Bannister* (1878) 3 QBD 569, 578). The former cannot be explained on grounds that the equitable assignment, without more, had substituted C in place of A as B's creditor, causing A to "drop out". Given the latter, the substitution could only take place once B had acquired knowledge of the assignment, say, after having received notice of the same. Indeed, might such "delayed substitution" not also explain why "equities run *until* notice"? Unfortunately, the "delayed-substitution" account is contradicted by various other aspects of assignment lore.

Suppose A had equitably assigned the benefit of the £10,000 debt to C1 (by gift), and subsequently, to C2 (for value). Under English law, both assignments are valid, the problem being to determine which assignee's claim is to be given priority where B's indebtedness is insufficient to satisfy both claims. Applying the rule in *Dearle v Hall*,[6] priority is determined by the order of notice to B of C1's and C2's assignments from A, and not by the order of their creation, so long as the subsequent assignee had given value and taken the assignment whilst ignorant of the prior assignment. Accordingly, if C2 had given value for his assignment whilst ignorant of C1's prior one, and then gave B notice of his assignment ahead of C1, C2's claim would have priority over C1's; though if C1's claim was then left unsatisfied, C1 could look to A. But if an equitable assignment coupled with notice substituted the assignee in place of the assignor, why is this restricted only to assignees for value (since the rule in *Dearle v Hall* does not apply to assist volunteers)?

The theory that equitable assignments result in substitutive transfer following notice is also made doubtful by the "*Vandepitte* procedure". In *Vandepitte v Preferred Accident Insurance Corpn of New York* [1933] AC 70, the Privy Council concluded that where a trust is constituted over the benefit of a contract, the trust beneficiary may join the trustee in an action against the contractual obligor were the trustee unwilling to do so; and it is accepted that equitable assignees may invoke this procedure, too (*Barbados Trust Company Ltd v Bank of Zambia*;[7] and also, *Roberts v Gill*[8] (though without explicitly mentioning the doctrine)).

As explained in *Harmer v Armstrong*,[9] the *Vandepitte* procedure joins proceedings, not parties: namely, the equitable proceedings (as between trustee and beneficiary) and the common law one (as between the trustee-creditor and debtor). But, if equitable assignment substituted C in A's place, the *Vandepitte* procedure would be redundant since joinder of A would be improper, A having become a stranger to the creditor-debtor relationship. Further, it has been accepted that, in principle, an equitable assignor should still be joined to an assignee's proceedings against the obligor even after notice (see *William Brandt's Sons & Co v Dunlop Rubber Co Ltd*,[10] where notice of assignment had been given; though such joinder may be dispensed with if the proceedings had been brought within the court's equitable jurisdiction, as in *Performing Right Society v London Theatre of Varieties Ltd*,[11] where an injunction had been sought).

Lastly, a debt is an indivisible chose (so B owes *a* debt of £10,000, not 10,000 debts of £1 each). In *Re Steel Wing*,[12] PO Lawrence J followed Bray J's reasoning in *Forster v Baker*[13] that statutory assignment of part of a debt was impossible because of the court's need to have before it all parties with an interest in the debt. This led PO Lawrence J to conclude that the assignment before him could only be equitable, though notice had been given. If notice substituted equitable assignees in place of assignors, why would the judge's reason for rejecting the possibility of statutory assignment not also apply to bar such equitable assignment? But rejected, it was not.

One could say that these incoherent results show that the law of equitable assignment consists of a heap of inconsistent rules. But perhaps these results are only inconsistent with the substitutive transfer conception of equitable assignment? Is there an alternative, non-substitutive conception of equitable assignment?

EQUITABLE ASSIGNMENT OPERATES BY MEANS OF A COMBINATION OF A BARE TRUST, COUPLED WITH AN UNUSUAL FORM OF AGENCY

Suppose instead that A constituted herself to be bare trustee of B's indebtedness for C1's benefit. This gives rise to a "trust effect". Second, suppose A also authorised/empowered C1 to invoke any and all of her powers against B arising from the loan of £10,000, whilst releasing C1 from having to invoke these delegated powers for A's benefit. This gives rise to an unusual "agency effect".

Given the "trust effect", A would have vested C1 with a beneficial equitable interest in the £10,000 debt owed by B. Consequently, if A were to become insolvent, A's unsecured creditors would not be entitled to claim this sum since it would no longer be beneficially "owned" by A.

Next, given the "agency effect", C1 would have been delegated A's power to give a good discharge by accepting a conforming tender of payment by B. Consequently, were A to bring an action in debt against B for failing to precisely perform his obligation (ie by tendering payment to A when repayment became due), B could successfully defend himself by pleading the facts of the delegation to C1, his tender of payment to C1, and C1's acceptance of such tender: precisely the result if A had "equitably assigned" the benefit of B's indebtedness to C1.

This thought experiment reveals that the combination of trust and agency reasoning can achieve the same results as those which are arrived at by the institution of equitable assignment. Perhaps, then, that is precisely *how* that institution operates, ie when A equitably assigns the debt owed to her by B to C1, A (as C1's "principal") will have encumbered herself with a duty to C1 (as A's "agent") to invoke her powers as against B, not for her own self-interest, but for C1's interest (ie the "trust effect"); furthermore, A will have empowered C1 to invoke A's entitlements against B, whilst simultaneously releasing C1 as "agent" from having to take A's interests into account when invoking those delegated entitlements (ie the "agency effect").

The combination of the two effects has important consequences. *Inter alia*, C1's equitable beneficial interest in the debt has proprietary status to the extent that, were A to go bankrupt, B's indebtedness to A would not pass unencumbered to A's trustee-in-bankruptcy,[14] provided that the equitable assignment was made before the commencement of the bankruptcy.[15] Then, where an agency is "coupled with [a proprietary] interest", the agency becomes irrevocable, contrary to the usual position.[16] What is more, such irrevocable agency becomes proof against the "principal's" bankruptcy[17] or insolvency.[18]

It also becomes proof against death of the "principal". Notwithstanding Lord Ellenborough's rhetorical question in *Watson v King*:[19] "A power coupled with an interest cannot be revoked by the person granting it; but it is necessarily revoked by his death. How can a valid act be done by a dead man?"; in *Shipman v Thompson*[20] Willes CJ upheld the decision of Fortescue J who came to the contrary conclusion. In turn, Willes CJ's decision was accepted as correctly representing the position at law by Romilly MR in *Lambarde v Older*.[21] Further, the position in the Court of Chancery also contradicted Lord Ellenborough's hypothesis: see *Dale v Smithwick*,[22] which was followed in *Lepard v Vernon*;[23] *Gurnell v Gardner*;[24] *Spooner v Sandilands*;[25] and *Kiddill v Farnell*.[26] (For discussion, see Tham, pp 132-134). Hence, if the common law position diverged from the position in equity, this would be an instance where the rules of equity would prevail.

It is suggested that this is the truth of it: that equitable assignment operates in the manner of a trust, coupled with an irrevocable agency. This "trust" is akin to that arising when a settlor constitutes himself bare trustee of the benefit of a chose in action, say, a debt. This explains how C1, as equitable assignee, acquires a beneficial interest in the chose assigned so as to be proof against A's bankruptcy. Meanwhile, the "agency effect" also goes some way to explain how C1 may effectively compromise the debt by, say, executing a deed releasing B from his indebtedness without A's involvement, though doing so with knowledge of the assignment could amount to equitable fraud, rendering the deed liable to be set-aside: *Phillips v Clagett*.[27] This non-substitutive account of equitable assignment also explains why, even following the equitable assignment, A may still sue B to recover the debt, if unpaid, so long as C1 is joined (see *Three Rivers District Council v Governor and Company of the Bank of England)*[28] – and, presumably, was content to proceed when joined.

The composite "trust-plus-agency" model of equitable assignment also explains why only "benefits", but not "burdens" may "pass": this must be so because, one cannot be a trustee of burdens for another; nor can a principal delegate to another its liabilities (as opposed to its powers). As explained in Tham, Part IV, it provides a rationale for the operation of the rules about running of equities, and the rule in *Dearle v Hall*. Leaving aside explanations for the former for now, what follows is a summary explanation for the operation of the latter.

If equitable assignments operate by combining trust and agency effects, when A equitably assigns B's debt to her to C2, B must *still* be indebted to A, notwithstanding her prior assignment to C1. Although it would be a breach of her equitable duties to C1 as assignee for her to do so (given the "trust" aspect of the assignment), it is not *invalid per se*. Just as a vendor can validly contract to sell a unique thing to multiple purchasers although she has only one legal title to convey, so, too, may a creditor validly equitably assign a single debt to multiple assignees. Each assignment is inherently valid, even if complete satisfaction of each assignee's claim is impossible.

Since C1's and C2's equitable assignments are valid, *nemo dat* reasoning is inapplicable. Instead, English courts apply the rule favouring the assignee who had acted more expeditiously in giving notice of assignment to the debtor, ie the "rule" in *Dearle v Hall*. (As explained in Tham, pp 209-212, this results from application of the "Golden Rule" that one should do as one would wish to be done, together with the general equitable proposition that "where the equities are equal, the first in time shall prevail").

The non-substitutive conception of equitable assignment is also consistent with the proposition that the "equities" which run with the assignment do not include insolvency set-off.

If A became bankrupt without having effected an equitable assignment to C, insolvency set-off pursuant to Insolvency Act 1986, s 323 would apply such that were

any action brought against B in relation to the sum borrowed from A, A's trustee-in-bankruptcy would only recover the balance after setting-off the £500 that B had lent A. (Where A is an insolvent corporate entity, the Insolvency Rules 1986, r 4.90 would have the same effect). However, these fall beyond the "equities run until notice" rule.[29]

Insolvency set-off only arises when there is mutuality of *beneficial* interests: but, following the equitable assignment to C, A's indebtedness of £500 would still be owed beneficially to B, whereas B's indebtedness of £10,000 would be owed beneficially *to* C. Given the lack of mutuality, insolvency set-off would no longer apply.[30]

For good measure, the "trust-plus-agency" account of equitable assignment also explains why insolvency set-off *is* available where the *assignee* is bankrupt/insolvent.[31] Suppose C, the equitable assignee of B's indebtedness to A, became indebted to B in the sum of £3,000 in a completely separate transaction. If B were then sued for the £10,000, where C was bankrupt, B *could* invoke insolvency set-off so as to set-off the £3,000 owed to him by C, against the £10,000 which he would have come to owe beneficially to C given the "trust effect" underlying A's equitable assignment to C.

If, as explained above, the effects arising from an equitable assignment can also be achieved by the combination of "trust" and "agency" effects, then perhaps that is exactly what an equitable assignment does.

SOME IMPLICATIONS

Possible domestic law implications: anti-assignment clauses

An appropriately worded anti-assignment clause can preclude the operation of LPA1925, s 136(1) by which certain entitlements are transferred from the "statutory" assignor to her assignee where an equitable assignment has been effected in a suitable signed writing when written notice is given to the obligor. Thus, when Lord Browne-Wilkinson explained that "a prohibition on assignment normally only invalidates the assignment as against the other party to the contract so as to prevent a transfer of the *chose* in action": *Linden Gardens Trust v Lenesta Sludge Disposals*,[32] the House of Lords was presumably referring to these "transfer" effects arising in connection with the statutory (not equitable) assignments which were before it.[33]

Some have argued that anti-assignment clauses operate by precluding dealings in "property", whether by means of an equitable or statutory assignment, and do not merely operate as contractual stipulations.[34] Others take a more limited view.[35] But which is it, and what are we to make of Lord Browne-Wilkinson's words which followed on immediately after the extract above, that, "in the absence of the clearest words [an anti-assignment clause] cannot operate to invalidate the contract as between the assignor and the assignee and even then it may be ineffective on the grounds of public policy"?

First, it is pertinent that Lord Browne-Wilkinson's observations, above, were made in response to the decision in *Tom Shaw v Moss Empires*[36] where an anti-assignment clause in an employment contract had been held to be ineffective to preclude the employee from effectively assigning 10% of his salary, including salary yet to be earned, such assignment being necessarily equitable as one cannot statutorily assign part of a debt, nor can statutory assignment be applied when "assigning" future debts. Second, if an equitable assignment operates through the combination of trust-plus-agency effects, there is no "transfer" from assignor to assignee, only the *semblance* of one. The question therefore becomes the extent to which an anti-assignment clause can preclude such simulation.

Here, it may be helpful to distinguish between the trust and the agency effects which underpin equitable assignments. If the rationale for precluding "transfers" is to give effect to the desire of an obligor (eg B) to deal with no one apart from the obligee (A), not even the obligee's agents or delegatees, then perhaps an anti-assignment clause could negate an equitable assignment's "agency effect" by signifying that, contrary to the usual situation, the obligor is *not* assenting to dealings with the obligee's agent or delegatee, and so, gives the obligee (A) no power to delegate. If so, the anti-assignment clause operating as an anti-*delegation* clause would preclude the obligee from effectively delegating her powers to an assignee (eg C).

This leaves untouched the ability of an obligee (A) to encumber herself to another's benefit such that she would no longer be able to invoke her powers against the obligor (B) for her own benefit: without more, the obligee/assignor (A) would not be precluded from creating a beneficial interest in the assignee (eg C) in a manner akin to that which would arise were a bare trust declared by the assignor (A). And this is consistent with the analysis in *Don King's Productions v Warren*,[37] where Lightman J concluded that the anti-assignment clause before him did not preclude the creation of a beneficial equitable interest through the constitution of a trust.[38]

Conceiving equitable assignments as a composite of trust-plus-agency effects enables an understanding of anti-assignment clauses as possibly precluding only the latter effect, whilst leaving the former intact. If so, those anti-assignment clauses which have not been neutralised by the Business Contract Terms (Assignment of Receivables) Regulations 2018 (SI No 1254), reg 1(2), read with reg 2(1), 3(2) and 3(3) will have less impact than might be thought, otherwise.

Possible comparative law implications

Second, from the perspective of comparative law, the simulation of a substitutive transfer via the composite device of the "trust-plus-agency" effects underpinning equitable assignment may be of particular interest to those jurisdictions which have developed notions of assignment in which notice is a constituent requirement. One example is the Scots law of assignation.

Under Scots law, an assignation of a debt is only effective following notice or "intimation" to the debtor. This causes difficulties if the subject matter of the assignation is a future receivable. As a matter of English law and practice, the equitable assignment of future receivables is commonplace. However, assignation of a future receivable in Scots law appears problematic because one cannot intimate an assignation of a not-yet-extant debt: until the debt arises, there is no debtor to intimate *to*. Instead, Scots law permits a trust to be constituted over future receivables: when it comes into being and the beneficiary is notified of the same: it would then be held for the benefit of the beneficiary and thus be ring-fenced against insolvency of the "trustee".

Feature

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Even so, the beneficiary would still be unable to deal directly with the debtor. But what if the beneficiary was also granted an irrevocable agency, so as to achieve what the "agency effect" within English equitable assignment achieves?

If English equitable assignment relies on a combination of trust-plus-agency to do its work, then it would follow that other jurisdictions may achieve similar results using similar means. The deconstructed model of equitable assignment described in this article points to alternative ways which other jurisdictions might choose to develop their own laws by way of supplementing their own pre-existing property-transfer institutions.

Possible private international law implications

Third, conceiving equitable assignment in terms of trust-plus-agency effects may signal possible paths forward for the development of English conflicts rules.

In Case C-548/18 *BNP Paribas SA v TeamBank AG Nürnberg*,[39] the CJEU clarified that the Rome I Regulation does not provide a choice of law rule governing issues of competition or priority between assignees. Hence, an English court would be left to apply English choice of law rules, derived (in the absence of anything else) from English common law principles, but, as to which, no clear consensus has yet been reached.

In the 8th and 9th editions of *Dicey & Morris on the Conflict of Laws*, Dr Morris had suggested that the English priority rule should be "the proper law of the debt". Writing more generally, Professor Goode has suggested that because the issue as between two assignees is not one which alters the liability of the debtor, there is no need to look (through) to the proper law of the debt. Instead, it may be preferable to develop a rule which has its focus on "the law of the assignor's habitual residence".[40]

The analysis supported by Professor Goode is similar to the third option (Option C) set out in the British Institute of International and Comparative Law's 2011 report, *Study on the question of effectiveness of an assignment or subrogation of a claim against third parties and the priority of the assigned or subrogated claim over a right of another person – Final Report*. It is also similar to the default choice of law rule adopted in §22 of the UNCITRAL Convention on the Assignment of Receivables in International Trade.

If equitable assignment operates by means of trust-plus-agency effects, both are, at root, *personal* relationships. As explained above, this does *not* involve substituting the assignee for the assignor, thereby changing the nature of the obligations undertaken by the obligor. Through the combination of trust-plus-agency, equitable assignments *simulate* a substitutive transfer, without actually effecting one. And if so, the case for looking to the law of the debt (which is, after all, a bilateral relationship between the debtor and the creditor) to deal with questions pertaining to the creditor-assignor and the assignee becomes rather less strong. One may debate whether one should look to the proper law of the assignor-assignee relationship, or to the place where the assignor has his/her/their residence or principal place of business; but whatever one does, there is no logical, or principled, reason for looking at the debtor or the debt.

Just as there is no good building without strong foundations, there is no understanding without mapping the fundamentals of the law. If the basis of equitable assignment is as this account proposes, some things which appear odd become explicable. Where this may lead remains to be seen, but this, it is submitted, is the route of the road which got us to where we are. ■

1 On 21 January 2020, a preliminary version of this article was presented at a public seminar organised by the British Institute of International and Comparative Law. The seminar was chaired by Professor Andrew Dickinson (Oxford University), and Mr Justice Marcus Smith, Professor Sir Roy Goode (Oxford University), Professor Adrian Briggs (Oxford University), and Mr Jonathan Hardman (University of Edinburgh, Faculty of Law) participated as commentators. I am grateful for their views and suggestions, and also for the comments from the participants at the event. However, all errors remain my own.
2 *Colonial Bank v Whinney* (1886) 11 App Cas 426 (HL), 440.
3 (CUP, 2019) (Tham).
4 See M Smith and N Leslie, *The Law of Assignment*, 3rd ed (OUP, 2018), para 13.09.
5 *Fortescue v Barnett* (1834) 3 My & L 36, 42.
6 (1828) 3 Russ 1 (affirmed, 3 Russ 48).
7 [2007] 1 Lloyd's Rep 495 (CA), [99].
8 [2010] UKSC 22, [2011] 1 AC 240, [64].
9 [1934] Ch 65 (CA), 83.
10 [1905] AC 454, (HL) 462.
11 [1924] AC 1 (HL), 13-14.
12 [1921] 1 Ch 34.
13 [1910] 2 KB 636.
14 *Beavan v The Earl of Oxford* (1856) 6 De G M & G 507.
15 *Winch v Keeley* (1787) 1 Term Rep 619.
16 See eg P Watts, *Bowstead and Reynolds on Agency*, 21st edn (Sweet & Maxwell, 2018) (hereafter *Bowstead*), paras 10-007 and 10-010; and also, *Angove's Pty Ltd v Bailey* [2016] UKSC 47, [2016] 1 WLR 3179, [7].
17 *Alley v Hotson* (1815) 4 Camp 325.
18 *Bowstead*, Art 118 Rule (3).
19 (1815) 4 Camp 272, 274.
20 (1738) Willes 103, 105.
21 (1853) 17 Beav 542.
22 (1690) 2 Vern 151.
23 (1813) 2 V & B 51.
24 (1863) 4 Giff 626.
25 (1842) 1 Y & C C C 390.
26 (1857) 3 Sm & Giff 428.
27 (1843) 11 M & W 84, 93 (Parke B), 96 (Alderson B).
28 [1996] QB 292, (CA) 313E-G.
29 See SR Derham, *Derham on the Law of Set-off*, 4th edn (OUP, 2010) (Derham), para 17.39, text to fn 196.
30 See Derham, para 11.13.
31 See: *Thornton v Maynard* (1872) LR 10 CP 695, and *Derham*, para 11.17.
32 [1994] 1 AC 85 (HL), 108.
33 See Tham, p 416, fn 9.
34 See GJ Tolhurst and JW Carter, 'Prohibitions on Assignment: A Choice to be Made' (2014) 73 CLJ 405.
35 See, eg Sir Roy Goode, *Goode on payment obligations in commercial and financial transactions*, 2nd edn (Charles Proctor ed, Sweet & Maxwell, 2009), p 310.
36 (1908) 25 TLR 189.
37 [2000] Ch 291.
38 But cf PG Turner, 'Prohibitions on Assignment: Intellectualism v Law' (2018) 134 LQR 532.
39 EU:C:2019:848.
40 RM Goode, 'Assignment of Intangibles in Conflict of Laws' in L Gullifer and S Vogenauer (eds), *English and European Perspectives on Contract and Commercial Law: Essays in Honour of Hugh Beale* (Hart, 2014) pp 374-375.