

ASSIGNMENT

is commonly used in reference to personal property; but it is not incorrect, in some cases, to apply it to realty, *e. g.*, "assignee of the reversion."

Assignee in fact is one to whom an assignment has been made in fact by the party having the right. *Tucker v. West*, 31 Ark. 643. One to whom an assignment has been made. *Michigan Trust Co. v. Chaffee*, D.C.N.D., 44 F.Supp. 848, 850.

Assignee in law is one in whom the law vests the right; as an executor or administrator.

Old Law

A person deputed or appointed by another to do any act, or perform any business. *Blount*. An *assignee*, however, was distinguished from a *deputy*, being said to occupy a thing in his own right, while a deputy acted in right of another. *Cowell*.

ASSIGNEE FOR THE BENEFIT OF CREDITORS.

One to whom, under an insolvent or bankrupt law, the whole estate of a debtor is transferred to be administered for the benefit of creditors; he is a trustee for the creditors who stands in the shoes of an assignor, and can assert no claim to property which assignor could not. *Slater v. Oriental Mills*, 18 R.I. 352, 27 A. 443, 444; *Textor v. Orr*, 86 Md. 392, 38 A. 939, 940.

ASSIGNMENT. A transfer or making over to another of the whole of any property, real or personal, in possession or in action, or of any estate or right therein. *Bostrom v. Bostrom*, 60 N.D. 792, 236 N.W. 732, 734. It includes transfers of all kinds of property, *Higgins v. Monckton*, 28 Cal.App.2d 723, 83 P.2d 516, 519. But is ordinarily limited to transfers of choses in action and to rights in or connected with property, as distinguished from the particular item of property. In *re Beffa's Estate*, 54 Cal.App. 186, 201 P. 616, 617. It is generally appropriate to the transfer of equitable interests. *Kavanaugh v. Cohoes Power & Light Corporation*, 187 N.Y.S. 216, 228, 114 Misc. 590.

To constitute valid "assignment," there must be perfected transaction between parties intended to vest in assignee present right in thing assigned. In *re Lynch's Estate*, 272 N.Y.S. 79, 85, 151 Misc. 549. It is contract, and is subject to same requisites as to validity as other contracts, such as proper parties, mutual assent, consideration, and legal subject-matter. *Hutsell v. Citizens' Nat. Bank*, 166 Tenn. 598, 64 S.W.2d 188.

The transfer of the interest one has in *lands* and *tenements*; more particularly applied to the unexpired residue of a term or estate for life or years; *Cruise*, Dig. tit. xxxii. (Deed) c. vii, § 15; 1 Steph.Com. 507.

The distinction between an "assignment" and a "sublease" is that an assignment transfers the entire unexpired term. *Sandford v. Ambassador Restaurant Co.*, 247 N.Y.S. 655, 657, 139 Misc. 3.

The deed by which the transfer is made. *Humphrey v. Coquillard Wagon Works*, 37 Okl. 714, 132 P. 899, 902, 49 L.R.A.,N.S., 600.

A transfer of the title to a bill, note, or check.

An assignment at common law differs from an indorsement in that by an assignment the assignor passed title to

the assignee but did not subject himself to any contractual liability, whereas an indorser, in addition to passing title, impliedly contracts to pay note at maturity on demand and notice on maker's failure to so do. *Johnson v. Beickey*, 64 Utah, 43, 228 P. 189, 191.

In patent law, the transfer of the entire interest in a patented invention or of an undivided portion of such entire interest as to every section of the United States. *Rob.Pat.* § 762. It differs from grant in relation to the territorial area to which they relate. A grant is the transfer of the exclusive right in a specific part of the United States. It is an exclusive sectional right. A license is a transfer of a less or different interest than either the interest in a whole patent or an undivided part of such whole interest or an exclusive sectional interest. *Littlefield v. Perry*, 21 Wall. 205, 22 L.Ed. 577.

A license is distinguished from an assignment and a grant in that the latter transfers the monopoly as well as the invention, while a license transfers only the invention and does not affect the monopoly otherwise than by estopping the licensor from exercising his prohibitory powers in derogation of the privileges conferred by him upon the licensee. *Rob. Pat.* § 806. See *Pope Mfg. Co. v. Mfg. Co.*, 144 U.S. 248, 12 S.Ct. 641, 36 L.Ed. 423.

—**Assignment for benefit of creditors.** An assignment in trust made by insolvent and other debtors for the payment of their debts. These are usually regulated by state statutes. *Woodard v. Morrissey*, 115 Kan. 511, 223 P. 306, 307.

The distinctive test between an "assignment" and a sale, where another creditor is to be paid off, is that in the former case such other creditor is to receive some of the property or its proceeds, and in the latter the creditor to whom title is passed takes for himself the whole property, stipulating to pay the other creditor out of his own means and not out of the property or its proceeds. *Silver & Goldstein v. Chapman*, 163 Ga. 604, 136 S.E. 914, 919.

—**Assignment of account.** Transfer to assignee giving him a right to have moneys when collected applied to payment of his debt. *Nanny v. H. E. Pogue Distillery Co.*, 56 Cal.App.2d 817, 133 P.2d 686, 688.

—**Assignment of dower.** The act by which the share of a widow in her deceased husband's real estate is ascertained and set apart to her. *Bettis v. McNider*, 137 Ala. 588, 34 So. 813, 97 Am.St.Rep. 59.

—**Assignment of error.** See Error.

—**Assignment pro tanto.** Where an order is drawn upon a third party and made payable out of a particular fund then due or to become due to the drawer, the delivery of the order to the payee operates as an assignment pro tanto of the fund. *Doyle v. East New York Sav. Bank*, 44 N.Y.S.2d 318, 323.

Under Mechanics' Lien Law a workman or materialman who serves on owner a stop notice becomes an assignee pro tanto of debt due from owner to contractor. *Commonwealth Roofing Co. v. Riccio*, 81 N.J.Eq. 486, 87 A. 114, 115.

Check drawn on a bank operates as an assignment pro tanto of depositor's funds in favor of holder. *Nat. Bank of America v. Indiana Banking Co.*, 114 Ill. 483, 2 N.E. 401.

—**Assignment with preferences.** An assignment for the benefit of creditors, with directions to the

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assignee to prefer a specified creditor or class of creditors, by paying their claims in full before the others receive any dividend, or in some other manner. More usually termed a "preferential assignment."

—**Foreign assignment.** An assignment made in a foreign country, or in another state. 2 Kent, Comm. 405, *et seq.*

—**General assignment.** An assignment made for the benefit of *all* the assignor's creditors, instead of a few only; or one which transfers the *whole* of his estate to the assignee, instead of a part only. Royer Wheel Co. v. Fielding, 101 N.Y. 504, 5 N.E. 431.

—**Voluntary assignment.** An assignment for the benefit of his creditors made by a debtor voluntarily; as distinguished from a compulsory assignment which takes place by operation of law in proceedings in bankruptcy or insolvency. Presumably it means an assignment of a debtor's property in trust to pay his debts generally, in distinction from a transfer of property to a particular creditor in payment of his demand, or to a conveyance by way of collateral security or mortgage. Dias v. Bouchaud, 10 Paige (N.Y.) 445.

ASSIGNOR. A person who assigns a right, whether or not he is the original owner thereof. Restatement, Contracts, § 149(2).

ASSIGNS. Assignees; those to whom property shall have been transferred. Now seldom used except in the phrase, in deeds, "heirs, administrators, and assigns." Stannard v. Marboe, 159 Minn. 119, 198 N.W. 127. It generally comprehends all those who take either immediately or remotely from or under the assignor, whether by conveyance, devise, descent, or act of law. Ferrell v. Deverick, 100 S.E. 850, 853, 85 W.Va. 1.

ASSISA. In old English and Scotch law. An assise; a kind of jury or inquest; a writ; a sitting of a court; an ordinance or statute; a fixed or specific time, number, quantity, quality, price, or weight; a tribute, fine, or tax; a real action; the name of a writ. See Assise.

ASSISA ARMORUM. Assise of arms. A statute or ordinance requiring the keeping of arms for the common defense. Hale, Com.Law, c. 11.

ASSISA CADERE. To fail in the assise; *i. e.*, to be nonsuited. Cowell; 3 Bl.Comm. 402.

ASSISA CADIT IN JURATUM. The assise falls (turns) into a jury; hence to submit a controversy to trial by jury.

ASSISA CONTINUANDA. An ancient writ addressed to the justices of assise for the continuation of a cause, when certain facts put in issue could not have been proved in time by the party alleging them. Reg.Orig. 217.

ASSISA DE CLARENDON. The assise of Clarendon. A statute or ordinance passed in the tenth year of Henry II., by which those that were ac-

cused of any heinous crime, and not able to purge themselves, but must abjure the realm, had liberty of forty days to stay and try what succor they could get of their friends towards their sustenance in exile. Bract. fol. 136; Co.Litt. 159a; Cowell.

ASSISA DE FORESTA. Assise of the forest; a statute concerning orders to be observed in the royal forests.

ASSISA DE MENSURIS. Assise of measures. A common rule for weights and measures, established throughout England by Richard I., in the eighth year of his reign. Hale, Com.Law, c. 7.

ASSISA DE NOCUMENTO. An assise of nuisance; a writ to abate or redress a nuisance.

ASSISA DE UTRUM. An obsolete writ, which lay for the parson of a church whose predecessor had alienated the land and rents of it.

ASSISA FRISCÆ FORTIÆ. Assise of fresh force, which see.

ASSISA MORTIS D'ANCESTORIS. Assise of mort d'ancestor, which see.

ASSISA NOVÆ DISSEYSINÆ. Assise of novel disseisin, which see.

ASSISA PANIS ET CEREVISIÆ. Assise of bread and ale, or beer. The name of a statute passed in the fifty-first year of Henry III., containing regulations for the sale of bread and ale; sometimes called the "statute of bread and ale." Co.Litt. 159b; 2 Reeve, Hist.Eng.Law, 56; Cowell; Bract. fol. 155.

ASSISA PROROGANDA. An obsolete writ, which was directed to the judges assigned to take assises, to stay proceedings, by reason of a party to them being employed in the king's business. Reg.Orig. 208.

ASSISA ULTIMÆ PRÆSENTATIONIS. Assise of darrein presentment, (*q. v.*).

ASSISA VENALIUM. The assise of salable commodities, or of things exposed for sale.

ASSISE, or ASSIZE. An ancient species of court, consisting of a certain number of men, usually twelve, who were summoned together to try a disputed cause, performing the functions of a jury, except that they gave a verdict from their own investigation and knowledge and not upon evidence adduced. From the fact that they sat together, (*assideo*,) they were called the "assise." See Bract. 4, 1, 6; Co.Litt. 153b, 159b. A court composed of an assembly of knights and other substantial men, with the baron or justice, in a certain place, at an appointed time. Grand Cou. cc. 24, 25.

The verdict or judgment of the jurors or recognitors of assise. 3 Bl.Comm. 57, 59.

In modern English law, the name "assises" or "assizes" is given to the court, time, or place where the judges of assise and *nisi prius*, who are sent by special commission from the crown on circuits through the kingdom, proceed to take indictments, and to try such disputed causes issu-