Chose in possession and Chose in Action under Common Laws

Description

This post is rather an effort of myself in learning property laws in common law countries.

As a lawyer, one of my main law practices is to help China's high net worth individuals to work out their estate plan under which very often clients wishes to allocate their assets or properties in both China and offshore countries. It is critical for me to understand the basic concepts and rules of local property laws that are very often unique and distinct.

The term "chose in action" has really puzzled me a lot when reading legal materials in English.

According to some of the internet resources:

> A chose in action refers to all personal rights to property which can only be claimed or enforced by an action and not by taking physical possession of the property. It is a right to recover something not in one's possession. It is a right of which a person does not have present enjoyment, but may recover it (if withheld) by action. This may be assigned by writing, if signed by the assignor, absolute in terms and notice in writing being given to the debtor. A "chose in possession" is a right of which the owner has the actual enjoyment.

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and the one from Oxford Reference:

> A right of proceeding in a court of law to obtain a sum of money or to recover damages. Examples include rights under an insurance policy, a debt, and rights under a contract. A chose in action is a form of property and can be assigned, sold, held in trust, etc. See also chose in possession.

As opposite to chose in possession where there is a corporeal tangible thing that can be physically possessed, chose in action seems to refer to those incorporeal intangible interests that can only be obtained by way of legal action.

> Chose in Possession as opposed to chose in action means vesting of actual possession of a thing or a right in person. All *proprietary rights in personam* if chose in possession refers to anything or right which is in claimant's possession. For example, the money which a person has in purse is a chose in possession whereas the money which a debtor owes to him is a chose in action.

Further, it is said that:

(a) Chose in action
(i) These are intangible rights which can only be enforced by court action.

(ii) They are not capable of physical possession for example debts, patents, among others.

(b) Chose in possession
These are tangible things or subject matter, capable of physical possession for example land and motor vehicles.

So from the above, a chose in action under common law can refer to all personalties that don't fall within the category of "chose in possession", encompassing a great variety of proprietary interests.

The property systems in common law are so different from those in civil law jurisdictions and they are almost incomparable. There are also some elements of differences among the common law countries themselves.

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