

# ASSIGNMENT OF CFAs

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# Why is this important?

- There have been many such assignments
- Takeovers
- Insolvencies
- Mergers
- Conversions to LLP
- Getting it wrong is very costly

# What is the fuss about? Why not assign a CFA?

- Deep rooted objections arising from the law relating to assignment
- You cannot assign a personal contract so as to compel someone to contract with a person not of their choosing
- You cannot assign the burden of a contract only the benefit

# The Jenkins exception. Is it right?

- Based on the desire of the client to follow a fee earner from firm to firm
- Thus “trust and confidence” maintained
- The benefit of earning the fees was inextricably linked with the burden of having to perform the retainer
- But is the latter analysis right?

# Jones v Spire

- Distinguishes Jenkins on the basis that there was no “trust and confidence”
- On appeal, part heard
- Likely to go further

# Strategies for now

- Wait and see
- The agency option
- Go ahead with an assignment but with back stop

# For the paying party

- Has there been a notice of change during proceedings, especially post 31<sup>st</sup> March 2013?
- If so, is the success fee claimed thereafter?
- Interrogate about the circumstances of the change
- More test cases? Budana for example.

# For barristers

- This does not only affect solicitors
- Ignore the problem that arises when you receive instructions from a new legal entity in succession to a previous one seeking to continue to instruct on the basis of the old CFA at your peril



# Questions?

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