

City University of Hong Kong

Course Syllabus

offered by School of Law
with effect from Semester A 2018/19

Part I Course Overview

Course Title: Equity & Trusts

Course Code: LW6177E

Course Duration: One semester

Credit Units: 3

Level: P6

Medium of Instruction: English

Medium of Assessment: English

Prerequisites:
(Course Code and Title) Nil

Precursors:
(Course Code and Title) Nil

Equivalent Courses:
(Course Code and Title) LW5630 Equity & Trusts

Exclusive Courses:
(Course Code and Title) Nil

Part II Course Details

1. Abstract

This course aims to

- examine the nature, role and significance of equity in common law legal system;
- develop a sound knowledge of law, policy and practice in relation to the law of equity, including the law trusts;
- develop the following set of skills in relation to the law of equity, including trusts:
 - research skills
 - analytical and problem-solving skills
 - effective written and oral communication skills
- develop an awareness of the social and commercial contexts in which trust law operates;
- introduce students to some of the basic practical skills required to advise on application of trusts law; and
- review the distinctions between trusts, gifts and the law of obligations (contract and tort).

2. Course Intended Learning Outcomes (CILOs)

(CILOs state what the student is expected to be able to do at the end of the course according to a given standard of performance.)

| No. | CILOs | Weighting (if applicable) | Discovery-enriched curriculum related learning outcomes (please tick where appropriate) | | |
|-----|---|------------------------------|---|----|----|
| | | | A1 | A2 | A3 |
| 1. | Identify, describe and explain basic principles of equity and trusts. | 40% | | √ | |
| 2. | Analyse and critically evaluate: <ul style="list-style-type: none"> ➢ Issues in equity and trusts of topical interest ➢ the operation of the substantive rules of trusts law: <ul style="list-style-type: none"> ○ in terms of the objectives and practical implications of trusts law ○ in their social and commercial contexts ○ in relation to other branches of law ○ as a form of distributive or remedial device. | 35% | √ | √ | |
| 3. | Apply principles of equity and trusts to solve legal problems by: <ul style="list-style-type: none"> ➢ conducting independent research on issues of equity and trusts ➢ communicating their analysis clearly and precisely in their own words and in plain English | 15% | | √ | √ |
| 4. | To communicate ideas, marshal arguments or prepare advice clearly and coherently both in oral and written forms. | 10% | | √ | √ |
| | | 100% | | | |

A1: Attitude

Develop an attitude of discovery/innovation/creativity, as demonstrated by students possessing a strong sense of curiosity, asking questions actively, challenging assumptions or engaging in inquiry together with teachers.

A2: Ability

Develop the ability/skill needed to discover/innovate/create, as demonstrated by students possessing critical thinking skills to assess ideas, acquiring research skills, synthesizing knowledge across disciplines or applying academic knowledge to self-life problems.

A3: Accomplishments

Demonstrate accomplishment of discovery/innovation/creativity through producing /constructing creative works/new artefacts, effective solutions to real-life problems or new processes.

3. Teaching and Learning Activities (TLAs)

(TLAs designed to facilitate students' achievement of the CILOs.)

| TLA | Brief Description | CILO No. | | | | | | Hours/week (if applicable) |
|-----------|--|----------|---|---|---|--|--|----------------------------|
| | | 1 | 2 | 3 | 4 | | | |
| Lectures | <p>Students will acquire knowledge of principles of trusts law and the role of equity.</p> <p>Students will be introduced to principles of equity and trusts through practical application and case law examples.</p> <p>Students will learn how to solve problems by applying trusts law.</p> | √ | √ | √ | | | | 3 |
| Tutorials | <p>Students will, by answering questions and engaging in exercises in relation to principles of equity and trusts, further develop explanatory skills. Tutorial questions will require students to analyse facts and law and critically examine the adequacy and effectiveness of law in its current state, together with its underlying policy objective.</p> <p>Students will be required to analyse fact situation and to apply case law precedents to ascertained facts.</p> <p>Students will be required to analyse fact situations and to apply case law precedents to ascertained facts.</p> <p>Students are required to participate in tutorial discussion, particularly by making presentations on pre-assigned tutorial assignments.</p> <p>Students will also be asked to discuss tutorial questions among themselves, with the tutor commenting on strengths and scope for improvement in student contributions.</p> | √ | √ | √ | √ | | | |

4. Assessment Tasks/Activities (ATs)

(ATs are designed to assess how well the students achieve the CILOs.)

| Assessment Tasks/Activities | CILO No. | | | | | | Weighting | Remarks |
|--|----------|---|---|---|--|--|-----------|---------|
| | 1 | 2 | 3 | 4 | | | | |
| Continuous Assessment: 50 % | | | | | | | | |
| Assignments: Students' ability to identify and explain the relevant principles and components of the law of equity and trusts will be tested. | √ | √ | √ | √ | | | 30% | |
| Classwork: | √ | √ | | √ | | | 20% | |
| Examination: 50% (duration: 2 or 3 hours) | | | | | | | | |
| Students' ability to apply legal rules and principles to particular sets of hypothetical circumstances will be tested. | | √ | √ | | | | | |
| | | | | | | | 100% | |

Students are required to attend at least 70% of the classes (lectures, seminars, presentations). If a student does not meet this requirement, he/she may be disqualified for assessment.

Students must obtain a minimum mark of 40% in both coursework and examination and an overall mark of 40% in order to pass the course.

5. Assessment Rubrics

(Grading of student achievements is based on student performance in assessment tasks/activities with the following rubrics.)

| Assessment Task | Criterion | Excellent (A+, A, A-) | Good (B+, B, B-) | Fair (C+, C, C-) | Marginal (D) | Failure (F) |
|-------------------------------------|--|--|---|---|--|---|
| 1. Coursework | Demonstration of skills in recognising legal issues, identifying applicable rules, and resolving the issues through an application of the relevant rules; Demonstration of a high level of legal research and analytical skills. | Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base. | Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature. | Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material. | Sufficient familiarity with the subject matter to enable the student to progress without repeating the course. | Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature. |
| 2. Tutorials and class presentation | Demonstration of legal argument construction skills, oral communication skills, and willingness/ability to answer questions in class. | Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base. | Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature. | Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material. | Sufficient familiarity with the subject matter to enable the student to progress without repeating the course. | Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature. |
| 3. Examination | Demonstration of understanding of principles, theories and concepts. Demonstration of ability to recognise issues, identifying applicable legal rules, and resolving problems by applying applicable rules. Ability to engage in argument-based analysis. Aptitude for formulating innovative solutions to designated fact-based questions. | Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base. | Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature. | Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material. | Sufficient familiarity with the subject matter to enable the student to progress without repeating the course. | Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature. |

Part III Other Information (more details can be provided separately in the teaching plan)

1. Syllabus

1.1 Keyword Syllabus

(An indication of the key topics of the course.)

Nature and role of equity

Equitable maxims

Undue influence

Fiduciary relations

The concept, essential elements, classification, and functions of trusts

The creation of trusts

Formalities and complete constitution of trusts

Discretionary trusts

Illegality

Express trusts in commercial contexts

Constructive trusts in a domestic situation

Constructive trusts in commercial settings

Strangers as constructive trustees

Duties of trustees

Breach of trust and remedies

1.2 Detailed Syllabus

- Equity: Meaning of equity—historical evolution as a gloss on common law—fusion of common law and equity—maxims of equity—role of equity in the contemporary common law systems
- Undue influence: The meaning of undue influence, the distinction between undue influence and duress, classification of undue influence, actual undue influence, presumed undue influence
- Fiduciary relations: The concept of fiduciary, the relevance of fiduciary law, classification of fiduciaries, the determining factors of fact-based fiduciaries, scope of fiduciary obligations, breach of fiduciary obligations, defences.
- The concept, essential elements, classification and functions of trusts: The concept of trusts, trustee, beneficiary, and trust property, trusts compared with companies and partnerships, express trusts, fixed trusts, discretionary trusts, imputed trusts (resulting trusts & constructive trusts)
- Creation of trusts: three certainties, purpose trusts, the effect of gifts to unincorporated associations
- Formalities and complete constitution of trusts: formalities required for the creation of a trust, circumstances where formalities are not required, enforceability of an incompletely constituted trust, types of volunteers who are exempted from the rule that equity will not assist a volunteer.
- Discretionary trusts and illegality: The structure and functions of discretionary trusts, distinctive features of discretionary trusts, the nature of the interests of beneficiaries under a discretionary trust, the test of certainty of object in the case of a discretionary trust, the difference between a trust power and a mere power, the difference between semantic certainty and evidentiary certainty, trusts for illegal purposes, trusts carrying out illegal purposes, trusts that disturb the sanctity of marriage or family

- Express trusts in commercial contexts and constructive trusts in a domestic situation: trusts in liquidation, trusts that secure priority, co-existence of trust and loan, constructive trusts used to regulate the property relationship between separating de facto spouses and estranged spouses.
- Constructive trusts in commercial settings, strangers as constructive trustees, constructive trusts as a tool to regulate commercial relationships, knowing receipt, dishonest assistance.
- Duties of trustees: the no conflict rule and no profit rule, duty of care, duty to account and provide information, duty to act impartially, duty to act personally, duty to invest, trustee's right to indemnity
- Breach and remedies: Three forms of breach of trusts, remedies generally, tracing, liability of third parties who have received trust property

2. Reading List

2.1 Compulsory Readings

(Compulsory readings can include books, book chapters, or journal/magazine articles. There are also collections of e-books, e-journals available from the CityU Library.)

G E Dal Pont, *Equity and Trusts: Commentary and Materials* (6th edn, Thomson Reuters Lawbook Co, Sydney 2016).

2.2 Recommended Readings

(Additional references for students to learn to expand their knowledge about the subject.)

Text (Required)

Virgo, Graham. *The Principles of Equity & Trusts* (Third ed. Oxford, United Kingdom: Oxford University Press, 2018).

Recommended Reading

Mowbray, et al, *Lewin on Trusts* (Sweet & Maxwell)

Haley and McMurtry, *Equity and Trusts* (Sweet & Maxwell)

Hanbury and Martin, *Modern Equity* (Sweet & Maxwell)

Hayton and Marshall, *Commentary & Cases on the Law of Trusts and Equitable Remedies* (Sweet & Maxwell)

Penner, *Butterworth's Core Textbook on Law of Trusts* (Butterworths)

Todd and Wilson, *Textbook on Trusts* (OUP)

Todd and Watt, *Cases and Materials on Equity and Trusts* (OUP)

Gary Watt, *Trusts and Equity* (OUP)

Gary Watt, *Trusts Textbook* (OUP)

2.3 Online Resources

Westlaw and Lexis.com. Several of the books recommended above come with online resources.