

COURSE SYLLABUS

Equity and Trusts

Course code: LEG317/A

Semester and year: Fall 2023

Day and time: Mondays; 11:30 – 14:15

Instructor: Hanna Ripper Mashinsky

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Consultation hours: By Appointment

London credits AAU credits	30 UK/15 ECTS 12 ECTS/6 US (whole year)	Level	6
Length	Semester (Academic Year)	Contact Hours	44 Hours (88 Hours)
Contact hours	88 Hours	Course type	University of London LLB/CertHE/EMFSS

1. Course Description

This module deals with the rules and principles governing the creation and operation of trusts – a particular method of holding property that developed historically in the courts of equity. The syllabus focuses on three broad areas:

1. the requirements for establishing a valid trust (including express private trusts; charitable trusts; implied and resulting trusts; constructive trusts);
2. the powers and obligations of trustees under a valid trust (including appointment, retirement and removal of trustees);
3. the remedies available when trustees act improperly.

MODULE PURPOSE AND OVERVIEW

Equity and Trusts is one of the seven foundation modules required for a qualifying law degree (QLD) in England Wales. Students on a QLD pathway must pass an examination in the module in order to meet the requirements of their programme.

The module guide was prepared by Martin Dixon, BA (Oxon), MA, PhD, FRSA, Honorary Bencher of Lincoln’s Inn, Professor of the Law of Real Property, Dean of College, Queens’ College, Cambridge

MODULE AIM

This module aims to provide students with an understanding of the fundamental principles of the modern law of trusts and the principles of equity, together with an appreciation of the controversies and difficulties that can be encountered in this area of law.

MODULE SYLLABUS

- (a) Definition and distinction from other legal concepts. Classification of trusts. Equitable rights and remedies.
- (b) Express private trusts. Statutory requirements for creation. Secret trusts. Incompletely constituted trusts. Certainties of a trust. Protective trusts. Discretionary trusts. Purpose trusts.
- (c) Trustees' powers and duties. Delegation of trustees' powers and discretions. (d) Charitable trusts. Definition. Distinctions from private trusts. Classification of charitable trusts. Doctrine of cy près.
- (e) Resulting trusts. Purchase in the name of another. Joint purchase and joint accounts. Contributions to purchase price. Beneficial interest not completely disposed of.
- (f) Constructive trusts. General nature. Constructive trusts of wrongful enrichment and unjust enrichment. Constructive trusts arising for other reasons, including the contractual vendor as a constructive trustee.
- (g) The appointment, retirement and removal of trustees.
- (h) Remedies for breach of trust. Trustees' liability to account. Equitable compensation. Exemption clauses. Trustees' right of indemnity or contribution. Dishonest assistance. Knowing receipt.
- (i) Claims based on tracing. Tracing rules. Trusts, liens, and subrogation.

STUDENT LEARNING OUTCOME

The primary outcome is an enhancement of knowledge, critical thinking and capacity to achieve a successful assessment.

LEARNING OUTCOMES: KNOWLEDGE

Students completing this module are expected to have knowledge and understanding of the main concepts and principles of Equity and Trusts. In particular they should be able to:

1. Contextualise the modern law of trusts within its historical origins, together with the role of equity in modern law;
2. Compare and contrast types of trusts and explain their main distinctive features and purposes;
3. Identify and apply relevant statutory frameworks to the law of Trusts;
4. Explain how breaches of trusts arise and identify and evaluate appropriate remedies;
5. Evaluate key issues in judicial decision making in the law of trusts and equity, including ethical and societal considerations, and demonstrate understanding of the wider academic debates.

LEARNING OUTCOMES: SKILLS

Students completing this module should be able to demonstrate the ability to:

1. Apply knowledge to complex practical problems and theoretical enquiries demonstrating the ability to think critically about the issues arising;
2. Synthesise key arguments advanced in judicial opinions and academic writings;
3. Distinguish lines of argument and analyse their relative strengths and weaknesses;
4. Use appropriate legal terminologies specific to the law of Equity and Trusts.

2. Reading Material

Core reading/Essential reading

!!! MODULE (SUBJECT) GUIDE posted at London & NEO page – absolutely indispensable !!!

- Penner, J.E. *The Law of Trusts*. (Oxford: Oxford University Press, 2022) 12th edition [ISBN 9780192855008]

Academic articles

Core statutes & cases on property law

Legal journals

In addition to the essential texts, you should consult a range of legal journals to keep yourself up to date with academic writing on the subject:

- *Law Quarterly Review*
- *Modern Law Review*
- *New Law Journal*
- *Estates Gazette*
- *Conveyancer and Property Lawyer*.

Recommended Materials

- VLN Study pack readings + VIDEO lectures
- NEO Study pack readings + VIDEO Lectures

3. Teaching methodology

- The lectures will be interactive and strongly oriented towards the discussion of the reading materials and other sources of information suggested by the VLN/London. They will be complemented by case studies, group work and presentations initiated by the students and reviewed by a class analysis. Considering the abundance of materials and the need to interweave information, great organization, active participation, and at-home preparation is absolutely essential for success. Regular attendance, on-time completion of homework, and ongoing work with the VLE page is required.

Module guide

Module guides are students' primary learning resource. The module guide covers the entire syllabus and provides students with the grounding to complete the module successfully. It sets out the learning outcomes that must be achieved as well as providing advice on how to study the module. It also includes the essential reading and a series of self-test activities together with sample examination questions, designed to enable students to test their understanding. The module guide is supplemented each year with the pre-exam update, made available on the VLE.

The Laws virtual learning environment (VLE)

The Laws VLE provides one centralised location where the following resources are provided:

- a module page with news and updates, provided by legal academics associated with the Laws Programme;
- a complete version of the module guides;
- pre-exam updates;

- past examination papers and reports;
- discussion forums where students can debate and interact with other students;

Computer Marked Assessments – multiple-choice questions with feedback are available for some modules allowing students to test their knowledge and understanding of the key topics.

The Online Library

The Online Library provides access to:

- the professional legal databases LexisLibrary and Westlaw;
- cases and up-to-date statutes;
- key academic law journals;
- law reports;
- links to important websites.

4. Course Schedule

2023

Date	Class Agenda
Sept. 18	<p>Topic: Trusts – the basics Description: Equity; what is a trust?; comparison with other legal concepts Reading: SG - Introduction and Chapter 2 Module Guide; Penner, Chapter 1 “Historical origins of the trust” Assignments/deadlines: See SG.</p>
Sept. 25	<p>Topic: Types of Trusts Description: Express trusts; discretionary and fixed trusts; bare trusts; trusts arising by operation of law; testamentary and inter vivos trusts; purpose trusts Reading: Module Guide Chapter 3; Penner, Chapter 2 ‘Express trusts: basic principles’, Sections ‘Express trusts and trusts arising by operation of law (TABOLs)’ and ‘The position of the settlor’; Chapter 3 ‘Trusts and powers’, Sections ‘Three basic building blocks: fixed trusts, discretionary trusts, and powers of appointment’ and ‘The variety of interests under express trusts’ and ‘; Chapter 17 ‘Constructive trusts’, Sections ‘Varieties of constructive trust (CTs)’ and “Institutional”and “remedial” constructive trusts’; and Chapter 10 ‘Resulting trusts’, Sections ‘Resulting uses’ and ‘Resulting trusteeship’. Assignments/deadlines: See SG.</p>
Oct. 2	<p>Topic: The express trust relationship Description: Intention to create a trust; identifying the trust property; identifying the beneficiaries Reading: Module Guide Chapter 5; Penner, Chapter 5 “Certainty” Assignments/deadlines: See SG.</p>
Oct. 6	<p>Topic: Review class Description: Review session for all prior completed chapters thus far Reading: TBD dependent on student comprehension and areas needing improvement Assignments/deadline: See SG</p>
Oct. 9	<p>Topic: Formalities Description: Declarations of trusts of titles to land; testamentary trusts; transfer of interests under trusts</p>

	<p>Reading: Module Guide Chapter 6; Penner, Chapter 9 "Formalities and secret trusts"</p> <p>Assignments/deadlines: See SG.</p>
Oct. 13	<p>Topic: Review class</p> <p>Description: Review session for all prior completed chapters thus far</p> <p>Reading: TBD dependent on student comprehension and areas needing improvement</p> <p>Assignments/deadline: See SG</p>
Oct. 16	<p>Topic: Constitution</p> <p>Description: Constituting a trust; defective constitution</p> <p>Reading: Module Guide Chapter 7; Penner, Chapter 6 "constitution", Section "Equity will not assist a volunteer" and "Perfecting an imperfect Gift"</p> <p>Assignments/deadlines: See SG.</p>
--- MID TERM BREAK ---	
Oct. 30	<p>Topic: Promises to create Trusts</p> <p>Description: Promises in deeds; promises for consideration; promises and detrimental reliance</p> <p>Reading: Module Guide Chapter 8; Penner, Chapter 6 "Constitution", Sections "covenants to settle" to the end of the chapter</p> <p>Assignments/deadlines: See SG.</p>
Nov. 6	<p>Topic: Charitable purpose trust</p> <p>Description: Charitable status; the meaning of 'charity'; the public benefit requirement; contaminating non-charitable elements; <i>cy-prés</i></p> <p>Reading: Module Guide Chapter 9; Penner, Chapter 18 "the law governing charities"</p> <p>Assignments/deadlines: See SG.</p>
Nov. 13	<p>Topic: Private purpose trusts</p> <p>Description: objections to private purpose trusts; the 'beneficiary principle'; trusts for persons limited by a purpose; anomalous valid non-charitable (private) purpose trusts; departures from the beneficiary principle</p> <p>Reading: Module Guide Chapter 10; Penner, Chapter 7 "the beneficiary principle", sections "the beneficiary principle and the invalidity of private purpose trusts", "anonymous valid purpose trusts", "powers for purposes" and "an enforcer principle?"</p> <p>Assignments/deadlines: See SG.</p>
Nov. 20	<p>Topic: Unincorporated associations</p> <p>Description: Transfers to unincorporated associations; the distribution of property upon dissolution</p> <p>Reading: Module Guide Chapter 11; Penner, Chapter 11 "Bare trusts subject to contractual obligations and agent's instructions", section 'unincorporated association trusts (UATs)'</p> <p>Assignments/deadlines: See SG.</p>
Nov. 27	<p>Topic: Resulting Trusts</p> <p>Description: When do resulting trusts arise?; why do resulting trusts arise?</p> <p>Reading: Module Guide Chapter 12; Penner, Chapter 10 "resulting trusts"</p> <p>Assignments/deadlines: See SG.</p>

Dec. 4	<p>Topic: Constructive Trusts Description: Genuine constructive trusts; disputed constructive trusts; types of constructive trust; making sense of constructive trusts; wrongs; unjust enrichment; other events Reading: Module Guide Chapter 13; Penner, Chapter 17 "Constructive Trusts" Assignments/deadlines: See SG.</p>
Dec. 11	<p>Topic: Secret Trusts Description: What are secret trusts? Justifications for the admission of evidence of secret trusts; some specific issues; what type of trust is ultimately enforced? Reading: Module Guide 14; Penner, Chapter 8 "Formalities and secret trusts", sections "testamentary trusts: Wills Act 1837, s9" and "informal testamentary trusts; secret and half-secret trusts" Assignments/deadlines: See SG.</p>

5. Course Requirements and Assessment (with estimated workloads)

There are 88 hours of contact time and additional hours of notional study time. In sum, students should study no less than 300 hours for this course (considering the whole year), and this predominantly by reading and critical thinking and discussing.

ASSESSMENT

Learning is supported through tasks in the module guide online activities. The formative assessment will prepare students to reach the module learning outcomes tested in the summative assessment.

Summative assessment is through a three-hour and 15 minute unseen examination, which includes a choice of essay and problem questions. Students are required to answer three questions out of six. Please be aware that the format and mode of assessment may need to change in light of extraordinary events beyond our control, for example, an outbreak such as the coronavirus (COVID-19) pandemic. In the event of any change, students will be informed of any new assessment arrangements via the VLE.

Permitted materials

Students are permitted to bring into the examination room the following specified document:

- Hart core statutes on property law 2022-23 (Bloomsbury).

TBD – see past exams (London page).

6. General Requirements and School Policies

General requirements

All coursework is governed by AAU’s academic rules. Students are expected to be familiar with the academic rules available in the Codex, AAU’s Student Handbook, the School of Law Handbook, and the University of London International Programme Student Handbook.

Electronic communication and submission

The university and instructors shall only use students’ university email address for communication; students are encouraged to communicate through NEO.

Each e-mail sent to an instructor that is a new topic (not a reply to an original email) shall have the course name and purpose of the email listed in the subject, for example: "Property

Law Mid-term Exam Feedback question”; each new matter requires a new subject line, for example “Property Law essay draft question” or “Property Law – review final essay feedback”.

A considerable amount of course work will be handwritten; these assignments are to be submitted in person. Electronic documents will be submitted via NEO.

Attendance

Attendance, i.e., presence in class in real-time, at AAU courses is default mandatory; however, it is not graded as such. (Grades may be impacted by missed assignments or lack of participation.) Still, students must attend at least two thirds of classes to complete the course. If they do not meet this condition and most of their absences are excused, they will be administratively withdrawn from the course. If they do not meet this condition and most of their absences are not excused, they will receive a grade of “FW” (Failure to Withdraw). Students may also be marked absent if they miss a significant part of a class (for example by arriving late or leaving early).

LLB students are required to attend a minimum **80%** of courses. Students failing to meet the threshold in dual enrolment courses may be dissociated as representative of AAU. This step removes AAU’s access to the student’s University of London’s records and prevents AAU from advocating on the students behalf. This is an absolute attendance requirement; excused absences do not apply. The handbook should be consulted for further information.

Absence excuse and make-up options

Should a student be absent from classes for relevant reasons (illness, serious family matters), and the student wishes to request that the absence be excused, the student should submit an Absence Excuse Request Form supplemented with documents providing reasons for the absence to the Dean of Students within one week of the absence. Each student may excuse up to two sick days per term without any supporting documentation; however, an Absence Excuse Request Form must still be submitted for these instances. If possible, it is recommended the instructor be informed of the absence in advance. Should a student be absent during the add/drop period due to a change in registration this will be an excused absence if s/he submits an Absence Excuse Request Form along with the finalized add/drop form.

Students whose absence has been excused by the Dean of Students are entitled to make up assignments and exams provided their nature allows. Assignments missed due to unexcused absences which cannot be made up, may result in a decreased or failing grade as specified in the syllabus.

Students are responsible for contacting their instructor within one week of the date the absence was excused to arrange for make-up options.

Late work: No late submissions will be accepted without prior consultation and agreement with the instructor – please follow the deadlines.

Electronic devices

Electronic devices (e.g. phones, tablets, laptops) may be used only for class-related activities (taking notes, looking up related information, etc.). Any other use will result in the student being marked absent and/or being expelled from the class. No electronic devices may be used during tests or exams unless required by the exam format and the instructor.

Eating is not allowed during classes.

Cheating and disruptive behavior

If a student engages in disruptive conduct unsuitable for a classroom environment, the instructor may require the student to withdraw from the room for the duration of the class and shall report the behavior to the student's Dean.

Students engaging in behavior which is suggestive of cheating will, at a minimum, be warned. In the case of continued misconduct, the student will fail the exam or assignment and be expelled from the exam or class.

Plagiarism

Plagiarism obscures the authorship of a work or the degree of its originality. Students are expected to create and submit works of which they are the author. Plagiarism can apply to all works of authorship – verbal, audiovisual, visual, computer programs, etc. Examples are:

- **Verbatim plagiarism:** verbatim use of another's work or part of it without proper acknowledgement of the source and designation as a verbatim quotation,
- **Paraphrasing plagiarism:** paraphrasing someone else's work or part of it without proper acknowledgement of the source,
- **Data plagiarism:** use of other people's data without proper acknowledgement of the source,
- **False quotation:** publishing a text that is not a verbatim quotation as a verbatim quotation,
- **Fictitious citation:** quoting, paraphrasing, or referring to an incorrect or a non-existent work,
- **Inaccurate citation:** citing sources in such a way that they cannot be found and verified,
- **Ghostwriting:** commissioning work from others and passing it off as one's own,
- **Patchwriting:** using someone else's work or works (albeit with proper acknowledgement of sources and proper attribution) to such an extent that the output contains almost no original contribution,
- **Self-plagiarism:** unacknowledged reuse of one's own work (or part of it) that has been produced or submitted as part of another course of study or that has been published in the past,
- **Collaborative plagiarism:** delivering the result of collective collaboration as one's own individual output.

At minimum, plagiarism will result in a failing grade for the assignment and shall be reported to the student's Dean. A mitigating circumstance may be the case of novice students, and the benefit of the doubt may be given if it is reasonable to assume that the small-scale plagiarism was the result of ignorance rather than intent. An aggravating circumstance in plagiarism is an act intended to make the plagiarism more difficult to detect. Such conduct includes, for example, the additional modification of individual words or phrases, the creation of typos, the use of machine translation tools or the creation of synonymous text, etc. The Dean may initiate a disciplinary procedure pursuant to the Academic Codex. Intentional or repeated plagiarism always entail disciplinary hearing and may result in expulsion from AAU.

Use of Artificial Intelligence and Academic Tutoring Center

The use of artificial intelligence tools to search sources, to process, analyze and summarize data, and to provide suggestions or feedback in order to improve content, structure, or style, defined here as AI-assisted writing, is not in itself plagiarism. However, it is plagiarism if, as a result, it obscures the authorship of the work produced or the degree of its originality (see the examples above).

AAU acknowledges prudent and honest use of AI-assisted writing, that is, the use of AI for orientation, consultation, and practice is allowed. For some courses and assignments, however, the use of AI is counterproductive to learning outcomes; therefore, the course syllabus may prohibit AI assistance.

A work (text, image, video, sound, code, etc.) generated by artificial intelligence based on a mass of existing data, defined here as AI-generated work, is not considered a work of authorship. Therefore, if an AI-generated work (e.g. text) is part of the author's work, it must be marked as AI-generated. Otherwise, it obscures the authorship and/or the degree of originality, and thus constitutes plagiarism. Unless explicitly permitted by the instructor, submission of AI-generated work is prohibited.

If unsure about technical aspects of writing, and to improve their academic writing, students are encouraged to consult with the tutors of the AAU Academic Tutoring Center. For more information and/or to book a tutor, please contact the ATC at:

<http://atc.simplybook.me/sheduler/manage/event/1/>.

Course accessibility and inclusion

Students with disabilities should contact the Dean of Students to discuss reasonable accommodations. Academic accommodations are not retroactive.

Students who will be absent from course activities due to religious holidays may seek reasonable accommodations by contacting the Dean of Students in writing within the first two weeks of the term. All requests must include specific dates for which the student requests accommodations.

7. Grading Scale

AAU

Letter Grade	Percentage*	Description
A	95 – 100	Excellent performance. The student has shown originality and displayed an exceptional grasp of the material and a deep analytical understanding of the subject.
A-	90 – 94	
B+	87 – 89	Good performance. The student has mastered the material, understands the subject well and has shown some originality of thought and/or considerable effort.
B	83 – 86	
B-	80 – 82	
C+	77 – 79	Fair performance. The student has acquired an acceptable understanding of the material and essential subject matter of the course, but has not succeeded in translating this understanding into consistently creative or original work.
C	73 – 76	
C-	70 – 72	
D+	65 – 69	Poor. The student has shown some understanding of the material and subject matter covered during the course. The student's work, however, has not shown enough effort or understanding to allow for a passing grade in School Required Courses. It does qualify as a passing mark for the General College Courses and Electives.
D	60 – 64	

F	0 – 59	Fail. The student has not succeeded in mastering the subject matter covered in the course.
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* Decimals should be rounded to the nearest whole number.

University of London

The criteria of the grading scale are elaborated in the Law School Handbook. Students should review the handbook for a greater understanding of the aspects of each classification. Courses will be marked with a numerical grade while the degree is awarded an honour. Feedback for your formative assessments will indicate an honour level.

Grade Translations Table			
UK Class of Honours LLB	U.K. Numerical Grade	U.K. Class of Honours CertHE	ECTS* Grade
First	70 - 100	Distinction	A
Upper Second	67 - 69	Merit	A
Upper Second	65 - 66	Merit	B
Upper Second	60 - 64	Merit	B
Lower Second	55 - 59	Credit	C
Lower Second	50 - 54	Credit	C
Third	47 - 49	Pass	D
Third	45 - 46	Pass	D
Third	40 - 44	Pass	D
Fail	35 - 39	Fail	E
Fail	Below 35	Fail	F

* European Credit Transfer and Accumulation System

Prepared by and when: Hanna Ripper Mashinsky on 15.8.2023 (updated September 2023)

Approved by: Jan Vašenda, Vice Dean, School of Law on 10.4.2023