

LAWS6012: Equity and Trusts

Newcastle City Precinct
Semester 1 – 2024



THE UNIVERSITY OF
NEWCASTLE
AUSTRALIA

OVERVIEW

Course Description This course examines important historical, theoretical, conceptual and doctrinal aspects of Australian equity and trusts law. It considers the history and context of equitable jurisdiction, the role of fusion within the contemporary legal framework, and key equitable concepts, such as confidential information, fiduciary obligations and trusts.

Compulsory Attendance Attendance at all classes will be monitored and records maintained by the Course Coordinator. In order to satisfy the “Compulsory Attendance” requirement, students must be present at a minimum of 80% of scheduled classes (i.e. ten (10) seminars) as spelled out in the course outline, unless they are able to demonstrate that their absence falls within the Adverse Circumstances policy. Unless this requirement is met, despite marks awarded in other assessment items, the student will receive a zero mark and an CF grade for the course.

Please note that if you miss more than 2 classes for reasons that fall within the University’s adverse circumstances policy you may be required to complete additional assessment items to ensure that you have completed the required volume of learning for this course.

Note also that “attendance” means attending the given class for its full length. Where a student leaves class early, attendance may not be credited.

Skills Focus Respectful discussion
Structural writing skills
Problem solving

Requisites Students must be active in the Juris Doctor/Grad Dip Legal Practice [12334] and have successfully completed the following courses:
LAWS6000 AND LAWS6001 AND (LAWS6120 and LAWS6121) or LAWS6002B AND (LAWS6130 or LAWS6003B) AND (LAWS6140 and LAWS6141) or LAWS6004B. OR Students must be Active in or Master of Laws [12333]

Contact Hours **Newcastle City Precinct**
Online Activity
Online
2 hour(s) per week for full term starting week 1, students are required to complete the lecture online

Seminar
Face to face on campus
2 hour(s) per week for full term

Unit Weighting 10

COURSE OUTLINE

www.newcastle.edu.au

CRICOS Provider 00109J

Workload Students are required to spend on average 120-140 hours of effort (contact and non-contact) including assessments per 10 unit course.

CONTACTS

Course Coordinator Dr Glen Anderson
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SYLLABUS

Course Content Topics covered will include:

- Introduction to Equity: Historical Origins and General Principles
- Introduction to Equity: The Fusion Fallacy?
- Assignments
- Equitable Dispositions and the Statutory Requirements of Writing
- Confidential Information
- Fiduciary Obligations
- Introduction to Trusts
- Express Trusts
- Variation and Termination of Trusts
- Charitable Trusts
- Resulting Trusts
- Constructive Trusts

Course Learning Outcomes **On successful completion of this course, students will be able to:**

1. Demonstrate an advanced understanding of the key concepts and principles of Australian equity and trusts law.
2. Demonstrate an advanced understanding of the historical development of equitable jurisdiction.
3. Critically analyse the fusion of law and equity within contemporary common law legal systems.
4. Demonstrate an advanced understanding of equity and trusts law concepts, such as confidential information, fiduciary obligations, and trusts

Course Materials The prescribed textbook for this course is:

- Radan, P., and Stewart, C., *Principles of Australian Equity and Trusts* (LexisNexis Butterworths, 5th ed, 2021).

In addition, students are able to freely access draft chapters of:

- Anderson, G., *Equity and Trusts: Concepts and Doctrine* (unpublished).

Access will be under a special tab on Canvas.

The following books are also recommended for general reading and reference and will be available (mostly on closed reserve) in the Law Library:

- Bant, E., and Bryan, M., *Principles of Proprietary Remedies* (Thomson Reuters 2013).
- Barkehall, T. S., and Vann, V., *Equity* (LexisNexis Butterworths, 3rd ed., 2015).
- Barkehall, T. S., and Vann, V., *Trusts* (LexisNexis Butterworths, 3rd ed., 2016).
- Barnes, M., (QC), *The Law of Estoppel* (Bloomsbury, 2020).
- Birks, P., and Rose, F. (eds.), *Restitution and Equity* (LLP Professional Publishing, 2000).
- Biscoe, P., *Freezing and Search Orders: Mareva and Anton Piller Orders* (LexisNexis Butterworths, 2008).
- Bradshaw, F. M., *The Law of Charitable Trusts in Australia* (Butterworths, 1983).
- Brien, C., *Equity and Trusts Guidebook* (Oxford University Press, 2nd ed., 2015).
- Bryan, M., and Vann, V., *Equity and Trusts in Australia* (Cambridge University Press, 2nd ed, 2017).
- Butler, A. S., (ed.), *Equity and Trusts in New Zealand* (Thomson Reuters, 3rd ed., 2022).
- Chambers, R., *Resulting Trusts* (Clarendon Press, 1997).
- Conaglen, M., *Fiduciary Loyalty: Protecting the Due Performance of Non-Fiduciary Duties* (Bloomsbury 2010).
- Cope, M., *Constructive Trusts* (Law book Co., 1992).
- Cope, M., *Equitable Obligations: Duties, Defences and Remedies* (Lawbook Co., 2007).
- D'Angelo, N., *Commercial Trusts* (LexisNexis Australia, 2014).
- Dal Pont, G. E., and Cockburn, T., *Equity and Trusts in Principle* (Lawbook Co., 4th ed., 2019).
- Dal Pont, G. E., *Equity and Trusts in Australia* (Lawbook Co, 7th ed., 2018).
- Dal Pont, G. E., *Equity and Trusts: Commentary and Materials* (Lawbook Co., 7th ed., 2021).
- Dal Pont, G. E., *Law of Agency* (LexisNexis Butterworths, 4th ed., 2020)
- Dal Pont, G. E., *Law of Charity* (LexisNexis Butterworths, 3rd ed., 2021).
- Dal Pont, G. E., *Law of Confidentiality* (LexisNexis Butterworths, 2nd ed., 2020).
- Dal Pont, G. E., *Law of Succession* (LexisNexis Butterworths, 3rd ed., 2020).
- Degeling, S., and Edelman, J., (eds) *Equity in Commercial Law* (Lawbook Co, 2005).
- Douglas, R., and Knowler J., *Trusts in Principle* (Lawbook Co., 2012).
- Edwards, K., *Essential Equity and Trusts* (Routledge-Cavendish, 2nd ed., 2007).
- Edwards, R., and Stockwell, N., *Trusts and Equity* (Pearson, 13th ed., 2013).
- Evans, M., *Equity and Trusts* (LexisNexis Butterworths, 4rd ed., 2016).
- Finn, P. D., *Fiduciary Obligations* (Lawbook Co., 1977).
- Finn, P. D., *Fiduciary Obligations: 40th Anniversary Republication with Additional Essays* (Federation Press, 2016).
- Ford, H. L., and Lee, W. A., *Principles of the Law of Trusts* (loose-leaf edition, LBC Information Services, 1996+).
- Frankel, T., *Fiduciary Law* (Oxford University Press, 2011).
- Garton, J., Probert, R., and Bean, G., *Moffat's Trusts Law: Text and Materials* (Cambridge University Press, 7th ed., 2020).
- Getzler, J., (ed.), *Rationalizing Property, Equity and Trusts: Essays in Honour of Edward Burn* (LexisNexisUK, 2003).
- Glister, J., and Lee, J., *Modern Equity* (Sweet and Maxwell, 22th ed., 2021).
- Glover, J. (ed.), *Commercial Equity: Fiduciary Relationships* (Butterworths, 1995).
- Glover, J., *Equity, Restitution & Fraud* (LexisNexis Butterworths, 2004).
- Goldberg, J. C. P., Smith, H. E., and Turner, P. G., (eds.) *Equity and Law: Fusion and Fission* (Cambridge University Press, 2021).
- Hepburn, S., *Principles of Equity and Trusts* (The Federation Press, 6th ed., 2020).
- Heydon, J. D., and Leeming, M., *Jacob's Law of Trusts* (LexisNexis Butterworths, 8th ed., 2016).
- Heydon, J. D., and Loughlan, P., *Equity & Trusts: Cases & Materials* (LexisNexis Butterworths, 9th ed., 2018).
- Heydon, J. D., Leeming, M. J and Turner, P. G., *Meagher, Gummow and Lehane's Equity Doctrines and Remedies* (LexisNexis Butterworths, 5th ed., 2015).
- Hudson, A., *Equity and Trusts* (Routledge Cavendish, 10th ed., 2021).
- Jordan, F., *Select Legal Papers* (Legal Books Pty Ltd, 1983).
- Kerr, W. W., *Kerr on Fraud and Mistake: Including the Law Relating to Misrepresentation*

Generally, Undue Influence, Fiduciary Relations, Constructive Notice, Specific Performance etc (Sweet and Maxwell, 1929).

- Kershaw, D., *The Foundations of Anglo-American Corporate Fiduciary Law* (Cambridge University Press, 2018).
- Klinck, D. R., *Conscience, Equity and the Court of Chancery in Early Modern England* (Ashgate Publishing Ltd, 2010).
- Liew, Y. K., *Rationalising Constructive Trusts* (Hart Publishing, 2017).
- McKendrick, Ewan (ed.), *Commercial Aspects of Trusts and Fiduciary Obligations* (Oxford, 2003).
- Miller, Paul B., and Gold, Andrew S., *Contract, Status, and Fiduciary Law* (Oxford University Press 2017).
- Mitchell, C. (ed.), *Constructive and Resulting Trusts* (Hart Publishing, 2010).
- Oakley, A. J., *Parker and Mellows: The Modern Law of Trusts* (Sweet and Maxwell, 9th ed., 2008).
- Oakley, A. J., *Trends in Contemporary Trust Law* (Clarendon Press, 1996).
- Ong, D., *Ong on Equity* (Federation Press, 2011).
- Ong, D., *Ong on Estoppel* (Federation Press, 2020).
- Ong, D., *Trusts Law in Australia* (Federation Press, 5th ed., 2018).
- Panesar, S., *Equity and Trusts* (Pearson Education Limited, 2020).
- Parkinson, P., (ed.), *The Principles of Equity* (Lawbook Co, 2nd ed., 2003).
- Pearce, R. A., Stevens, J., and Barr, W., *The Law of Trusts and Equitable Obligations* (Butterworths, 7th ed: 2018).
- Penner, J. E., *The Law of Trusts* (Oxford University Press, 12th ed., 2022).
- Radan, P., Stewart C., and Vickovich, I., *Principles of Australian Equity and Trusts: Cases and Materials* (LexisNexis Butterworths, 5th ed., 2021).
- Ramjohn, M., *Text, Cases and Materials on Equity and Trusts* (Abingdon, 4th ed., 2008).
- Scott-Hunt, S., and Lim, H., *Feminist Perspectives on Equity & Trusts* (Cavendish Publishing, 2001).
- Sheppard, R., Fitzgerald, I. R., and Gonski, D., *Report of Inquiry into the Definition of Charities and Related Organisations, 2001* (www.cdi.gov.au).
- Simpson, W. B., *An Introduction to the History of the Land Law* (Oxford University Press, 1961).
- Smith, L., and Popovici, A., *Equity and Trusts* (Edward Elgar Publishing Ltd, 2019).
- Vout, Paul T., *Unconscionable Conduct: The Laws of Australia* (Lawbook Co., 3rd ed., 2017).
- Virgo, G., *The Principles of Equity & Trusts* (Oxford University Press, 3rd ed., 2018).
- Waters, D., Smith, L., and Gillen, M., *Waters' Law of Trusts in Canada* (Carswell, 5th ed., 2021).
- Watt, G., *Trusts and Equity* (Oxford University Press, 9th ed., 2020).
- Worthington, S., *Equity* (Oxford University Press, 2006).
- Wright, D., and Hepburn, S., *Remedies in Equity* (Thomson Reuters 2nd ed., 2019).
- Young, P., Clyde, C., and Smith, L., *On Equity* (Lawbook Co, 2009).

SCHEDULE

Week	Week Begins	Topic
1	26 Feb	Introduction to Equity: Historical Origins and General Principles
2	3 Mar	Introduction to Equity: The Fusion Fallacy?
3	11 Mar	Assignments
4	18 Mar	Equitable Dispositions and the Statutory Requirements of Writing
5	25 Mar	Confidential Information
6	1 Apr	Fiduciary Obligations
7	8 Apr	Introduction to Trusts
8	29 Apr	Express Trusts
9	6 May	Variation and Termination of Trusts
10	13 May	Charitable Trusts
11	20 May	Resulting Trusts
12	27 May	Constructive trusts
13	3 Jun	No Lecture

ASSESSMENTS

This course has 3 assessments. Each assessment is described in more detail in the sections below.

	Assessment Name	Due Date	Involvement	Weighting	Learning Outcomes
1	Research Essay	21 April 2024 5PM	Individual	40%	1, 2, 3, 4
2	Seminar Engagement and Participation	NA	Individual	10%	1, 2, 3, 4
3	Formal Examination	TBA by exams	Individual	50%	1, 2, 3, 4

Late Submissions

The mark for an assessment item submitted after the designated time on the due date, without an approved extension of time, will be reduced by 10% of the possible maximum mark for that assessment item for each day or part day that the assessment item is late. Note: this applies equally to week and weekend days.

Assessment 1 - Research Essay

Assessment Type Description

Essay

The first assessment will be the choice of an essay question with a word limit of 1500 words. The word limit will be strictly enforced by the examiners. The purpose of this assessment is to allow students to explore some of the general principles and doctrine that arise in the area of equity and trusts and to develop skills in legal research. Students must type the question at the top of the first page of the essay. These words, along with the footnotes and bibliography, will be excluded from the overall word count. Students are advised to move beyond the course materials and undertake their own independent research to enhance their critical analysis and argumentation. With regards to referencing, please follow the Australian Guide to Legal Citation (fourth edition). The Guide can be viewed online. https://drive.google.com/file/d/1TGvYqdqQnOU-GtSV3l25ft6EyYlx_w4U/edit

Weighting

40%

Due Date

21 April 2024 5PM

Submission Method

You are required to submit your research essay to Turnitin and provide a Turnitin ID on the cover sheet of your assignment. You may submit assignments for self-checking any time prior to the due date. Note that Turnitin requires you to allow 24 hours between each submission.

Please note that all other forms of submission will be disallowed under all conditions. Plenty of advance warning has been given and no deviation from the prescribed submission method will be permitted. For example: papers which are emailed to the co-ordinator will not be accepted. Papers which are submitted after the specified due date or time will incur penalty

as prescribed by official university policy.

Assessment Criteria	Copies of the Assignment Cover Sheet may be found at: http://www.newcastle.edu.au/service/student-forms/Electronic copy Six criteria will be used: 1. Identifies the relevant principles of equity and trusts law. 2. Develops a persuasive and well-reasoned response to the question. 3. Intelligently utilizes relevant research sources including cases, journal articles, books and legislation. 4. Writes clearly, concisely and within the word limit. 5. Correctly cites authorities and references other people's work using AGLC4 format. 6. Structures the analysis in a logical way (using headings where appropriate).
Return Method	TBA.
Feedback Provided	Yes, but only if formally requested at front of essay.

Assessment 2 – Seminar Engagement and Contribution

Assessment Type	Seminar Engagement and Contribution
Description	The seminar participation assesses the ability to critically read, analyse and reflect on equity and trusts law, while learning within a collaborative environment.

Seminar participation marks will be awarded on the basis of the quality of each student's overall seminar participation.

Matters that will be taken into account will be regular attendance and sensible/thoughtful contributions to matters being discussed. Discussion points must relate to the designated subject and be based upon, or referable to, the lecture and readings.

A seminar attendance roll will be taken in each class to allow accurate attendance records. Students are responsible for ensuring that if their name has not been called, or if they arrive late to class their attendance has been noted by the tutor. The record of attendance generated at the conclusion of the semester will hence be unassailable and incontrovertible. It goes without saying, of course, that falsely stating that someone has attended when they have not is academic misconduct, and would be likely to impact on the issue of whether someone was a "fit and proper" person to be admitted as a legal practitioner. Students who depart half way through a seminar without providing their tutor with a satisfactory explanation will not be recorded as having attended the class. Half class attendance does not count for this assessment item. If there is an ongoing academic clash for any part of the seminars (which may include clinical requirements for attendance at the Legal Centre), students should contact the co-ordinator as soon as becoming aware of this to discuss the attendance issue. Should illness affect attendance on a particular occasion, students may notify the co-ordinator by email, either before, or within the week after, the occasion. It is emphasized here that a law degree is a serious academic undertaking and cannot be properly attempted if seminars are not attended.

- There is a compulsory attendance requirement in this course. In order to satisfy the "Attendance" requirement, students must be present at a minimum of 80% of scheduled classes as spelled out in the course outline, unless they are able to demonstrate that their absence falls within the Adverse Circumstances policy. Unless this requirement is met, despite marks awarded in other assessment items, the student will receive a zero mark and an CF grade for the course.

Please note that if you miss more than 2 classes for reasons that fall within the University's adverse circumstances policy you may be required to complete additional assessment items to ensure that you have completed the required volume of learning for this course.

Weighting	10%
Due Date	NA
Submission Method	NA
Assessment Criteria	Five criteria will be used: 1. Relevance to the question or discussion point. 2. Accuracy of information/argument. 3. Demonstrated links to corresponding readings. 4. Clarity of expression.

	5. Reasoned interaction with points made by other students and staff.
	6. Regard for other students and staff.
Return Method	NA.
Feedback Provided	No.

Assessment 3 – Formal Examination

Assessment Type	Formal Examination
Description	This will be an open book examination conducted in the examination period and scheduled through the University central administration. Notes and books (other than University library books) may be brought into the examination room. The exam will require application of the principles taught in the course to particular fact situations. Further information will be provided by the convenor viz the examination's general content closer to the formal examination period. Students are of course responsible for arranging to be present for the allocated examination dates when they are published according to University procedures.
Weighting	50%
Due Date	TBA
Submission Method	NA
Assessment Criteria	Three criteria will be used: <ol style="list-style-type: none"> 1. Identifies and applies the relevant principles of equity and trusts. 2. Develops a persuasive and well-reasoned response to the question(s). 3. Structures the analysis in a logical way (using headings where appropriate).
Return Method	NA
Feedback Provided	No

ADDITIONAL INFORMATION

Grading Scheme

This course is graded as follows:

Range of Marks	Grade	Description
85-100	High Distinction (HD)	Outstanding standard indicating comprehensive knowledge and understanding of the relevant materials; demonstration of an outstanding level of academic achievement; mastery of skills*; and achievement of all assessment objectives.
75-84	Distinction (D)	Excellent standard indicating a very high level of knowledge and understanding of the relevant materials; demonstration of a very high level of academic ability; sound development of skills*; and achievement of all assessment objectives.
65-74	Credit (C)	Good standard indicating a high level of knowledge and understanding of the relevant materials; demonstration of a high level of academic achievement; reasonable development of skills*; and achievement of all learning outcomes.
50-64	Pass (P)	Satisfactory standard indicating an adequate knowledge and understanding of the relevant materials; demonstration of an adequate level of academic achievement; satisfactory development of skills*; and achievement of all learning outcomes.
0-49	Fail (FF)	Failure to satisfactorily achieve learning outcomes. If all compulsory course components are not completed the mark will be zero. A fail grade may also be awarded following disciplinary action.

*Skills are those identified for the purposes of assessment task(s).

Communication Methods

Communication methods used in this course include:

Course Evaluation

Each year feedback is sought from students and other stakeholders about the courses offered in the University for the purposes of identifying areas of excellence and potential improvement.

Oral Interviews (Vivas) As part of the evaluation process of any assessment item in this course an oral examination (viva) may be conducted. The purpose of the oral examination is to verify the authorship of the material submitted in response to the assessment task. The oral examination will be conducted in accordance with the principles set out in the [Oral Examination \(viva\) Procedure](#). In cases where the oral examination reveals the assessment item may not be the student's own work the case will be dealt with under the [Student Conduct Rule](#).

Academic Misconduct All students are required to meet the academic integrity standards of the University. These standards reinforce the importance of integrity and honesty in an academic environment. Academic Integrity policies apply to all students of the University in all modes of study and in all locations. For the Student Academic Integrity Policy, refer to <https://policies.newcastle.edu.au/document/view-current.php?id=35>.

Adverse Circumstances The University acknowledges the right of students to seek consideration for the impact of allowable adverse circumstances that may affect their performance in assessment item(s). Applications for special consideration due to adverse circumstances will be made using the online Adverse Circumstances system where:

1. the assessment item is a major assessment item; or
2. the assessment item is a minor assessment item and the Course Co-ordinator has specified in the Course Outline that students may apply the online Adverse Circumstances system;
3. you are requesting a change of placement; or
4. the course has a compulsory attendance requirement.

Before applying you must refer to the Adverse Circumstance Affecting Assessment Items Procedure available at:
<https://policies.newcastle.edu.au/document/view-current.php?id=236>

Important Policy Information The 'HELP for Students' tab in UoNline contains important information that all students should be familiar with, including various systems, policies and procedures.

Wellness Contacts There are a variety of pressures on law students, and being able to perform well academically under pressure, without excessive stress will contribute to enhanced outcomes in wellbeing and academic results. Reach out to support services and learn ways to maintain your mental health, deal with stress and common issues like perfectionism, procrastination and anxiety.

To access UON support:
<https://www.newcastle.edu.au/current-students/support/personal>
Ph: 4921 6622 or email: counselling@newcastle.edu.au

For support outside of office hours call the University Crisis Support Line on 1300 653 007 or for chat sms 0488 884 165.

For immediate support contact Lifeline 24/7 on 13 14 11 or <https://www.lifeline.org.au/>

This course outline was approved by the Head of School. No alteration of this course outline is permitted without Head of School approval. If a change is approved, students will be notified and an amended course outline will be provided in the same manner as the original.

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