

LW6177E: COMMERCIAL APPLICATION OF EQUITY AND TRUSTS

Effective Term

Semester B 2024/25

Part I Course Overview

Course Title

Commercial Application of Equity and Trusts

Subject Code

LW - Law

Course Number

6177E

Academic Unit

School of Law (FL)

College/School

School of Law (FL)

Course Duration

One Semester

Credit Units

3

Level

P5, P6 - Postgraduate Degree

Medium of Instruction

English

Medium of Assessment

English

Prerequisites

Nil

Precursors

Nil

Equivalent Courses

LW5630A/B, LW4630A/B Equity & Trusts

Exclusive Courses

Nil

Part II Course Details

Abstract

This course aims to focus on the role of equity and trusts in the context of commercial transactions in common law jurisdiction. It does so by a selective topic where equity and trusts are applied to strengthen the financial instruments (i.e. bond, securitisation), to offer proprietary rights (ownership right than priority) in the event of counterparty's insolvency, and ancillary remedies to the common law claim. With the above in mind, the course also offers a comparative perspective on how equity and trusts address the legal issues that could be borrowed into civil law jurisdiction. This is particularly important for Hong Kong, where its legal system is based on common law, and how the system interacts with the mainland civilian system in a long-term and sustainable way. Therefore, the course will involve identifying the issue arising out of trust concepts and other comparative theories, such as dual patrimony being offered in other civilian jurisdictions.

This course aims to

- examine the nature, role and significant application of Equity and Trusts in commerce;
- develop a critical knowledge of the vital role that Equity and Trusts have in the modern commercial transactions such as fiduciary duty, relations, following assets, protection of investment account etc.,
- develop the following set of skills in relation to the law of equity, including trusts:
 - research skills
 - analytical and problem-solving skills
 - effective written communication skills
- develop an awareness of the social and commercial contexts in which equity and trusts law operates;
- introduce students to some of the basic practical skills required to advise on the application of trusts law in commerce; and

Course Intended Learning Outcomes (CILOs)

CILOs		Weighting (if app.)	DEC-A1	DEC-A2	DEC-A3
1	Identify, describe and explain basic principles of equity and trusts.	40		x	
2	Analyse and critically evaluate: - Issues in equity and trusts of topical interest - the operation of the substantive rules of trusts law: 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	x	x	
3	Apply and identify principles of equity and trusts to solve legal problems by: - conducting independent research on issues of equity and trusts - communicating their analysis clearly and precisely in their own words and in plain English	15		x	x
4	To communicate ideas, marshal arguments or prepare advice clearly and coherently both in oral and written forms.	10		x	x

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 real-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.

Learning and Teaching Activities (LTAs)

LTAs	Brief Description	CILO No.	Hours/week (if applicable)
1	Lectures Students will acquire knowledge of principles of trusts law and the role of equity. Students will be introduced to principles of equity and trusts through practical application and case law examples. Students will learn how to solve problems by applying trusts law.	1, 2, 3	3
2	Tutorials 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. Students will be required to analyse fact situation and to apply case law precedents to ascertained facts. Students are required to participate in tutorial discussion, particularly by making presentations on pre-assigned tutorial assignments. Students will also be asked to discuss tutorial questions among themselves, with the tutor commenting on strengths and scope for improvement in student contributions.	1, 2, 3, 4	3

Assessment Tasks / Activities (ATs)

ATs		CILO No.	Weighting (%)	Remarks (e.g. Parameter for GenAI use)
1	Group Assignments: Students' ability to identify and explain the relevant principles and components of the law of equity and trusts will be tested.	1, 2, 3, 4	40	The use of Generative AI tools is not allowed.
2	Class Participation:	1, 2, 4	10	The use of Generative AI tools is not allowed.

Continuous Assessment (%)

50

Examination (%)

50

Examination Duration (Hours)

2

Additional Information for ATs

Examination: Students' ability to apply legal rules and principles to particular sets of hypothetical circumstances will be tested. The use of Generative AI tools is not allowed.

Applicable to students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter

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.

Applicable to students admitted from Semester A 2022/23 to Summer Term 2024

Students must obtain a minimum mark of 50% in both coursework and examination and an overall mark of 50% in order to pass the course.

Assessment Rubrics (AR)**Assessment Task**

Group Assignments: (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

Criterion

Demonstration of skills in identifying 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.

Excellent

(A+, A, A-) Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

Fair

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

Marginal

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

Failure

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Assessment Task

Classwork (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

Criterion

Demonstration of application of legal argument, construction skills, oral communication skills, and willingness/ability to answer questions in class.

Excellent

(A+, A, A-) Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

Fair

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

Marginal

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

Failure

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Assessment Task

Examination (for students admitted before Semester A 2022/23 and in Semester A 2024/25 & thereafter)

Criterion

Demonstration of ability to describe principles, theories and concepts.

Demonstration of ability to identify 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.

Excellent

(A+, A, A-) Strong evidence of original thinking; good organization, capacity to analyse and synthesize; superior grasp of subject matter; evidence of extensive knowledge base.

Good

(B+, B, B-) Evidence of grasp of subject, some evidence of critical capacity and analytic ability; reasonable understanding of issues; evidence of familiarity with literature.

Fair

(C+, C, C-) Student who is profiting from the university experience; understanding of the subject; ability to develop solutions to simple problems in the material.

Marginal

(D) Sufficient familiarity with the subject matter to enable the student to progress without repeating the course.

Failure

(F) Little evidence of familiarity with the subject matter; weakness in critical and analytic skills; limited, or irrelevant use of literature.

Assessment Task

Group Assignments: (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

Demonstration of skills in identifying 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.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Assessment Task

Classwork (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

Demonstration of legal argument construction skills, oral communication skills, and willingness/ability to answer questions in class.

Excellent

(A+, A, A-) High

Good

(B+, B) Significant

Marginal

(B-, C+, C) Moderate

Failure

(F) Inadequate

Assessment Task

Examination (for students admitted from Semester A 2022/23 to Summer Term 2024)

Criterion

Demonstration of ability to describe and contextualise principles, theories and concepts.

Demonstration of ability to identify issues, identifying applicable legal rules, and resolving problems by applying applicable rules.

Ability to engage in argument-based analysis.

Aptitude for applying formulated and innovative solutions to designated fact-based questions.

Excellent

(A+, A, A-) High

Good

(B+, B, B-) Significant

Marginal

(D) Moderate

Failure

(F) Inadequate

Part III Other Information

Keyword Syllabus

- Nature and role of equity in English Common Law (equitable remedies)
- Nature of trusts and duality of ownership (allocation of legal and equitable interest)
- Trusts in (1) purchase-transaction (constructive trust), (2) commercial context (purpose trusts in lending, insolvency), (3) securitisation, (4) bonds, (5) banking and investment context (insolvency)
- Statutory Trust on Subject Matter: Lehman Brothers Client's Account
- Purpose clause in lending to give rise to resulting Quistclose trust vs securities' interest
- Directors' fiduciary duties and general duties
- Tracing and following the assets under Equity
- Banks' liabilities as dishonest assistant to fiduciary breach vs the common law restitution of debt claim against bank.

Reading List

Compulsory Readings

Title	
1	Nil

Additional Readings

Title	
1	Text (Required)
2	Virgo, The Principles of Equity & Trusts, (5th edn OUP Oxford 2023).
3	Recommended Readings
4	Glister and Lee, Hanbury & Martin: Modern Equity (Sweet & Maxwell)
5	McGhee, Snell's Equity (Sweet & Maxwell)
6	Mowbray et al, Lewin on Trusts (Sweet & Maxwell)
7	Haley and McMurtry, Equity and Trusts (Sweet & Maxwell)
8	McFarlane and Mitchell, Hayton & Mitchell: Law of Trusts and Equitable Remedies: Texts, Cases & Materials (Sweet & Maxwell)
9	Penner, The Law of Trusts (Core Texts) (Oxford University Press)

10	Online Resources
11	Westlaw and Lexis.com. Several of the books recommended above come with online resources.