



# LAW 317

## Equity and Trusts

S2 External 2018

*Dept of Law*

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#### **Disclaimer**

Macquarie University has taken all reasonable measures to ensure the information in this publication is accurate and up-to-date. However, the information may change or become out-dated as a result of change in University policies, procedures or rules. The University reserves the right to make changes to any information in this publication without notice. Users of this publication are advised to check the website version of this publication [or the relevant faculty or department] before acting on any information in this publication.

## General Information

Unit convenor and teaching staff

Unit Convenor

Teresa Somes

[teresa.somes@mq.edu.au](mailto:teresa.somes@mq.edu.au)

Contact via through ilearn site

Room 539, W3A

Wednesday 2-3pm

Credit points

3

Prerequisites

LAW316

Corequisites

Co-badged status

Law 317

Unit description

This unit relates to and continues on from LAW316 and focuses on equitable notions of property, with a particular emphasis of the law of trusts, but also covering the historical development of equity and its relationship to common law, the assignment and other dispositions of property in equity, the obligation of confidence in equity with respect to information, equitable estoppel and fiduciary obligations. This unit will provide students with a theoretical grounding in the relevant principles as well as equip them with the capacity to apply these principles in practice.

## Important Academic Dates

Information about important academic dates including deadlines for withdrawing from units are available at <https://www.mq.edu.au/study/calendar-of-dates>

## Learning Outcomes

On successful completion of this unit, you will be able to:

Demonstrate a thorough understanding of legal principles relating to equity and trusts

Demonstrate an enquiring, critical, analytical and thoughtful approach to equitable property interests and their place in the overall scheme of property interests

Formulate, present and evaluate oral and written arguments about equity and trusts,

drawing upon relevant precedent and policy considerations

Analyse hypothetical fact situations, identify legal and factual issues involving the law relating to equity and trusts, and apply relevant principles to solve legal problems

Demonstrate sophisticated research, writing and referencing skills appropriate to students undertaking a unit at this level

Take responsibility for one's own learning by managing one's time effectively so as to be able to undertake readings for weekly seminars on time as well as complete and submit assessment items on time

## **General Assessment Information**

### ***Marking Rubrics***

Detailed marking rubrics will be made available on iLearn. Markers in this unit undertake a process of 'blind marking' to establish a common marking standard and all Fail papers are double marked.

### ***Late Submission Penalty***

Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days (incl. weekends) after the original submission deadline. No late submissions will be accepted for timed assessments – e.g. quizzes, online tests

### ***Special Consideration***

In the absence of a successful application for special consideration due to a disruption to studies, any assessment task submitted after seven (7) days will not be graded and will receive a mark of zero. Applications for a Disruption to Studies are made electronically via [ask.mq.edu.au](https://ask.mq.edu.au) and should be accompanied by supporting documentation. Students should refer to the Disruption to Studies policy for complete details of the policy and a description of the supporting documentation required.

### ***Word Limits***

Word limits will be strictly applied and work above the word limit will not be marked.

### ***Assessment Submission***

All assessments in the unit except for the exam are to be submitted electronically. Plagiarism detection software is used in this unit.

## Assessment Tasks

Name	Weighting	Hurdle	Due
<u>Assignment</u>	30%	No	12pm 14 September 2018
<u>Final Examination (Take Home)</u>	40%	No	2 pm, 16 November 2018
<u>Quiz</u>	30%	Yes	Weeks 4 and 11

### Assignment

Due: **12pm 14 September 2018**

Weighting: **30%**

The answer provided must be a properly referenced response with appropriate analysis and argument supported by relevant authoritative cases and commentary. The response must be typed and must be kept to a maximum 1,500 words (excluding footnotes and the bibliography). The word limit will be strictly applied and work above the word limit will not be marked.

The assignment must be electronically submitted. Plagiarism detection software is used in this unit.

In completing their answer, students must comply with the *Australian Guide to Legal Citation*, compiled by the Melbourne University Law Review. The guide is available for download free at:

[https://law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0007/1586203/FinalOnlinePDF-2012Reprint.pdf](https://law.unimelb.edu.au/__data/assets/pdf_file/0007/1586203/FinalOnlinePDF-2012Reprint.pdf)

Further instructions and information in relation to the assignment, including detailed marking rubrics, will be made available on iLearn. Markers in this unit undertake a process of 'blind marking' to establish a common marking standard and all fail papers are double marked.

Unless a Special Consideration request has been submitted and approved, (a) a penalty for lateness will apply – two (2) marks out of 100 will be deducted per day for assignments submitted after the due date – and (b) no assignment will be accepted more than seven (7) days (incl. weekends) after the original submission deadline, and an assignment submitted after this date, without special consideration will receive zero.

If, for justifiable reasons, a student is unable to submit the assignment on time, he or she may submit an application for special consideration pursuant to the University's Disruption to Studies Policy. If special consideration is granted the student may be given a different research question to be completed at a time determined by the unit convenor in consultation with the student.

Applications for special consideration pursuant to the Disruption to Studies Policy are made electronically via [ask.mq.edu.au](http://ask.mq.edu.au) and should be accompanied by supporting documentation. Students should refer to the Disruption to Studies Policy for complete details of the policy and a description of the supporting documentation required.

This Assessment Task relates to the following Learning Outcomes:

- Demonstrate a detailed and thorough knowledge of legal principles relating to equity and trusts;
- Analyse hypothetical fact situations, identify legal and factual issues involving the law relating to equity and trusts, and apply relevant principles to solve legal problems:
- Take responsibility for one's own learning by managing one's time effectively so as to be able to undertake readings for weekly seminars on time as well as complete and submit assessment items on time;
- Formulate, present and evaluate oral and written arguments about equity and trusts, drawing upon relevant precedent and policy considerations; and
- Demonstrate sophisticated research, writing and referencing skills appropriate to students undertaking a unit at this level.

On successful completion you will be able to:

- Demonstrate a thorough understanding of legal principles relating to equity and trusts
- Demonstrate an enquiring, critical, analytical and thoughtful approach to equitable property interests and their place in the overall scheme of property interests
- Formulate, present and evaluate oral and written arguments about equity and trusts, drawing upon relevant precedent and policy considerations
- Analyse hypothetical fact situations, identify legal and factual issues involving the law relating to equity and trusts, and apply relevant principles to solve legal problems
- Demonstrate sophisticated research, writing and referencing skills appropriate to students undertaking a unit at this level
- Take responsibility for one's own learning by managing one's time effectively so as to be able to undertake readings for weekly seminars on time as well as complete and submit assessment items on time

## Final Examination (Take Home)

Due: **2 pm, 16 November 2018**

Weighting: **40%**

The final examination in this unit will be a take home examination.

The final examination will be based on material covered in the unit, ie all topics and materials covered in the unit.

The final examination will be in the form of one problem question and one essay question. All questions will have to be answered.

Students will be able to access the final examination paper on iLearn from 10 am on Friday 16 November 2018 and must submit their answers to the final examination paper by 2 pm on Friday 16 November 2018. The assignment must be electronically submitted. Plagiarism detection software is used in this unit.

A student's answers to the final examination paper's questions cannot exceed 2,000 words (exclusive of footnotes). This is an upper word limit and a student need not write 2,000 words if he or she can answer the questions in less than 2,000 words. A bibliography is not required. The word limit will be strictly applied and work above the word limit will not be marked. The answers to the examination questions must be typed.

Students are not required to comply with strict AGLC referencing, however must provide authority which can be provided via footnotes.

Further instructions and information in relation to the final examination will be made available on iLearn.

If, for justifiable reasons, a student is unable to do the final examination at the above time or his or her performance in the final examination is adversely affected, he or she should submit an application for special consideration pursuant to the University's Disruption to Studies Policy, which, if granted, will enable the student to complete an alternative assessment. The alternative assessment may not be in the form of a take home examination - it may take some other form such as a formal sit down examination.

Applications for special consideration pursuant to the Disruption to Studies Policy are made electronically via [ask.mq.edu.au](http://ask.mq.edu.au) and should be accompanied by supporting documentation. Students should refer to the Disruption to Studies Policy for complete details of the policy and a description of the supporting documentation required.

Any student who does not submit answers to the final examination or supplementary examination, as the case may be, on time or at all, will receive a zero mark for the this assessment item.

This assessment task relates to the following learning outcomes:

- Demonstrate a thorough understanding of legal principles relating to equity and trusts;
- Analyse hypothetical fact situations, identify legal and factual issues involving the law relating to equity and trusts, and apply relevant principles to solve legal problems;
- Formulate, present and evaluate oral and written arguments about equity and trusts, drawing upon relevant precedent and policy considerations; and
- Take responsibility for one's own learning by managing one's time effectively so as to be able to undertake readings for weekly seminars on time as well as complete and submit assessment items on time.

On successful completion you will be able to:

- Demonstrate a thorough understanding of legal principles relating to equity and trusts
- Demonstrate an enquiring, critical, analytical and thoughtful approach to equitable property interests and their place in the overall scheme of property interests
- Formulate, present and evaluate oral and written arguments about equity and trusts, drawing upon relevant precedent and policy considerations
- Analyse hypothetical fact situations, identify legal and factual issues involving the law relating to equity and trusts, and apply relevant principles to solve legal problems
- Take responsibility for one's own learning by managing one's time effectively so as to be able to undertake readings for weekly seminars on time as well as complete and submit assessment items on time

## Quiz

Due: **Weeks 4 and 11**

Weighting: **30%**

**This is a hurdle assessment task (see [assessment policy](#) for more information on hurdle assessment tasks)**

Students will sit two online quizzes, the first in Week 4, the second in Week 11. **Each quiz is worth 15%.** The questions will be based on work covered in any of the weeks prior to the quiz.

This assessment relates to the following learning outcomes:

- Demonstrate a thorough understanding of legal principles relating to equity and trusts;
- Analyse hypothetical fact situations, identify legal and factual issues involving the law relating to equity and trusts, and apply relevant principles to solve legal problems; and
- Take responsibility for one's own learning by managing one's time effectively so as to be able to undertake readings for weekly seminars on time as well as complete and submit assessment items on time.

On successful completion you will be able to:

- Demonstrate a thorough understanding of legal principles relating to equity and trusts
- Analyse hypothetical fact situations, identify legal and factual issues involving the law relating to equity and trusts, and apply relevant principles to solve legal problems
- Take responsibility for one's own learning by managing one's time effectively so as to be able to undertake readings for weekly seminars on time as well as complete and submit assessment items on time

## Delivery and Resources

### DELIVERY OF UNIT

#### Weekly Lectures (Internal and Distance Students)

Weekly lectures in this unit will be pre-recorded and available to students on iLearn. Weekly lectures will commence in Week 1 and go through to Week 12.

#### Weekly Seminars (Internal Students)

For internal students, weekly tutorials of two (2) hours duration commence in Week 1 of the semester (ie the week beginning Monday 30 July 2018). The last seminar will be in Week 13. Seminar attendance is compulsory.

For seminar times and classrooms students should consult the MQ Timetable website.

**Students are required to complete the set readings prior to the seminar in preparation for the seminar** The problem and discussion questions for each seminar will be made available in the seminar.

Additional readings may be added from time to time via Leganto (available on ilearn).

#### On Campus Sessions (Distance Students)

For distance students there are two days of on campus sessions. Attendance at the on campus sessions is compulsory. On campus sessions will run from 9 am to 12 noon and 1 pm to 4 pm on each of the two days.

Students who are unable to attend must apply for a disruption to studies. If that application is accepted, alternative work will be set in lieu of on-campus attendance.

For the dates and venues of the on campus sessions students should consult the MQ Timetable website.

The topics for the on campus sessions will be selected from the topics covered in the semester.

The problem and discussion questions for the on campus sessions will be made available on iLearn prior to the on campus session dates.

### RESOURCES

#### Prescribed Materials

P Radan & C Stewart, *Principles of Australian Equity & Trusts*, 3rd ed, LexisNexis, Sydney, 2016

P Radan, C Stewart & I Vickovich, *Principles of Australian Equity & Trusts, Cases & Materials*, 3rd ed, LexisNexis, Sydney, 2016

Up-dates to the textbook and other additional materials available on iLearn

#### Other Recommended Material

Barnett & Harder, *Remedies in Australian Private Law* (Cambridge University Press, 2nd ed,



2018)

Bryan & Vann, *Equity and Trusts in Australia* (Cambridge University Press, 2nd ed, 2017)

Evans, *Equity and Trusts* (LexisNexis, 4th ed 2016)

Heydon & Leeming, *Jacobs' Law of Trusts* (LexisNexis, 8th ed, 2016)

Meagher, Gummow & Lehane, *Equity, Doctrines and Remedies* (LexisNexis, 5th ed, 2015)

Young, Croft & Smith, *On Equity* (Lawbook Co, 2009)

## Unit Schedule

### TOPICS STUDIES IN THIS UNIT

The schedule of topics covered in this unit is available on iLearn.

Week	Topic(s)
1	Introduction; History & Nature of Equity
2	Law and Equity; Equitable Estates and Interests
3	Dispositions in Equity I
4	Dispositions in Equity II
5	Fiduciary Obligations; Introduction to Trusts
6	Express Trusts
7	Variation & Termination of Trusts; Trustees
8	Beneficiaries; Tracing
9	Charitable Trusts
10	Resulting Trusts
11	Constructive Trusts
12	Equitable Estoppel; Confidential Information

The required readings for the above topics are set out in detail on iLearn and additional material will be provided via Leganto.

## Policies and Procedures

Macquarie University policies and procedures are accessible from [Policy Central](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central>). Students should be aware of the following policies in particular with regard to Learning and Teaching:

- [Academic Appeals Policy](#)
- [Academic Integrity Policy](#)
- [Academic Progression Policy](#)
- [Assessment Policy](#)
- [Fitness to Practice Procedure](#)
- [Grade Appeal Policy](#)
- [Complaint Management Procedure for Students and Members of the Public](#)
- [Special Consideration Policy](#) (**Note:** *The Special Consideration Policy is effective from 4 December 2017 and replaces the Disruption to Studies Policy.*)

Undergraduate students seeking more policy resources can visit the [Student Policy Gateway](https://students.mq.edu.au/support/study/student-policy-gateway) (<https://students.mq.edu.au/support/study/student-policy-gateway>). It is your one-stop-shop for the key policies you need to know about throughout your undergraduate student journey.

If you would like to see all the policies relevant to Learning and Teaching visit [Policy Central](https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central) (<https://staff.mq.edu.au/work/strategy-planning-and-governance/university-policies-and-procedures/policy-central>).

## Student Code of Conduct

Macquarie University students have a responsibility to be familiar with the Student Code of Conduct: <https://students.mq.edu.au/study/getting-started/student-conduct>

## Results

Results shown in *iLearn*, or released directly by your Unit Convenor, are not confirmed as they are subject to final approval by the University. Once approved, final results will be sent to your student email address and will be made available in [eStudent](#). For more information visit [ask.mq.edu.au](https://ask.mq.edu.au).

## Student Support

Macquarie University provides a range of support services for students. For details, visit <http://students.mq.edu.au/support/>

## Learning Skills

Learning Skills ([mq.edu.au/learningskills](http://mq.edu.au/learningskills)) provides academic writing resources and study strategies to improve your marks and take control of your study.

- [Workshops](#)
- [StudyWise](#)
- [Academic Integrity Module for Students](#)
- [Ask a Learning Adviser](#)

## Student Services and Support

Students with a disability are encouraged to contact the [Disability Service](#) who can provide appropriate help with any issues that arise during their studies.

## Student Enquiries

For all student enquiries, visit Student Connect at [ask.mq.edu.au](http://ask.mq.edu.au)

## IT Help

For help with University computer systems and technology, visit [http://www.mq.edu.au/about\\_us/offices\\_and\\_units/information\\_technology/help/](http://www.mq.edu.au/about_us/offices_and_units/information_technology/help/).

When using the University's IT, you must adhere to the [Acceptable Use of IT Resources Policy](#). The policy applies to all who connect to the MQ network including students.

## Graduate Capabilities

### Capable of Professional and Personal Judgement and Initiative

We want our graduates to have emotional intelligence and sound interpersonal skills and to demonstrate discernment and common sense in their professional and personal judgement. They will exercise initiative as needed. They will be capable of risk assessment, and be able to handle ambiguity and complexity, enabling them to be adaptable in diverse and changing environments.

This graduate capability is supported by:

### Learning outcomes

- Formulate, present and evaluate oral and written arguments about equity and trusts, drawing upon relevant precedent and policy considerations
- Take responsibility for one's own learning by managing one's time effectively so as to be

able to undertake readings for weekly seminars on time as well as complete and submit assessment items on time

## Commitment to Continuous Learning

Our graduates will have enquiring minds and a literate curiosity which will lead them to pursue knowledge for its own sake. They will continue to pursue learning in their careers and as they participate in the world. They will be capable of reflecting on their experiences and relationships with others and the environment, learning from them, and growing - personally, professionally and socially.

This graduate capability is supported by:

### Learning outcome

- Take responsibility for one's own learning by managing one's time effectively so as to be able to undertake readings for weekly seminars on time as well as complete and submit assessment items on time

## Discipline Specific Knowledge and Skills

Our graduates will take with them the intellectual development, depth and breadth of knowledge, scholarly understanding, and specific subject content in their chosen fields to make them competent and confident in their subject or profession. They will be able to demonstrate, where relevant, professional technical competence and meet professional standards. They will be able to articulate the structure of knowledge of their discipline, be able to adapt discipline-specific knowledge to novel situations, and be able to contribute from their discipline to inter-disciplinary solutions to problems.

This graduate capability is supported by:

### Learning outcomes

- Demonstrate a thorough understanding of legal principles relating to equity and trusts
- Demonstrate an enquiring, critical, analytical and thoughtful approach to equitable property interests and their place in the overall scheme of property interests
- Analyse hypothetical fact situations, identify legal and factual issues involving the law relating to equity and trusts, and apply relevant principles to solve legal problems

### Assessment tasks

- Assignment
- Final Examination (Take Home)
- Quiz

## Critical, Analytical and Integrative Thinking

We want our graduates to be capable of reasoning, questioning and analysing, and to integrate

and synthesise learning and knowledge from a range of sources and environments; to be able to critique constraints, assumptions and limitations; to be able to think independently and systemically in relation to scholarly activity, in the workplace, and in the world. We want them to have a level of scientific and information technology literacy.

This graduate capability is supported by:

## **Learning outcomes**

- Demonstrate a thorough understanding of legal principles relating to equity and trusts
- Demonstrate an enquiring, critical, analytical and thoughtful approach to equitable property interests and their place in the overall scheme of property interests
- Formulate, present and evaluate oral and written arguments about equity and trusts, drawing upon relevant precedent and policy considerations
- Analyse hypothetical fact situations, identify legal and factual issues involving the law relating to equity and trusts, and apply relevant principles to solve legal problems
- Demonstrate sophisticated research, writing and referencing skills appropriate to students undertaking a unit at this level

## **Assessment tasks**

- Assignment
- Final Examination (Take Home)
- Quiz

## **Problem Solving and Research Capability**

Our graduates should be capable of researching; of analysing, and interpreting and assessing data and information in various forms; of drawing connections across fields of knowledge; and they should be able to relate their knowledge to complex situations at work or in the world, in order to diagnose and solve problems. We want them to have the confidence to take the initiative in doing so, within an awareness of their own limitations.

This graduate capability is supported by:

## **Learning outcomes**

- Demonstrate a thorough understanding of legal principles relating to equity and trusts
- Demonstrate an enquiring, critical, analytical and thoughtful approach to equitable property interests and their place in the overall scheme of property interests
- Formulate, present and evaluate oral and written arguments about equity and trusts, drawing upon relevant precedent and policy considerations
- Analyse hypothetical fact situations, identify legal and factual issues involving the law relating to equity and trusts, and apply relevant principles to solve legal problems
- Take responsibility for one's own learning by managing one's time effectively so as to be

able to undertake readings for weekly seminars on time as well as complete and submit assessment items on time

## Assessment tasks

- Assignment
- Final Examination (Take Home)
- Quiz

## Effective Communication

We want to develop in our students the ability to communicate and convey their views in forms effective with different audiences. We want our graduates to take with them the capability to read, listen, question, gather and evaluate information resources in a variety of formats, assess, write clearly, speak effectively, and to use visual communication and communication technologies as appropriate.

This graduate capability is supported by:

## Learning outcomes

- Demonstrate a thorough understanding of legal principles relating to equity and trusts
- Demonstrate sophisticated research, writing and referencing skills appropriate to students undertaking a unit at this level

## Assessment tasks

- Assignment
- Final Examination (Take Home)

## Changes since First Published

Date	Description
19/07/2018	Exam day was incorrect - read Thursday 16 November and has been changed to Friday 16 November