Instructor Information

- Professor Adam Gearey
- 4 Gower St, Room 201

Course Information

- Thursday 1-4 for 11 weeks from the 30th September
  Class room number and building to be specified

Course Overview and Goals

After an introduction to the course, the first lectures deal with the problems that relate to the nature of equity. We consider some important accounts of the trust and its relationship to market economy, power and wealth. We will begin to examine the idea of an ethics of equity, and take into account concerns with tax havens and tax avoidance. However, we will not only be concerned with contemporary issues. We will also make reference to the history of equity. In order to understand these themes, we will make reference to the work of Maitland- as well as more recent accounts of the nature of the trust and fiduciary relationships. Subsequent lectures focus on the foundation of express trusts. We go on to consider the formalities necessary to set up a trust, the concept of the constitution of trusts and the three certainties necessary for the existence of a trust. We then turn our attention to the under-arching beneficiary principle and the issue of purpose trusts. We will also consider charitable trusts. We then turn our attention to a study of resulting trusts and constructive trusts before moving on to consider fiduciaries, trustee’s duties and powers. The latter part of the course addresses breach of trust, third party liability for breach of trust and tracing. Running throughout the course is a concern with the idea of conscience and with equity’s place in the commercial world. Our working thesis will be that the trust, and equity in general require us to think about market relationships in ways that suggest the centrality of ethics to various commercial relationships.

Upon Completion of this Course, students will be able to:

- Have a critical understanding of the key cases and doctrines in equity
- Have a critical understanding of the key debates about the nature of the subject
- Have achieved the ability to think under pressure and work to deadlines
- Have achieved the ability to write focused and structured essays
- Have achieved the ability to write focused and structured responses to problem questions
- Have achieved the ability to read and comprehend case law

**Course Requirements**

**Grading of Assignments**

The grade for this course will be determined according to these assessment components:

<table>
<thead>
<tr>
<th>Assignments/Activities</th>
<th>Description of Assignment</th>
<th>% of Final Grade</th>
<th>Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignment</td>
<td>Essay/Assignment on a set question and relating to set materials (2,500 words max)</td>
<td>30%</td>
<td>Week 11</td>
</tr>
<tr>
<td>Exam</td>
<td>Exam of two parts. The first part examines a case as well as a problem question. The second part is an essay based on the readings.</td>
<td>40%</td>
<td>Week 11</td>
</tr>
<tr>
<td>Problem Question</td>
<td>A problem question based on a legal issue and the relevant case law (1000 words max)</td>
<td>20%</td>
<td>Week 8</td>
</tr>
<tr>
<td>Seminar Presentation</td>
<td>A 5 min (max) presentation and contribution to discussion. Submission of a short text 500 words max.</td>
<td>10%</td>
<td>Week 3</td>
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</tbody>
</table>

Failure to submit or fulfill any required course component results in failure of the class

**Grades**

Letter grades for the entire course will be assigned as follows:

<table>
<thead>
<tr>
<th>Letter Grade</th>
<th>Percent</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Example: 93.5% and higher</td>
<td>An excellent answer in all or nearly all areas; in areas where excellence is not achieved, a high degree of competence must be shown. Displays exceptional knowledge of the subject,</td>
</tr>
</tbody>
</table>
Course Materials

Required Textbooks & Materials

Each session has a lecture and accompanying questions. The basic lecture guides and the accompanying questions are laid out in this document. The lecture notes themselves are contained in a separate document. Please read on to make sure that you understand the relevance of the READINGS, CASES AND ASSIGNMENT MATERIALS to the course and its assessment.

In summary, you need the following documents:

i) The Syllabus Guide (this document)
ii) The Lecture Notes
iii) Readings
iv) Cases
v) Assignment Materials.

vi) The Study Guide. This contains more or less the same materials as (i), above, but it also contains more detailed assessment materials; summaries of the lectures and the questions for class discussion (referred to as ‘seminars’ or ‘sessions’) that accompany each lecture.

**Required Texts**

There is no single essential or required text book; all the available books have their strengths and weaknesses. The lecture notes refer to Moffat, but if you prefer Hudson, see below for the equivalent passages of *Principles of Equity and Trusts*. The basic distinction is between more advanced text books and basic guides (see below).

**Text Books**


Some people find Hudson preferable to Moffat. It is worth reading a couple of sample sections from both books, and seeing which one you prefer.

**Relevant Readings**

As explained in the lectures, the emphasis of the course is on the lecture notes/ readings and cases. The readings below might be helpful, but, be guided by the lecture notes. Use the text book readings to build your knowledge and understanding, but, remember that the course is driven by the themes/ concerns/ cases of the lectures. If the lectures do not go into a theme dealt with by the text book, concentrate on the lecture notes; if the text book goes into more detail than the lecture notes, be careful not to go into a text book issue in too great a detail. In all instances, as far as the kind of issues on which you might be assessed in the exam, be guided by the lecture notes.

The readings for the lectures and the are given with reference to Moffat. If you are using a different book, the notes below should help.

For the first two sessions, if you are using Moffat (*Trusts Law*, 6th edition), relevant sections are Chapter 1 sections 2, 3, 4 and 7. Then, in chapter 2, sections 1, 2, 4, 6 and 7. Also see below on some points re. conscience if you are using Moffat and not Hudson.

For the sessions on formalities see Moffat chapter 4 sections 3 and 6. You might want to read the material on taxation, but it is not necessary. This is contained in chapter 3 sections 2, 3 and 4 are worth looking at if you are interested.

For the session on certainty, see chapter 4, sections 1, 2 a-d (not e and f) and section 4 a and b; for certainty of objects, see chapter 5, sections 1, 2 and 3, but particularly section 3.

In relation to the session on constitution, see Moffat chapter 4, section 3 – in particular part c. Moffat considers formalities as part of his more general consideration of how a trust is created.
For private purpose trusts see chapter 5 section 5. See also chapter 15 on unincorporated associations unincorporated associations. For Charitable Trusts, lectures and accompanying seminar, chapters 18 and 19. However, we do not go into great detail on charity, so you might want to focus on the introductory sections and the material on religious charities i.e chapter 17 (1), 2, 3- and in particular 3(c) on the advancement of religion. Also look at 8- but primarily in relation to the advancement of religion. Have a glance at chapter 19.

For Resulting and Constructive, see Moffat chapter 1 section 9. Chapter 14 on constructive trusts in fiduciary relations and chapter 15 for the role of the trust in the context of unincorporated associations. See chapter 11 for implied trusts and the family home, section 5. For the sessions on trustees duties and powers see chapters 9 and 10. See 10 section (4) for breach of trust and for third party liability see 12(4). For tracing, see 12 (2 a-e). Note, though, that we only cover tracing in the most basic of terms. The material from Moffat might be more relevant for future reference.

If you are using Hudson (9th edition)

Part 1 (2) covers the material in the introductory lectures, particularly sections 1.1, 1.2, 1.3 and 1.5. Hudson, as you will realize, is a strong advocate of the role of conscience in equity. He is perhaps much more focused than Moffat on issues of morality in his introduction to the trust. It is worth reading Moffat alongside Samet- and- noting that Birks and Penner take contrary positions.

Parts 2(3) should be read in relation to certainty; 2(5) in relation to formalities; 2(4) relating to the beneficiary principles and purpose trusts; 2 (5) also covers constitution. Part 8 chapter 23 covers charity. Part 3 chapters 8 and 9 deal with the powers of trustees in general and investment powers in particular. Part 4 chapters 11 and 12 are relevant to the sessions on resulting and constructive trusts. See also part 5 (15) on the family home. Part 6 chapters 18 and 19 are relevant to the sessions on breach of trust and accessory/third party liability; chapter 20 covers tracing- but note that we only cover this topic in the most basic of terms. Perhaps use chapter 20 for future reference.

Optional Textbooks & Materials

Basic Guides
Alastair Hudson, *Understanding Equity & Trusts*; 6th edition (Routledge, 2016). If you find Bray too simple—then *Understanding Equity & Trusts* might be a better place to start.

Resources
- Access your course materials: NYU Classes (nyu.edu/its/classes)
- Databases, journal articles, and more: Bobst Library (library.nyu.edu)
- NYUL Library Collection: Senate House Library (catalogue.libraries.london.ac.uk)
- Assistance with strengthening your writing: NYU Writing Center (nyu.mywconline.com)
- Obtain 24/7 technology assistance: IT Help Desk (nyu.edu/it/servicedesk)

## Course Schedule

<table>
<thead>
<tr>
<th>Session/Date</th>
<th>Topic</th>
<th>Reading</th>
<th>Assignment Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>Session 1: [3/10/19]</td>
<td>Introduction to the Study of Equity</td>
<td>Please see Study Guide</td>
<td></td>
</tr>
<tr>
<td>Session 2: [10/10/19]</td>
<td>The Natures of Equity</td>
<td>Please see Study Guide</td>
<td></td>
</tr>
<tr>
<td>Session 3: [17/10/19]</td>
<td>Certainty</td>
<td>Please see Study Guide</td>
<td>Class room response to short question</td>
</tr>
<tr>
<td>Session 4: [24/10/19]</td>
<td>Formalities</td>
<td>Please see Study Guide</td>
<td></td>
</tr>
<tr>
<td>Session 5: [31/10/19]</td>
<td>Constitution</td>
<td>Please see Study Guide</td>
<td></td>
</tr>
<tr>
<td>Session 6: [7/11/19]</td>
<td>Private Purpose Trusts and Charity</td>
<td>Please see Study Guide</td>
<td></td>
</tr>
<tr>
<td>Session 7: [14/11/19]</td>
<td>Powers and Duties of Trusties</td>
<td>Please see Study Guide</td>
<td></td>
</tr>
<tr>
<td>Session 8: [21/11/19]</td>
<td>Resulting Trusts</td>
<td>Please see Study Guide</td>
<td>Problem Question Due</td>
</tr>
<tr>
<td>Session 9: [28/11/19]</td>
<td>Constructive Trusts</td>
<td>Please see Study Guide</td>
<td></td>
</tr>
<tr>
<td>Session 10: [5/12/19]</td>
<td>Breach of Trust, Third Party Liability and introduction to tracing.</td>
<td>Please see Study Guide</td>
<td></td>
</tr>
<tr>
<td>Session 11: [12/12/19]</td>
<td>Exam</td>
<td></td>
<td>Dissertation (2,500 words)</td>
</tr>
</tbody>
</table>
Co-Curricular Activities
Not applicable

Classroom Etiquette

Think of others: do as you would be done by.

NYUL Academic Policies

Attendance and Tardiness
- Key information on NYU London’s absence policy, how to report absences, and what kinds of absences can be excused can be found on our website (http://www.nyu.edu/london/academics/attendance-policy.html)

Assignments, Plagiarism, and Late Work
- You can find details on these topics and more on this section of our NYUL website (https://www.nyu.edu/london/academics/academic-policies.html) and on the Policies and Procedures section of the NYU website for students studying away at global sites (https://www.nyu.edu/academics/studying-abroad/upperclassmen-semester-abroad/academic-year-study-away/academic-resources/policies-and-procedures.html).

Classroom Conduct

Academic communities exist to facilitate the process of acquiring and exchanging knowledge and understanding, to enhance the personal and intellectual development of its members, and to advance the interests of society. Essential to this mission is that all members of the University Community are safe and free to engage in a civil process of teaching and learning through their experiences both inside and outside the classroom. Accordingly, no student should engage in any form of behaviour that interferes with the academic or educational process, compromises the personal safety or well-being of another, or disrupts the administration of University programs or services. Please refer to the NYU Student Conduct Policy for examples of disruptive behavior and guidelines for response and enforcement.
Disability Disclosure Statement

Academic accommodations are available for students with disabilities. Please contact the Moses Center for Students with Disabilities (212-998-4980 or mosecsd@nyu.edu) for further information. Students who are requesting academic accommodations are advised to reach out to the Moses Center as early as possible in the semester for assistance.

Instructor Bio

Adam Gearey, Professor of Law, Birkbeck College. In 2001-2002, he was a visiting professor in the Faculty of Law at Makerere University, Uganda; and in 2003 a visiting professor at the University of Pretoria. He has also been a visiting scholar at The Center for Law and Society, University of California, Berkeley and a visiting professor at the University of Peace, Costa Rica. He also teaches jurisprudence for the School of Professional and Continuing Education at the University of Hong Kong. His writings on equity and trusts include: ‘Equity and the Social Reproduction of Capital’, Polemos 2017, 11 (1), pp. 55-72; ‘We Want to Live’: Metaphor and Ethical Life in F.W. Maitland’s Jurisprudence of the Trust’ The Journal of Law and Society, 2016 43 (1) and ‘Equity in a Severe Style: The Phenomenology of Spirit, Conscience and Critical Legal Thinking’ Australian Journal of Feminist Legal Studies, 2015 41 (1). A contribution to a collection of essays on Roger Cotterrell’s pioneering work, edited by Nick Piska and Hayley Gibson, ‘The More He Argued the More Technical He Became’ Surplus Value in the Law of Trusts, is forthcoming. Gearey’s books include Critical Jurisprudence (2005; with Costas Douzinas) and Poverty Law and Legal Activism: Lives that Slide Out of View, 2018.