

EQUITY & TRUSTS

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494-1006

Laws 2203-01
(3 hours credit)

Tuesday 3-4:30
Thursday 3-4:30 pm

Room 305

Office Hours:

After class (4:30-5:30) on Tuesday or by appointment

Materials:

Compulsory casebook:

Mark R. Gillen and Faye Woodman, eds. *The Law of Trusts: A Contextual Approach*, 2nd ed. (Toronto: Emond Montgomery, 2008)

Compulsory Legislation

[Certain sections only]

Accumulations Act, RSO 1990, c. A.5.

Perpetuities Act, RSO. 1990, c. P.9, s. 16.

Succession Law Reform Act, RSO. 1990, c. S. 26, ss. 3-6.

Wills Act, RSNS 1989, c. 505 s.6.

[Whole act]

Statute of Frauds, RSO 1990, c. S. 19.

Statute of Frauds, RSNS 1989, c. 442.

Variation of Trusts Act, RSO. 1990, c. V.1.

Trustee Act, RSNS 1989, c. 479.

Full marks will not be awarded without pinpoint references to legislation where appropriate.

Optional texts:

Eileen E. Gillese and Martha Milczynski, *The Law of Trusts*, 2d ed. (Toronto: Irwin Law, 2005);

A. H. Oosterhoff et al. *Oosterhoff on Trusts: Text, Commentary and Materials*, 7th ed. (Toronto: Thomson Carswell, 2009).

D.W.M. Waters, *Waters' Law of Trusts in Canada*, 3d ed. (Toronto: Thomson/Carswell, 2005)

Mode of Evaluation

- I. 10% class attendance. (Students are responsible for finding and signing sign-in sheet each class),
- II. 15%- one hour in class open book essay (page limited) on optional chapter on Tues, December 7th. Please choose a chapter by November 18th. Indicated at end of syllabus.

OR

Fifteen minute oral class presentation on a topic to be chosen by student and approved by instructor. Student must indicate interest to instructor by Thurs. September 16th, and

- III. 75% 2 1/2 hours final examination; closed book; statutes will be supplied.

Plagiarism

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

All students in the course must read

- The University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website, and
- The Law School policy on plagiarism, as set out in the law school regulations (available in hard copy from the Associate Dean's office and online at http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/index.php)

Students with Special Needs/Requests for Accommodation

Students seeking special accommodation with regard to course evaluation, such as exam deferral and extensions to deadlines, should consult with Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes as soon as possible, and before an exam is scheduled to be written or an assignment is due. Requests for special accommodation for reasons such as illness or personal circumstances will require an application to the Law School Studies Committee. Students should contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes if they require more information about the Studies

Committee process. Students wishing to discuss arrangements for classroom assistance should see Professor Wildeman, the law faculty advisor to students with disabilities.

Students may request accommodation as a result of barriers related to disability, religious obligation, or any characteristic under the Nova Scotia Human Rights Act. Students who require academic accommodation for the writing of tests, quizzes and exams should make their request to the Office of Student Accessibility & Accommodation (OSAA) prior to or at the outset of each academic term (with the exception of X/Y courses). Please see www.studentaccessibility.dal.ca for more information and to obtain Form A – Request for Accommodation. Students may also contact the Office of Student Accessibility & Accommodation directly at 494-2836, and they may contact Associate Dean Michael Deturbide or Assistant Dean Elizabeth Hughes for more information.

Exams and Computers

It is hoped that students will be able to write their exams on their computers. This has not been finalized, however.

FALL 2010

<i>Date</i>	<i>Day</i>	<i>Topic</i>	<i>Readings</i>	
<i>Thurs. Sept 9th</i>	<i>1</i>	<i>Introduction</i>	<i>Ch. 1,</i>	<i>pp. 3-18;</i>
<i>Tues. Sept 14th</i>	<i>2</i>	<i>History of Equity & Trusts-Fusion</i>	<i>Ch. 2,</i>	<i>pp. 41-48; 55-71;</i>
<i>Thurs. Sept 16th</i>	<i>3</i>	<i>Fiduciary Obligations</i>	<i>Ch. 15,</i>	<i>pp. 839-92;</i>
<i>Tues. Sept 21th</i>	<i>4</i>	<i>Political Trust Doctrine</i>	<i>Ch. 16,</i>	<i>pp. 907-23;</i>
<i>Thurs. Sept. 23th</i>	<i>5</i>	<i>Creating Express Trusts</i> <ul style="list-style-type: none"> • <i>Generally</i> • <i>The Three Certainties</i> <ul style="list-style-type: none"> ... <i>Intention</i> ... <i>Subject</i> 	<i>Ch. 4,</i>	<i>Trustee Act, RSNS 1989, c.479, s.51.</i> <i>pp. 75-79;</i> <i>pp. 79-85;</i> <i>pp. 94-101;</i> <i>pp. 101-05;</i>
<i>Tues. Sept 28th</i>	<i>6</i>	... <i>Object</i>		<i>pp.105-22;</i>
<i>Thurs. Sept. 30th</i>	<i>7</i>	• <i>Constitution of Express Trusts</i>		<i>pp.123-154;</i>
<i>Tues. Oct 5th</i>	<i>8</i>	<ul style="list-style-type: none"> • <i>Formalities of Express Trusts</i> • <i>Constraints on Express Trusts</i> <ul style="list-style-type: none"><i>Public Policy</i><i>Fraud on Creditors</i><i>Perpetuities/Accumulations</i> 		<i>pp. 155-161;</i> <i>Wills Act, RSNS 1989, c. 505 s 6..</i> <i>pp. 161-162;</i> <i>pp. 162-165;</i> <i>lecture;</i> <i>pp. 182-187;</i> <i>Accumulations Act, RSO 1990, c. A.5.</i>
<i>Thurs. Oct. 7th</i>	<i>9</i>	<ul style="list-style-type: none"> • <i>Restraints on Alienation & Spendthrift Trusts</i> • <i>Early Termination of Express Trusts: Saunders v. Vautier</i> 		<i>pp. 187-195;</i> <i>pp. 196-197;</i>
<i>Tues. Oct 12th</i>	<i>10</i>	<i>Variation of Express Trusts</i> <i>Cy – pres-</i> <i>Review problems/catch up</i>		<i>pp. 198-209;</i> <i>p. 209, Trustee Act, RSNS 1989, c. 479</i> <i>s. 52</i> <i>Variation of Trusts Act., RSO 1990, c. V.1.</i> <i>Variation of Trusts Act, RSNS 1989, c.486.</i> <i>Statutes of Fraud RSO 1990, &</i> <i>Statute of Fraud RSNS 1989, c.442 .</i>

<i>Thurs. Oct 14th</i>	11	<i>Non-charitable Purpose Trusts</i>	<i>Ch. 5,</i>	<i>pp. 211-29, Perpetuities Act, RSO 1990, c. P.9, s.16 ;</i>
<i>Tues. Oct 19th</i>	12	<i>Charitable Purpose Trusts</i> <ul style="list-style-type: none"> • <i>Generally</i> • <i>Relief of Poverty</i> • <i>Advancement of Education</i> • <i>Advancement of Religion</i> 		<i>pp. 229-35; pp. 235-40; pp. 240-45; pp. 245-51;</i>
<i>Thurs. Oct 21st</i>	13	<ul style="list-style-type: none"> • <i>Other Purposes Beneficial to the Community</i> • <i>Associated Doctrines</i> <ul style="list-style-type: none"> ... <i>Exclusivity</i> ... <i>Political Purposes</i> ... <i>Discriminatory Conditions</i> • <i>Cy-pres Doctrine</i> 		<i>pp. 252-71; pp. 271-76; pp. 276-83; pp. 283-89; pp. 289-300;</i>
<i>Tues. Oct 26th</i>	14	<i>Administration of Trusts</i> <ul style="list-style-type: none"> • <i>Generally</i> • <i>Appointment, Retirement & Removal of Trustees</i> • <i>Duties & Powers</i> • <i>Duty of Care</i> 	<i>Ch. 6,</i>	<i>pp. 301-02; Trustees Act, ss. 16,17,31,41, 42 pp. 313-34; Trustee Act, s.30 pp. 335-42;</i>
<i>Tues. Oct 28th</i>	15	<ul style="list-style-type: none"> • <i>Duty Not to Delegate</i> • <i>Exculpation Clauses</i> 		<i>Trustee Act, ss. 23; pp. 342-351, Trustees Act, ss. 64;</i>
<i>Tues. Nov 2nd</i>	16	<ul style="list-style-type: none"> • <i>Duty of Impartiality</i> • <i>Trustee Investments</i> • <i>Remuneration & Indemnification</i> 		<i>pp. 360-85; pp. 405-09, Trustee Act, RSNS 1989, c. 479, ss. 3,3A,3B,3C,3D,3E,3F,4,5, 7,8A,9,10,11,14 pp. 423-433; Trustee Act, RSNS 1989, c. 479 , s. 29, 49 62 & 64.</i>

<i>Thurs. Nov 4th</i>	17	<i>Resulting Trusts</i> <ul style="list-style-type: none"> • <i>Transfer of Property or Cash in name of Other</i> • <i>Presumption of Advancement</i> • <i>Failure of Express Trust</i> 	<i>Ch. 8,</i>	<i>pp. 483-92;</i> <i>pp. 492-506;</i> <i>pp. 517-521;</i>
<i>Tues. Nov 9th</i>	18	<i>Constructive Trusts</i> <ul style="list-style-type: none"> • <i>Theory of</i> • <i>Wrongful Conduct</i> 	<i>Ch. 9,</i>	<i>pp.525-34;</i> <i>pp.535-58;</i>
<i>Thurs. Nov 11th</i>		<i>REMEMBRANCE DAY</i>		
<i>Tues. Nov. 16th</i>	19	<ul style="list-style-type: none"> • <i>Unjust Enrichment</i> 		<i>pp. 558-67, pp. 572-74;</i>
<i>Thurs. Nov 18th</i>	20	<ul style="list-style-type: none"> • <i>Equitable Fraud</i> <ul style="list-style-type: none"> ➤ <i>Statute of Frauds</i> ➤ <i>Mutual Wills</i> ➤ <i>Secret Trusts</i> 		<i>pp. 575</i> <i>pp. 576</i> <i>pp.576-79</i> <i>pp. 579-86</i>
<i>Tues. Nov. 23rd</i>	21	<i>Review Problems/catch up</i>		
<i>Thurs. Nov 25th</i>	22	<i>Remedies</i> <ul style="list-style-type: none"> • <i>Personal Remedies</i> <i>... Equitable Compensation</i> 	<i>Ch. 10</i>	<i>pp. 595-623;</i>
<i>Tues. Nov 30th</i>	23	<ul style="list-style-type: none"> • <i>Accounting for Profits</i> <ul style="list-style-type: none"> ➤ <i>The trustee</i> ➤ <i>Others</i> <i>...knowing assistance</i> <i>...knowing receipt</i> 		<i>pp. 623-34</i> <i>pp. 634-48</i> <i>pp. 659-74</i>
<i>Thurs. Dec 2st</i>	24	<ul style="list-style-type: none"> • <i>Proprietary Remedies</i> <i>... Tracing</i> <ul style="list-style-type: none"> ➤ <i>Rule in Hallett's Case</i> ➤ <i>Rule in Clayton's Case</i> 		<i>pp. 674-77;</i> <i>pp.677-680</i> <i>pp. 681-82</i>
<i>Tues. Dec 7th</i>	25	<i>Review & 1 hour in class essay</i>		-----
<i>ESSAY OPTIONS</i>				
		<i>Equity and "Family Relationships": Cohabitation and Constructive Trusts</i>	<i>Ch. 13</i>	

		<i>An Introduction to Trusts and the Environment</i>	<i>Ch. 11</i>	
		<i>Trusts in Corporate and Commercial Law</i>	<i>Ch. 12</i>	
		<i>Trusts and Taxation: Section I or II</i>	<i>Ch. 2</i>	
		<i>The Trust in Succession Planning Section I or II</i>	<i>Ch. 14</i>	
		<i>Trusts and Aboriginal Peoples</i>	<i>Ch. 16</i>	