

Stage 3

3.1 Module 18 Equity and Trusts

3.1.1 Headline information about the module

Module title	Equity and Trusts
Module NFQ level (only if an NFQ level can be demonstrated)	8
Module number/reference	Module 18
Parent programme(s) the plural arises if there are embedded programmes to be validated.	LLB (Hons)
Stage of parent programme	3
Semester (semester1/semester2 if applicable)	Semester 1 and 2
Module credit units (FET/HET/ECTS)	ECTS
Module credit number of units	15
List the teaching and learning modes	Full Time, Part Time,
Entry requirements (statement of knowledge, skill and competence)	Successful completion of Stages 1 and 2 of the programme
Pre-requisite module titles	None
Co-requisite module titles	None
Is this a capstone module? (Yes or No)	No
Specification of the qualifications (academic, pedagogical and professional/occupational) and experience required of staff (staff includes workplace personnel who are responsible for learners such as apprentices, trainees and learners in clinical placements)	Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.
Maximum number of learners per centre (or instance of the module)	60
Duration of the module	Two Semesters, 24 weeks
Average (over the duration of the module) of the contact hours per week (see * below)	4
Module-specific physical resources and support required per centre (or instance of the module)	Lecture room with internet access and digital projector.

Analysis of required learning effort (much of the remainder of this table must also be presented in the programme schedule—take care to ensure consistency)										
Effort while in contact with staff										
Classroom demonstration and		Mentoring and small-group tutoring		Other (specify)		Directed e-learning (hours)	Independent learning (hours)	Other hours (specify)	Work-based learning hours of learning effort	Total effort (hours)
Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner	Hours	Minimum ratio teacher/learner					
72	1:60	24	1:20				279			375
Allocation of marks (within the module)										
				Continuous assessment	Supervised project	Proctored practical examination	Proctored written examination	Total		
Percentage contribution				30			70	100%		

3.1.2 Module aims and objectives

The Module examines Equity, its maxims, doctrines and remedies and enables learners to understand the philosophical and practical importance of Equity in the Irish legal system. The Module provides learners with an understanding of the origins and historical development of Equity, including its evolving relationship to the Common Law. Learners then analyse a range of equitable remedies in detail and are enabled to understand the relationship of these remedies to each other.

The second half of this module provides learners with an understanding of the concept of the trust, including its creation (both implied and express) and the roles, power and duties of trustees. The main types of trusts are critically analysed in detail, including the potential for reform. Learners are also provided with an understanding of the practical operation of the law of equity and trusts to both commercial and banking practices and the charitable sector in Ireland. Finally, the module develops key skills in relation to research and communication and learners are also enabled to apply equitable and trust doctrines to hypothetical factual scenarios.

3.1.3 Minimum intended module learning outcomes

On successful completion of this Module, learners will be able to:

- (i) Analyse the law of Equity and Trusts and how it applies to the legal system as a whole;
- (ii) Differentiate between the different types of equitable remedies and trusts and when and in what context they are relevant;
- (iii) Critically review the law of equity and trusts in a systematic manner.
- (iv) Critically analyse the theoretical and philosophical underpinnings of the law relating to equity and trusts
- (v) Research and present on issues of the law of Equity and Trusts.
- (vi) Critique the societal impact of the law of equity and trusts.
- (vii) Analyse areas in which reform of the law may be considered.

3.1.4 Rationale for inclusion of the module in the programme and its contribution to the overall MIPLOs

Equity and Trusts is a core area of practice and academic focus within the Irish legal system and is examined for the Final Examination – Part 1 in the Law Society of Ireland. The Module encompasses both Equity and Trusts and covers in detail each of the specific remedies, principles and doctrines under each. This module serves to directly underpin programme learning outcomes 1, 4, 5, 6, 8, 9, 10.

3.1.5 Information provided to learners about the module

Learners will receive the following resources and materials in advance of commencement:

- Module descriptor with module learning outcomes
- Class plan
- Assignment and project brief with assessment strategy
- Reading materials
- Notes

Additionally, this material is available through Moodle, the College Virtual Learning Environment, along with other relevant resources and activities.

3.1.6 Module content, organisation and structure

Equity and Trusts is taught and assessed over one academic year. The module is delivered over 24 lecture sessions of 4 hours' duration for Full Time learners and 2 hours duration for Part Time Learners. The Learning outcomes are articulated in accordance with the *Quality and Qualifications Ireland (QQI) Awards Standards for Honours Bachelor of Laws and Master of Laws (July 2014)* and for *Generic Higher Education and Training (July 2014)*.

The topics covered in the Module are:

- Introduction and Historical Background
- Maxims of Equity
- Injunctions
- Specific Performance
- Rescission
- Rectification
- Estoppel
- Introduction and the Historical Development of the Trust
- Express Trust
- Secret and Half-Secret Trusts
- Purpose Trusts
- Charitable Trusts and the Doctrine of Cy-pres
- Resulting Trusts
- Constructive Trusts
- The Administration of Trusts
- The role, powers and duties of the trustee and their personal liability

3.1.7 Module teaching and learning (including formative assessment) strategy

The module uses participative lectures, which consist of tutorial-style discussions, group work sessions and exercises. The lectures are supplemented by structured on-line resources and directed reading. Formative assessment is provided in the form of interactive exercises such as directed class discussion topics which reference current affairs pertaining to Equity and Trusts at the time of instruction. Formative assessment is also provided through tutorial-style discussions, group work and exercises. These focus on specific case law and problem-based learning requiring learners to analyse the law and apply it to practical equity and trusts disputes or issues.

Learners also engage in collaborative work in pairs or small groups to brainstorm what learning has been achieved at the end of lectures. In order to support learners through the examination process, they engage in the answering of sample examination questions and correction of their own or peer's papers, thereby familiarising themselves with the marking criteria. Learners also engage in activities where they draft their own exam questions in order to recap and consolidate a particular topic.

Learners undertaking the course via blended learning benefit from varied and additional options for engagement to compensate their reduced attendance of campus. These include

webinars, screencasts (recorded lectures), discussion fora, and increased use of the College's VLE (Virtual Learning Environment), Moodle.

In addition to what has been stated, classroom assessment and benchmarking techniques are deployed to encourage learners to develop more agency in terms of their own learning including in-class presentations, group work, peer-review exercises and reflective practice. The variety of teaching, learning and assessment techniques reflect an enhanced emphasis on skills acquisition to deepen practical knowledge. Finally, the attention of learners is drawn to current industry practice and technology used in the specific area of law to add a further dimension to learning, tracking the actual practice of legal professionals.

3.1.8 Work-based learning and practice-placement

Equity and Trusts is a class-based module and does not require work-based learning and practice placement.

3.1.9 E-learning

Moodle, the College Virtual Learning Environment, is used to disseminate notes, advice, and online resources to support the learners. Moodle can be accessed in the learner's home, various open labs on campus and in the library. The learners also have access to Lynda.com as a resource for reference.

3.1.10 Module physical resource requirements

Requirements are for a fully equipped classroom. The classroom is equipped with a PC and Microsoft Office; no other software is required for this module.

The College library has a dedicated law section and online legal research tools (Justice One, Westlaw, Hein Online).

3.1.11 Reading lists and other information resources

Primary Reading:

Keane, R. (2017) Equity and the Law of Trusts in Ireland. Dublin: Bloomsbury
Biehler, H. (2016) Equity & the Law of Trusts in Ireland. Dublin: Round Hall

Secondary Reading:

Martin, J. (2018) Hanbury & Martin Modern Equity. London: Sweet & Maxwell
Breen, O. (2019) The Law of Charities in Ireland. Dublin: Bloomsbury
Kirwan, B. (2015) Injunctions: Law and Practice. Dublin: Roundhall
O'Neill, B., Brady, N., Conroy, B. (2012) Specific Performance and Succession. Dublin: Bloomsbury
Moffat, G., Bean, G. & Probert, R. (2009) Trusts Law: Text and Materials. Cambridge: Cambridge University Press
Keogan, A., Mee, J. & Wylie, J.C.W. (2007) The Law and Taxation of Trusts. Dublin: Tottel

3.1.12 Specifications for module staffing requirements

Lecturers expected to hold at least a level 8 legal qualification, preferably with a professional legal qualification. It is an advantage to have completed the Certificate in Training and Education provided by Griffith College.

Learners also benefit from the support of the Programme Director, Programme Administrator, Lecturers, Learner Representative, Students' Union and Counselling Service.

3.1.13 Module summative assessment strategy

Theoretical knowledge will be assessed by both continuous assessment (30%) and a summative end of year examination (70%). The continuous assessment shall consist of a written assignment (30%).

The examination will consist of both essay and problem style questions.

Essay style questions will place emphasis on the demonstration of understanding pertaining to Equity and Trusts Law. Problem Style questions will enable learners to apply the principles of Medical Law to a factual scenario.

The assessed work breakdown can be seen in the table below.

No	Description	MIMLOs	Weighting
1	Exam	i, ii, iii, iv, vi, vii	70%
2	Assignment	iii, v	30%

3.1.14 Sample assessment materials

Assignment Question

Rebel Insurance LTD. carry on business as insurance brokers in Cork. In August 2014, they employed Edward as part of their sales team. The written contract of employment provided *inter alia* that the employee should not for a period of 24 months after termination of employment:

'Solicit or seek in any capacity, whatsoever, any business, orders or custom which is similar to or in competition with Rebel Insurance Ltd. from any customer of Rebel Insurance Ltd.'

Edward discovered, in the course of his employment, that Rebel Insurance LTD had entered into a "secret deal" with another Insurance company to keep the price of insurance artificially high in the Cork area. As a result, Edward left the firm last December 2015 and set up a competing firm, Excaliber LTD. Rebel Insurance LTD. has noticed a serious downturn in business since then. Edward has been undercutting Rebel Insurance LTD.'s quotations and thereby getting many of its customers. If this continues, then there is a real likelihood that Rebel Insurance LTD will not be able to survive in business and may have to cease trading. Rebel Insurance LTD are also concerned about the effect on their reputation of the transfer of so many of its longstanding customers to Excaliber LTD.

At a recent consultation at your Law Firm's office, the Managing Director of Rebel Insurance LTD informs you that they have not acted until now because they wanted to see what effect Edward's actions would have on their business before seeking legal advice. The Managing Director also informs you that if Rebel Insurance LTD go out of business, the public in Cork will suffer as the closure of an insurance firm will cause a loss of competition and add to the costs of insurance in the longer term.

Rebel Insurance LTD are planning to issue proceedings against Excaliber LTD for the loss and damage caused by Edward's breach of contract. However, in the meantime, they wish to prevent Edward and Excaliber LTD from causing any further loss or damage to them until the full trial of the action. As such, you are required, on the basis of the above facts, to advise Rebel Insurance LTD in detail about their prospects of obtaining an interlocutory injunction against Excaliber LTD and the tests they must satisfy in order to obtain same.

Marking Criteria – See Appendix 1

Sample Examination
Answer any three of the following questions.
All questions carry equal marks.

Question 1

“A testator cannot reserve to himself a power of making future unwitnessed dispositions by merely naming a trustee and leaving the purpose of the trust to be supplied afterwards nor can a legatee give testamentary validity to an unexecuted codicil by accepting an indefinite trust, never communicated to him in the testator's lifetime.”

Per Viscount Sumner, *Blackwell v Blackwell* [1929] AC 318.

In light of the above statement and citing relevant case law, academic commentary and statute in your answer, critically discuss the law relating to fully secret and half secret trusts, taking into consideration issues associated with the fact that property may be held on trust by one or more persons.

Sample Answer 1

*This Question requires the student to deal with the ingredients to establish both a secret and half-secret trust. In particular, students are required to discuss the manner in which these ingredients have been applied by the courts, with particular reference to the importance of when the trust is communicated to the trustee. Students are also required to deal with the issue of co-ownership and the effect that joint tenancy and tenancy in common have on the validity of the trust. Better students should also be able to identify how secret/half secret trusts relate to the formalities to create a will and the avoidance of fraud. Important cases include: *Re Stead* (1900) 1 Ch 237; *Re Keen's Estate* [1937] Ch 236; *McCormick v Grogan* (1869) LR 4 HL 82; *Prendiville v Prendiville* (1995) 2 ILRM 578.*

In order to pass, some exposition of the relevant law is required. For a 2.2, the relevant law should be addressed to a significant extent; however, a level of error/omission will not be fatal. For a 2.1, the relevant law should be set out clearly and comprehensively,

although minor errors or omissions will not be fatal, and there should be some attempt at application of the law to the facts. Progress towards a 1.1 will depend largely on the application of the law. For a 1.1, generally the answer must be excellent in terms of description and application of the relevant law.

Question 2

Commenting on the MacNaughten classification Delany in *Equity and the Law of Trusts in Ireland* (Round Hall, 4th Ed., 2007) at page 322 states:

“It is now generally accepted that trusts which are considered to be charitable in law fall into these four separate, although not necessarily mutually exclusive, categories.”

With reference to relevant case law and academic commentary, outline and discuss each of the four charitable purposes as set out in the case of *Commissioners for Special Purposes of Income Tax v. Pemsel* [1891] AC 531.

Sample Answer 2

*This Question requires the student to identify and discuss the 4 components of a charitable trust: poverty, education, religion, community benefit. Students are then required to explain and critically discuss the effect of the Charities Act 2009 on these components. Students are then required to explain and critically discuss the scope of the each of the components. Pertinent points in each include the poor relations exception under the poverty component, the meaning of education, the public benefit element in religion and the issue of politics, tourism and sport in the community benefit component. Relevant cases include: *Re Colthurst* (1951); *Sander’s Will Trust* (1954) Ch 265; *Re Segleman* [1996] Ch171; *Re Shaw Will Trust* (1952); *AG v Delaney* (1875) IR 10 CL 207; *National Tourism Authority v Coughlan* [2009] 3 IR 549; sections 3 and 4 Charities Act 2009. Good students will also be able to explain the Cy-Pres Doctrine generally.*

In order to pass, some exposition of the relevant law is required. For a 2.2, the relevant law should be addressed to a significant extent; however, a level of error/omission will not be fatal. For a 2.1, the relevant law should be set out clearly and comprehensively, although minor errors or omissions will not be fatal, and there should be some attempt at application of the law to the facts. Progress towards a 1.1 will depend largely on the application of the law. For a 1.1, generally the answer must be excellent in terms of description and application of the relevant law.

Question 3

In 2010, Monica opened a joint deposit account in the names of herself and her favourite former housemate, Jennifer. She lodged the sum of €5 million in the account. Monica had taken early retirement two years previously, in 2008. Nevertheless, despite the fact that she was now living in London, Jennifer decided she should be present for the opening of the bank account, and so she flew over to Dublin where, at the bank, the bank manager endorsed the deposit book as ‘payable to Ms Monica Feller only, or her survivor’.

Thereafter, Monica made a number of lodgements into the account but Jennifer had no dealings with the account. Monica died earlier this year. She was not survived by a spouse or other relatives, and in her will, dated 27 May 2007, she left all of her property to her friend Joey.

Jennifer has been informed of Joey's entitlement under the will. Despite what the will says, Jennifer claims to be entitled to the monies in the joint deposit account.

Advise Jennifer as to her position in relation to the monies. Support your answer by reference to relevant legal authority.

Sample Answer 3

Students are required to give an overview of the types of 2 main types of resulting trusts: automatic and presumed resulting trusts. The focus of this Question is on presumed resulting trusts, transfer of personalty and the issue of joint bank accounts. Important cases are: Vinogradoff [1935] WN 68; Lynch v Burke [1990] 1 IR 1; Owens v Greene [1932] 2 IR 225; AIB Finance Limited v Sligo County Council [1995] 1 ILRM 81. Better students will also be able to identify and apply the presumption of advancement and purchase money resulting trusts.

In order to pass, some exposition of the relevant law is required. For a 2.2, the relevant law should be addressed to a significant extent; however, a level of error/omission will not be fatal. For a 2.1, the relevant law should be set out clearly and comprehensively, although minor errors or omissions will not be fatal, and there should be some attempt at application of the law to the facts. Progress towards a 1.1 will depend largely on the application of the law. For a 1.1, generally the answer must be excellent in terms of description and application of the relevant law.

Question 4

"A... classification can be made between interim and interlocutory injunctions on the one hand and perpetual injunctions on the other hand. The former are granted prior to the trial of an action... A perpetual injunction on the other hand will only be granted at the trial of the action where a plaintiff has established a right and the actual or threatened infringement of that right by the defendant."

Biehler, H., Equity and the Law of Trusts in Ireland, 6th edition, 2016 (p565-566)

Critically examine the different considerations facing a judge who is asked to exercise their discretion to grant an injunction depending on whether the injunction is sought on an interim, interlocutory or perpetual basis. You are expected to refer to appropriate sources of law in your answer as well as relevant academic commentary.

Sample Answer 4

This is an essay relating to Injunctions. It focuses on the students' ability to critically examine the difference in tests and considerations applying to the grant of an injunction depending on its duration and status (before or at full hearing). General considerations (adequacy of damages; delay; rights of third parties; conduct) ought to

be considered primarily as they might relate to the grant of perpetual injunctions. Then student would be expected to describe adjustments to these basic considerations that are required for different interim and interlocutory injunctions, as well as other requirements such as undertakings as to damages that may be sought by the judiciary to further balance the rights of parties in these expedited environments. Students could employ any number of cases, including but not limited to an outline the development of tests through Stratford, American Cyanamid and Campus Oil in relation to interlocutory injunctions, together with recent case law such as Okunade v Min. Justice, Equality and Law Reform [2012] 3 IR 152 or Mareva, Anton Piller or Bayer cases that gave their names to the associated orders when discussing interim injunctions and the heavy onus on an ex-parte plaintiff to make full and frank disclosure.

In order to pass, some exposition of the relevant law is required. For a 2.2, the relevant law should be addressed to a significant extent; however, a level of error/omission will not be fatal. For a 2.1, the relevant law should be set out clearly and comprehensively, although minor errors or omissions will not be fatal, and there should be some attempt at discussion. Progress towards a 1.1 will depend largely on the quality of discussion. For a 1.1, generally the answer must be excellent in terms of description and discussion of the relevant law.

Question 5

In 2005, Bigpool Ltd. leased a large unit in Bigpool Shopping Centre on the outskirts of Dodge city for 25 years to Diddly Ltd. The unit is by far the largest premises in the shopping centre. The lease contained a term that stated the unit was to be operated as a grocery/supermarket by Diddly Ltd. for the entire duration of the lease, and this commitment was reflected in the price agreed. The lease went on to state that Diddly Ltd. “must ensure that the premises are maintained ‘to the highest standards of cleanliness and repair’”. It further acknowledged that Diddly Ltd. would be “the primary tenant in the shopping centre”.

Diddly Ltd. stores were initially very popular in the area. For several years it made large profits and created a lot of footfall in the shopping centre. Turnover has however been recently effected by the growth of online grocery shopping. Today Bigpool Ltd has been notified by Diddly Ltd. that on foot of this new trading environment, the Diddly store in Bigpool Shopping Centre is going to cease trading in order to move to a smaller premises in the city centre. The owners of Bigpool Ltd. come to you for advice. They are appalled at the prospect that they would lose their anchor tenant. Initial investigations with other supermarkets suggest nobody is willing to take over the tenancy at short notice. This could mean the end for the shopping centre! They want to force Diddly Ltd. to remain.

In your meeting the owners of Bigpool Ltd., they point out that Diddly Ltd. stopped investing in the maintenance of the premises two years ago. As the Diddly store is at the entrance to the store, it is apparent to any visiting customer that the place is no longer being well kept and leaves a very poor impression. Diddly Ltd. has ignored all warnings and requests to maintain the premises better from Bigpool Ltd. Your clients ask you whether Diddly Ltd. could

be ordered somehow to comply with the “clean and repair” provisions of the lease should they remain as tenants.

Advise Bigpool Ltd., the owners of the shopping centre. Your answer should have regard to relevant law.

Sample Answer 5

The question relates to the topic of specific performance and requires students to deal, in particular, with contracts involving the carrying on of a business. Students may set out briefly the general principles governing the grant of orders for specific performance before moving on to consider the specific issues arising in relation to contracts to carry on a business. Students should demonstrate detailed knowledge relevant case law in this area. Some relevant cases: Dakota Packaging Ltd v APH Manufacturing BV [2005] 2 IR 54; Kelly v Simpson [2008] IEHC 374; Smelter Corporation v O’Driscoll [1977] IR 305; Co-operative Insurance Society Ltd v Argyll [1998] AC 1 [HL]; Wanze Properties (Ireland) Ltd v Five Star Supermarket (HC unrep. 1997)

In order to pass, some exposition of the relevant law is required. For a 2.2, the relevant law should be addressed to a significant extent; however, a level of error/omission will not be fatal. For a 2.1, the relevant law should be set out clearly and comprehensively, although minor errors or omissions will not be fatal, and there should be some attempt at application of the law to the facts. Progress towards a 1.1 will depend largely on the application of the law. For a 1.1, generally the answer must be excellent in terms of description and application of the relevant law.

Question 6

Tom and Mary have been married for fifteen years. Although Mary is of a quieter disposition than Tom, they are both known as “pillars of the community”. Bill is the manager of the local bank and would know Tom as a local restaurant business owner with a solid business. He would know Mary as the ladies’ captain at the golf club. Bill recently heard rumours at the clubhouse that Tom and Mary’s marriage was “under pressure”, but dismissed them as the private affairs of a married couple. He has also heard a rumour that Tom’s restaurant is not honouring old vouchers, but has never experienced this problem himself.

Tom has requested a loan facility to build a terrace on to the restaurant that would capture more summer business. He has generated an impressive business plan to support this initiative, and Bill is inclined to offer him the €100,000 loan sought. However, the restaurant is already mortgaged and would not be good collateral for Bill’s bank. The only other worthwhile asset the couple own is the family home, which is in Tom’s name. Tom tells you that he has discussed this at home and the couple are quite happy to use the family home as collateral. Tom and Mary are coming in today to “sign the necessary paperwork”.

Bill tells you he was at a seminar recently that warned of potential pitfalls when dealing with family business loans secured by family home, but he cannot remember the specifics.

Advise Bill as to how the law operates to protect a non-owning spouse who may be under pressure from their spouse to agree to a loan facility and what Bill's obligations are with respect to Mary in this transaction.

Sample Answer 6

This question relates to rescission and in particular rescission on grounds of undue influence in the case of the family home and other property. Students should outline the nature of rescission as an equitable remedy and proceed to deal with the case law concerning both the family home and other property and apply the same to the facts. Relevant case law includes: Ulster Bank v Fitzgerald High Court, unreported, November 9th 2001; Ulster Bank Ireland Ltd v Roche [2012] IEHC 166.

In order to pass, some exposition of the relevant law is required. For a 2.2, the relevant law should be addressed to a significant extent; however, a level of error/omission will not be fatal. For a 2.1, the relevant law should be set out clearly and comprehensively, although minor errors or omissions will not be fatal, and there should be some attempt at application of the law to the facts. Progress towards a 1.1 will depend largely on the application of the law. For a 1.1, generally the answer must be excellent in terms of description and application of the relevant law.