

Unit Code: LWZ210 -

Unit Title: Equity

Credit points: 10 **Mode:** Online suitable for both Internal and External Enrolments

Assumed knowledge: The teaching in this unit will assume that you have completed all of the first year units in the degree course in Law (those units included in the 100 series unit codes).

Students should refer to and follow the Study Plans posted on the CDU web site in this respect.

Pre-requisite(s): LWZ100A **Learning method:** Problem Based Learning Course Work

Year: 2012 **Lecturer:** Mr Geoff James

Semester: Semester 1 **Unit coordinator:** Mr Geoff James

School: Law, Business & Arts **phone:** 61 8 8946 6791
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UNIT DESCRIPTION

This unit examines the content, purpose and significance of the discrete and very significant body of principles in the law of English speaking people that is known as equity. The focus of the Unit is to stimulate and facilitate learning that covers:

- The History and Nature of Equity;
- Equitable Estates and Interests;
- Equitable Assignments;
- Equitable Estoppel;
- Confidential Information;
- Relationships of Equity;
- Fiduciary Obligations;
- Undue Influence;
- Unconscientious Conduct;
- Fraud and Mistake;
- Unfair Outcomes;
- Subrogation, Marshalling and Ademption;
- Relief against Forfeiture;
- Part Performance;
- Constructive Trusts;
- Injunctions & Specific Performance; and
- Other Equitable Remedies & Defenses.

LEARNING OUTCOMES

On completion of this unit a student should be able to:

1. Define, and explain the operation of, the principles, remedies and relevant statutory provisions that are recognized as being the fundamental elements of equity.
2. Apply those principles, remedies and relevant statutory provisions to formulate legally supportable arguments that satisfactorily address the problems on which the course work of the unit is based.
3. Critically evaluate the fundamental elements of equity (as studied in this unit) in both the legal and the wider social contexts.

TEACHING AND LEARNING STRATEGIES

No Scheduled Lectures

Our study of equity will be done through course work in contrast to the conventional process of attending lectures and tutorials.

The entire course work for the semester will be notified to students from the beginning of the semester. It will be posted in the **Course Work folder** on the unit web site.

Problem Based Course Work

The unit course work is focused on a series of exercises devised under the principles of Problem Based Learning ("PBL") which aims at an advanced learning outcome achieved from the student's personal efforts at problem analysis utilising the range of learning resources that are provided. The course work is organized around a brief of problems in the form of a series of narratives of fictional facts that raise issues relevant to equity which are typical examples of contentious situations that commonly arise in the practical world.

The student must, to the extent possible within the limits of the principles of equity, address and analyse the problems thereby presented using the learning materials provided in the unit. The process requires the student to progressively identify and apply a comprehensive cross-section of the main doctrines of equity all of which are to be found in the instructional material contained in the learning resources provided.

The course work requires the student to propound an analysis of each of the problems contained in the brief addressed from the standpoint of equity and offer a suggested solution (if any is possible).

The student is intended to do so with the help of:

- the learning materials provided for the unit (lecture audios and notes);
- the prescribed text book and the reports of the leading cases;
- guidance provided by the lecturer during discussions in meetings called Problem Analysis Sessions ("PASs");
- discussion with other students in PAS sessions;
- discussion with other students in sessions of your chosen Study Support Group ("SSG"); and

- participating in, and monitoring, Discussion Board posts made by the lecturer and other students.

If you achieve that challenge in relation to the entire suite of problems collectively you will attain the learning outcomes expected of this unit.

Individual Program of Progress

Students who wish to do so, may at any time from the beginning of semester, access all of the instructional material contained in the learning resources for the whole of the eleven (11) weeks of instruction in the semester. This facility is available to enable individual students to accelerate their personal progress through the learning process of the unit. The option to do that may assist some individual students to arrange their own personal learning program and may also assist in the process of gaining an overview that assists with course work.

The Learning Resources

The range of learning resources includes:

1. **Audio Resources:** There will not be any in-person lectures delivered in theatre but there will be audio recordings of spoken guidance on the main themes of the unit. These are provided as a general instructional overview of the main themes and topic areas dealt with in greater detail in the prescribed text. The audios are intended as the equivalent of the traditional lecture. In the main, they are formulated as lectures but there will also be audios of remarks on specific problems and issues.

The sequence of the audios, and all other, resources will be parallel to the normal progress through the study of any unit. Moreover the resources will be tagged and identified on Learnline in ways that assist the student to assess the relevance of the particular audios (and other resources) to the sequence of problems to be considered by the student in the unit course work.

2. **Resource Papers:** Written material is posted back to back with each of the lecture equivalent audio as the equivalent of "lecture notes". So far as is reasonably practicable each of these resource papers has been restricted to a particular topic. By this means they are both short comprehensive and, in most cases, offered in shorter more manageable lengths.

3. **Special Resources:** The lecturer will provide special resources from time to time. These may be in audio or written form or may be publications or decided cases. Usually special resources will take the form of commentaries that are focused on specific matters. These may relate

to particular cases, concepts or principles. Or, commentaries may be provided to provide models of analysis similar to those required in course work. The special resources may be in audio form to conserve the lecturer's time.

4. **Reference Resources:** The prescribed texts are the principal learning resource for the unit. In addition, there are a selection of leading decided cases that must be read and understood for a full comprehension of equity. These will be indicated by the contents of the prescribed text and the Resource Papers. There may also be a range of material covering various themes, topics and issues posted from time to time on an ad hoc basis.

5. **Problem Analysis Sessions:** Students are expected to participate in a weekly Problem Analysis Session (called a PAS). These sessions are held, either online or in person at Casuarina, as a seminar where students may receive interactive guidance on equity, and the course work problems in particular, to substitute for the conventional lecture period.

PASs are provided to both help you learn the required law and to apply it to the problems contained in the brief. During the sessions you will have the opportunity to ask questions and obtain direction if required. You will benefit most by participating in PASs but attendance is not compulsory and if you are unable to attend an archive of each session will normally be available for you to visit

6. **Discussion Board Posts:** Answers to questions raised by students to the lecturer will be posted on the unit discussion board for the information of all students. This is an important learning resource that students are expected to utilize.

7. **Study Support Groups:** Students may work individually but are encouraged to join a study support group (**SSGs**). All students are encouraged to actively work in an SSG to prepare for the weekly PAS and to benefit from cooperation between members on the challenges of the course work. SSGs discussions can be conducted by written communication on the Discussion Board in the form of an on-line chat room or by online voice communication in the unit's Collaborate Room. The unit's Collaborate Room will be left open at all times to enable SSGs to convene at the time of their choice for voice discussions.

On the unit Discussion Board provision has been made for a selection of choices of days and times for students to meet for group discussion of learning issues. Students are to select the day and time that suits their individual needs and self select themselves to be members of a group that is to meet at that day and time. If that choice does not attract other student subscribers it will be necessary for you to make another selection.

Study Method

The unit course work begins with you reading the problem brief thoroughly as a first step in undertaking the course work of the unit. It is recommended that you do so before beginning your progress through the learning resources of the unit. When you are aware of the general nature of the course work problems you will have a sense of direction for your review and digest of the learning resources.

Your objective must then be to become conversant with the principles, doctrines, cases and statutes contained in the learning resources. They hold the key to addressing the problems in the brief. You must also then attend the PASs to hear the guidance of the lecturer, and other students, on the analysis of the problems of the course work. Or, if you were prevented from attending, listen to the archive of the PAS.

Each week of the semester, your study activities should include:

1. **Audio Resources:** Listen to and study the content of audio recordings of the lecturer's guidance on particular elements of equity. Allow, at least, 90 minutes.
2. **Reference Resources:** Pre-read the relevant chapters of the prescribed texts, the lecturer's resource papers, selected reported cases and etc. Allow, at least, 120 minutes.
3. **SSG:** Online discussion with other members of your study group (perhaps as much as 60 minutes).
4. **PAS:** Then, each week attend the face-to-face or online PAS with the lecturer and other students. These sessions which will be similar to, but not precisely the same as, a conventional tutorial. During the session, the lecturer will assist with your analysis of the problems under consideration. Allow 60 minutes (90 for on-line students).
5. **Return to Your SSG:** Following each PAS the student is encouraged to further discuss the current problems with members of their SSG. You should budget 20-30 minutes weekly for participation in discussions after problem analysis sessions.

After the session and discussions, the student must apply that guidance and learning in further consideration of the learning resources, if necessary by then, and formulating their actual solution to the focal problems.

Course Work Documentation

Then you must do your course work. You need to budget about 60 minutes per week for this task.

Summary

For you to be successful in this unit, you must:

1. Complete all the preparation required for the weekly PAS;
2. Communicate regarding the problems of the course work with the members of your SSG;
3. Attend and studiously participate in the PAS;
4. Present your course work outcomes in assignment format.
5. Submit your course work for assessment on the due dates (see later).

Communication with the Lecturer

Spoken communication with the lecturer in the PASs is welcome, encouraged and expected. Written communication is also welcome but it is preferred if that is done on the overall Unit Discussion Board so that everyone can learn from your queries and the lecturer's answers. If however a student wishes to raise a truly personal matter, of course he or she may do so by e-mail or telephone call directly to the lecturer.

First Briefing Session

There will not be a first (or subsequent) lecture in the semester's academic program for the unit. There will be a **Briefing Session** at 5 PM Tuesday of Week 1 2012 in CDU Room Red 6.1.01. The session will be aimed at assisting students to understand and adjust to the PBL teaching and learning, and the differences in this unit to the approaches based on lectures and tutorials, that they may have experienced in other units.

Necessarily, the briefing session will be attended predominately by internal students. Any external student who is able to attend is most welcome. The session will be recorded and posted on the learning materials page for Week 1.

PAS Time Table

PASs commence in **Week 2** of semester. There will be three (3) PAS sessions held each week. These are:

On campus on Tuesdays from 16:00 to 17:00 in room Red 6.1.01;

Online on Tuesdays from 17:00 to 18:30 CST; and

Online on Tuesdays from 18:30 to 20:00 CST.

All students, of which ever classification (internal or external), are welcome to attend any of these sessions, and change their choice, depending on the exigencies of their individual time commitments from week to week.

OVERVIEW OF ASSESSMENT

Assessment for a pass or better in the unit will be based on two (2) criteria. These are:

1. **COURSE WORK - THREE ASSIGNMENTS** 50 %

The unit course work is comprised of three (3) assignments which account for fifty percent (50%) of total unit assessment marks.

DUE DATES

Four (4) weeks is allowed for the submission of the first assignment after which three (3) weeks respectively is allowed in succession for the other two (2) assignments.

Assignment No. 1 is due for submission at 23:59 hours CST on Sunday **25 March 2012**.

Assignment No. 2 is due for submission at 23:59 hours CST on Sunday **22 April 2012**; and

Assignment No. 3 is due for submission at 23:59 hours CST on Sunday **13 May 2012**

ASSESSMENT REGIME

Assignments 1 and 2: The first two assignments qualify for a total of twenty (20) assessment points (20% of unit total) and will be marked on the principle that students are then in the course of exploratory learning. Each problem in those assignments will account for up to two (2) assessment points (2% of unit total) awarded on the criteria that the submission made for the particular problem must be:

1. a bona fide conscientious effort to fulfill the assignment tasks for that problem - one (1) assessment point (1% of unit total);
2. a sincere attempt to comprehensively address the assignment tasks for that problem - one (1) assessment point (1% of unit total).

Assignment No. 3: The third assignment qualifies for a total of thirty (30) assessment points (30% of unit total). It will be marked partly on the same principle as assignments 1 and 2 and partly on the principle of specific qualitative assessment. The criteria will be:

3. Firstly, all five (5) of the problems to be addressed in assignment 3 will attract two (2) assessment points (2% of unit total) each to be awarded on the same basis as is the criteria for assignments 1 and 2.
4. Secondly, the remaining twenty (20) assessment points (20% of unit total) will be split into two equal allocations of ten (10) assessment points (10% of unit total) and applied to the further assessment, on a qualitative basis, of only two (2), of the total of five, problems. The problems to be assessed qualitatively will be nominated uniformly after the submission date and before assessment begins. Assessment of the analysis of those nominated problems will proceed on a qualitative basis according to the terms of reference notified the assignment specifications.

ASSIGNMENT SPECIFICATIONS

Details of the assignments (in addition to as specified above) including the problem tasks, their terms of reference, and the principles for assessment of their quality are posted in the course work folder.

The **learning outcomes** to be achieved by this work are those numbered 1 and 2 on page 2 of this unit information.

2. **FINAL EXAMINATION** 50 %

At the end of semester there will be a centrally organized final examination on an invigilated basis, in open book limited time conditions, in which students will be examined

as to their understanding of and ability to apply the content of the unit learning.

The **learning outcomes** to be achieved by this work are those numbered 2 and 3 on page 2 of this unit information.

Unit Course Work Principles

General: The unit course work is comprised of three (3) assignments.

Format: Each assignment will specify five (5) fictional fact situations that raise contentious hypothetical issues of a kind that are similar to what might be expected to occur in the practical world.

Objective: The objective is to learn the principles of equity by the means of analysing how those principles apply to the issues raised in the scenarios of the course work. Students are to treat each of the fictional fact situations as a problem for which they must state and explain an analysis, according to the principles of equity, as clearly and instructively as would be expected of a practicing lawyer who was asked to make an advisory report on the matter to another lawyer who was unfamiliar with the jurisdiction.

Problem Solutions: The process of making attempts to formulate a solution to a problem is intended to give context to the student's learning experience and enhance the relevance of the learning materials contained in the prescribed text, the audios, the resource papers and the discussions at problem analysis sessions. The solution itself is not regarded as the most significant outcome of the learning activity in the course work. The way in which the analysis illustrates the student's satisfactory, or other, comprehension of the principles of equity, is the most important element. The marking regime places emphasis on the principle that knowing how to look at a problem is more important than knowing "the answer".

Limitations: Each problem analysis is to be done only on the basis of equity as studied in this unit. This limitation is applied in a practical manner. If a student's learning activity is facilitated by the use of factors from other relevant learning, or from general knowledge, then those matters may be used. Students must however be careful to avoid the temptation to try to resolve a problem in the study of equity by offering an analysis under some other legal discipline, for example, by reference to the law of contract.

Word Limit: The indicative overall word limit of each assignment is approximately 2,000 words evenly spread; that is, students should aim to achieve a word content of approximately 400 words for each problem.

No Penalty: It is recognised that some students may wish to formulate their course work in the form of a digest of their research as a record of their learning resource. For that reason, no penalty will be imposed on students who exceed the word limits.

Feed Back: Feed back on the course work is given in global form. That is done by the lecturer posting a selection of sample answers to each respective problem in that assignment. The samples will range from best through good and reasonable to bad. To prepare themselves for the challenge of the next assignment, students must personally critique their own submitted work on the basis of these examples and learn from the comparison. The posting will occur promptly after the submission date to enable students to do so.

Extensions: The learning progress of students will be influenced by the course work feed back given through the posted sample answers. To be of value that feed back must be promptly posted shortly after the submission date. For that reason extensions of assignment submission times cannot be approved for individual students beyond the feed back date. To do otherwise would necessitate delaying feed back which will impede the learning progress of the entire class. The rigour of this feature of the assessment regime is moderated by the fact that incomplete submissions will be accepted and marked in accordance with the policies above. By that means, a student affected by circumstances, may be able to salvage some progress from a partial effort.

Assessment Values: Please refer to the overview of assessment above. From that it can be seen that the course work accounts for 50% of total assessment marks. The first two assignments are regarded as a practice exercise and qualify respectively for 10% each of total unit assessment points. The third assignment accounts for 30% of total unit assessment.

Assignments 1 and 2: They are marked at the rate of 2% per problem which is awarded on the criteria of a bona fide conscientious effort to fulfil the assignment tasks and a sincere attempt to comprehensively address the relevant principles of equity. A submission that meets these criteria will not be marked down on the basis of quality factors. That regime is designed to encourage students to overcome the early learning challenges of the unit (and to provide some measure of safety net for late starters).

Assignment 3: The earlier principles of assessment apply to a limited extent. An allowance of 10% is awarded on the same basis as for the first two assignments. Additionally however a qualitative element is now introduced. By the time that students confront this third assignment it is expected that they will be in a position to submit competitive work. On that basis, two of those five problems in assignment 3 will also be assessed for qualitative merit for the award of up to an additional 10% each.

Required textbook(s)

Learning resources will generally follow the pattern of analysis contained in the two (2) prescribed texts (see below) for which reason they are essential resources. They are available at the CDU Bookshop.

First Prescribed Text

Evans, M
Equity and Trusts
3rd Ed, 2012
LexisNexis Butterworths
ISBN 9780 409 328 711

Note: In all learning materials this book will simply be called "Evans".

Second Prescribed Text

Thomas, SB; & Vann, V
LexisNexis Butterworths Study Guide
Equity
1st Ed. 2007
ISBN 978 0 409 323221

Note: This will be referred to as "Study Guide Equity"

SECONDARY TEXTS:

It should be understood that the prescribed texts do not offer a universal answer to the comprehension challenges that the student may experience. The following secondary texts are also available for students who wish to read as widely as possible to assure themselves of a thorough foundation in the subject.

Barkehall Thomas, S
Equity; Butterworths Student Companions
4th.Ed. 2002
LexisNexis Butterworths
ISBN 978 040 9319 897

This publication is out of print but if students can source a pre-owned copy it is a very valuable resource.

Note: This will be referred to simply as "Companions".

Dal Pont GE
Equity and Trusts in Australia
5th Ed. 2011
Thomson Reuters
ISBN 9780 455 229 072

Note: This will be referred to as "Dal Pont".

Heydon JD; Leeming LJ

Cases and Materials on Equity and Trusts
8th Ed. 2011
LexisNexis Butterworths
ISBN 9780 409 327 861

Note: This will be referred to as "Heydon".

Dal Pont GE

Equity and Trusts: Commentary and Materials
5th Ed. 2011
Thomson Lawbook Co
ISBN 8670 455 229 065

Note: This will be referred to as "Dal Pont's
Commentary".

Required textbooks can be ordered from the CDU Bookshop through their website which is accessible via the CDU website.

CDU On-Line Learning System

In this unit, Learnline will be used to:

- provide important announcements about the unit;
- distribute online resources for the unit;
- will be used for submission of your course work;
- access feedback from tasks and grades for assessable work;
- provide a communication point where you contribute to discussions as part of your assessment, and to interact with other students in the unit;

Access to Learnline is via the link provided on the home page of the CDU web site. Access may not be available until day 1 of the semester.

If this is your first time using Learnline, click on 'Student Learnline Support' in the left-hand navigation panel BEFORE logging in.

It is recommended that all students have access to regular and reliable broadband access to complete unit requirements.

e-Reserve

e-Reserve allows electronic copies of journal articles, book chapters and lecturer notes that have been recommended by a lecturer as part of their course reading requirements. You can access e-Reserve from the CDU web site. The specific site for e-reserve is password protected. Your

CDU student login will provide you access. You can then search for items by Lecturer, Unit Code, Title, Author, keyword, Year or Date if you have that information.

LEARNING SCHEDULE

The following is the program for learning in the unit throughout the semester.

WEEK 1

History and Nature of Equity

Evans 3rd Ed Chapters 1, 2 and 3 pages 3 - 32

Study Guide Equity Chapter 1 pages 1 – 15

Equitable Property, Interests and Rights

Evans 3rd Ed Chapters 4, 5 and 6 pages 35 - 65

Study Guide Equity Chapter 2 pages 16 – 49

WEEK 2

Equity and Assignments

Evans 3rd Ed Chapters 7, 8, 9, 10 and 11 pages 67 - 121

Study Guide Equity Chapter 3 pages 51 – 88

WEEK 3

Fiduciary Obligations.

Evans 3rd Ed Chapter 12 pages 122 - 166

Study Guide Equity Chapter 5 pages 107 – 147

WEEK 4

Confidential Information

Evans 3rd Ed Chapter 14 -- pages 184 – 212

Study Guide Equity Chapter 8 pages 198 – 213

WEEK 5

Constructive Trusts

Evans 3rd Ed Chapter 46 -- pages 818 - 841

Study Guide Equity Chapter 9 pages 216 – 230

Fraud and Mistake in Equity

Evans 3rd Ed Chapter 16 pages 227 - 234 and

Evans 3rd Ed Chapter 17 pages 254 - 269

WEEK 6

Undue Influence and Unconscionable Conduct

Evans 3rd Ed Chapter 15 -- pages 213 – 226 and

Evans 3rd Ed Chapter 16 -- pages 235 - 253

Study Guide Equity Chapter 6 pages 149 to 166 and

Study Guide Equity Chapter 7 pages 179 – 195

WEEK 7

Equitable Estoppel

Evans 3rd Ed Chapter 18 -- pages 273 - 306

Study Guide Equity Chapter 4 pages 90 – 105

WEEK 8

Penalties, Forfeiture and Subrogation,

Evans 3rd Ed Chapters 19 and 20 -- pages 307 – 351

Study Guide Equity Chapter 6 pages 167 to 177

WEEK 9

Contribution, Marshalling, Election and Ademption

Evans 3rd Ed Chapters 21 and 22 pages 352 to 386

WEEK 10

Injunctions

Evans 3rd Ed Chapter 40 -- pages 705 – 728

Interlocutory Injunctions, Mareva and Anton Piller Orders

Evans 3rd Ed Chapter 41 -- pages 729 – 748

WEEK 11

Specific Performance and Part Performance

Evans 3rd Ed Chapter 42 -- pages 749 – 766

Rescission, Restitution and Other Miscellaneous Remedies

Evans 3rd Ed Chapter 44 -- pages 789 - 804

Declaration

Evans 3rd Ed Chapter 45 -- pages 805 - 816

Study Guide Equity Chapter 12 pages 265 – 283

WEEK 12

Equitable Damages and Equitable Compensation

Evans 3rd Ed Chapter 43 -- pages 767 – 788

Study Guide Equity Chapter 10 pages 231 – 283

Laches and Acquiescence, Statutory Bar, Set Off, Release and Waiver, Unclean Hands

Evans 3rd Ed Chapter 37 -- pages 675 – 698

Assignment Cover Sheet

Assignment Cover Sheets need to be used for authentication of your Course Work assignments. They can be downloaded from the CDU web site.

CDU Graduate attributes

CDU graduate attributes refer to those skills, qualities and understandings that should be acquired by students during their time at the University

regardless of their discipline of study. (For a more detailed explanation go to the CDU web site item on this subject).

In this unit, the following graduate attributes are developed:

Attribute	Description	Learning outcomes
Acquisition	Can identify, retrieve, evaluate and use relevant information and current technologies to advance learning and execute work tasks.	1 and 2
Application	Is an efficient and innovative project planner and problem solver, capable of applying logical and critical thinking to problems across a range of disciplinary settings and has self-management skills that contribute to personal satisfaction and growth.	2 and 3
Knowledge base	Has an understanding of the broad theoretical and technical concepts related to their discipline area, with relevant connections to industry, professional, and regional knowledge.	1, 2 and 3
Communication	Demonstrates oral, written, and effective listening skills as well as numerical, technical and graphic communication skills in a cross generational environment.	1 and 3
Social Responsibility	Is able to apply equity values, and has a sense of social responsibility, sustainability, and sensitivity to other peoples, cultures and the environment.	1, 2 and 3

*****END*****