

Trusts Law

Module Handbook

2024/25

1. Introduction

Welcome to Trusts Law! This course will introduce you to what must surely be one of the most curious inventions of the English law, the trust. As a legal instrument, the trust offers unrivalled flexibility. You may be surprised to discover that the trust solves problems in commercial as well as in family law; in tax, inheritance, financial and land law; in the law of charities; that it equally functions as a means for private wealth management and for doing 'good' in society; that it is a vehicle for investments, such as pensions, as well as for assuring that one's pets are cared for after one's death. As one commentator notes, trust "are like those extraordinary drugs curing, at the same time, toothache, sprained ankles, and baldness, sold by peddlers on the Paris Boulevards; they solve equally well family troubles, business difficulties, religious and charitable problems."¹

Trusts law gives rise to many tensions, disagreements and outright contradictions. The main aim of this course is to give you a good grounding in the basic features of the trust, but we will also point you to aspects of the law that invite questions and critique. Ultimately, we hope that this course will challenge you to think differently about property and its associated obligations. The teaching team is here to guide you through the material and answer any questions you may have. Many of us conduct research in this area, so we are interested to hear your thoughts on the subject. Come and see us after lectures, in our office hours or post your questions on the discussion board.

Finally, a thought by James Penner on studying trusts law: "Read and think; read and pause. Learn to recognise when your brain is full, and stop. Like a box of breakfast cereal, your brain will have room for more once the contents have settled. [. . .] Remember also that the different topics are all part of the same subject, so you will understand each of them better the more you understand all of the others. As Wittgenstein said, 'light dawns gradually over the whole'."²

¹ Lepaulle P (1927) Civil Law Substitutes for Trusts. *The Yale Law Journal* 36(8): 1126-1147, 1126.

² Penner J (2022) *The Law of Trusts*. Oxford University Press, iii-iv.

2. Learning outcomes

By the end of this course, you should be able to:

- 1) Demonstrate a sound understanding of:
 - a. The historical and conceptual foundations of the trust;
 - b. The individual structural elements of the trust;
 - c. Different types of trust and the circumstances in which they arise;
 - d. The duties, powers and liabilities of trustees;
 - e. The various mechanisms and remedies associated with breaches of trust; and
 - f. Critiques of the trust, trust law, and trust practice.
- 2) Recognise and explain the structure of the trust in its various settings;
- 3) Apply trusts law to given factual scenarios and advise accordingly;
- 4) Critically assess the trust both in its conceptual form and as a legal practice in the light of internal (systematic) and external (social, political, commercial) considerations; and
- 5) Demonstrate developed research and writing skills, including the ability to work independently and to take responsibility for your own learning.

Also see the module description for Trusts Law (LAW2211) in the Faculty Handbook (<https://apps.dur.ac.uk/faculty.handbook/2024/UG/module/LAW2211>).

3. Course structure

Trusts Law will be taught through face-to-face lectures and tutorials. You can find the lecture and tutorial schedule at the end of this module handbook. Both lectures and tutorials are 50 minutes long, starting at five minutes past the hour and finishing at five minutes to the hour.

Lectures

There will be a total of 21 lectures, ten in Michaelmas Term, ten in Epiphany Term and one (revision lecture) in Easter Term. Lectures are on Mondays at 11am in TLC042 (Teaching and Learning Centre) and will be recorded. Lecture handouts will be available on Learn Ultra one week in advance; slides will be uploaded shortly before each lecture, recordings after each lecture.

Lectures are primarily intended to introduce you to the basics of a particular topic and suggest approaches to evaluation and critical analysis. Lectures will focus on key points on the lecture handout and may sometimes be repetitive, going over points again that have already been covered. This is because students every year request that we explain things multiple times rather than just once. Together with the lecture handouts, lectures provide a starting point from which you then develop your own understanding of trusts law by engaging with the materials. You will get much more out of lectures if you complete the relevant readings on the topic before coming to the lecture. You can find and access these readings through the Reading List feature on Learn Ultra.

Tutorials

There will be five cycles of tutorials, two in Michaelmas Term and three in Epiphany Term. There will be no tutorials in Easter Term.

Attendance at tutorials is compulsory and an attendance record may be taken. If you are unable to attend your allocated tutorial, you should let your tutor know in advance. If you wish to attend another tutorial instead, please ask the relevant tutor for permission by email. You can find the times and locations of all tutorials on the general timetable here (select 'LAW2211 – Trusts Law'): <https://timetable.dur.ac.uk/module.htm>. Every effort will be made to accommodate change requests, but please keep in mind that this is a large course and that groups may be full.

A tutorial worksheet for each tutorial will be made available on Learn Ultra two weeks in advance. The tutorial worksheet will give the tutorial questions, to which you should prepare a response. Tutorials are intended to deepen your understanding of a particular topic and encourage you to think critically about trusts law. In order for tutorials to be beneficial to your understanding of trusts law, you should come to tutorials prepared to engage in discussion. We may use part of the tutorial time to allow you to discuss the materials with your peers; this is an important part of the learning process, particularly for those of you who normally hesitate to share their views, so please support your peers by engaging with them. There will also be plenty of time to discuss your understanding with the tutor. Do raise any questions you might have on the materials and remember: No question is too small to ask!

4. The teaching team

Module convenor

- Dr Johanna Jacques (johanna.jacques@durham.ac.uk)

Lecturers

- Dr Johanna Jacques (johanna.jacques@durham.ac.uk)
- Dr Matteo Patrone (matteo.patrone@durham.ac.uk)
- Dr Lukas Simkus (lukas.simkus@durham.ac.uk)

Tutors

- Dr Johanna Jacques (johanna.jacques@durham.ac.uk)
- Dr Matteo Patrone (matteo.patrone@durham.ac.uk)
- Dr Adebola Adeyemi (adebola.adeyemi@durham.ac.uk)
- Dr Lukas Simkus (lukas.simkus@durham.ac.uk)

- Ms Xiaofeng Li (xiaofeng.li@durham.ac.uk)

Academic support and feedback hours (office hours)

Each member of the teaching team will hold two office hours per week during Michaelmas Term, Epiphany Term and the first two weeks of Easter Term. Please use these office hours, they are there for you to ask questions or discuss your work. You can find the times and locations of office hours on the course pages on Learn Ultra. Given the size of the course, you will appreciate that we may be unable to make appointments outside of office hours.

5. Learning resources

Learn Ultra

The course pages on Learn Ultra are an integral part of the course, so please check them regularly. Teaching materials, information about assessments and announcements about the course will appear here.

Reading materials

The reading materials for this course are made up of textbook readings, articles and cases. You may find that there is little diversity in the authorship of secondary sources, such as textbooks and articles, but we are making every effort to include materials written by women and members of ethnic or other minorities. We hope that over time (and perhaps with your help!) trusts law will become a more diverse area of scholarship.

Core text

We have chosen one core text, from which readings for each topic will be set:

- Watt G, (2023) *Trusts & Equity 10th edition*. Oxford: OUP
(<https://www.oxfordlawtrove.com/display/10.1093/he/9780192869630.001.0001/he-9780192869630?rskey=1GNzAV&result=1>)

This book provides a clear and concise commentary on the law. The indicated readings from it are essential readings. While an electronic copy of *Trusts & Equity* is available for you to access, you may also want to purchase your own hard copy (look out for second-hand copies from third-year students). At times, we may also ask you to read chapters from other textbooks in addition to the essential text.

Journal articles

A number of journal articles will be assigned as further readings for each topic. These provide you with commentary and critique of the law. We expect you to have read these further readings in preparation for the tutorials and come ready to discuss them. You may want to leave further readings that do not relate to a tutorial topic until you begin preparing for the exam.

If you would like to read more widely, specialist journals for trusts law include the following (although many relevant articles are also published in generalist law journals, such as the *Modern Law Review*, the *Law Quarterly Review* or the *Oxford Journal of Legal Studies*):

- *Trusts & Trustees* (available as an e-journal through the library); and
- *Conveyancer and Property Lawyer* (available through Westlaw).

Cases

Trusts law is to a large extent based on precedent, and cases therefore play a pivotal role in this area of law. We will list the most important of the relevant cases under further readings, but please note that you need to know all the cases referred to in the lecture handouts. Each of you will have their own approach to mastering cases; however, please keep in mind that

the more concise a case note is, the less accurate it will reflect the complexity of the facts, ratio and judicial arguments. There is little that can substitute the reading of a full judgment, which we recommend for as many cases as possible, not least because good knowledge of judgments, including dissenting opinions, can help you attain a first-class exam mark.

Other books

We are privileged to have a library that has a number of other textbooks, commentaries and reference materials in trusts law that you may wish to refer to for additional or alternative readings, some examples of which are given below. Please keep in mind that every author will have their own approach to the subject and their own interpretation of the law, which may diverge from that adopted in this course. The books below are given without dates; please make sure you select the latest edition.

- Bridge, M. et al., *The Law of Personal Property*.
- Davies PS and Penner J, *Equity, Trusts and Commerce*.
- Gardner S, *An Introduction to the Law of Trusts*.
- Garton, J, Probert, R and Bean, G, *Moffat's Trusts Law*.
- Hudson A, *Great Debates in Equity and Trusts*.
- Lawson FH and Rudden B, *The Law of Property*.
- McBride NJ, *Key Ideas in Trusts Law*.
- McGhee J, *Snell's Equity*.
- Mitchell C and Mitchell P, *Landmark Cases in Equity*.
- Nolan RC, Low KFK and Wu TH, *Trusts and Modern Wealth Management*.
- Pearce R and Barr, W, *Pearce and Stevens' Trusts and Equitable Obligations*.
- Penner JE, *The Law of Trusts*.
- Tucker L, Le Poidevin N and Brightwell J, *Lewin on Trusts*.
- Virgo G, *The Principles of Equity and Trusts*.

- Worthington S, *Equity*.

Many other textbooks are available, although the library may not have a copy of the latest edition. However, these may still be useful if you are looking for a different explanation of a particular issue.

Guest lectures

The course includes two guest lectures, which are timetabled and also included on the lecture schedule below. While attendance is not compulsory, you are expected to attend. We are taking attendance at these lectures, which may then be considered when responding to reference requests. These lectures will help you put what you have learned into context and tell you about some aspects of trusts law you have not encountered yet. They also provide a good opportunity to ask practitioners any questions about private practice that you might have.

6. Assessment and feedback

The course is assessed by one summative assessment. Two formatives provide opportunities for practicing answers and learning from the feedback given.

Summative assessment

There will be a written examination in Easter Term. This exam will make up 100% of your overall mark for the course.

Exam preparation

You can find copies of past exam papers on SharePoint:
<https://durhamuniversity.sharepoint.com/teams/exampapers/Law/Forms/AllItems.aspx>.

However, please note that the content of the course changes from year to year, with some

new topics introduced and others dropped from the syllabus. This year the format of the exam is also likely to change. We will tell you more about this in due course.

It is important that you consider all the material covered in the lectures as well as any essential and further readings in writing your exam answers. This will require private study, but we will also help you to make sure you are well-prepared (many students are surprised how well they do in the exam). The lecture in the first week of Easter Term will be a lecture on revision and exam preparation, and you can ask any question you may have relating to the exam then. We will not make available model answers, as these were unfortunately copied from in previous years. However, we will make available guidance on answering problem questions in trusts law generally. Please note that due to the size of the course, we will not be able to review and comment on individual practice answers, but we will of course be happy to address any questions you might have during our office hours, including on how to structure and write exam answers.

Academic misconduct

Please take extra care to familiarise yourself with the rules around academic misconduct, as we have cases every year where students in Trusts Law are penalised for colluding, copying from unacknowledged sources or using resources that are not permitted, such as generative AI. Note that academic misconduct includes unacknowledged copying from lecture handouts.

Prizes for top exam performances

The Law School awards a prize (supported by the law firm Macfarlanes LLP) to the top three second year students with the highest marks in Trusts Law. First prize will receive £500, second prize £300 and third prize £200. In addition to the financial award, prize winners will also have an opportunity to engage with Macfarlanes LLP.

Formative assessment

There will be two formative assessments, one in Michaelmas Term and one in Epiphany Term. You are required to complete at least one of these but can choose which one. We would encourage you to complete both. The submission deadlines are:

- Formative 1: 3 February 2025
- Formative 2: 21 March 2025

In formative assessments, we are looking for a good level of knowledge as well as for critical analysis and will comment on any misconceptions that may need to be corrected. Your submissions should evidence that you have read and understood relevant materials and have thought about them in arriving at your own conclusions. We will endeavour to be as helpful as possible in our feedback, but you are also welcome to discuss further any points raised in the feedback during our office hours.

We will let you know once the relevant question and submission instructions have been posted. This will be at least six weeks before the deadline. Feedback will be made available within four weeks of submission. Once all feedback has been returned, a report with generic feedback will be prepared by the module convenor, explaining what we were looking for, highlighting things that were done well and pointing out common mistakes. This report will be uploaded on Learn Ultra, and you should read it before seeking additional feedback from tutors in their office hours.

Extensions for formative work

You are strongly encouraged to submit your formative assessment to the deadline specified. However, you may submit one week later, should you wish to do so. If you require any further

extension, please follow the process set out in the UG Handbook (but note this will not be granted unless there are evidenced exceptional circumstances present).

Lecture scheduleMichaelmas Term

Teaching week*	Date	Topic	Lecturer
Week 1 (12)	7 October	Introduction to the trust	JJ
Week 2 (13)	14 October	History of the trust	MP
Week 3 (14)	21 October	Formalities (I)	JJ
Week 4 (15)	28 October	Formalities (II)	JJ
Week 5 (16)	4 November	The three certainties (I)	MP
	6 November	Guest lecture (I) – 12:00 in CLC013	Prof. Philip Bennett
Week 6 (17)	11 November	The three certainties (II)	MP
Week 7 (18)	18 November	The constitution of trusts	LS
Week 8 (19)	25 November	Resulting trusts	JJ
Week 9 (20)	2 December	Constructive trusts	LS
Week 10 (21)	9 December	The beneficiary principle	LS

* The number in brackets is the week number as given on the timetable:

<https://timetable.dur.ac.uk/module.htm>.

Epiphany Term

Teaching week*	Date	Topic	Lecturer
Week 11 (26)	13 January	Charitable trusts	MP
Week 12 (27)	20 January	Fiduciary duties and associated remedies	JJ
Week 13 (28)	27 January	Non-fiduciary duties	JJ
Week 14 (29)	3 February	Remedies for breach of non-fiduciary duties	JJ
Week 15 (30)	10 February	Tracing (I)	JJ
Week 16 (31)	17 February	Tracing (II)	JJ
	21 February	Guest lecture (II) – 13:00 in TLC042	TBC
Week 17 (32)	24 February	Dishonest assistance	JJ
Week 18 (33)	3 March	Knowing receipt	JJ
Week 19 (34)	10 March	The variation of trusts	JJ
Week 20 (35)	17 March	The trust in an international context	MP

* The number in brackets is the week number as given on the timetable:

<https://timetable.dur.ac.uk/module.htm>

Easter Term

Teaching week*	Date	Topic	Lecturer
Week 21 (41)	28 April	Revision and exam preparation	JJ

* The number in brackets is the week number as given on the timetable:

<https://timetable.dur.ac.uk/module.htm>

Tutorial scheduleMichaelmas Term

Teaching week*	Date	Topic
Week 6 (17)	W/b 11 November	Formalities; the three certainties
Week 9 (20)	W/b 2 December	The constitution of trusts

* The number in brackets is the week number as given on the timetable:

<https://timetable.dur.ac.uk/module.htm>.

Epiphany Term

Teaching week*	Date	Topic
Week 14 (29)	W/b 3 February	Charitable trusts
Week 17 (32)	W/b 24 February	Resulting trusts
Week 20 (35)	W/b 17 March	Non-fiduciary duties and remedies for their breach

* The number in brackets is the week number as given on the timetable:

<https://timetable.dur.ac.uk/module.htm>.