

## **Law of Equity and Trusts: Understanding Estate Planning in India**

### **COURSE DESCRIPTION:**

The concept of Equity encompasses the idea of justice and fairness. The system of Equity differs from the system of law as law is based on rules while the subject matter of Equity is based on the “maxims of equity” developed by the Courts of Chancery in England. Equity strives to fill in the gaps in the law by acting as a supplementary system, as no system of law can claim to provide relief for all possible scenarios. This ensures that the administration of justice remains at par with the ever-evolving dynamics of society. As Plato has rightly said, “Equity is indispensable to any intelligent administration of justice”.

The idea of Trusts has been described as the most critical development of the law of Equity. Trusts constitute a significant and comprehensive branch of Equity Jurisprudence.<sup>1</sup> Trust is an equitable right in a property where a person, even though not a legal owner, is bound to exercise rights on behalf of another. As Trust is an obligation connected with property, the law has a crucial role in protecting the interests of persons for whom the trust is created and balancing the rights and duties of persons connected with trust transactions. Trusts ensure the distribution and management of wealth to meet the needs of families and commerce as the Trustee owes a fiduciary duty to the trust's beneficiary to preserve the property. There are also instances where, even in the absence of specific trust, the law must protect the beneficial interests of persons on equitable considerations. Trusts may also be created for public purposes of a charitable and religious nature.

We will begin the course by raising issues about equity and its comparison with common law. The students will learn about the origins of Equity as a branch of law. We will focus on all the twelve maxims of equity, equitable remedies, and equitable rights. The students will also learn about fiduciary duties and responsibilities.

After building upon the foundations of equity, the students will learn about the Indian position on the Law of Trusts by discussing the Indian Trusts Act in detail. We will discuss the creation of trusts and the classification of trusts. The students will learn about different kinds of Trusts, namely, simple and special trusts, private and public trusts, constructive trusts, resulting trusts, precatory trusts, secret trusts, etc. We will also do a comparative analysis of charitable endowments under Hindu and Muslim law. The students will also learn about Charitable trusts through statutes like the Charitable and Religious Trusts Act of 1920, The Religious Endowment Act of 1863, The Charitable

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<sup>1</sup> Gary L. McDowell, Joseph Story's "Science" of Equity, The Supreme Court Review Vol. 1979 (1979), pp. 153-172 (20 pages), The University of Chicago Press, <https://www.jstor.org/stable/3109569>

Endowments Act of 1890, etc. We will also focus on the rights and liabilities of Trustees and Beneficiaries. The students will learn about the principle of extinction of Trust and the personal liabilities of third parties in the case of Trusts. We aim to build students' skills in drafting Trust deeds and encourage them to work as estate planners. We will conclude the course by discussing the contemporary issues in Trust Law, like the correlation between Trusts and Tax laws, trusts for the securitisation process, issues related to international estate planning like management of offshore trusts, etc.

### **COURSE AIMS AND INTENDED LEARNING OUTCOMES:**

- This course hopes to introduce students to the existing laws concerning trusts, and equitable and fiduciary relations connected with property through the perspectives of history, policy, cases, and statutes.
- This course will build on the existing knowledge of the interaction between common law and equity. The students will learn about the jurisprudence of equity and trusts in an economic and socio-political context.
- The students will also explore the development and current state of the law of Equity and Trusts from a comparative perspective. The students will critically discuss the problems and advantages of using Equity and Trusts and evaluate their use in the context of other legal strategies.
- The students will learn about the Indian position on Trusts and be introduced to drafting Trust deeds.
- The students will learn about various contemporary issues in Trust law.

### **ASSESSMENT CRITERIA:**

The student's learning will be assessed through research papers, presentations on contemporary themes, case presentations and an end-term examination.

### **PROPOSED COURSE OUTLINE:**

Teaching Week(s)	Lecture Topic
Weeks 1-4	<b>Introduction to the concept of Equity</b> Relationship between Equity and the Common Law Maxims of Equity, Equitable Remedies and Application under Indian Legal System Fiduciary Relationship
Week 5	<b>General overview of trust under the Indian Law</b> Classification and Kinds of Trusts Creation of Trusts
Weeks 6-8	<b>Trustees</b> Rights, Liabilities, Powers, Disabilities, Discharge, Duties and Appointment of New Trustees
Week 9	<b>Beneficiaries</b>

	Rights and Liabilities
<b>Week 10</b>	<b>Extinction of Trusts</b> Personal Liabilities of Third Parties in Respect of Trusts
<b>Week 11</b>	<b>Obligations in the nature of Trusts and the Limitation Act, 1963</b>
<b>Week 12</b>	<b>Trusts under Hindu Law, Muslim Law &amp; Related Legislations</b>
<b>Week 13</b>	<b>Contemporary Issues under Trusts Law</b>
<b>Week 14</b>	<b>Revision</b>

## READINGS:

### Books:

1. Davies PL, *Equity Trusts and Commerce* (Bloomsbury Publishing PLC 2017)
2. Penner J, *The Law of Trusts* (10th ed, Oxford University Press 2016)
3. Hudson A, *Understanding Equity and Trusts* (Routledge 2012)
4. Gardner S, *An Introduction to The Law Of Trusts* (Oxford University Press 2011)
5. Tripathi S. C, *Equity, Mortgages, Trusts and Fiduciary Relations* (Natural Law Publications 2011)
6. Philip H. Pettit, *Equity and Law of Trust*, Oxford University (2012).
7. S. Krishnamurthy Aiyar and Harbans Lal Swin, *Principles and Digest of Trusts Laws* (1998), University Book Agency, Allahabad.
8. R.E. Megarry and P.V. Baker, *Snell's principles of Equity* (1964) ELBS, Sneet and Maxwell.
9. Upadhyaya J R, *Equity, Trusts, Mortgages and Fiduciary Relations* (Central Law Agency Allahabad 1979)
10. Rajarathnam, Natarajan and Thankaraj, *Commentary on Charitable Trusts and Religious Institutions* (2000) Universal, Delhi.
11. B.M. Gandhi - *Equity, Trusts and Specific Relief* (Eastern Book Company, Lucknow)
12. Aggarwal O P, *The Indian Trusts Act*.
13. Tandon M P, *The Indian Trusts Act*, Allahabad Law Agency.
14. Ahmad Aquil, *Equity, Trusts and Specific Relief*, Central Law Agency.
15. Basu Durga Das, *Equity, Trusts and Specific Relief*, Kamal Law House, 1996.

### Cases:

1. Thayarammal v. Kanakammal, (2005) 1 SCC 457.
2. Jt. Commr., HRCE, Admn. Deptt. v. Jayaraman, (2006) 1 SCC 257.
3. Swami Shivshankargiri Chella Swami v. Satya Gyan Niketan, (2017) 4 SCC 771.
4. Pratibha Pratisthan v. Canara Bank, (2017) 3 SCC 712.
5. State Bank of India v. Special Secy., Land, 1995 Supp (4) SCC 30.
6. Trustees of Gordhandas Govindram Family Trust v. CIT, Bombay, (1973) 3 SCC 346.
7. Pooja Pal v Union of India (2016) 3 SCC 135
8. Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41

9. Abdul Wajid v Oosman Abdul Rubb (1943) Mad 154
10. K.S. Varghese v. St. Peter's & St. Paul's Syrian Orthodox Church, (2017) 15 SCC 333.

**Articles:**

1. Matthew Harding, "Equity and the Rule of Law", Quarterly Review (2016) Vol 132 Issue 2
2. Anglim Jennifer Kreder, The "Public Trust" University of Pennsylvania Journal of Constitutional Law Vol 18 Issue 5
3. Wu Hang Tang, "Equity and Trusts" (2016) Singapore Academy of Law Annual Review of Singapore Cases
4. Andrew Burrows, "We Do This at Common Law but That in Equity" (2002) Oxford Journal of Legal Studies Vol 22 No 1
5. Graham Moffat, "Trusts Law: A song without end?" (1992) The Modern Law Review 0026-7961
6. Eugene E. Siegel, "Equity: Where Did You Come From? Are You Long for this Life? " (1976) 1 Glendale L Rev 227
7. Ralph A. Newman, "The principles of equity as a source of world Law" (1966) 1 Isr L Rev 616
8. Philip A Ryan, "Equity: system or process?" (1956-1957) 45 Geo L J 213
9. Howard L Oleck, "Historical nature of equity jurisprudence" (1951) Fordham Law Review Volume 20 Issue 1
10. Robert L. Munger, "A glance at equity" (1915-1916) 25 Yale L J 42