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Trust Agreements and Their Distinctive Features in The Anglo-American Legal System

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Abstract: This article examines the legal nature, historical evolution, and distinctive characteristics of the institution of trust within the Anglo-American legal system. The study analyzes the origins and developmental stages of trust law, emphasizing its close relationship with the English judicial system and the doctrine of equity. Particular attention is devoted to the concepts of divided ownership, fiduciary duties of the trustee, and the legal status of the beneficiary. Furthermore, the article provides a comparative analysis of the trust institution in common law jurisdictions and property management mechanisms in continental legal systems, including the fiduciary patrimony under the Civil Code of Quebec. The research concludes that, despite the fundamental differences between the Anglo-American and continental legal traditions regarding property rights, the ongoing convergence of legal systems necessitates a comprehensive study of trust mechanisms and their potential application in modern civil law jurisdictions.

Keywords: Trust, trust property management, beneficiary, fiduciary relationship, equity, Quebec Civil Code, Anglo-American legal system, comparative law, property management.

Introduction: Most legal scholars who have studied the historical development of the trust institution maintain that the concept of trust-based property management emerged in England during the twelfth and thirteenth centuries. Historically, land could generally be transferred only through the rules of inheritance, passing from one heir to another. The allocation or transfer of land for purposes other than inheritance was subject to numerous legal restrictions and procedural barriers, making such transactions particularly difficult. In response to these limitations, the trust institution developed as a legal mechanism that enabled parties to achieve practical and economic objectives without formally violating the existing legal framework. In essence, the trust served as a means of circumventing rigid legal constraints while remaining within the boundaries of the law. This innovative institution subsequently evolved into one of the defining features of the Anglo-American legal system, playing a fundamental role in the administration, protection, and management of property rights.

For instance, following the recognition of the institution of trust property management, V.A. Dozortsev argued that trust relationships—derived from the term “trust”, meaning “confidence” or “fiduciary reliance”—originated in medieval England. According to his analysis, this legal institution emerged as a mechanism enabling certain property owners to overcome the legal obstacles that prevented them from acquiring or exercising proprietary rights under the existing legal framework. Through the use of the trust, owners were able to secure and preserve their interests in property without formally contravening the law, thereby creating a legally recognized fiction that protected their proprietary claims. Developing this argument further, Dozortsev emphasized that prior to the incorporation of the trust institution into statutory law, trust-based property management lacked formal legal recognition. In the absence of such legal institutionalization, the arrangement would have constituted an evident circumvention of existing legal norms. Consequently, the beneficiary’s de facto control or informal entitlement to the property was founded primarily upon the fiduciary relationship and mutual trust existing between the legal owner and the trustee, rather than upon an officially recognized legal right.

It should be noted, however, that some scholars argue that the origins of trust-based property management can be traced back to Roman law. For example,

K.I.Sklovsky contends that through the extensive interpretative work of the "glossators", the medieval legal tradition developed the concept of "divided ownership, whereby property rights were separated into distinct active and passive components. This doctrinal evolution, in his view, laid the conceptual foundation for later fiduciary property arrangements. Nevertheless, Sklovsky's assertion that the English trust institution was significantly influenced by Roman law has received limited support within legal scholarship. Many jurists reject this interpretation, emphasizing the independent evolution of English law.

In this regard, G.F. Shershenevich, in his analysis of the English legal system, argued that English law developed autonomously and that its fundamental principles emerged primarily through judicial practice and case law rather than through the reception of Roman legal doctrines. This position has subsequently been endorsed by a number of legal scholars.

Similarly, E.A. Sukhanov attributes the emergence of the trust institution in England to the distinctive characteristics of the English judicial system. According to his view, the relationship between the property owner and the person entrusted with the administration of the property was regarded as an expression of "equity", founded upon a relationship of complete mutual trust. In resolving disputes, English courts placed particular emphasis on principles of fairness and good faith, linking the concept of "equity" with that of "trust". Consequently, the development of the trust institution was largely a product of the English doctrine of "equity", which evolved through the system of judicial precedents and became one of the defining features of the Anglo-American legal tradition.

The historical emergence and development of the institution of "trust property management" can be most clearly observed within the Anglo-American legal system. Legal scholars generally agree that the origin and evolution of the trust institution are closely associated with the distinctive features of the English judicial system and the doctrine of "equity".

Legal literature commonly identifies four principal stages in the historical development of trust property management.

The first stage was characterized by the use of a special right relating to land ownership, which emerged following the Norman Conquest during the eleventh and twelfth centuries. During this period, however, the courts did not provide legal protection for the interests of property owners. In particular, an owner had no legal remedy to recover damages caused by the trustee or person entrusted with the management of the property. Although Parliament enacted various statutes, these laws did not establish rights in favor of property owners against those managing their property. Instead, they primarily imposed restrictions on the transfer of property into the management of third parties. For example, the statute of 1376 permitted a creditor who had seized a debtor's land to transfer it into the trust management of a third party. Likewise, legislation enacted in 1391 provided that a landowner who transferred land into the trust management of religious institutions, corporations, or other individuals could forfeit his legal title to the land.

The second stage, beginning in the early fifteenth century, was marked by the recognition of trust arrangements by the Lord Chancellor as an instrument for limiting feudal control over property. During this period, trust rights received judicial protection, and disputes arising from trust relationships were adjudicated in the Courts of Equity. Property ownership, particularly with respect to land, became divided into two distinct interests: legal ownership, vested in the formal owner, and equitable ownership, held by the trustee or beneficiary under the principles of equity.

The third stage commenced with the enactment of the Statute of Uses (1536). The primary objective of this legislation was to reform the existing system of trust property management and provide a legal framework for regulating trust relationships. Following its adoption, disputes arising from trust arrangements were initially transferred from the Courts of Equity to the common law courts. Nevertheless, supervisory authority remained with the Lord Chancellor, who continued to administer justice according to equitable principles. Consequently, although common law courts formally exercised jurisdiction, they continued to rely substantially on the doctrine of equity rather than on statutory provisions. Only by the seventeenth century did the statutory rules begin to be consistently applied, after which the regulation of trust relationships gradually returned to the jurisdiction of the Courts of Equity, where disputes were once again resolved on the basis of equitable principles.

The fourth stage corresponds to the seventeenth century. Following the abolition of the feudal system in 1660, the application of trust relationships expanded beyond land to encompass other categories of property. During this period, the trust institution underwent significant modernization, and its legal scope broadened considerably, enabling its use in a wider range of property and commercial transactions.

These stages clearly demonstrate that the institution of trust property management cannot be regarded as a direct continuation of Roman law. Rather, its development was intrinsically connected with the historical evolution of English society and with the efforts of public authorities to regulate social and economic relations among different social classes. In this regard, E.A. Sukhanov observed that no other European legal system, including the historical legal system of Russia, recognized a division between "common law" and "equity" comparable to that found in England. Continental legal systems traditionally adhered to the principle that a single object of property could not simultaneously be subject to two distinct proprietary rights. Accordingly, ownership was regarded as indivisible, precluding the separation of legal and equitable interests that characterizes the Anglo-American trust.

According to R.O. Halfina, trust property management may arise from various legal grounds, including a "will" or a "contract". Regardless of its legal basis, the institution is designed to protect the interests of both the settlor and the trustee. When establishing a trust, the owner transfers to the trustee all powers necessary for the effective administration of the property. The settlor may either specify the objectives and limitations governing the management of the property or grant the trustee broad discretionary authority to manage the property independently with the aim of generating economic benefit or achieving other designated purposes.

In Anglo-American law, the fundamental essence of the trust concept lies in the separation between legal ownership and beneficial interest. The person who transfers property into trust— the settlor — is the owner of the property, while the individual for whose benefit the trust is established is the beneficiary. Under this arrangement, the settlor transfers the management of the property to another person to be administered for the benefit of the beneficiary. Notably, the settlor may also designate himself or herself as the beneficiary of the trust.

The beneficiary is not necessarily required to be a specifically identified individual. In certain circumstances, the beneficiaries may constitute an indefinite or indeterminate group of persons. Such arrangements are generally referred to as public trusts or charitable trusts. For example, a trust may be established to support public healthcare services, educational initiatives, or charitable activities. Whereas a private trust is created for the benefit of one or more identifiable individuals, a public trust is designed to promote the interests of society or a particular community.

Trust relationships constitute one of the most significant legal mechanisms governing property transactions in jurisdictions based on the Anglo-American legal tradition. In particular, trusts are extensively utilized in the establishment and operation of large corporations and commercial enterprises. A notable historical example is the formation of the "Standard Oil Trust" in the United States in 1892, when shareholders of forty companies transferred the management of their shares to trustees through a trust agreement. In exchange, the shareholders received trust certificates confirming their beneficial interests and became entitled to a share of the profits, while the trustees acquired the authority to manage and administer the companies on their behalf.

Trust arrangements are also widely employed in the administration of "investment portfolios, pension funds, and insolvent or bankrupt entities". Likewise, many holding companies operate on the basis of trust principles. Such companies, possessing separate legal personality, acquire and hold shares in subsidiary corporations through trustees and exercise managerial control over those entities in accordance with the objectives of the trust arrangement.

In addition to express trusts, Anglo-American law recognizes various forms of constructive or fiduciary trusts, which arise from relationships involving a high degree of confidence and loyalty. These relationships may exist between a principal and an agent, a corporation and its directors, partners in a partnership, a client and an attorney, or a guardian and a ward. In each of these situations, one party is entrusted with acting in the best interests of another and, by virtue of that position, acquires the ability to manage or control property or assets for the benefit of the other party.

The defining characteristic of a trust relationship is that the trustee administers and manages the trust property as though he or she were its legal owner in dealings with third parties. The trustee is generally authorized to use the property and to enter into transactions concerning its management and administration. However, unless expressly permitted by the trust instrument or applicable law, the trustee is not entitled to exercise unrestricted powers of disposition or alienation. Consequently, although the trustee possesses extensive managerial powers, he or she does not acquire full beneficial ownership of the trust property.

The trustee is under a fiduciary obligation to render an account to the beneficiary regarding the administration of the trust property. Furthermore, after deducting reasonable expenses and costs incurred in the course of management, the trustee must transfer all remaining profits and benefits derived from the trust property to the beneficiary in accordance with the terms of the trust.

A notable distinction exists between English and American trust law concerning the remuneration of trustees. Under traditional English law, the trustee is presumed to serve without remuneration unless the trust instrument expressly provides otherwise. By contrast, United States law generally recognizes the trustee's right to receive reasonable compensation for services rendered in the administration of the trust.

Property transferred into a trust must be administered separately from the trustee's personal assets. The trustee bears legal responsibility for compensating the beneficiary for any losses resulting from the improper performance or non-performance of fiduciary obligations. Furthermore, where the trustee abuses the powers conferred by the trust, such conduct may give rise not only to civil liability but also, where applicable, to criminal liability.

Trust relationships are generally terminated upon the fulfillment of the purpose for which the trust was established, the expiration of the agreed duration, the death of the beneficiary, or the occurrence of other circumstances specified by law or by the trust instrument. Upon termination of the trust relationship, the trust agreement ceases to have legal effect. The grounds and procedures for termination are ordinarily stipulated within the trust instrument itself.

One of the defining characteristics of Anglo-American trust law is the concept of divided ownership. Under this doctrine, the powers of possession, management, and administration of the property are vested in the trustee, whereas the right to enjoy the economic benefits, profits, and income generated by the property belongs to the beneficiary. Consequently, legal title and beneficial interest coexist as separate but complementary proprietary rights.

Although Canadian law belongs to the Anglo-American legal family, an important exception to this principle can be observed in the civil law jurisdiction of Quebec, where the traditional concept of divided ownership is not recognized. Instead, Articles 1260–1370 of the Civil Code of Quebec regulate the institution of fiducie (fiduciary patrimony) and the administration of another person's property.

Under Quebec law, the settlor segregates all or part of his or her assets to create a separate patrimony dedicated to a specific purpose. This newly constituted patrimony is transferred to a fiduciary administrator, who is responsible for accepting, administering, and managing the property. Importantly, neither the settlor nor the fiduciary acquires ownership rights over the fiduciary patrimony itself, as expressly provided in Articles 1260 and 1261 of the Civil Code of Quebec.

A fiducie may be established either for private or public purposes. A private fiducie may be created to preserve the memory of a deceased person, to provide pension benefits, or to secure the interests of shareholders, employees, members of associations, or other designated beneficiaries. By contrast, a public fiducie is established for the benefit of society or the public at large. In such cases, the income generated by the fiduciary property is intended to finance cultural, religious, educational, scientific, or other socially beneficial activities. Accordingly, neither the settlor nor the fiduciary administrator is expected to derive personal financial gain or managerial control as the principal objective of the arrangement (Articles 1266 and 1268–1270 of the Civil Code of Quebec).

The fiduciary administrator does not acquire ownership of the fiduciary property. Rather, the administrator merely exercises the authority to manage and administer another person's property in accordance with the purposes for which the fiducie was established. In performing these duties, the fiduciary acts in his or her own name, supervises the property, and takes all necessary measures to ensure its preservation and proper administration, as stipulated in Article 1278 of the Civil Code of Quebec.

The incorporation of legal concepts resembling the Anglo-American trust into legal systems outside the common law tradition is not limited to Quebec. Similar institutions can also be identified in several continental legal systems. In this regard, R.O. Halfina
observed that German law likewise regulates legal relationships between a property owner and a person entrusted with the administration of that property. According to her analysis, the property manager may either be the owner or an individual authorized to administer another person's assets, with their legal relationship governed by contract or other legal instruments. The profits derived from the management of the property are distributed between the owner and the administrator in accordance with the agreed terms. Such arrangements are frequently employed where it is necessary to transfer the legal position of the owner to another person for administrative purposes.

For example, where the owner is a foreign national who lacks citizenship of the state in which the property is located or is otherwise unable to conduct activities within that jurisdiction, the owner may delegate the administration of the property to a professional property manager acting on the basis of a contractual arrangement.

In conclusion, the Anglo-American legal system differs fundamentally from the continental civil law tradition in recognizing the principle of divided ownership, under which proprietary rights may be separated between the legal owner and the trustee. While this mechanism provides considerable flexibility in property administration and commercial transactions, it may also create potential risks for the protection of the owner's proprietary interests. By contrast, continental legal systems adhere to the principle of the unity and indivisibility of ownership, thereby ensuring a stronger and more direct protection of the owner’s legal position.

Nevertheless, the ongoing harmonization and convergence of legal systems across the world have increasingly narrowed the distinction between common law and civil law traditions. This development underscores the growing importance of studying the legal mechanisms of the trust institution and evaluating their potential application within jurisdictions based on the continental legal tradition.

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