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Core Irreducible Features of the Trust: Comparative Analysis of Trust across Common Law, Civil Law, and Mixed Jurisdictions

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ABSTRACT

This article comparatively analyses the core irreducible essential features of trust across common law, civil law, and mixed/hybrid jurisdictions. English trust and civil law trust like instruments are compared to identify similarities and core features. Trusts and trust like instruments are locked in these country models in Hague convention, Luxembourg, Italy, France, South Africa, Czech, Quebec, Scotland. Each unique to its own. Ownership trust assets, rights and duties of trustee, settlor and beneficiary is identified and compared in civil and common law perspective. Conclusively similarities are identified in vastness of differences. Core inessential features are laid out.

Keywords: *Trust, Trustee, Settlor, Beneficiary, Core Features, Trust like Instruments, Common law trusts, Civil law trusts, Hybrid trusts, Convergence, Hague Convention*

Are there core irreducible features of the trust across common law, civil law and mixed legal jurisdictions? If so, what are they and why are they essential?

I. INTRODUCTION

In an attempt to study these jurisdictions and examine its features, let us first see what is meant by the phrase 'irreducible core feature', that essential feature or soul of any law without which the law would either loose its meaning or will have changes in it, with any change in its feature. That feature would be core irreducible feature.

It is widely understood fact that the trust in common law is extremely different from civil law jurisdictions, trust in common law exists and performs variety of functions, whereas trust in civil law as argued by strict civil lawyers do not exist. Instead civil law has these variety of instruments that they use to perform trust like functions. Some of these instruments are fiducia, treuhand, etc which can serve some of the functions, the trust has in common law. These instruments perform trust like function, but they don't not replace trust entirely. As civil law

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has certain ideologies or principles which go against the basics of trust, like the concept related to property, ownership, etc.[2]

We see all these mixed law jurisdictions successfully using and applying trusts in their county and that makes us wonder the common characteristics in trust laws between common law jurisdictions and civil law jurisdictions. A comparative trust law approach would help us understand these common characteristics between trust law in these separate jurisdictions, with an effort to determine core irreducible features across these jurisdictions.

We will be taking up all three jurisdictions separately, discuss their essential features and see if we find any common link between them.

We will be taking up examples of France and Italy. We will also look at French Fiduciae which is a sui generis institution that though formed contractually has major resemblances to trust. We also look at Italy, how astonishingly they created a sync between national law and foreign law and developed their own functioning of internal trusts.[3] We look at UK for the common law jurisdiction, for civil law jurisdiction we look at France, Italy, Germany and lastly for mixed legal systems we look at Czech Republic, Scotland (that has mixed roman civil and common law), Québec (minority French civil law and majority common law) and South Africa. We shall briefly look at these jurisdictions and not in detail.

II. Definition of a Trust

What academics realise after years of study into trust law is that a trust is an extremely complicated instrument, hard to define. Not for the lack of trying their part.[4]

Hague trust convention defines trust as an instrument developed in courts of equity as common law principle which is adopted with some modification in other jurisdictions.[5]

III. Trust in English law

As in English law, certain rules and concepts are developed through traditions and historical aspects.[6] We need to eliminate essentials from these. In order to determine core features of trust across civil law and common law, we need to identify core features across both these

[2] James Koessler, *Is there room for the trust in a civil law system? The French and Italian perspective.*(March 2012), *available at* http://www.jameskoessler.com/wp-content/uploads/2012/08/Trust-in-Civil-Law.pdf.
[3] Id. at.
[4] Lionel Smith & Lionel D. Smith, The Worlds of the Trust (Cambridge : Cambridge University Press. 2013).
[5] *30: Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition*(1985), *available at* https://www.hcch.net/en/instruments/conventions/full-text/?cid=59.
[6] William Swadling, *Trusts and Ownership: A Common Law Perspective*, 24 European Review of Private Law (2016).,954

jurisdictions.

An English law, non-charitable trust must have an ascertainable beneficiary. T Honore, in his paper 'Trusts: The Inessentials'[7] explains that duality of ownership of trust assets and equity were the only inessential characteristics.[8] When we compare this with the South African trust, we find this in favour of Honore's[9] statement. No distinct separation exists like that in English law. They tackled the problem through a concept of duality of estates.[10]

The article by Swaddling[11], states that trusts are held on right and there is no division of ownership. The consequences which flow from a right being held on trust is that a trustee is accountable to the beneficiaries for the exercise of the rights he holds. Those rights held on trust are not available to satisfy the debts of the trustee and beneficiary can obtain an order for the execution of the trust in his own favour or in favour of others.[12]

IV. INSTRUMENTS OF TRUSTS IN CIVIL LAW

Civil law claimed to have no trusts existing as trusts were entirely part of English common law, but civil law did have certain trust like instruments.[13] Fiducia and Treuhand had certain similarities with trust like institutions of guardianships and curatorship of the assets of other person, which was separate from the administrator of the assents in favour of another person or for a purpose. It can be said that these administrators performed the functions of trustees in civil law systems. What is trying to be explained is that features of these instruments like guardianship, curatorship and administrator ship match the structural features of a trust.[14]

German Treuhand and the French Fiducie do not match in their features majorly to trust. They perform a similar function but are different in structure and form. As I will later determine having a supervisory jurisdiction as one of core feature, these instruments lack in it. A public authority or a court cannot be called upon to ensure purposes of these instruments are being carried out. They function like a special type of contract that give rise to contractual remedies.[15]

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[7] *Rationalising Property, Equity and Trusts: Essays in Honour of Edward Burn*, 121 LAW QUARTERLY REVIEW (2003).
[8] E. H. BURN & JOSHUA S. GETZLER, RATIONALIZING PROPERTY, EQUITY AND TRUSTS : ESSAYS IN HONOUR OF EDWARD BURN (London : LexisNexis UK. 2003).
[9] Tony Honoré, *On Fitting Trusts into Civil Law Jurisdictions*, OXFORD LEGAL STUDIES RESEARCH PAPER NO. 27/2008 (2008).
[10] M de Waal, *The Core Elements of the Trust: Aspects of the English, Scottish and South African trusts compared*, 117 SOUTH AFRICAN LAW JOURNAL 548 (2000).
[11] Swadling, EUROPEAN REVIEW OF PRIVATE LAW, (2016).
[12] Id. at.
[13] Honoré, OXFORD LEGAL STUDIES RESEARCH PAPER NO. 27/2008, (2008).
[14] Vera BolgÃ¡r, *Why No Trusts in the Civil Law?*, 2 THE AMERICAN JOURNAL OF COMPARATIVE LAW (1953).
[15] REID KRESS WEISBORD, WILLS, TRUSTS, AND ESTATES : THE ESSENTIALS (David Horton & Stephen K. Urice eds., New York : Wolters Kluwer. 2018).

Other civil law instruments are more limited in scope. They are more specialised contractual in nature. Though contracts played a significant role in evolution of a trust across both jurisdictions. But the main difference between a trust and a contract is that enforcement of contract is up to the parties and not the court if the parties decide to not enforce it. But court can enforce a trust. Court plays its role in it. From appointment of a trustee to enforcement for trust purpose, court can have it say in it. Thus, the presence of authority is necessary. And certain civil instruments have that authority that resemble a common law trust, since common law trust have these characteristics. Thus, can be regarded as an essential. Another sound reasoning is that civilian systems recognise offices of guardian, curator, tutor, procurator, executor, factor, administrator, etc. These officers perform some or the other function in favour of someone, either a minor or deceased person, etc. Thus, a supervisory authority is recognised in civil law. Thus, they can extend another recognition to an office of trustee.[16]

There are various differences in civil laws that tell that having an exact English trust in civilian context is impossible as there is division between ownership and that is a big challenge to the adoption of the trust in civil jurisdictions, where such division is forbidden.[17] 'Ownership' in civilian systems is often said to be indivisible. Bolgar regarded this a reason why civil law cannot have English trusts. [18]

V. HAGUE TRUST CONVENTION

Hague trust convention recognises trusts to be created and regulated among the signatory states. It was specially to deal with the problems of differences in private laws over different jurisdictions, like recognition of civil law instruments in common law and vice versa. France, Italy, Netherlands, Malta etc are civil law countries that recognised it. Of these countries Italy and Malta are the only one who brought it into force. Hague convention allows people to have a trust instrument if one is not present domestically. [19]

VI. LUXEMBURG TRUST

Fiduciary arrangements are contracts, especially the relationship between fiduciant and fiduciary. Fiduciary arrangements required a transfer of title to the fiduciary. Segregation of assets from fiduciary's personal assets. The rules were amended to ratify with the Hague

[16] Honoré, OXFORD LEGAL STUDIES RESEARCH PAPER NO. 27/2008, (2008).
[17] Swadling, EUROPEAN REVIEW OF PRIVATE LAW, (2016).
[18] BolgÃ¡r, THE AMERICAN JOURNAL OF COMPARATIVE LAW, (1953).
[1919] Koessler. March 2012;Eva Heup, *Trusts in common law and civil law : Civil law for common lawyers*, (2016).

convention.[20]

VII. ITALIAN TRUST

Italy introduced internal trusts by means of ratification of Hague convention. As per that, assets placed under a trustee were a separate fund. Titles to asset would be in name of trustee or anyone on behalf of trustee. Trustee is accountable for the powers and duties he performs. The unique feature Italian trust had was to have separate jurisdiction for trusts, giving parties(settlor) an option to select trust jurisdiction of their choice, thus opening their gates for foreign trusts. Italy also had a law introduced for segregating of assets to achieve interests worthy of protection.[21]

VIII. FRENCH TRUST

French fiducie is defined as an operation in which one or more grantors transfers assets or rights, in present or in future to one or more fiduciaries who keep it separate from their own patrimonies for the purpose of benefit of one or more beneficiaries. This transaction has a contractual nature. French have introduced something called economic ownership. French trust is more like Luxemburg trust than Italian trusts. A fiducie is not said to be a trust in common law sense but it is closer to trust than it is to contracts. [22][23]

IX. SOUTH AFRICA

South African trusts are not at all like English trusts. Yes, the trust is shaped in an Anglo-American way, but the trust is largely influenced from civil law systems. These trusts have dropped a lot of features of English laws, that were not suitable to local conditions. Some may even describe it as state control, hence giving it a name of unique hybrid trust. One peculiar feature of these trusts is that businesses instead of being registered as companies can be registered as trust. That saved them tax and disclosures. Although it is just a temporary advantage being taken of trust which will be easily rectified with new laws.[24]

X. CZECH REPUBLIC AND QUEBEC

The Czech Republic has thus joined those continental legal orders that have adopted, in substance, a pure Anglo-Saxon legal institution of trust. In the case of the Czech Republic, the

[20] Corrado MALBERTI, *Fiduciary Arrangements in Civil Law Countries: Framing the Trustee's Role and Duties*, EUROPEAN REVIEW OF PRIVATE LAW 6-2016 [1053–1074] (2016).
[21] Id. at.
[22] Id. at.
[23] Koessler. March 2012.
[24] Tony Honoré, *Trust*, *in* SOUTHERN CROSS (1996).

model for its regulation was the regulation of trust in the Canadian province of Québec and therefore we may talk about an 'indirect' transposition. This is true despite the fact that certain institutions, partly providing the effects the institution of trust brings, had been known to the Czech legal system already before the new law was enacted, for example the regulation of endowment (charitable) fund or provisions on management of property of others.[25] Ownership in civil law, Czech civil code defines trust as trust is created when the founder sets aside a property. Now a property can be physical or a right, in reference if a trust it is usually a right. But it still creates confusion. [26] Let us look at Czech civil code, although no one is said to be the owner of the trust property. The rights are held by the trustee and they do not own the rights. No absolute right is owned by anyone, no ownership, enjoyment, disposition. If trustee exercised any of these rights, he would be liable for breach. Rights held by trustee are non-beneficial holding. They don't not actually mean that property is owned by no one in literal sense, thus they say trustee does not own the right, but it does not say that they are not vested in him.[27]

Laws seems to provide that neither the settlor, the trustee, nor the beneficiary has 'ownership' of the trust rights, that they are, in other words, owned by no-one, thinking behind this provision seems to be linked to the assumption prevalent among civilian lawyers that the common law trust involves a division of ownership. In Civil law systems, ownership is said to be indivisible, making the introduction of anything resembling the common law trust problematic. Hence, Czech decided to keep the owners as no one.

XI. SCOTLAND

In Scotland, the gradual operation of the combination of law and equity, aided by the system of public records, has led easily to the establishment of a regular system of trusts, in which the rights of all parties are regarded as vested in the trustee, as in deposit, with perfect security to those interested. The trust is construed as a combination of two contracts, deposit, and mandate. The object in view is always some purpose to be established.[28][29]

Anyway, this proves that translation of trust is not required to have trusts in civil law jurisdictions.

[25] Swadling, EUROPEAN REVIEW OF PRIVATE LAW, (2016).
[26] Id. at.
[27] Id. at.
[28] G. C. Reid Kenneth, *Constitution of trust: a Scottish perspective*, EDINBURGH LAW REVIEW (2011).
[29] Koessler. March 2012.

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XII. CORE ELEMENTS IN ENGLISH LAW

In general sense, intention to create a trust is one of the core element of English trust law. It can be oral or written, express or implied. But intention of creation of trust is an essential requisite. Split ownership is seen as one another core feature.[30]

The only sense in which the word 'ownership' can properly be used in English law is to describe the relationship between a person and a right. In this case trustees were defined as to have relationship between a person and a right, he is said to have an equitable obligation. This also explains it in respect of co ownership, two people exercising right on same property.[31]

creation of a trust involves a division of ownership, that the trustee has one part of ownership, the beneficiary another.

XIII. CORE ELEMENTS OF TRUST IN A CIVIL LAW PERSPECTIVE

1) In roman fidei commissum, fiduciaries were the complete owner of the property. So, no split ownership. The transfer could take place on the death of transferor only. Not before that. In the beginning beneficiary had no legal remedy in civil law, which later started to develop. Thus, civil law trust differs from common law when the rights of beneficiary are concerned.

2) In Napoleon code, Civil law of property was based on absolute ownership of the property. Ownership in the sense to manage, enjoy and dispense. Similarly, in Germain civil code, an owner has a power to exclude others from any interference at his discretion. Even if ownership is shared between one or more owners, each owner has full ownership right up to his share. Principles of publicity and specificity are also differing point in the English and civil laws.

3) Ownerships as a concept in civil law has no common view. It kept on changing. [32] But this remains unwavering is the indivisible nature of it.

XIV. OWNERSHIP ISSUE BETWEEN CIVIL AND COMMON JURISDICTIONS

Civil lawyers are more accepting towards an instrument where the administrators control the property but do not own it. While working out any transaction in such fiduciary instrument civil lawyers deny those instruments to be trust or even connected to it. Even if structural features are similar. [33] Even in mixed jurisdiction of Québec, a settlor, trustee or beneficiary, none of them has any real right in patrimony. The trustee although has the powers of

[30] Heup, (2016).
[31] Smith v. Anderson.
[32] Swadling, EUROPEAN REVIEW OF PRIVATE LAW, (2016).
[33] Honoré, OXFORD LEGAL STUDIES RESEARCH PAPER NO. 27/2008, (2008).

administration for others, of control and administration. The underlining idea is trust assets from a separate patrimony. Or a separate estate.

Other civil systems treat settlor as keeping the ownerships of the trust assets but transferring them to an administrator to exercise those administrative power for the trust's life. In such cases even though settlor might be the owner, the maximum right he has is the right to be consulted, this was an illustration regarding the functioning of Liechtenstein Treuhand (instruments like Treuhänder, fiduciaire, bewindhebber). The trust assets will always get back to the trustee unless something else is provided. (Sondervermögen, patrimoine d'affectation).[34]

XV. Beneficiary Issue Between Civil and Common

In common law, beneficiaries are to be secured of any right to income or capital that trust instrument confers in beneficiaries. Most importantly beneficiaries have a right to carrying out of trust instrument properly. Beneficiary can file for breach if trustee is not carrying out as per objects. Court can order the trustee to carry out acts according to objects of the trust. Sue and enforcing of trust are not property rights, but beneficial rights. The trust asset is separate from the trustee's own private property.[35] In civil law, terms of trust/instrument limit the powers of trustee. Usually title to the trust asset is not registered. Only in cases like land etc title is registered. Also there exists a doctrine of notice, which states that if someone acquires property from another with notice that the transferor was under an obligation to transfer ownership of or a real right in the property to a third person, the acquirer is bound by the transferor. It is a matter for each civil law jurisdiction that receives the law of trusts to decide to what extent it wants to protect the beneficiary. Anglo-American law also gives the beneficiary limited proprietary rights about trust assets that have been wrongly mixed by the trustee with his own assets or someone else's.

XVI. Elements that are essential to a trust

1. Segregation of assets or transfer of property

In civil law ownership is an absolute right in property that means possession, use, benefit and disposal which was different from common law, but in civilian light this has been seen differently. The notion that for an English trust to exist there needs to be a division in ownership, one in favour of trustee and other beneficial owner is wrong as charitable trusts have no beneficiaries and a beneficiary does not have an equitable version of a trustees right.

[34] Id. at.
[35] Id. at.

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Thus, we can safely conclude that there is no division of rights. [36] And banishing of idea of trust as property right and beneficiary's right to rem, then it seems that trust can fit into civilian jurisdictions. A successful example is Scotland. Scottish law has successfully integrated trusts in its civilian property law system by vesting the legal (fiduciary) ownership of the trust property in the trustee and classifying the beneficiary's right as a mere personal right. And, Québec, Louisiana, Mexico, Panama, Liechtenstein and Luxembourg have incorporated the trust concept into national legislation whereby the legal technique to protect the beneficiary's interests differ.[37] Swaddling clearly explained the common law ownership does not disturb the unitary nature as in required in civil law. This is the reason concepts of English law trust have been used to solve some shortcoming in civil law. Thus, trusts can exist in civil law.[38]

2. Trustee to administer assets.

Where rights are held on trust, new rights are created through which the trustee is controlled in his exercise of the rights he holds on trust. Nothing, however, has been carved out of the trust right.[39] We can carry such thinking across to Czech law. When the code says that the trust 'property' has no owner, it simply means is that the right is no longer held by any person outright. It does not mean that the 'property' is derelict and therefore open to the first taker. It merely describes how trustees inevitably hold rights.[40] But the trust like instruments have either administrators, or some other word to administer assets, and common law system has a trustee.[41] Trustee has to administer assets for the benefit of the beneficiary or the purpose of the trust or the instrument.

3. Existence of beneficiaries or a purpose.

In modern civil law, due to this globalisation and changes in academic atmosphere, there is a much greater acceptance rate of trust in civil jurisdictions. They can digest the idea of holding asset for the benefit of other.[42] Common law trust must have a beneficiary; it is an absolute requisite. Similarly trust like instruments have a person in whose favour asset is given to be administered by administrator.[43] Without a beneficiary or a purpose a trust cannot exist. The beneficial interest is the heart of this relationship. One person can perform more than two roles

[36] Swadling, EUROPEAN REVIEW OF PRIVATE LAW, (2016).
[37] Heup, (2016).
[38] Swadling, EUROPEAN REVIEW OF PRIVATE LAW, (2016).
[39] Honoré. 1996.
[40] Swadling, EUROPEAN REVIEW OF PRIVATE LAW, (2016).
[41] Daniel Clarry, The irreducible core of the trust (Lionel Smith ed., ProQuest Dissertations Publishing 2012).
[42] SMITH & SMITH. 2013. 313,339
[43] M. J. de Waal, *The core elements of the trust: Aspects of the English, Scottish and South African trusts compared*, 117 SOUTH AFRICAN LAW JOURNAL (2000).

in a trust instrument, but the presence of each role is important especially a beneficiary, after all trust is a beneficial instrument.

4. Court of authority to supervise

We have already discussed this before. Some authority, court or laws is required by the common law trust or trust like instrument in civil law to help in case of a breach of trust or any other problem in enforcing it.[44] Most instrument in civil laws will have a supervisory authority to remedy the situation just in case trustee conducts any misappropriation or used trust asset for his personal use. For example, in this situation, holding trustee accountable and recover the loss from him, presence of an authority is helpful. In certain situations, the court orders the trustee to act as per the object of the trust.

5. Both Roman fideicommissum and common law trust developed **outside the legal institution to fill the gaps in legislation**.[45] This last point makes less sense when compared to a wider view. But this core feature is extrinsic. I believe trusts and trust like instrument are a result of gap filling approach. Whenever people saw or wanted loophole in any ordinary law, new way was developed. Trust answers some questions contract can't.[46]

6. Another Research On irreducible core of trusts.

One such research we found concurs with the discussions we laid above. In another study of irreducible core approach, the focus was kept on accountability (duty sided) approach of trustee and enforceability (rights sided) approach for the beneficiary.

"Inner core of the trust 1. The duty/right to inform persons of their beneficial status under a trust; 2. The duty to keep, and right to have kept, trust accounts and information; 3. The duty of/right to disclosure of trust accounts and information; 4. The duty of/right to good faith trust administration; 5. The duty/right of loyalty; 6. The duty to perform the trust and the right to have the trust performed; 7. The power/liability to vary the trust; 8. The power/liability to terminate the trust."[47]

These core elements have been talked at in detail in the study, these core elements explore how a beneficiary has the right to know if his beneficial right or beneficial interest in an asset. How a beneficiary has a duty to keep a check on trust and trustee. Duties of beneficiary become the rights of trust as how a trustee should keep and maintain account of the trust, and disclose

[44] SMITH & SMITH. 2013.
[45] Heup, (2016).
[46] Koessler. March 2012.
[47] Clarry. 2012.

information relating to trust accounts. Trustee should be loyal to the trust and its purpose. These seem simple, but these simplicities hide in the complexities of the common law and civil law trusts, which gets harder to determine as we study more and more instruments of civil law.

XVII. CONCLUSION

Civil law and Common law though being so different reveal many similarities, as many as they have differences. Despite of so many differences in history, thoughts, schools, ideologies, cultures, origins, beliefs, civil law, and common law is seeing a meeting point in the way they see trusts (convergence). The two systems are seeing globalisation, and modern civil law and modern common law are moving towards each other, drifting away from old orthodox unbending meanings they gave to the trust instruments. The differences that used to be clearly visible in civil law and common law are now a bit diluted, considering Hague convention and other global measures.

The differences that we see in civil law and common law now are due to the ideology, methodology and execution of trusts. Although they see similar results and the goals of these instruments are same, they use different reasoning for it. While the reasoning they give is different, the subject matter they use to arrive to conclusion is same. Hence, we see similar conclusions, more in practical world that in academic world. I believe in academic world these differences will continue to be for an indefinite period as academic world is a world of ideas and belief and common law systems and civil law systems are two poles in ideas. The aim of this essay was to highlight any core essential similarity (if any) between these three jurisdictions or point out the differences.[48]

We saw jurisdictions that had transplanted the trusts into them, we saw jurisdictions that adopted trust and intermingled with their own domestic instruments. Their similarity with English trusts depended on the history and culture. Civil trust and common trust show conceptual similarity that is a common fiduciary nature. Civil law has these kinds of instruments where one person manages for the benefit of another. And we have seen certain civil law countries have incorporated trust into their own jurisdictions.[49] Common law trust are no longer a unique instrument. It has become a widely demanded and requested instrument across all globe. Every jurisdiction has been taking best parts of it according to them and incurring it in their national legislation, even in civil law ones.

[48] Caslav Pejovic, *Civil law and common law: two different paths leading to the same goal*, 32 VICTORIA UNIVERSITY OF WELLINGTON LAW REVIEW (2001).
[49] Heup, (2016).

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I conclude by stating that civil law countries had their own instruments resembling trusts, countries like France and Germany. These countries have further ratified Hague convention and taken steps towards a global trust approach where civil and common law line fade. Countries like Italy that are civil law have taken up Hague convention completely and allowed foreign trust to function, thus opening way for amalgamation of civil and common laws, and many other mixed jurisdictions. Countries like Scotland, Québec, Czech Republic, South Africa and many more had mixed jurisdictions, parts of civil law and parts of common law. These countries have proved that trusts can function in both civil law and common law jurisdictions. These countries first stated that trusts are not for common law countries only.[50] In section Q, I highlighted all the essential core elements of trust. In order to determine these essential core elements, we looked at the basic right or trustee, beneficiary and settlor in common law system and various civil law jurisdictions. We found differences in nature of the instruments, but we came to conclusion that regardless of the nature of the right, a property was assigned to someone for benefit of someone or for a purpose. These things were constant and common. There was a person (settlor) who was alienating himself from the right and vesting/transferring that right to someone else (trustee). The trustee that received that right/asset was holding it for benefit of someone else (beneficiary) or a purpose. Things that were clear that this property was different from private property of trustee. Beneficiary had certain rights against trustee. And no matter which law you look at, you will find these three core rights in them, in civil law system or common jurisdictions or mixed jurisdictions. The degree of the strength of the right varies, but these core features are present. In some civil instruments, beneficiary has less rights against trustee. In some mixed situations, no one is the owner of the trust property superficially, but the rights get transferred and vested. So, the names and the degree of strength of these rights vary, but these features imbibe their presence. You can call it a leopard, lion or you can call it a cat, yes, they look different and have different identities and functions but belong to the same family of Felidae. Thus, I reiterate, these core features will be present in any instrument.

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[50] Id. at.

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