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The Core Elements of the Trusts: From the Start of Three International Documents

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Abstract: The extensive application of trusts and trust laws has demonstrated that trusts, as an institutional tool with functional advantages in the realm of private wealth inheritance, on the one hand, offer an innovative framework for the transfer and management of personal assets. This serves as a valuable reference for non-trust law jurisdictions, displaying the distinctive structure of rights and obligations. On the other hand, for trust law countries, trusts born in different jurisdictions call for the adjustment and regulation of unified rules. Researching the core elements of the trusts can contribute to achieving these two goals. By carefully examining three international documents, this essay argues that each core element of trust intertwines to form a causal web: trust operates as a tool that protects beneficiary' interests and supports the fiduciary position of trustees (characterized by the separation of trust property). The location of ownership of trust property, however, remains an optional element determined according to local circumstances.

Keywords: Trusts; Trust Law; Core Elements; Essence of the Trust Legal Relationship

1. Introduction

With the widespread application of the trusts and trust law in the international market, the instrumental structure and fundamental functions of the trusts have become increasingly flexible and diversified. For those jurisdictions with the legislation for the trusts, this presents an excellent opportunity to promote innovation and expansion within their own trust practices. Simultaneously, the dynamic domestic capital market and demand for overseas capital flow would like to initiate some discussions and adjustments to establish uniform rules for trust law institution, providing a legal application space for the growing popularity of transnational trusts; while for those non-trust law jurisdictions, adopting this well-established, proven, and mature financial instrument as well as wealth inheritance tool can activate local wealth flow and therefore stabilize market trading order—an approach worth considering. Accordingly, whether through regional harmonization efforts (such as in Europe) or by transplanting trust law into non-trust law jurisdictions, it is both essential and necessary to conduct careful research on the fundamental core elements that constitute the trusts, along with their fundamental legal structural framework. Furthermore, with the ongoing rise of globalization trends and the growing appeal of globalized localism, both scholars and lawyers in civil law jurisdictions are gradually turning their attention towards the trusts. This foundational research can provide a “knowledge warehouse” for them to prompt global awareness and understanding of the trusts, clarifying its basic structure, main functions compared to other similar tools to show its uniqueness and advantages.Furthermore, this research also encourage the consideration and exploration for the trusts’ adaptability when transplanting trusts, without stifling its limitless potential for innovative and autonomous development. So the primary task of this essay is to examine and establish the core elements and components of the trusts, as well as the fundamental structure of trust legal relationships formed and influenced by these elements and components.

This essay will be expanded into five sections: Section 2 primarily begins with an examination of three current and controversial international (European) documents that clarify the attitude and position on the core elements of trusts. By analyzing these documents, common factors are extracted to determine consensus among them. Additionally, a single element in dispute is identified as well. Subsequently, this essay will focus on discussing and analyzing these results derived from these three texts. Section 3 centers around the location of ownership of trust

property, which remains a contentious challenge in trust legal theories. It is not only the most difficult aspect to address but also the most flexible area within trust legislation and transplantation practices. Section 4 will mainly focus on the fiduciary status of trustee, which plays a crucial role in maintaining trust functionality. As an important theoretical source within commercial law, fiduciary status should be comprehensively understood by considering both objective and subjective perspectives. Objectively, trustees should engage in their duties as agreed upon in the trust agreement "in their own name" and perform fiduciary obligations (ie.duty of loyalty and care). Subjectively, trustees must make it clear that their actions are guided by serving beneficiary's best interests rather than pursuing their personal interests. Section 5 delineates the distinctive essence of trust-segregation of trust property. This element serves as a pivotal factor in distinguishing trust from entrustment and other civil institutions. Its realization primarily hinges on the trustee's fidelity and diligence in fulfilling their obligations. Simultaneously, conversely, the legal ramifications resulting from the isolation of trust property also impact the theoretical discourse surrounding the nature of trust. Section 6 delves into the fundamental purpose of trust and at the same time returns to a perplexing quandary within civil law systems: the protection of the beneficiary's interests and the nature of their beneficial right. Ultimately, this essay clarifies that while the beneficiary's beneficial right is not at the core of trust, it remains intrinsic to achieving its fundamental objective-protecting and preserving vested interests.

2. Core Elements Established in Three International Documents

The identification and comprehension of the core elements of trust have long been a contentious issue within academic discourse. The trust institution, hailed as "the greatest achievement and contribution" in the English jurisprudence, has garnered significant attention from nations worldwide. Since the late 20th century, with the increased international capital flow and growing demand for wealth preservation and inheritance, there has been a gradual adoption and transplant of trust law in the common law or civil law jurisdictions. The United States (common law jurisdiction) stands as an exemplar with its well-established modern trust industry that predates most civil law jurisdictions; it enacted foundational trust legislation back in 1887. France (civil law legal system) followed later in the 21st century by officially developing its own trust institution in 2007. In Canada (Quebec province, mixed legal system), a unique trust law framework was established in 1994, making substantial contributions to foundational trust theory research. Revisiting the Asia eastern region, the *trust law of RPC* in China was born in 2001.

Certainly, these examples not only demonstrate the widespread trusts prevalent but also highlight the flexibility and variations in the trusts legal framework across different national legal systems. However, fundamentally, the core elements and unique legal relationship structure of trust remain consistent. The distinctive legal relationship structure presented by trusts needs to be understood from a holistic perspective while simultaneously acknowledging the functional values that underlie this structure. This is because upon disintegration, comparison, and analysis of the intricate legal relationships within trusts, it becomes evident that trust as an product of private autonomy shares commonalities with the "contract" in civil laws. Additionally, certain substructures and basic functions within trusts exhibit perplexing similarities with concepts such as agency, depository arrangements, and consortiums. Consequently, this implied fungibility for trusts challenges its "proud"uniqueness. It is for the reason that Hein Koetz expresses his concern regarding trust practice and necessity of its transplantation: the flexible provisions of German civil law are sufficiently equipped to offer suitable solutions to practical issues pertaining to trust law. Nevertheless, numerous theoretical studies have demonstrated essential distinctions between the trusts and other analogous tools from multiple perspectives so as to prevent disdainful disregard or emasculation of its uniqueness.

To conclude, exploring the legal essence of trust, a tool with economic attributes, is undeniably a challenging and intricate academic task. The complexity of trust practice requirements and the diversity of trust Institutional variants have somewhat obscured the legal essence of trust relationships. In order to delve into the core elements of trust, it is necessary to revisit traditional legal considerations and examine

them from the perspectives of legal structure (formalism), function, and value essence. Building upon this foundation, this essay primarily draws insights from three international documents-Hague Trust Convention (1985) (say"HTC"), Principles of European Trusts Law (1999) (say"Principles"), and Draft Common Frame of Reference Book X (2010) (say"DCFR (X)")-as the starting point to explore their selection and position regarding core elements of trusts. The final objective is to restore and summarize the composition of these core elements and the unique legal relationship structure constructed.

Three consensuses from those international texts include:

(a) Separating trust property from trustee's personal assets;

(b) Trustee has managerial duty to trust property based on the trust agreement or trust law;

(c) Trustee's performance is solely dedicated to beneficiary's best interests.

Three documents, however, have not yet reached a consensus or even conflicting views on the location of ownership of the trust property. HTC emphasizes that "title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee" (Article 2, para2 (b)). HTC also underscores that trustee's "control" over trust assets is a key characteristic of the trust. The Principles assert that "trustee 'owns' trust assets for the benefit of beneficiary..." DCFR (X) argues that "trust fund becomes or remains vested in the trustee" (Section 2: X-I: 201: Definition of a trust). The three documents employ different terms such as "in the name of", "vested in", "owns", and "controll", respectively, indicating divergent perspectives on the trustee's actual state towards trust property.

It is also important to note that the narrative style of this essay revolves around distinguishing between core elements and optional ones. optional elements, which embody the imagination and creativity of various countries, are flexible in nature. Essentially, identifying core elements involves a gradual extraction process from the complex realm of the optional. Analyzing the optional contributes to strengthening the argument for the core. Two elements are interconnected and mutually referenced. As Buckley said, the elements and components of a system (ie.the trusts, in this essay) are interconnected in an amazing causal network.[1]

3. Location of Ownership (Title) of Trust Property

The ownership location of trusts has always been a contentious theoretical issue in the field of trust law. While the concept of "dual ownership" (legal title and equitable title) within the traditional English trust provides a fresh perspective, it also leads to some misunderstandings and disputes in other legal systems, particularly in civil law jurisdictions. Currently, there is no clear consensus on this matter within academia.

After conducting a comprehensive analysis for the respective legal implications of different arrangements (among three parties of trust involved) of location of ownership of trust assets , it becomes evident that there is no definitive solution to this question. (a) If the settlor retains the property and assets, it may impede the trustee's convenience to effectively manage and dispose of assets. For instance, when dealing with real estate or share transfers, trustee who is not the owner of trust property may face scrutiny and rejection from the third parties in transaction market. (b) Alternatively, if the property is assumed to vest in the beneficiary from inception, the special conditions set by settlor for the beneficiary-"postponed gratification"-may be ignored. This misaligns with the original intentions of settlors who typically establish trusts to postpone beneficiary's benefits (e.g., incentive trusts or beneficiaries lacking required legal capacity). (c) Some scholars argue that the trustee should be the location of ownership of property; however, dissenting scholar Tony Honoré contends that trustee only hold "nominal" ownership, rather than "real" ownership, based on their management and control. This perspective also raises concerns among most civil law scholars as "real and entire" ownership encompasses four functions of possession, use, income, and disposition which are fragmented and redistributed within trust framework. The transfer of "real" ownership only occurs upon the termination of trust, to beneficiary entirely.

Based on trust legislation and transplant experience in some countries, it is evident that the traditional dichotomy paradigm in English trust does not represent the core of trust. For instance, French and Scottish trust grant ownership directly to trustee;[2] Quebec

supports “ownerless” trust;[3] Japan follows a "patrimony" conception; South Africa admits both English trusts and Dutch *bewind* (where ownership goes to beneficiary); Chinese trust does not clarify the location of ownership at all.[4] The different locations of ownership can be attributed to two reasons:

(a) The first one can be attributed to the cut apart of the concept of “ownership (title)” in Anglo-American law, and the collision between it and the “absolute real right theory” in civil law system. Modern compelling theories such as “residual rights” or “nominal ownership” have found a reasonable explanation for the “ownership fragmentation” caused by the so-called “dual ownership” : the ownership (title) in trust law is not the “real and entire” ownership required in the property law. The property right attribute of trust with certain meaning does not mean that it needs to fully conform to all the logic of the property law theoretically. Trust law is an independent unit of legal system in the UK, which cannot be fully explained by those general principles in property law.

(b) The root cause lies in a misinterpretation of the concept of “equitable title” within traditional English trusts. Historically, Anglo-American law established this concept as a specific arrangement to limit trustee and protect beneficiaries’ benefits and interests, gradually evolving into a notion of ownership (title) that could counter third-party’s claims. Consequently, the arrangement of "equitable title" is merely one means of remedy for the beneficiary. Its essence resides in a kind of value priority that inclines to maximize the greatest interests of beneficiary. Scholars have also observed that the core principle underlying civil law jurisdictions’ reception of the trusts is mainly the “coherent rationalization” of beneficiary's rights and status; while related formalism designs (eg. location of ownership) for the realization of purpose of trust is not a necessary concern. Thus, it can be deduced from this logic is that, the arrangement of location of ownership under trust law is merely an outward manifestation or designation aimed at taking care a subject singularly and ensuring priority of the realization of his interest value. For instance, granting ownership (or “title”) to trustee can facilitate administration; while endowing to beneficiary can strengthen checks and balances and supervision of the trustee. Accordingly, the determination of optimal ownership location should ultimately be based on the state's stance (through legislation) and specific local circumstances, which primarily depend on political, cultural, social customs, and other regional factors characteristic of the locality.

In addition, from the perspective of trust’s function, it primarily relies on trustee’s “self-discipline (not for private interests) + control (management and disposal,.etc)” over the trust property to maximize beneficiary’s benefits. For those attempting to support trustee as the owner, the location arrangement may only impose an “appearance” or “label"on the trustee’s actual control, representing his basis and even legitimacy of exercise of managerial rights and facilitating transparent transactions. Their concern mainly refers to the lack of clarity and transparent of the trust relationship towards “external world”, potentially leading to confusion for the external third party and therefore hindering the healthy development of the trusts. While this essay admits the reasonableness of this concern, a practical solution to address this issue could involve enhancing the trust registration, which has been successfully implemented in certain civil law and mixed law jurisdictions. In addition, in order not to suppress the trust's satisfaction with the diversified demands of the current market, it may not be necessary to explicitly define the location of ownership. Some settlors prefer retaining ownership of trust assets as a safeguard against potential trustee’s right abuses. Others opt for transferring ownership to younger beneficiary ahead of their death, but the actual control is still in the hands of the trustee in order to prevent them from being unable to constrain the younger beneficiary after their death. The term “actual control” not only elucidates the trustee's genuine authority over the management and disposal of trust property, but also allows rooms for flexible agreement between trust parties or adherence to national legislation for the specific ownership location of trust property.

Thus, it can be concluded that the core element of trust is primarily determined by the actual control exercised by the trustee over the trust property, rather than the location of ownership.

4. Trustee’s Fiduciary Status

The fiduciary status is often defined as a set of rights and obligations for a trustee, who must act

selflessly (not for his personal benefits) and with undivided loyalty (the duties of integrity, loyalty and care) to the beneficiary's interests. This definition should be understood from the following two aspects:

(a) Performing "in the name of" the trustee. Article 2 of the HTC stipulates that the trust property should be held "in the name of the trustee or a person authorized to act on behalf of the trustee." This provision serves two purposes: firstly, it signifies that the trustee exercises actual control over the trust property; secondly, it confirms and establishes the trustee's fiduciary status within the trust relationship. It can be simply understood that "in the name of trustee" means that the trustee will act as the "identity of trustee" to perform in accordance with the trust agreement or legal requirements. Furthermore, the expression "in the name of" also explicitly elucidates the fundamental distinction between trust, agency, and entrustment, thereby emphasizing the distinctive legal relationship structure inherent in trusts.

(b) Not for trustee's own personal benefits and trustee's fiduciary obligations. The primary objective of a trustee to establish a trust is to optimize beneficiary's benefits. So it is crucial for trustee to prioritize and enhance this purpose throughout the operation of the trust. However, as per trust law, once the trust relationship is established, trustee gains actual control over the trust property and possesses a certain level of discretionary management authority. During the period of operation, beneficiary would be in a relatively Inferior position and must remain vigilant against any potential abuse of power by trustee who may exploit their dominant position for personal gain. In light of this concern, Tony proposes that fiduciary status should necessitate preventing trustees from acting in pursuit of their own personal benefits or interests. It becomes imperative to clearly emphasize within the fundamental elements of a trust that trustees shall "NOT act for their own personal benefits and interests."[5] Lionel also provides examples such as "self-declaration trust" and "settlor-trustee-beneficiary (STB) trust" to point out how these non-triangular trusts fail to meet true essence and standards for the trusts.[6] The perspective articulated by these two scholars highlights the the core requirements of fiduciary status and further implies the key content within trustee's fiduciary obligations.

Fiduciary obligations serves as the legal foundation for beneficiary to scrutinize and constrain the trustee. Fiduciary law generally mandates that trustee should possess (i) moral character (honesty and integrity) and (ii) professional qualities (prudence and efficiency) that contributing to the healthy operation of the trust established by settlor. The former embodies the fundamental requirements on the trustee's personality, while the latter reflects a rigorous examination of their professional competence and ethics in fulfilling their duty of care and diligence. However, since trust law is generally perceived as arbitrary law, the parties can autonomously negotiate specific provisions regarding fiduciary obligations unless being bound by mandatory rules, such as self-dealing or disclosure of information to beneficiary.

5. Separation of Trust Property

Separation of trust property is the paramount core element that epitomizes the distinctive legal relationship structure of a trust. It is precisely due to the obligatory requirements for separating and isolating trust property that the fiduciary status of the trustee can be established, thereby ensuring comprehensive protection of the beneficiary's fundamental interests. The essential objective behind guaranteeing separation of trust property lies in achieving a clear demarcation between the trustee's vocational identity and private identity, as well as delineating distinct boundaries between their responsibilities towards the trust and personal obligations. The confusion of trust property with the trustee's personal assets not only breaches his fiduciary duty of loyalty, integrity, and honesty expected from a professional and trustworthy individual but also exposes the trust property to potential claims for execution by his private creditors.

It is precisely due to a series of legal effects resulting from the separation of trust property that the legal nature of trust (*in rem* or *in personam*) is extensively debated within theoretical and practical circles. There are typically two types of legal effects involved. The first pertains to the internal legal effect, primarily aimed at constraining and balancing the three parties involved within the trust relationship. Trust property possesses an autonomous legal status vis-à-vis each party, necessitating separate management from the inherent assets belonging to the settlor, trustee, beneficiary, or any other assets not included in

the trust arrangement itself. The second aspect concerns external legal effects arising from the trust relationship, particularly its impact in rem on *bona fide* purchasers, donees, estate executors, successor trustees, trustee's private creditors etc. What should be paid particular attention is the external legal effects stemming from separation of trust property. On the one hand, due precisely to this segregation effect, trust property is not within the scope of trustee's personal assets. Consequently neither heirs nor trustee's private creditors are entitled to claim enforcement against the trust property. On the other hand, this segregation effect in turn encourages hot disputes over the nature of the beneficiary's beneficial rights (or equitable title). As the beneficiary with vested interest in the future, the beneficiary's beneficial rights are generally considered to be binding on any person in the world (except bona fide purchasers). This is due to the fact that the beneficiary has recourse to their specific trust property held by an unauthorized non-bona fide purchaser and has right to refuse the trustee's private creditor's request for the execution of the trust property. This therefore enable the beneficial right exude a strong attribute of the right in rem.

Therefore, it can be concluded that separation of trust property serves as a crucial link that connects the fiduciary status of trustee and the protection of beneficiary's interests, making it an indispensable core element within the structure of a trust.

6. Protection of the Beneficiary's Interests

The nature of beneficiary's rights is the most contentious issue in the field of trust law and among local scholars seeking to transplant the trust. Currently, scholars generally hold that beneficial right is a kind of real right, personal right, "in-between right" or "right in the right". The main challenge lies in establishing a legal basis for beneficiary to claim against the third party (excluding bona fide purchasers) outside the trust relationship. The beneficial right's nature in rem is acknowledged by some scholars, who consider it a fundamental characteristic and core element of the trusts. However, Ben McFarlane and Robert Stevens contend that the beneficiary's right is not inherently a real right, but rather a right against the trustee's specific entitlement to the trust property, which can be enforced against any third party who acquires property from the wrongful trustee.[7] This essay concurs with the latter interpretation. In fact, the controversy surrounding the nature of beneficiary rights necessitates a retrospective examination of "equitable title" within English trusts. In section 3, we clarified that the equitable title does not mean that the beneficiary gain real ownership in the framework of property law. Therefore, it would be premature to assume that a beneficial right is in rem within the framework of an English trusts simply because they just "hold the title". Rather, the equitable title serves as a mechanism for monitoring and challenging trustees in order to protect beneficiary' best interests. Whether a beneficiary's right to claim against external third parties constitutes real right still requires further analysis.

6.1 The Beneficiary's Right Against the Trustee's Private Creditor

The core argument supporting the nature in rem of beneficiary's right lies in the antagonistic effect the beneficiary have on private creditors of trustee. Under English laws, beneficiary possesses equitable title and equitable interests that grants them priority over unsecured creditors in insolvency proceedings, thereby entitling them to this priority within this jurisdiction and similar institutions. Yet the flawed nature of this understanding is also proposed by some scholars who argue that the claim held by a private creditor against the trustee is directed towards his individual private identity, rather than in identity as a "trustee". Consequently, this implies that such creditors do not hold claims against the trust assets. If the trustee performs his obligations to segregate two kinds of property, the enforceability of trust assets would not be risked. Private creditors of trustee and the beneficiary do not sharer the same actionable pool and scope of assets. Given that the subject matter of the action falls under distinct categories and is inherently different, it can be concluded that private creditor and beneficiary are involved into different proceedings based on different reasons for actions. So Essentially there is no priority comparison for the realization of claims between the beneficiary and the private creditor of the trustee. There is no reasonableness to consider beneficiary's right a real or quasi-real right. It also becomes evident that the significant and dominant role of the separation of trust property

within this contention has often been overlooked.

From an alternative perspective, this section will focus on Reid's research outcomes to analyze this issue.[8] According to Reid, there are differences between common law trusts and some civil law trusts in terms of whether trust creditors (including trust beneficiary) can "directly" claim for trust property, which leads to differences in the conclusion of judging which of trust creditors and private creditors has the priority to claim trust property. In common law jurisdictions, trust creditors cannot directly ask for the trust property but must rely on the trustee as an "intermediary" to facilitate assets transfer, or paid by trustee using his personal assets first. In this case, trust creditors and the private creditors of trustee are in the same status for trust assets. Conversely, civil law countries require that trust creditors make direct claims on trust property, granting them priority over private creditors. From Reid's argument, this "claim directly towards trust assets" authorized by civil law represents the essence of real right since it bypasses any intermediary procedures involving requesting transfers from trustees. The beneficiary's direct claim to the trust property has nothing to do with the question of preference between the beneficiary and the trustee's private creditors, as previously mentioned. Because the enforceable assets they claim for are included in different kinds of asset pools (eg.trustee's personal account and account set for the trust, separately).

In fact, Reid's report significantly highlights the potential risk of trustees engaging in "self-dealing" practices, including advance payments by trustee. He indirectly implies the criticality of maintaining separation between the two assets pools and fully fulfilling fiduciary obligations. In a self-dealing scenario, as demonstrated in Figure 1:

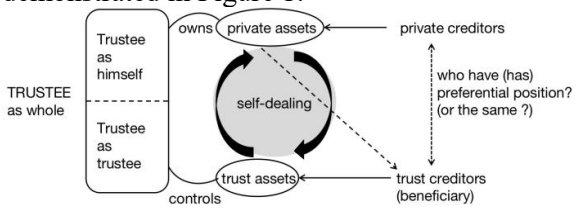

Figure 1. Beneficiary would be Preferred to Private Creditors of Trustee

When a trustee advances their own assets to address a claim from trust creditors, he simultaneously become both a trust creditor (to the trust property) and may have the same status with other trust creditors (including beneficiary) to claim for trust assets. If standing by the position of beneficiary: firstly, after self-dealing, trustee also become a member of trust creditors and attains an equal status with the beneficiary, but allowing potential to him for pursuing his personal gains and benefits. Secondly, private creditors of the trustee may assert their right to subrogation in order to claim enforcement of trust property. This, in the true sense, raises issue regarding the preference for compensation between private creditors and beneficiary. To mitigate the threat to beneficiary's interests, legislative measures are necessary to restrict trustee's self-dealing. Lepaulle, for example, proposed "double patrimony" theory to clearly differentiate trustee's duties under different identities (beneficiary's right is in personam in this case);[9] or in the United States, granting beneficiary a right against trustee's private creditor directly has been legislatively allowed; or allowing parties involved in trust relationship to decide whether or not they wish to impose restrictions on self-dealing. Certainly, there is also legislation, Article 37 in Trust Law of China, that gives trustee more space to exercise management power and allow his advanced payment to trust creditors and self-dealing.

It can be seen that the exclusivity effect produced by beneficiary's beneficial right against private creditor of trustee does not mean that the nature of beneficial right is absolutely in rem, but deeply implies the dominance of the soul element of trust—separation of trust property. While some jurisdictions recognize the beneficial right's real right nature, it serves more of as a protective measure to prevent potential harm caused by self-dealing or confusion of assets by trustees. Such safeguards can also be achieved through a series of personal right arrangements. Therefore, not the real right nature of beneficiary's right, but the protection of beneficiary's best interests is the core component of trust.

6.2 Why Only *Bona Fide* Purchasers Can Immune From Beneficiary's Claim

When Maitland tried to prove the nature in personam of the beneficiary's right, he pointed out that beneficiary cannot fight against the bona fide purchaser of trust property, so beneficiary's right cannot be real right in nature. However, this argument has faced criticism from numerous scholars. Advocates of the "real right" argue that

this rule exists as an exception to real right and serves as a reasonable limitation on the beneficiary's equitable title. Similar to the principle of bona fide acquisition, we cannot dismiss the nature in rem of beneficiary's right solely based on the inability to fight against the bona fide third party. Proponents of "personal right" maintain that this arrangement is simply a response to economic and social justice requirements and ensures secure operations; thus, it does not directly imply that beneficiary's right has the nature of real right.[10]

This essay believes that this issue needs to return to the intention of the bona fide acquisition itself. Bona fide acquisition is generally considered an exception to the property law. This exception is primarily concerned with the choice and balance of the two values , market transaction safety and owner's interests, representing respectively the bona fide purchasers and owner of asset. In this scenario, legislature has chosen to prioritize protecting market integrity, order and safety while relaxing absolute protection for owner's interests. Within the case of trust, values choice arises between the anticipated beneficiary's benefits and transaction market integrity. In accordance with the doctrine of bona fide acquisition, an absolute predominance in favor of beneficiary protection is diminished. Therefore, the main legislative consideration of whether a beneficiary has right against bona fide buyers are the actual social and economic factors. Such legislative design cannot directly or arbitrarily "veto" the nature in rem of beneficiary's right. To some extent, this exception implies that the nature of the beneficiary's right may not be so important, but how to use and arrange the nature of the beneficiary's right to achieve the purpose of safeguarding the fundamental interests of the beneficiary is extremely important, which is truly in line with the core of the trusts.

To conclude, the answer for the nature of beneficiary's right against private creditors of trustee or non-bina fide purchasers is unclear in the structure of the trusts, and actually even not the core element of the trusts. Instead, the fundamental purpose-the protection of beneficiary's interests underlying those complex judgement of right nature should be the core and essence of trust.

7. Conclusion

Each core element of trust intertwines within a causal network: trust essentially serves as a tool for guiding the core value of the protection of beneficiary's best interests, relying on trustee control and their fiduciary position (based on the separation of trust property): fiduciary status of trustee plays a crucial role in maintaining trust functionality and should be comprehensively understood by considering both objective ("in his own name" to perform fiduciary duties) and subjective perspectives (Not for his own personal benefits). Segregation of trust property, as the soul of trust, serves as a pivotal factor in distinguishing trust from entrustment and other similar civil law institutions. Its realization primarily hinges on the trustee's fidelity and diligence in fulfilling their obligations. Finally the protection of the beneficiary's interests is the purpose of the trusts and the fundamental guidance for the trustee's actions. However, the location of ownership, detailed contents of fiduciary obligations, and the nature of beneficiary's beneficial right are not the core elements in trusts, which require tailored solutions in different countries and circumstances.

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