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COMPARATIVE ANALYSIS OF THE EXPERIENCE OF COMMON LAW STATES IN THE REGULATION AND USE OF TRUSTS: IMPLICATIONS FOR THE REPUBLIC OF MOLDOVA

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Abstract

The study undertaken by the authors examines the adoption and use of the trust in common law jurisdictions, highlighting both its advantages and the challenges associated with this legal instrument. Drawing on its origins in the English legal tradition, the authors emphasize the trust's essential role in asset management, protection, and estate planning.

Through a comparative legal analysis, the paper addresses the defining features of the trust, including the separation of legal and equitable title, the fiduciary nature of the trustee's obligations, and the flexibility of this mechanism in diverse legal and economic contexts. Relevant examples from the legislation and legal practice of the United States, the United Kingdom, Canada, and Australia illustrate the impact of trust structures on asset management and legal relationships.

The authors also consider the situation of the Republic of Moldova, where the trust is not expressly regulated; however, fiducia, regulated by the Civil Code, represents a functionally related legal instrument. The analysis shows that certain elements of the Anglo-Saxon trust may strengthen the legal regime of fiducia, particularly with regard to asset protection and administrative flexibility.

In conclusion, the authors underline that the trust offers significant advantages, while emphasizing the need for clear and coherent legal and regulatory frameworks to ensure its effective use.

Keywords*: trust, law, settlor, common law, beneficiary, system, assets, case law*

1. Introduction

In recent decades, global economic and legal transformations have prompted numerous states to diversify their instruments for asset management and asset protection. In this context, the institution of the trust, traditionally embedded in the legal systems of common law states, has gained increasing relevance, both due to the diversity of its forms and its adaptability to the needs of contemporary society. The expansion of trust usage in jurisdictions outside the Anglo-Saxon legal family represents a significant indicator of its potential to address complex needs situated at the intersection of civil, fiscal, and financial law.

In states such as the United Kingdom, the United States of America (USA), Canada, and

Australia, the trust has become a sophisticated legal mechanism, built on solid jurisprudential foundations and supported by a flexible normative framework. Over time, these systems have developed institutional and doctrinal structures that enable the effective management of relationships between the settlor, the trustee, and the beneficiaries, establishing a balanced model between asset protection and fiduciary responsibility. At the same time, these jurisdictions provide relevant experience regarding the role of the trust in tax planning, family wealth structuring, investment fund administration, and the optimization of the financial architecture of economic entities.

An analysis of how the trust is perceived, regulated, and applied in these states allows for the identification of both its intrinsic advantages and its current limitations. The evolution of rules governing trust administration, the strengthening of supervisory mechanisms, and adaptation to the requirements of the global economy demonstrate the capacity of common law systems to respond dynamically to contemporary challenges. Simultaneously, the experience accumulated in these jurisdictions serves as a valuable reference for states considering the introduction of the trust into their own legal systems. In the context of modernizing patrimonial management instruments, a detailed examination of the trust and fiducia is required, together with a comparative analysis of domestic economic practices, where holding-type structures remain the primary mechanisms for asset organization. This perspective facilitates the identification of legal gaps, functional compatibilities, and the potential for adapting trust-based institutions within the legal system of the Republic of Moldova (hereinafter – RM).

In the case of RM, the analysis of the experience of common law states regarding the trust is of particular relevance, as national legislation regulates only the institution of fiducia (Articles 1233–1246 of the Civil Code of RM (CC of RM)) [9], without fully incorporating the structure and functions of the Anglo-Saxon trust. A comparison between the models applied in the USA, the United Kingdom, Canada, and Australia and the legal regime of fiducia in RM enables an assessment of compatibility and the identification of possible directions for the development of patrimonial law.

Based on these premises, the authors aim to conduct a comprehensive analysis of the development and functioning of the trust in the principal common law systems, highlighting its legal, economic, and social impact. Through this analysis, the authors seek to identify both the practical benefits and the challenges arising from the use of the trust, while also providing a relevant framework for jurisdictions exploring the adoption of this legal instrument. For the purposes of the present research, common law is used to designate the Anglo-Saxon legal family, characterized by the central role of case law and the institutions of equity, whereas fiducia represents an institution specific to civil law, regulated by statute, with partially convergent but structurally distinct functions. These concepts are not synonymous, and the distinctions between them are essential for comparative analysis. By virtue of its comparative and applied character, the research contributes to the broader effort to understand modern legal mechanisms and to adapt them to the current trends of globalization and economic interdependence.

The relevance of the research is further enhanced by the status of the Republic of Moldova as a candidate state for accession to the European Union, a context in which the harmonization of private law with European standards and modern legal instruments has become a strategic priority. The analysis of the institution of the trust and its functional equivalents is integrated into this broader process of normative and institutional convergence.

2. Degree of research on the issue and purpose of the study

The issues surrounding the adoption and functioning of the trust in states with a common law system (Anglo-Saxon law) have long constituted a subject of in-depth analysis in the specialized literature. This legal institution, grounded in a solid historical tradition, has established itself as a fundamental reference point in asset management, asset protection, and estate planning. Legal doctrine has extensively examined the conceptual architecture of the trust, its operational mechanisms, fiscal implications, and its capacity to adapt to contemporary economic and social dynamics, while also highlighting the difficulties associated with its transposition into legal systems of continental inspiration.

The comparative research conducted by the authors demonstrates that the trust cannot be properly understood outside its historical and jurisprudential context specific to Anglo-Saxon states. The growing interest in this mechanism in other jurisdictions has generated a substantial body of doctrinal literature, particularly focused on attempts to adapt the institution to civil law systems. In the RM, doctrinal debates have been stimulated by the introduction of fiducia in the Civil Code of RM, Title IV [9], which has facilitated functional comparisons with the Anglo-Saxon trust. The contributions of authors such as O. Cazac [7], U. Mattei [16], M. Graziadei [19], H. Hansmann [21], M. Lupoi [23], E. Sîrluca [35], G. Moffat [25], M. Graziadei [16] et al. provide a diversified theoretical foundation, outlining the main directions of analysis concerning the compatibility of these institutions. Nevertheless, research addressing the relationship between trust, fiducia, and the possibility of their implementation in RM remains fragmented, which justifies the need for a more in-depth examination of their compatibility with the civil law tradition and the conditions for normative adaptation at the national level.

In this context, the purpose of the study is to examine the historical, theoretical, and functional dimensions of the trust in states with a common law system, with particular emphasis on its potential as a model for civil law jurisdictions. The authors aim to identify the legal mechanisms that have enabled the consolidation of the trust in the Anglo-Saxon legal space, to assess the advantages and challenges associated with its use, and to analyze the opportunities for adaptation within the legal system of RM, with a view to formulating useful recommendations for the modernization of legal instruments for asset management.

3. Research methods and materials

The research methodology is based on an interdisciplinary approach, through which the authors correlate classical legal research methods with elements of economic and institutional analysis, in order to examine the institution of the trust both from the perspective of its legal regulation and its practical functionality in states with a common law system.

The authors apply the historical method to identify the origins of the trust in the English legal tradition and to trace its conceptual evolution, as well as the comparative method, used to analyze the differences and similarities between trust regulation in the main common law jurisdictions and analogous institutions of civil law, in particular fiducia as regulated by the Civil Code of the RM [9]. In this context, the legal structure of the trust, the roles of the settlor, trustee, and beneficiaries, as well as the legal and fiscal implications of its use, are examined.

Analytical and logical methods are employed by the authors to clarify fundamental legal concepts and the legal relationships between the parties involved in the trust, while methods of synthesis and deduction enable the integration of findings derived from doctrinal, normative, and case-law analysis.

The research materials include the legislation of common law states, the relevant provisions of the Civil Code of the RM [9], specialized legal doctrine, and pertinent case law, which substantiate the conclusions and recommendations formulated.

4. Results and discussion

The trust emerged as a response to the limitations inherent in the transfer of land ownership, being initially conceived through the legal mechanism of the use, which allowed land to be transferred by will or inter vivos acts to a person who held it for the benefit of another [24, p. 13]. This mechanism facilitated the exercise of control over immovable property through a trusted person who administered the assets for the benefit of a third party [18, p. 58]. From a legal perspective, the trust involves the transfer of assets by the settlor to a trusted person (the trustee) for administration in favor of the beneficiary, in accordance with the terms of the constitutive instrument [8, p. 438]. A specific feature of the trust lies in the possibility of cumulating the capacities of settlor, trustee, and beneficiary in the same person, depending on the settlor’s intention.

A defining characteristic of the trust is the division of ownership between the legal title, held by the trustee, and the equitable title, recognized in favor of the beneficiary by equity [16, p. 206]. The beneficiary holds an effective equitable right, enabling the initiation of legal actions and the tracing of trust assets in cases where the trustee fails to perform the obligations assumed [12, p. 208]. This structure confers upon the trust a hybrid character, situated at the intersection of property law and the law of obligations, thereby enhancing its legal flexibility.

Another essential feature is the separation of the trust property from the trustee’s personal patrimony, which limits creditors’ claims strictly to the relevant patrimonial mass [21, p. 35]. At the same time, the autonomy of the settlor’s will plays a central role, legal rules being applicable only subsidiarily, in the absence of express stipulations, in accordance with the principle of lex voluntatis.

Every trust is characterized by the duty of loyalty and the prohibition imposed on the trustee to obtain any personal profit [22, p. 97]. The rule according to which the beneficiary may not issue instructions to the trustee, as well as the generally irrevocable nature of the trust, may be subject to express derogations [16, p. 128].

Trustee liability arises in cases of breach of obligations and the occurrence of damage and is, as a rule, personal, subject to clearly defined exceptions in situations involving fraud, abusive use of trust assets, or professional fault [16, p. 210]. Depending on the classification criteria applied, trusts may be express, implied, constructive, or resulting, as well as charitable or private purpose trusts [8, p. 439; 34, pp. 307–308; 24, p. 208]. Although such classifications are predominantly theoretical, in practice trusts are widely used for family wealth management, tax optimization, the administration of co-ownership, matrimonial property relations, insolvency, and collective investments [36].

The recognition of the Anglo-Saxon trust in certain European jurisdictions is achieved on the basis of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on Their Recognition [23, p. 5].

Italy was the first state to ratify the Hague Convention on the recognition of the effects of trusts, which became fully recognized as of 1 January 1992 [31, p. 52]. The ratification of the Convention marked a significant milestone in the acceptance of this legal instrument specific to common law systems. Through the Convention, as well as through doctrinal and case-law contributions, a practice developed of applying foreign law to so-called "internal" trusts [8, p. 107]. The ratifying law did not aim to introduce a new legal institution; rather, the shaping of the trust resulted from doctrinal and judicial interpretation in the absence of express statutory regulation, a circumstance that has prompted legislative reform proposals oriented toward establishing a mechanism capable of harnessing the advantages of the Anglo-Saxon trust [36; 37, p. 33].

In the Republic of San Marino, the trust is regulated by specific legislation adapted to wealth management and asset protection needs [11]. Initially introduced by Law No. 42 of 01.03.2010 and subsequently amended by Law No. 123 of 05.08.2019, the trust has experienced significant development, leading to the establishment of the association "Il trust in Italia ETS" [2], which is responsible for research activities, maintaining the Register of accredited trustees [3], and drafting deontological rules [1]. Moreover, a specialized court competent exclusively to adjudicate trust-related disputes has been established.

In Germany, the trust, as it is known in common law systems, is not recognized as a distinct legal institution [26, p. 461; 37, p. 28]. Instead, German law relies on alternative legal structures that perform similar functions, such as Stiftung (foundation) and Treuhand (fiduciary arrangement) [24, p. 93]. Stiftung is used primarily for charitable or family purposes and has legal personality, being subject to public authority supervision, while Treuhand involves a contractual relationship for the administration of assets for the benefit of a third party, without achieving a full separation between legal and beneficial title. Germany recognizes trusts constituted in other jurisdictions, particularly on the basis of the 1985 Hague Convention, thereby facilitating cross-border asset management. Although the absence of a specific legal framework for trusts may generate practical difficulties, the flexibility of alternative structures provides effective solutions for asset administration.

In France, fiducie represents a distinct form of trust-related regulation, being enshrined in the French Civil Code, Articles 2011–2082. Fiducie involves the transfer of assets to a trustee, who administers them in the interest of the beneficiaries, under a strict regime of formalism and publicity [32, pp. 54–57]. Although functionally close to the Anglo-Saxon trust, French fiducie does not recognize the duality of ownership; instead, the concept of "trust ownership" (propriété fiduciaire) has been introduced, the legal effects of which remain insufficiently defined [32, p. 55]. France signed the Hague Convention in 1991 without ratifying it, and the trust mechanism entered the French legal system primarily through case law [8, p. 109]. The regulation of fiducie reflects the specific features of French civil law and provides a detailed legal framework for asset administration and protection [32, p. 1].

South Africa represents an example of a mixed jurisdiction which, although not a party to the Hague Convention [35, p. 15], has integrated the trust into its legal system. The South African trust, originally derived from Anglo-Saxon law, has evolved into a distinct institution influenced by Roman-Dutch law and local legal particularities [26, p. 475]. The South African system does not adopt the division of ownership titles; the trust is considered the holder of the assets, while the beneficiary holds a ius in personam, subject to certain statutory exceptions [26, p. 476]. Trusts are regulated both by common law and by specific legislation, particularly the Trust Property Control Act of 1988 [26, p. 479], providing a clear legal framework for the use of trusts in wealth planning and business administration.

Following the analysis conducted, it can be noted that the objectives achieved through trusts in common law systems are accomplished in civil law jurisdictions by means of other existing legal instruments, such as foundations, associations, or contractual arrangements [19, p. 481]. In such cases, the impediments to the adoption of trusts relate less to the incompatibility of the Anglo-Saxon mechanism with civil law systems and more to the limited demand for this instrument, determined by insufficient awareness of the opportunities foregone [17, p. 102]. The opportunities offered by the applicability of this instrument constitute a strong incentive for states pursuing accelerated economic development, and the analysis of its possible implementation within national legal systems should not be neglected. The efficiency of the trust in resolving complex legal situations and the need for civil law jurisdictions to possess competitive legal instruments in the context of globalization and investment fund administration are among the reasons motivating states to adapt the Anglo-Saxon mechanism to their domestic legal frameworks.

The authors support the view expressed by F. W. Maitland, who described the trust as “an instrument of remarkable elasticity and flexibility, capable of numerous uses and practical purposes limited only by the imagination of lawyers” [19, p. 79]. Practical applications of the trust are commonly identified in the following contexts:

- the preservation of family wealth, through the aggregation and management of investments for the benefit of family members, ensuring intergenerational transfer of assets;
- the equitable division of property, in accordance with principles of fair play, between de facto partners following the dissolution of their relationship;
- finance and commerce, by creating a framework for collective investments (such as pension funds), serving as a security mechanism for commercial debts, or establishing standards of honesty and good faith applicable to business actors;
- volunteerism, through the use of trusts for charitable purposes aimed at enhancing social welfare [16, p. 33].

Accordingly, the trust is used for an exceptionally wide range of purposes, asserting itself as a universal legal instrument of adjustment and as one of the greatest achievements of English jurisprudence [39, p. 531].

While the United Kingdom and the United States possess a fully developed legal infrastructure for trusts, most EU Member States recognize trusts only on the basis of the Hague Convention on the Law Applicable to Trusts (1985), without providing internal regulation. The Republic of Moldova, being in a position similar to that of other civil law states, employs fiducia as a substitute instrument, albeit without the functional coverage of the Anglo-Saxon trust.

4.1. The legal framework of fiducia and the trust in the Republic of Moldova

In the Republic of Moldova (RM), the institution of fiducia is regulated by the Civil Code of the Republic of Moldova (Title IV) [9], which presents certain functional analogies with the trust but does not ensure full patrimonial separation nor the regime of trust duties characteristic of common law systems. While the trust benefits from a consolidated legal architecture, fiducia is limited by the requirement of authentic form, mandatory publicity, and the absence of courts of equity, factors that significantly reduce its flexibility in asset administration. The analysis of these elements allows the identification of the following key aspects:

1. The Civil Code of the Republic of Moldova defines fiducia as a legal arrangement by which the settlor transfers ownership rights over assets or sums of money to a trustee, who administers them in the name and interest of designated or determinable beneficiaries.
2. Under the Civil Code of RM, fiducia is established by agreement of the parties, expressed in a written legal act, which must clearly stipulate its purposes, the roles and responsibilities of the parties involved, and the rights of the beneficiaries.
3. The parties to fiducia are:
   - the settlor, who transfers ownership rights over assets or sums of money;
   - the trustee, who administers and manages the assets in accordance with the fiducia deed and in the interest of the beneficiaries;
   - the beneficiary, the person or persons in whose favor the benefits of fiducia are created.
4. The Civil Code of RM imposes strict trust duties on the trustee, including the obligation to act with diligence and professional competence, to maintain accurate accounting, and to respect the purposes of fiducia and the interests of the beneficiaries.
5. Moldovan legislation grants courts jurisdiction to supervise the administration of fiducia and to intervene in cases of abuse or negligence by the trustee in order to protect beneficiaries' interests.
6. Fiducia may be used in RM for various purposes, including estate planning, asset protection, administration of charitable funds, entrusted management of the assets of minors or persons with disabilities, as well as business and investment structures.

The results obtained confirm the need for a more detailed analysis of both the trust and fiducia, as well as of the concrete modalities of their implementation in RM, since only an in-depth examination of conceptual foundations, legal effects, and the constraints of the civil law system allows the formulation of viable solutions for legislative adaptation and integration. In conclusion, the Civil Code of RM [9] provides a legal framework for the regulation of fiducia, facilitating its use in various legal and economic contexts and contributing to transparency and protection in asset administration.

In this regard, the authors support the view expressed by O. Cazac, according to whom, in transactional practice in RM, trust-like mechanisms have been requested primarily in relation to escrow accounts, currently referred to as trustee escrow accounts, particularly in mergers and acquisitions and real estate transactions [7, p. 106]. In order to perform a similar function, the Civil Code of the Russian Federation introduced only the regulation of nominal bank accounts, without establishing a general regime of fiducia. Such a limited approach fails to address a wide range of legal issues that may arise in fiduciary relationships. By adopting the model rules of the Draft Common Frame of Reference (DCFR), RM introduced fiducia comprehensively into its civil law system. This adoption does not generate legislative or theoretical anomalies and is compatible with the classical treatment of ownership as an exclusive and perpetual right that may be limited by a complex obligational relationship. Consequently, the adoption of trust-like mechanisms in civil law systems is possible, although not tale quale, primarily due to the absence of courts of equity, but rather through adaptation to the specific features of each legal system [9].

In examining trust institutions and the possibility of implementing trust mechanisms in RM, it becomes essential to analyze examples from national legal and economic practice which, although not directly corresponding to the Anglo-Saxon trust model, highlight the need for advanced legal forms of asset administration. Within the RM legal system, the closest functional equivalent to the trust is fiducia, regulated by the Civil Code, through which a distinct patrimonial mass is constituted and administered by a trustee for the benefit of a third party or a determined purpose. This patrimonial separation reflects conceptual convergence with the common law trust; however, the limitations of fiducia derive from the rigidity of civil law structures, the principle of patrimonial unity, and constraints related to the publicity of real rights.

In the absence of developed trust mechanisms, domestic economic practice predominantly relies on corporate holding structures, established through commercial companies (LLCs and JSCs) integrated into corporate groups. Relevant examples include business conglomerates in RM operating in sectors such as agri-food, logistics, or retail, which consolidate control over assets through corporate shareholdings rather than through trust-based asset separation. Such structures, commonly referred to in the media as business groups, illustrate the classical holding model—an arrangement of legal entities designed to optimize commercial operations and consolidate economic control, without creating a distinct patrimonial mass administered in the interest of beneficiaries in a fiduciary sense.

The conceptual differences between trust/fiducia and holding structures are substantial. Trusts and fiducia aim at the separate administration of assets, subject to strict trust duties owed by the administrator to the beneficiaries. These structures are oriented toward asset protection, estate planning, professional asset management, and, in certain cases, tax optimization. By contrast, a holding is a corporate organizational form designed to concentrate control over commercial companies and is governed by rules relating to share capital, ownership interests, and corporate management. In a holding, there is no separation of “legal title/equitable title” or a fiduciary patrimonial mass; assets belong to the component companies, and legal protection derives from limited liability rather than from the fiduciary nature of the relationship.

From this perspective, the comparison between fiducia, the trust, and holding structures highlights the major challenges of a potential legislative transplant in RM. Although fiducia represents a significant step toward the modernization of asset administration instruments, its practical applicability remains limited. The absence of a fiduciary tradition, difficulties related to the publicity of fiduciary patrimony, and the lack of specific institutional mechanisms (such as equity courts in common law systems) constitute obstacles requiring in-depth analysis of implementation options.

Examples from Moldovan economic practice demonstrate that, at present, corporate instruments are preferred over trust-based structures, while the use of fiducia remains marginal. This reality confirms the need for a detailed assessment of the compatibility of the trust and fiducia with the Moldovan legal system, in order to identify normative solutions through which fiduciary institutions may be adapted to the particularities of civil law and the needs of the economic market.

In conclusion, the comparative analysis of trusts, fiducia, and holding structures suggests that RM is at an early stage in the development of modern legal instruments for asset administration. While holdings are widely used for business consolidation, trust institutions offer significant potential for asset protection, estate planning, and professional asset management, provided that an adequate normative and institutional framework is developed. This perspective justifies further research and the development of implementation models inspired by the experience of common law states, adapted to the specific features of Moldovan civil law.

4.2. Regulation of the trust in the Draft Common Frame of Reference (DCFR)

The Draft Common Frame of Reference (DCFR) represents a project initiated by the European Union aimed at harmonizing and unifying civil and commercial law within the Member States. Within the DCFR, the regulation of the trust is addressed in the section entitled “Property Trusts” [39, p. 501]. Given that a significant number of European states are unfamiliar with the institution of the trust, the creation of a comprehensive guide regulating this mechanism renders it accessible and potentially acceptable to civil law jurisdictions that traditionally consider the trust incompatible with their national legal systems. The main aspects of trust regulation under the DCFR include the following:

1. The DCFR defines the trust (trust) as a legal institution whereby a settlor transfers ownership of assets or rights to a trustee, who administers them for the benefit of designated or determinable beneficiaries.
2. According to the DCFR, the formation of a trust requires a valid and clear legal act specifying the purposes of the trust and the rights and obligations of the parties involved. It is essential that the trust be established in accordance with legal requirements and in compliance with the fundamental principles of European civil law.
3. The DCFR identifies the principal roles of the parties involved in the trust:
   - the settlor, who transfers assets or rights into the trust;

- the trustee, the person or entity designated to administer and manage the trust assets for the benefit of the beneficiaries;
- the beneficiary, the person or persons in whose favor the benefits of the trust are created.

4. The DCFR imposes strict trust duties on the trustee, similar to those found in other jurisdictions, including the obligation to act exclusively in the interest of the beneficiaries and to manage the trust assets with due diligence and professional competence. This includes the responsibility to maintain accurate records of the trust assets and to comply with the instructions established by the settlor.
5. The DCFR provides mechanisms for supervising the administration of trusts and for remedying abuses or negligence on the part of the trustee. Beneficiaries and other interested parties are entitled to seek judicial intervention for the protection of their interests in cases of conflict or breach of trust duties.

The DCFR thus offers a legal and conceptual framework for the regulation of trusts in the European space, with the primary objective of harmonizing and unifying rules on asset administration and protection through trust mechanisms. The implementation of the DCFR would facilitate the efficient and transparent management of trusts across the European Union, promoting trust, legal certainty, and predictability in the use of this complex legal instrument.

4.3. Regulation of the trust in the Uniform Trust Code (UTC)

In 2000, an attempt was made in the United States to standardize the provisions governing the institution of the trust through the adoption of the Uniform Trust Code (UTC) [27], which regulates voluntary trusts, whether charitable or non-charitable. Its primary purpose is to establish a set of basic rules applicable to voluntary trusts, supplementing existing regulations [39, p. 480]. According to the UTC preamble, the parties may derogate from these rules through the trust instrument, concluded by the settlor and containing the essential terms of the trust. The main regulatory aspects include the following [29, p. 21]:

1. The UTC was drafted by the Uniform Law Commission (ULC) to be adopted by individual U.S. states as a foundation for their trust legislation. Its principal objective is to ensure consistency and clarity in the regulation of trusts across different state jurisdictions.
2. The UTC defines key terms and concepts related to the trust, such as “trust,” “settlor,” “trustee,” “beneficiary,” and “trust property,” in order to harmonize their interpretation and application in all states adopting the UTC.
3. The UTC establishes the requirements for the valid formation of a trust, including the legal capacity of the settlor, the form and content of the trust document, and other formalities necessary to ensure its legal validity.
4. The UTC clarifies the principal roles and responsibilities of the parties involved in the trust:
   - the settlor, who transfers ownership of assets into the trust;
   - the trustee, the person or entity designated to administer and manage the trust assets for the benefit of the beneficiaries;
   - the beneficiary, the person or persons in whose favor the benefits of the trust are created.

5. The UTC imposes strict trust duties on the trustee to act exclusively in the interest of the beneficiaries and to manage the trust assets with due diligence and competence. This includes the obligation to maintain accurate records of the trust assets and transactions and to comply with the instructions set forth in the trust instrument.
6. The UTC includes provisions for the supervision and control of trust administration, allowing beneficiaries or other interested parties to seek judicial intervention in cases of abuse or negligence by the trustee.

In this regard, reference may be made to the opinion of the American scholar J. Langbein, according to whom “the promulgation and widespread adoption of the UTC constitutes a notable event in the history of American trust law,” while E. Halbach considers that “the adoption of the UTC is the result of a profound period of re-examination of trust law in the United States” [19, p. 487].

The UTC [40] therefore provides a comprehensive and uniform framework for the regulation of trusts in the United States, facilitating efficient and equitable administration for various legal, commercial, and estate planning purposes across the country by reducing legal uncertainty and disputes in this field.

5. Practical implications

The analysis of the experience of common law jurisdictions in the adoption and operation of the trust highlights a range of practical implications relevant to legal practitioners, legislators, financial institutions, and regulatory authorities. Within Anglo-Saxon legal systems, the trust has become established as a versatile legal instrument, widely used in asset administration, asset protection, estate planning, corporate structures, and the management of investment funds [5, p. 184]. By its nature, the trust provides a flexible legal framework based on the separation of legal title from the beneficiaries’ interests, thereby facilitating professional and responsible asset management [14, pp. 52–53].

From a patrimonial perspective, the trust simplifies the intergenerational transfer of wealth, avoiding lengthy and costly succession procedures. For this reason, it has been widely adopted by families, corporations, and financial institutions as a mechanism ensuring continuity and asset protection [25, pp. 205–206]. Trust structures are also frequently used in the administration of investment portfolios, non-profit assets, and charitable funds, where the trustee acts in the interest of the beneficiaries under a rigorous legal regime.

From a fiscal standpoint, the experience of common law states demonstrates that trusts may contribute to tax optimization without undermining transparency requirements or compliance with anti-money laundering and tax evasion prevention rules [6, pp. 210–211]. Specific tax regimes applicable to trusts can strike a balance between encouraging the use of this instrument and safeguarding public interests, thus providing useful reference models for jurisdictions undergoing legal and fiscal reform.

At the institutional level, Anglo-Saxon practice underscores the importance of effective mechanisms for supervising trustees’ activities, including reporting obligations, standards of diligence, and the possibility of judicial intervention in cases of improper performance of fiduciary duties. These elements are essential for preventing abuses and strengthening confidence in the trust mechanism. In the context of legal transplantation, the analysis reveals that the introduction of the trust into civil law systems requires significant conceptual and normative adaptations. Structural differences between the property law framework of common law and that of civil law necessitate the identification of functional equivalents, particularly in relation to fiducia or other comparable legal arrangements.

From a practical perspective, the experience of common law jurisdictions offers relevant guidance for the RM in the process of modernizing its asset administration instruments. Strengthening fiduciary duties, clarifying patrimonial separation, and developing effective supervisory mechanisms could enhance asset protection, estate planning, and the management of investment funds. Overall, the implications derived from the comparative analysis confirm that the trust may become a useful and effective legal instrument, provided that a clear, coherent legal framework adapted to the specific characteristics of each jurisdiction is in place.

6. Conclusions

The conclusions of the research synthesize the results of the analysis concerning the adoption and functioning of the trust in common law jurisdictions and highlight its theoretical and practical implications for civil law systems. The analysis demonstrates that many European states encounter difficulties in adopting the trust, difficulties primarily arising from the division of ownership rights, the publicity requirements applicable to real rights, and the structural principles of civil law. The duality between legal and equitable title, the numerus clausus principle, the confidentiality inherent in the trust, and the limitations imposed by compulsory heirship represent major obstacles to the full transposition of the Anglo-Saxon institution. Nevertheless, the research reveals that these impediments may be overcome through a careful adaptation of trust mechanisms to the structure and values of each civil law system. Compatibility depends on political will, openness to legal transplants, and the legislator’s capacity to integrate modern legal institutions into a coherent normative framework. The experience of states that have introduced trusts or functionally similar mechanisms demonstrates that harmonization solutions are feasible and that models of implementation may be differentiated according to specific economic and legal needs.

The comparative analysis of common law jurisdictions confirms that the trust represents a flexible and efficient instrument for asset administration, asset protection, and estate planning. The United Kingdom, the United States, Canada, and Australia have demonstrated the trust’s ability to respond to a wide range of legal and economic needs, including in the field of complex financial structures. At the same time, its use entails challenges related to regulatory complexity, the risk of abuse, and the need for effective mechanisms of supervision and fiscal transparency. From an economic perspective, the trust constitutes a valuable instrument for long-term wealth administration and asset protection; however, its effectiveness depends on the existence of a clear and predictable legal framework. The experience of common law states shows that the durability of the trust is ensured through detailed statutory norms, consistent case law, and appropriate control mechanisms.

With regard to the Republic of Moldova, the analysis indicates that fiducia represents a related mechanism, but one that does not fully cover the functions of the Anglo-Saxon trust. Drawing on the experience of common law jurisdictions could contribute to strengthening asset administration by clarifying patrimonial separation, reinforcing fiduciary duties, increasing the flexibility of fiducia purposes, and developing effective supervisory mechanisms. A potential legislative extension inspired by the trust model could lead to the modernization of asset protection instruments and to the creation of a more flexible and competitive legal framework adapted to the civil law context. In the context of the Republic of Moldova's accession process to the European Union, the adaptation of modern legal instruments for asset administration – including through the valorization of common law experience and European models such as the DCFR – may contribute to the modernization of national civil law and to the enhancement of legal competitiveness.

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Rezumat

În prezentul studiu, autorii analizează adoptarea și utilizarea trust-ului în statele cu sistem de common law, evidențiind avantajele și provocările asociate acestui instrument juridic. Pornind de la originile trust-ului în tradiția juridică engleză, autorii subliniază rolul său esențial în administrarea și protecția activelor, precum și în planificarea succesorală.

Analiza comparativă vizează caracteristicile definitorii ale trust-ului, în special separarea titlului legal de cel echitabil, natura obligațiilor fiduciare ale trustee-ului și flexibilitatea mecanismului în contexte juridice și economice diverse. Sunt examinate exemple relevante din legislația și practica juridică a Statelor Unite ale Americii, Regatului Unit, Canadei și Australiei, care ilustrează impactul trust-ului asupra gestionării patrimoniului și relațiilor juridice.

Totodată, autorii abordează situația Republicii Moldova, unde trust-ul nu este reglementat expres, însă fiducia, consacrată în Codul civil, constituie un mecanism juridic apropiat din punct de vedere funcțional. Analiza relevă că anumite elemente ale trust-ului anglo-saxon pot contribui la consolidarea regimului juridic al fiduciei, în special în ceea ce privește protecția activelor și flexibilitatea administrării.

În concluzie, autorii subliniază că trust-ul oferă avantaje semnificative în administrarea patrimoniului, dar necesită cadre normative clare și coerente pentru o valorificare eficientă.

Cuvinte-cheie: *trust, drept, constituitor, common law, beneficiar, sistem, bunuri, jurisprudența*

Аннотация

В настоящем исследовании авторы анализируют внедрение и использование траста в государствах с системой общего права (common law), выявляя его преимущества и основные вызовы. Исходя из истоков траста в английской правовой традиции, подчеркивается его значимая роль в управлении и защите активов, а также в наследственном планировании.

Сравнительно-правовой анализ охватывает ключевые характеристики траста, включая разделение юридического и бенефициарного титула, фидуциарный характер обязанностей доверительного управляющего (trustee) и гибкость данного механизма в различных правовых и экономических условиях. Рассматриваются примеры из законодательства и правоприменительной практики Соединенных Штатов, Соединенного Королевства, Канады и Австралии.

Отдельное внимание уделяется Республике Молдова, где траст не имеет прямого нормативного закрепления, однако институт фидуции, предусмотренный Гражданским кодексом, является функционально близким правовым механизмом. Анализ показывает, что отдельные элементы англосаксонского траста могут способствовать укреплению правового режима фидуции, особенно в части защиты активов и гибкости их администрирования.

В заключение подчеркивается, что траст обладает значительным потенциалом, однако его эффективное использование требует четких и согласованных правовых и нормативных рамок.

Ключевые слова: *: траст, право, учредитель, common law, бенефициар, система, имущество, судебная практика*

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