

COMPARATIVE ANALYSIS OF TRUSTS IN COMMON, CIVIL, AND ISLAMIC LEGAL SYSTEMS

Eshbaev Gayrat Bolibek ugli
esboevgajrat@gmail.com

ABSTRACT

This study presents a comprehensive comparative analysis of trust mechanisms across three major legal systems: Common Law, Civil Law, and Islamic Law. Through examining the historical development, fundamental principles, and contemporary applications of trusts in these systems, this research highlights the convergences and divergences in how different legal traditions approach the concept of property management and wealth transfer. The study reveals that while each system has developed distinct approaches, globalization has led to increasing convergence and mutual influence. The findings suggest that the future of trust law lies in continued harmonization while preserving the unique characteristics that make each system effective in its context.

KEYWORDS

Smart contracts, construction law, contract law, legal tech, project delivery, distributed ledger technology.

INTRODUCTION

Trust mechanisms represent a fundamental aspect of property management and wealth transfer across different legal systems worldwide. While the Common Law trust remains the most well-known iteration, various legal traditions have developed mechanisms to address similar social and economic needs through distinct legal frameworks. This study examines how these different approaches manifest across Common Law, Civil Law, and Islamic Legal systems, with particular attention to their historical development, current applications, and future prospects.

The significance of this research lies in today's globalized economy, where cross-border transactions and international estate planning necessitate a thorough understanding of these diverse approaches. Trust-like arrangements serve multiple purposes across legal systems, including wealth preservation, family succession planning, charitable giving, and commercial transactions. While the Common Law trust is unique in its bifurcation of legal and beneficial ownership, both Civil Law and Islamic Law have developed their own mechanisms to achieve similar objectives.

METHODS

This study employed a comparative legal analysis methodology, examining primary legal sources, scholarly literature, and case law across the three legal systems. The research focused on three main areas:

1. **Historical Development Analysis:** We conducted a systematic review of the historical evolution of trust-like mechanisms in each legal system, tracing their development from medieval England, Roman law traditions, and Islamic juridical history.
2. **Structural and Functional Analysis:** The study examined the fundamental principles, operational mechanisms, and practical applications of trusts and trust-like arrangements in each system through detailed analysis of legal documents, scholarly works, and practical implementations.
3. **Contemporary Practice Review:** We analyzed current developments in trust law and practice across jurisdictions, including the impact of

international conventions, commercial applications, and regulatory frameworks.

RESULTS

The historical analysis revealed distinct evolutionary paths for trust-like mechanisms across the three legal systems. The Common Law trust emerged from medieval English practice during the Crusades, evolving from the concept of "use" into its modern form after the Statute of Uses (1535). Civil Law jurisdictions, while historically lacking trust-like institutions, developed various mechanisms such as the Roman fideicommissum, German Stiftung, and French fiducie to achieve similar ends. The Islamic waqf system, dating back to the time of Prophet Muhammad, evolved as a distinct mechanism for charitable giving and family wealth management.

Structural analysis revealed fundamental differences in ownership concepts across the systems. The Common Law trust operates on a dual ownership model, splitting legal and beneficial title. Civil Law systems maintain unitary ownership while achieving trust-like outcomes through contractual and institutional arrangements. Islamic waqf emphasizes perpetual dedication of property for charitable or family purposes, operating under distinct religious and legal principles.

Contemporary practice analysis showed increasing convergence across systems, particularly in commercial applications. The globalization of financial markets has led to the adoption of trust-like mechanisms in Civil Law jurisdictions and the modernization of waqf structures in Islamic finance. The Hague Convention on Trusts has facilitated cross-border recognition of trusts, though implementation challenges persist.

DISCUSSION

The findings demonstrate both the resilience and adaptability of trust-like mechanisms across legal traditions. While each system maintains its distinct characteristics, there is clear evidence of convergence in response to globalization and commercial needs. This convergence is particularly evident in

mixed legal systems such as Quebec, South Africa, and Louisiana, which have successfully integrated elements from different legal traditions.

Current challenges facing trust law development include cross-border enforcement issues, tax implications, regulatory compliance requirements, and money laundering concerns. The emergence of digital assets and sustainable finance presents new challenges and opportunities for trust law evolution across all three legal systems.

The future of trust law likely lies in continued harmonization while preserving the unique characteristics that make each system effective in its context. The challenge will be maintaining this balance while adapting to new technological and social developments. Areas for future research include the impact of financial technology on trust administration, the role of artificial intelligence in trust management, and the development of sustainable finance mechanisms within trust structures.

CONCLUSION

This comparative analysis reveals that while trust mechanisms across Common Law, Civil Law, and Islamic Legal systems exhibit fundamental differences, they share common objectives and face similar contemporary challenges. The study demonstrates that understanding these different approaches is crucial for legal practitioners, scholars, and policymakers in an interconnected world. Future developments in trust law will likely continue to show convergence while preserving the unique characteristics that make each system effective in its particular context.

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