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Abstract:

Trust is a legal device that has been developed by English courts of equity and is traditionally viewed as distinctive for common law jurisdictions. Comparative studies on trusts proved, however, that trusts do not require equity (understood as a separate system of law). The examples of mixed jurisdictions, such as Scotland, South Africa, Quebec, or Louisiana, illustrate that even the legal system with predominantly civilian property law can accept trusts. This puts the question if it is possible to transplant trust to a civil law jurisdiction. There are countries that have already decided to do so, some cautiously, with many limitations (as France which adopted le fiducie in 2007), and other more bravely (as Czechia or Hungary). Therefore, the article addresses the question whether a trust could be implemented to Polish law. As the study shows, our jurisprudence recognizes legal concepts which taken together can describe the way in which a trust operates. It involves such theoretical concepts as separate patrimony, doctrine of subrogation, real obligations (obligations propter rem), claims with real effects, and contract of mandate. That is perhaps the most exact way of describing trusts in civilian terminology. There exists, however, a simpler way of conceptualizing the trust. It can be also regarded as an obligation to manage somebody else's assets, combined with authorization of a trustee to dispose of these assets and to acquire other assets in their place. In this model, the ownership of trust fund rests with the beneficiary. The trustee is not the owner of trust assets, but he is only authorized to manage them (on his own behalf, although with direct effect in the beneficiary's patrimony). If one agrees to acknowledge, from a functional point of view, that this kind of device has all consequences associated with trusts (e.g. in case of bankruptcy or breach of the trust), then some legal solutions present in Polish law could be viewed as trustlike. As the article claims, the newly adopted (in 2019) succession management (zarząd sukcesyjny) is one of them.