

ENGLISH TRUSTS

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Part 1

Well, good morning everyone, thank you, very nice to see you. Yes, I am going to talk to you today about something called the Trust, which is a peculiarly English phenomenon in law, although those of you who come from one of the former colonies of Britain, and that includes the United States, so it goes back as far as that, will perhaps be familiar with the idea of the Trust because countries like Australia where I grew up, Malaysia, Singapore, India, Canada, New Zealand, others that were once part of the British Empire do to some extent still use the Trust as well, but those of you who come from continental Europe or from other parts of the world, where they don't have a Common Law tradition but a Civil Law tradition, this will be something that is not part of your legal system. So John was just saying that this is, it was time that you had a hard lecture so this is going to be - maybe a harder lecture than some you have had and maybe perhaps more abstract but I hope you find it interesting, because I think this notion of the English Trust says something particular about the English character and English people that you might find helpful when you are studying here. You have a handout from me I think on the history of the English Trust. Did you all read that? Yes? I gave you that just to give you some of the historical background but I will talk a bit more about that as I go through. I will be using these slides which I hope you can all see?

So we'll start here. Now just to explain studying Trusts. On an English law degree it is compulsory for students to study a whole year on trusts. It's one of the seven compulsory subjects that students have to do in order to get a degree which will allow them to go on and practice as lawyers. Although the English law degree is not a professional qualification after they do the law degree they then have to do professional training. But nevertheless they have to study Trusts as part of the degree. And that's very interesting because you might think it is a rather unusual, rather peculiar, rather abstract area of law compared with, for example, family law but it's not compulsory to study family law in English law degrees. And that tells you something about the English, I think, because Trust law is about property and family law is about people. And of course you probably also know that we did not have a Human Rights Act until, it only came into force in the year 2000. It's not to say we didn't have Human Rights because we were signatories of the European Convention on Human Rights. But nevertheless it wasn't part of our law until 2000. And that, again, suggests something which is that ideas about the importance of people are somehow... are somehow less, or have a much more recent - it has become much more recently important in English law than ideas about the importance of property. Because students, as well as doing the Law of Trust, they also have to do a whole year on Land law in England as part of their compulsory, the compulsory part of their degree. So, property is very important.

However, Trusts, in particular. Now, I've put up reasons why students have to study Trust. And the first, I think, is perhaps the most important in terms of the

English character. That is, that the English regard Trusts as one of their greatest contributions to Law. I want to make a note, by the way, that I say English and I'm not saying British. And that's because –and some of you may know this- the... we don't all in the United Kingdom have the same legal system. Scotland has a Civil Law system like continental Europe, like Spain or France; England and Wales have a Common Law system...ok... So, Trust is part of Common Law, in fact, and so we talk about the English Law, not the British Law. Right, anyway, the English are very proud of the Trust.

Secondly, it is, in fact, one of those legal tools which is very flexible, very creative, has in the past used, served many useful purposes in Law, and continues to evolve and to be used in new situations when they arise. The next point which you will have picked up, I think, from the handout, it is particularly useful in mitigating the harshness of the Common Law and Statute. Let me just explain this: mitigating... you've possibly looked this up or you know this word but it's a way it is usually expressed in English, it just means 'it softens', ok, 'it softens the harshness of the Common Law'. The reason, as you'll have read in your handout, is that the Common Law, which grew up in different parts of England, historically, the Common Law was quite rigid, you could only bring a case if there was a form that already existed for you to bring your case. If it didn't then you have no remedy, and moreover, the numbers of remedies, the remedies were very strict. So, for example, if you brought a case of breach of contract which would be a very common, common law case, the only remedy that was available in Common Law was damages. Damages meaning you would get some money by way of compensation.

Now, it could be, that what you actually wanted, with the breach of contract, was that the contract should be carried out. You might want the court to say that the contract must be carried out. But in Common Law that couldn't happen. And so we had this other branch of the law which I've discussed in your handout called 'equity' which said "sometimes, in certain situations, we will say the contract must be carried out". I'll give you an example, it would be, if I decided that I was going to buy your castle, you had a castle, I wanted that castle, that particular castle not just any castle, and then you decided to sell it to someone else. If I got in before you did that I could say to the court "I must have that castle, damages is not enough. I actually want that castle because it is unique", and they might force you to sell it to me. So that would be an example of equity intervening. Now, the Trust is part of equity and so, it's often used when, for example, property belongs legally to someone but the court say "well, they may own it legally but, actually, it should belong to someone else" and they will impose a Trust. As we'll see by the end of this presentation you'll understand.

Part 2

And notice Common Law and Statute and Statute meaning, of course, the Act of Parliament that are passed by the legislature, that's the Houses of Parliament in London. Ok. It also creates rights where they were none in Common Law, 'CL' stands for Common Law. And the sort of rights which I detailed on your handout I think, I said they were rights such as... yes, new rights and interests, that's the beneficiary under the Trust, which we will be discussing, that you could get an interesting property as a beneficiary under a Trust that is not recognised in

Common Law. And it provides remedies which fit the particular case, as I explained. Then the final point “the trust is being adapted and imitated by continental legal systems”, not a lot it has to be said, not a lot. But they are at least beginning to recognise, particularly in Europe - because of course we have a united Europe in some ways - they are beginning to recognise how the Trust can be used for some sorts of common issues. And one common issue is charities, actually, and holding charitable funds as we will see in a minute.

Ok. Now, just to illustrate the first point I've got this nice quotation from a very famous jurist, that's a writer on law, from the 19th Century called Frederick William Maitland and he says 'If we were asked what is the greatest and most distinctive achievement by Englishmen in the field of jurisprudence - jurisprudence meaning the study of law, legal thought, legal philosophy- I cannot think that we should have any better answer to give than this, namely the development from century to century of the Trust idea'. That is just to illustrate how important the Trust is regarded in England.

In your handout I describe the history of the Trust. I described the medieval period with the feudal triangle. We've got there - at the top the king. Do you remember I explained the Crown owns all the land in England and Wales; most English people don't know that because it doesn't really mean anything. Because we talk of owning our own home, our own farm and so on. Technically the Crown - that's the Queen - owns it. Anyway in feudal times, there is the king at the top or queen, he then had some lords, usually titled, dukes, earls and they were the tenants there at the next layer down. So he gave them some land right? They then distributed that land amongst their mesne lords, (that's an old word not one that you need to know) just simply meaning the next level down of lord. Perhaps the lord of the manor. You've probably heard of the expression, if you go to a village in England you may find there is a manor house, m-a-n-o-r house and the lord of the manor lives there. And he still has certain privileges in the village, so that would be that level.

They in turn would lease out their land to tenants. Right at the bottom but I haven't put them there, there would be landless peasants as well, peasants who didn't have any land. Now the point about this feudal pyramid is that each level owed some kind of loyalty and allegiance to the level above. So the tenants down at the bottom there would in fact go off to war for their lords, they would offer them some of the produce of their land and so on, and so on.

Then I explained to you that, one of the obligations that they had to the lord, who was just above them was a kind of tax. This tax was called an 'incident' and it was due on a number of occasions. For example if a tenant died and his son inherited the land a tax was due, an 'incident' was due. We have something very similar today in England called *Inheritance Tax*. A lot of countries have abolished it, but we still have it. It's only payable by about 5 or 6% of the population, the richest people in the country. Ordinary people like me wouldn't have to pay it. But anyone who has money worth, you have to be worth more than £340,000 something like that when you die, you then have to pay a tax to the government. Well that derives from this situation where again if someone dies a tax was payable to the lord.

And of course people don't like paying tax. If you read the English papers you will see it's a big fuss, a big campaign to get rid of inheritance tax. Because people don't like having to give up their money, their hard-earned wealth as they see it. So it was the same situation in medieval times and lawyers developed a way of getting round the payment of the 'incident', by developing this thing called a 'use'. Whereby the property - if I was the tenant and say you were the son - well I don't want, when I die, for you to have to pay a tax so I actually transfer the property to my friends. I choose two trusted friends, transfer the property to them so it's theirs, but I tell them when I transfer it that they are to hold it for purposes which I will one day divulge to them, which I will one day tell them. When I die my instructions are opened and I want it transferred to my son.

Part 3

But note this is not a transfer from father to son and therefore it doesn't attract a tax. It is a transfer from you to someone unrelated, my son. Do you understand? You put in a stage in the middle of the transfer, it's a very common way of tax avoidance actually to do this. So that instead of it being a transfer from me to my son, it is a transfer in my life time to my friends, and on my death from my friends to my son. No tax - are we clear? Yes? Because that was a very clever thing to do but the kings did not like it and, as you can imagine, particularly Henry VIII, Henry VIII of course, I don't know whether you know about Henry VIII who had six wives and carried out the Reformation in Britain. He constantly needed money which is part of the reason for the Reformation as you know. He stole all the wealth from all the monasteries and the abbeys in the country. And another thing he did was to try to put an end to tax avoidance. He passed the Statute of Uses which prohibited the enforcement of Uses by Chancery and on the sheet I have outlined the development of the Chancery jurisdiction which was a separate court from Common Law. Common Law has nothing to do with trusts only Chancery, OK?

So he said they were prohibited except on property that wasn't freehold. At the moment just in modern times, this has not always been the case. We have property which is freehold which you hold for ever, or until you sell it or give it away or die and pass it to someone else. We also have property which you hold for a term which we call leasehold property which I am sure you have exactly the same in your countries. So you have a 20 year lease, or a 99 year lease or even a 6 month lease if you are just renting a property. So on leasehold property - uses were fine. Also where the trustee had duties to perform, now already I have put in this expression 'trustee'. The trustee originally called 'fefe' but now called trustee is the friend, the trusted friend to whom I have passed the property. Now if for example I had said 'here is some land I am going to pass it to you to hold for my son later on when I die, and in the meantime I would like to you to manage the land. That is you can farm it and take the profits but the profits of course belong to me or to my son, whoever I have said is the beneficiary, not to you. Or you could let it out and take an income from it. So if you had duties to perform then the *Use* was ok, it was valid. Or if you used this peculiar drafting form, remember I said if you put an extra person in, it breaks the sequence. All they did was put in an extra person. So they drafted the *Uses* - I give it to you to hold for you, to hold for someone else. And because it was drafted that way it fell

outside the law. And eventually that all dropped away and it became the modern Trust.

So what is a Trust? A Trust is a legal device, but it's a relationship whereby property, and this could be land, or it could be money or it could be objects, jewellery or anything, paintings anything can form a property. It could even be intellectual property like copyrights which you can't touch or shares, investments. Where property is vested in a person or persons called Trustees who hold it for the benefit of another person or persons called beneficiaries. So vested means that ownership is passed, ok. So what it means is, I want to set up a Trust, now, I could do this for any number of reasons - but let's, let's imagine that I want to give my daughter, shall we say, who isn't eighteen yet, therefore not an adult. I want to give her a house. Right? In English law, if you are less than eighteen you can't be the legal owner of land, and a house is land. ok? So, I have to appoint a legal owner. And so, what I'll do is I'll appoint a trustee or trustees. Usually it's better to have two, but one is fine. Ok. So, I find two friends or family members or two professionals, perhaps, people I know through the bank or lawyers, and they become my trustees. So the property is passed to them. It's transferred by all the formalities that you need to transfer property, which in the case of land means it's got to have a deed, which is a special piece of paper that says it's a deed. Ok. So I passed it to them.

They become the legal owners of the property. So, if you look at the Land Register which lists all the properties in England and Wales, and who owns it, and where it is, and all the people who have got interests and mortgages and things (there is a Land Register for England and Wales). If you look at it, it will say that the legal owners are the names of my trustees. My daughter will not be mentioned. She is not there. Ok? Just because the legal owners are the trustees. But I have set up a Trust and so those trustees know that that is all they are: they are legal owners. What we call 'pape's all electronic. But, we call it the paper owner. But they know they hold it on Trust, for my daughter, who is a minor because she is not eighteen yet. So when... what you will never find in the books but what I always tell my students is 'the real owner is my daughter'. So if the property were to be sold my daughter would get the money not the trustees. The trustees would have to sell it because they are the legal owners they must sign the contract and equally if they wanted to mortgage the property they would have to sign the contract if they wanted to let out the property to tenants they would have to sign it. But the person who gets the benefit is my daughter. So what you see then, is that the trustee is a very curious thing where the ownership is split. There is a legal owner and a beneficial owner. They are both owners, but one is the owner in law and the other is the owner in equity. Are we ok so far?

Part 4

[STUDENT] Excuse me, I have a question; do they have the right to sell it whenever they want?

No, no, no. Of course they don't. One of the things about a Trust... remember this word 'trust' means trust. You know the English word 'trust'. It means you... this is someone that you have confidence will do what you want. So, the trustees are bound to carry out the terms of the Trust which I've written, it will be written

down, ok, exactly what I want, but also the wishes of the beneficiary. They must consult the beneficiary. Now, you may ask what happens if they don't?! What happens if they sell the property and take the money? Then they are in breach of Trust, that is a serious or more serious, really, than a breach of contract and the law will come after them. And they can be... obviously the money can be got back by means, by various means, and if it's really serious they can be in prison. Although, mostly, it's not a criminal offence. But if you think that Trusts -I haven't talked about this yet- but Trusts underpin the management of large companies, and investments and we have had trustees and company directors who have been imprisoned precisely because they have been in breach of trust, they are handling the money that everyone has invested in the companies, they have perhaps used it for themselves or for unauthorised investments. The law catches up with them they go to prison. Ok? So it's quite serious, this trust. And the other thing you may ask is why would anyone be a trustee when they don't own anything? Well, you might do it because you are my friend or my relative. But much more likely, you will do it because I pay you to do it. It's a paid job, like you pay your solicitor or you pay your dentist. Right, it's that. You get someone to carry out a trust for you, if you use a professional you'll pay not a huge amount but you will pay professional fees. So that's why people do it.

So how does the Trust work? Here we are. The 'settlor'. That's a term of art, a legal term, you won't find it anywhere else. When you talk about people who settle countries, the 'settler', but 'settlor' means the person who creates a settlement, and a 'settlement' is another word for trust. So we talk about marriage settlements, when you put some money on trust for a married couple. The settlor is the person who creates the trust. Sometimes the settlor is a testator or person making a will. A lot of trusts are set up in wills. So, if I was worried that I was going to die and I still had children who are under age I might set up a trust in my will appointing someone not only as guardian to the children, but also as trustees of their property. And so that would be a testator. So the property is passed from the settlor to the trustee or the trustees with the legal owner and they hold it on trust for the beneficiary or the beneficiaries who have the benefit of the property and they are the equitable owners.

Now, just to recap what I told you about the Industrial Revolution. It's really -in this country- as you know, Britain was the first country in the world to industrialise in the mid eighteenth century. And that meant it had a head start on every other country, though, of course, it hasn't maintained that, in terms of the development of industry, of urbanisation and of finance. And, in some ways we are still the financial capital of the world, or one of them. This is partly because of the development of the law in the eighteenth and nineteenth century to meet the needs of modern commerce. Now, other countries which came later and from different ways, different heritages, didn't need a trust. But England already had the Trust and as the needs developed, the lawyers thought "Ah! The trust will be useful here". And so, they imposed the trust, and so we have -as I said- companies and investments and banks, all operate, very often with recourse to Trust Law. Company Directors are trustees of the funds, people who run investments are trustees of all the funds that are contributed by investors, banks often - you can set up a trust fund, not just for individuals, but say if you have a club and people will contribute to their subscriptions to the club. Then the bank might hold a trust fund which means that the money belongs to everyone who

contributed but someone can be the legal owner or the bank might be the legal owner of the money.

Part 5

I have explained also the strict settlements of land which we don't see nowadays but which explain why so many of the big palaces and castles and stately homes in this country, many now maintained by the National Trust, that you have heard about – why these stayed in family homes for so long. They did it because the owner, the owner for the time being who often didn't trust his son because, you know, young men they sometimes spend money, they gamble, they drink so – English young men at any rate, so what dad would say is 'I am not going to die and let you have this property because I know what you will do. You'll mortgage it, you will sell it because you have these expensive habits. So what he would force on the son is a trust whereby the son simply had the use of the property for his lifetime. But he had to leave it to his son and then when the son took possession and he had a son growing up, he'd do the same thing to his son. So it passed through the generations.

All of this stopped really in the 20th century because of taxes – really taxes became big, and particularly what used to be called death duties now inheritance tax, became big in the 20th century for rich people. And it became too expensive to do this. And so what you will find now is that most of these properties have either been sold or they have been given to the National Trust to manage because the families can't actually afford to manage them anymore. Now the National Trust is a charity and as such is exempt from these taxes and it's also exempt from the general rules about trusts. I have not mentioned this but you can't set up a trust for ever and ever. So I could not, if I was lord of the manor, I could not set up a trust that would bind my son, my grandson, my great grandson and so on. You can't do that because there is a principle in English law that land should be free to move around. So I can only do it for about 60 to 80 years. But charities are exempt from that restriction. And charities can tie up land in trust for ever, and they do. That explains why Oxford and Cambridge the colleges that you have probably seen, beautiful old colleges from the 14th and 15th centuries and old schools like Eton – why these have continued across the centuries because they are charities.

Of course money was given in the 14th and 15th century which is now worth millions and millions of pounds and it's tied up with the property. And of course that explains why Oxford and Cambridge are very rich universities and some others are not. Actually Reading is quite a rich university. You probably don't know that, but it's in the top 10 ten of richest universities in this country. It's got a lot of quite expensive endowments, so that is nice, isn't it, for us to know. You couldn't tell from looking at it, but it is.

And finally married women's property. Now married women's property again I have explained in your handout that married women lost their property in Common Law when they married. So a single woman who had her own property and a widow had her own property but when a woman married her property became her husband's because there was a principle that her husband then had to support her, although he often didn't in fact. Still that was the principle. The

difficulty then, particularly if you were a very affectionate father and you were not very happy about the man that your daughter was marrying – you might think, you know, he’s only after her money. He’s only going to marry her for her money. So what you would do, and indeed what all upper class and middle class fathers did in England in the 19th century, 18th, 19th century and even into the 20th century but less commonly now. What they would do is they would set up a marriage settlement or trust where property was put on trust for the daughter. She could only take the income, she couldn’t take the capital. So for example I would put £100,000 on trust for my daughter, and she could take £1,000 a month or whatever. I mean I know she would not get £1,000 a month off that, but £1,000 a year, whatever it is she would take an income. That would be her money because that is not part of common law that is part of equity and therefore it’s outside the control of her husband. Now all of that, as I said, became less common after the passing of the Married Women’s Property Acts which were strenuously fought for by women in what we call the first wave of feminism in the 19th century in this country had a big feminist wave in the second half of the 19th century where women fought obviously for the vote but for education, for work opportunities - all sorts of things. In particular for married women to be able to keep their own property. Now of course married women can keep their own property so we don’t see these settlements much but there is still a tax concession so we do, rich people still do them people do still do them.

Part 6

So that’s that. Right – a few features of the modern trust. First of all you can only set up a trust for persons not for purposes with a few exceptions, notably charities. I could for example give my money to trustees to hold for the benefit of educating poor people. Now that is a trust for purposes and because it is a charitable purpose that would be fine. But normally I can’t make a trust for, I don’t know, for building a house because the whole point of a trust is there must be someone who can enforce it. This means that you can force the trustee to carry it out. The only person who can do that is the beneficiary. So the beneficiary has to be a person not a purpose. The beneficiary has to be able to go the court and say the trustee is not doing what they were asked to do and then the court will of course force them to do it, if that’s true.

Now there are some other exceptions and one that will amuse you I think is that it is possible in England to create a trust for your pet dog or cat. And this is commonly done. Now you might say – how is that because a dog can’t enforce a trust, it can’t go to court, and all you can say is - it is what we call an anomaly. It is an exception, it has no explanation. The only reason we are allowed to do it is because the English love their dogs and cats. Not exactly actually. The reason is the original trust that were upheld were trusts for hunting. Because of course the English aristocracy loved to hunt. It’s not allowed now although I am sure they still do it, but it is illegal now to hunt. But they used to hunt with dogs and so you could set up a trust for your horses and your hounds, and that was then extended too, because they were useful animals- extended to your pet dog or your pet cat because it was held that dogs and cats are useful because they make you happy. So now you sometimes see in the papers about once a year someone who has left £25 million to their pet dog. It is very dodgy to do that. It is not a very sensible thing to do, because dogs can’t enforce it in fact so that money

could very well be taken by someone else. He pretends, you know, like starve the dog but use the money.

Those are, another problem also with pets. That is, as I say that, you can't have them go for ever and ever, so if you have a pet parrot, or pet tortoise, who can live for hundreds of years. You are not allowed to create a trust for them, because it goes on for too long. So they allow dogs and cats because they know they are going to die within say twenty years.

Next, any property may be placed on trust, tangible or intangible, that means you can touch it or not, for example, shares, shares in a company. You could even create a Trust of a Trust. I am not getting into all that, although our students have to do that. Can you imagine that the Trust itself is a piece of property and you can put that on trust and create a sub trust. And that sort of looks like you got your settlor, to your trustee to your beneficiary, who then becomes a settlor, no, who then becomes a trustee, and holds a property on trust for another beneficiary.

Trusts on certain types of property require particular formalities, and prime amongst of those is land. You probably noticed that England and Wales are very small countries. Land is very valuable here. It is very important. More important as I said than people, and for that reason, anything to do with land requires much stronger formalities. I could create a trust of this pen, say, just by saying I hold this pen on trust. That will be fine an oral declaration is enough.

That is something that sometimes surprises people who think you should have everything in writing. But you do not have to have everything in writing because if anyone disputed the fact that I said 'this is on trust' I could bring all of you into the court and you could all say 'Yes we heard her say it' and the court would believe you, you see because I have witnesses. So you don't need everything in writing. But when it's land you do need writing, anything to do with land needs writing, well almost anything and as I said it needs a deed as well, this important piece of paper. Now the settlor can be the trustee.

Part 7

And that was an example of it where I just said I hold this pen on trust. I am both creating the trust and I am naming myself as the trustee. So I can also be the trustee and I can also be the beneficiary in the sense that I could say 'I'm going to put £100 on trust, to be divided equally oh I know - I will put £100 on trust to pay out the income to you and me for the next 10 years and then it will be divided equally between us. Now you can see trusts can go on for a long period but that, well for 10 years. But that also shows that I am a beneficiary of the trust that I set up. I am not the only beneficiary but I can be a beneficiary. But that would have tax implications if I did that because the person who pays the tax is the beneficiary, if its income, income tax, because remember it's the beneficiary who has the value of the property.

Now I am just going to finish then by going through some modern uses of the Trust. Just to show how widespread it is in English law and English society. But also to show how, when new situations come along the Trust is sometimes brought in to solve the legal arrangements. As I have said this is peculiar to

England and common law countries. If you go to France for example they manage perfectly well without Trusts. They have exactly the same sorts of modern situations and challenges but they deal with them differently in law, but the Trust is English as I have said.

So first of all, the one I mentioned, holding property for minors or as nominees and I explained to you the situation where for example if I had a daughter who was less than 18 she could not be the legal owner of land, but I could appoint trustees to hold the land for her. As nominees, I will give you an example of that. My brother lives in the United States but like me who grew up in Australia and he has investments in Australia. He doesn't have the time or the knowledge to manage those, so he has appointed a nominee in Australia who manages his investments. Now this person, the nominee, will be the legal owner of his investments so any shares will be in his name, the nominee's name. But he holds them on trust for my brother. So should dividends come in or if there's any sales or transactions that go on, the money will come to my brother. Obviously my brother pays this nominee to carry out this job but the nominee, as far as the companies in Australia are concerned, the nominee is the investor. They don't know about my brother because my brother is just the beneficiary. The legal owner is the nominee, OK?

Tax planning. It's almost the biggest use of the trust today as it was historically. As I said people try to avoid tax, rich people in particular try to avoid tax. They employ tax planners, lawyers, accountants to figure out ways that they can look like they have less money than they have. One way you can do this, particularly if you've got a family that you want to benefit, is that you will create trusts. You will create a trust, say, in favour of all your children. Your children will of course get the income from the trust and therefore the property which would have been yours is not part of your taxable property and so you won't be taxed and if you spread it among 6 children then with luck none of them will be rich enough to have to pay a high amount of tax either. So that's what people do and very often they will do it for a period of time. They will give property to someone for 20 years, to take the income and then they will take it back, take the capital back at the end of the Trust. And Trusts are taxed differently from ordinary income, ordinary assets. And so there are different ways you can do this although it has to be said the government tries very hard to close all these loopholes and all these ways of tax avoidance. So it is actually much harder now to use trusts than it used to be. With every year that passes it gets harder to avoid tax. Actually in the country today tax is not - Britain doesn't have very high tax rates which is why we have so many rich people living here. So, it's, they particularly don't tax foreigners very highly as you have probably read in the papers. So its actually quite a good place to live if you want to avoid taxes.

Part 8

Charities. I have already mentioned. Charities are - always hold funds on trust always, that's the way it is done of course whereas in other countries it isn't. As I said they are exempt from taxes on their money and they are also exempt from this rule that says you can't tie up property for centuries, you can with charities. And this is a very efficient way of ensuring that a lot of money in this country

goes to charities. Which is supposed to be good for a society if you put a lot of money into doing good things.

Pension schemes. I pay into a pension scheme, everyone who works here in the university does. Pension funds are held in trust. Simply that all my money is passed to a fund somewhere and the person who runs that fund or the company that runs that fund is the trustee and they hold that property on trust for me and I will get it back one day. And the same with unit trust investments which are a particular kind of investment where instead of just investing in a company you invest in a spread of companies and they are managed by someone. So again your money goes to this person who is the legal owner and they hold it on trust for the investors.

Managing club funds. Well suppose you belong to a tennis club or a chess club or something. You pay an annual subscription and very often, not always, but very often this money will again be held in trust. The treasurer will set up a bank account and all the money will go in and it will be in the treasurer's name. But, of course, it's not the treasurer's money it's your money and your money and your money and all the club members money. So the bank account will be a trust account and if, for example, the club is wound up, if the club comes to an end, then the funds will be distributed to the beneficiaries. Then whatever is left in the bank account is distributed and we call that a resulting trust. I haven't talked about these sorts of trusts but a resulting trust is an implied trust. It's something that happens when a trust comes to an end and you haven't provided for what's to happen. Then, the court will assume that if this was a trust fund, the idea is that the money will result back to the people that put it in. So, in that case, if you like, the beneficiaries are also the settlors.

Security for lenders and creditors, or for buyers where goods are paid for in advance. Ok. Again, this involves a special bank account. Suppose I wanted to buy a book. That's the classic way, actually, not through *Amazon* where you pay straight away. But, suppose you want to buy a second-hand book from a dealer. The way you do that is that you ask for the book, it's sent to you with an invoice and then you pay. Right? Now, it could be that... well, that's the normal way to do it and that way, then, what would happen is [that] the bookseller would continue to be the legal owner of the book, in other words, they would hold that book on trust, as a resulting trust, in fact, for themselves, until I pay, until I pay. Right? When I pay, the title, the ownership passes to me. But if it was the other kind of buying where I send the money first, then what happens if I send money to buy, I don't know, a jumper, a jacket, something, and the company goes bust before they dispatch the goods. Then, my money is held on trust for me until I get the goods and therefore it will come back to me.

Now, why this should be important? You may wonder why it's important that that money should come back to me. The reason is, if they set up a trust, and a company goes bust, then that money will be returned to the person who sent it before any other creditor can look at the company funds. Because, you know, if a company goes bust it will have debts to lots of people. But if I had sent my money for my product it has to be put in a separate account, it continues to be my money, beneficially; I'm still the beneficiary until I get the goods, and if I never get the goods it will come back to me. And therefore, the other creditors can't touch that money. So, the other creditors must wait then until all the money has

gone back on trust and then, of course, there may be no money left. So that's why it's really important to have that trust arrangement to start with, because when a company goes bust it has run out of money - so you have priority.

Part 9

And then, the last two, which are actually the most important ones, but which could take hours, so I won't bore you with these. This is perhaps the most surprising of them all. In England, if you own a house with someone else you must own it under a trust. Now, that's very curious, because in any other country, well any non-Common Law country, if you buy property together it's just the same as if you buy it on your own. But in England is quite different. In England, if you buy it on your own you own it outright, if you buy it with your partner, or mother or friend or whatever, it's owned under a trust, and this was simply for convenience. What it means is that there will be legal owners who appear on the Land Register and there will also be equitable or beneficial owners. Nearly always they are the same people. So I bought a house with my partner, we are the people on the Land Register, we are also the beneficial owners. But as I explained to you at the beginning we might not be. There might be six beneficial owners, six people who co-own, but you can't have that many legal owners. There could be some minors. There are, all sorts of things could happen, they might not own it in equal shares or whatever. So, we have this system where the legal ownership is separated from the beneficial ownership. So there is a whole set of rules that then have a reason around this.

Now, that's formal co-ownership but there's also the situation in law and I'll end on this one. Suppose I buy a house and then you, or you, come and live with me after I - the house is in my name, I'm the owner, you come and live and eventually, you've been there for ten or fifteen years and you've paid half the mortgage, so you've actually contributed to the cost of the property. In English law, you will probably acquire an interest in the property, you will probably get to be a co-owner of that property. But you need to demonstrate how you do it, and the way English law goes around that is that they say that "I'm the legal owner, but because you have contributed substantially I hold it on trust for you and me". And you acquire an interest under what we call a constructive trust. And a constructive trust is different from a resulting trust because the courts have to construct it. So they would look at how much the house is worth, how much I had paid towards it, how much you had paid towards it, what we discussed; I might have said "come and live with me and I'll give you half". If I've said that the court will give you half, right? If I didn't say that, they'll look at the extent of your contribution and they will award you a share. And so, that's a very interesting area of law which can't be replicated, I think, in any other kind of legal system.

And it's probably, just to finish since John has come back, it's probably the most common area of trust law today in terms of the law, in that, as you can imagine, there are a lot of cases in court where people are claiming a share in property and because a lot of people now, most people now, buy property with someone else. And then they get into disputes. So, that's where we see the trust probably more than anywhere else today. That's it. John, I've finished. So...[applause] any questions, or anything you didn't understand.

Q: You mentioned that Common Law versus Civil Law were two different systems. Could you briefly explain the difference?

Yeah. Common Law is used in two different senses. You can say Common Law and Equity in English Law, but then we talk about the English legal system as a Common Law System and also the American and the Australian, though mostly the Americans, not entirely.

A Civil Law tradition, as you get in Continental Europe and parts of the world that were settled too. So, parts of the United States has Civil Law and Scotland as I said derives more from Roman Law and what characterises it is that the rules are written down in books and so you have a Civil Code and a Criminal Code, so you might be familiar with this from your own countries. Whereas in England, there's nothing written down. I mean, we have the odd statute but mostly -and we follow the statutes of course- but we don't have a rule book, if you like. Setting out all the criminal law or the land law. And a lot of our law develops simply through cases, so we just say, you know, it's a... the authority is not article what, what, x, y, z, of this code of this book, but it's actually a case. So that's the difference. And civil comes from Roman, actually. But of course you'd also contrast Civil Law with Criminal Law which is different again. Criminal Law, of course, being to do with crime and Civil Law to do with everything else.

End of lecture.