THE FOUR-LEGGED BIRD THAT BARKS AND HAS A TAIL: THE "NEW" PUERTO RICO INTER VIVOS TRUST, ANOTHER TYPE OF BUSINESS ORGANIZATION?

ARTICLE

ALBERTO J. E. AÑESES NEGRÓN*

---

* LL.M. (Business and Finance), The George Washington University Law School, Washington, DC; Certificate in International Taxation, University of Miami School of Law, Coral Gables, Florida (2016); LL.M. (Tax), University of Miami School of Law, Coral Gables, Florida (2016); J.D., Magna Cum Laude, University of Puerto Rico School of Law, San Juan, Puerto Rico (2014); B.S.I.B. (Finance), Summa Cum Laude, Bryant University, Smithfield, Rhode Island (2011), Yobaccio Family Commencement Award for Outstanding International Business Student (2011); Certified Global Business Professional. This article reflects work submitted in fulfillment of a graduation requirement for a Latin Legum Magister in Business and Finance Law degree and is the product of directed academic research. The opinions contained herein are those of the author. The author wishes to thank Prof. Dalia Tsuk Mitchell for all the help and guidance provided in the development of this article. Further thanks to the Capital Members of Casillas, Santiago & Torres, LLC who allowed the opportunity for this article to be written. All opinions, errors and mistakes remain those of the author and in no way represent the opinion of Casillas, Santiago & Torres, LLC.

Introduction

"It is an excellent bird", said the pet shop owner, who was trying to sell a 'bird' to a desperate mom that wanted to please her child. She replied, "but it has four legs, barks and has a tail. Isn't this really a dog?" "No, no", said the store owner, "I'm an expert, and I can tell you it is a bird."

Recent developments in Business Organization Law have increased the different types of entities that a person may select when deciding to organize a new business venture. Generally, depending on the jurisdiction where the person intends to establish its operations, a person who is interested in forming a business must decide between, at least, four options: (1) the partnership; (2) a corporation; (3) a limited liability company, or (4) a trust. The number of available subtypes of entities arising out of these four types is contingent on the jurisdiction where the person is interested in conducting business.

Described as the Englishmen's most significant contribution to the law,[1] trusts are a unique legal figure. Their adaptability provides for their use in many situations. For example, a trust can be used for estate planning, to solve family disputes, to achieve charitable purposes, or to manage a business. It is this great flexibility, perhaps, that has drawn the attention of many civil law scholars to study this legal figure and to seek ways by which to incorporate the same to their respective jurisdictions.

As the world becomes increasingly globalized, civil law jurisdictions have capitulated to the idea of having trusts, a foreign legal figure, in their jurisdiction. In fact, presently, only a few of the civil law jurisdictions still prohibit or have not incorporated into their legal system, said legal figure. While efforts have been made to standardize the interpretation of trusts across multiple jurisdictions, each one continues to have its own unique trust and associated features.[2] This reality is one that must be carefully taken into consideration when dealing with a trust organized according to the laws of a civil law jurisdiction.

As in the United States of America, the Commonwealth of Puerto Rico provides a variety of business organization forms to choose from.[3] These forms include: (1) sole proprietorship; (2) civil partnership; (3) mercantile partnership; (4) limited partnership; (5) limited liability partnership; (6) limited liability limited partnership; (7) limited liability company; (8) closely held corporation; (9) professional services corporation, and (10) regular corporations. As in the majority of the jurisdictions, each type of organization has its own characteristics, advantages, and disadvantages. Depending on the particular circumstances of the person or persons involved in the business, a venture choice must be made.

Another type of business entity that can be used in Puerto Rico are trusts, however it is uncommon to see them in use. This, despite the fact that the characteristics of the trust provide for a more flexible constitution than other types of business organization forms. More so, with proper planning, tax advantages can be achieved by using this type of legal entity.

This article has three purposes. First, the article will trace the history of the development of trusts in Puerto Rico. Although many authors have previously traced this history, very little has been written about its development from the

---

1 *See* 1 AUSTIN W. SCOTT & WILLIAM F. FRATCHER, THE LAW OF TRUSTS 1-2 (4th ed. 1987) (quoting FREDERIC W. MAITLAND, SELECTED ESSAYS 129 (1936)) ("If we were asked what is the greatest and most distinctive achievement performed by Englishmen in the field of jurisprudence I cannot think that we should have any better answer to give that this, namely, the development from century to century of the trust idea.").

2 Efforts have been made by the international community to ensure the similar treatment of trusts across different jurisdictions. An example of this is *The Hague Convention on the Law Applicable to Trusts and on their Recognition*, also known as the *Hague Trust Convention*, which was developed by the Hague Convention on Private International Law. However, only thirteen countries have ratified such convention. *See Status Table,* HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, https://www.hcch.net/en/instruments/conventions/status-table/?cid=59 (last updated Sep. 19, 2017).

3 *See* CARLOS E. DÍAZ OLIVO, CORPORACIONES: TRATADO DE DERECHO CORPORATIVO 27-71 (2016).

perspective of the jurisprudence of Puerto Rico's Supreme Court.[4] Second, and perhaps the main reason for this piece, it will attempt to demonstrate how the developments of this figure in the Commonwealth of Puerto Rico during the past six years—from 2012 to 2018—has rendered the trust a type of business organization, inconsistent with the intended legislative purpose of assimilating the Anglo-Saxon trust model in Puerto Rico's legal system. This, in turn, will present the trust as a viable type of business organization to be used in Puerto Rico, which is the last purpose of this article.

The article is structured into five sections. After this brief introduction, the first section is dedicated to analyzing Puerto Rico's legal system. To properly understand the delay in the recognition of the trust in Puerto Rico, as well as in other civil law jurisdictions, it is imperative to understand the constraints that they experience by virtue of their legal system. The second section of this piece will analyze the development of the trust in general, from the Roman Empire to the adoption of the first legislation that expressly recognized trusts in a civil law jurisdiction. In addition, this section will explore other ideas, methodologies and conceptions of trusts that were developed to incorporate trusts into civil law jurisdictions. The third section traces the history of the trust in Puerto Rico, from the adoption of the first law to the latest amendments to Puerto Rico's trust legislation. This section will emphasize how the evolution of the Puerto Rico trust reforms caused it to vary from the Anglo-Saxon trust. The fourth section of this article is dedicated to briefly describing business organizations in Puerto Rico and their main components. Lastly, the article concludes by comparing the Puerto Rico trust with other business organizations available to show how trusts are simply another type of business organization.

This article is only concerned with *inter vivos* trusts: trusts that are constituted by an act of living persons. Although in Puerto Rico laws recognize *mortis cause* trusts—which are constituted after the death of a person by virtue of a will—those are not part of the scope of this article. This distinction is essential because the treatment of one versus the other, from a contractual point of view, is highly relevant. Another consideration for the reader is the implied or tacit trusts, such as constructive or resulting trusts.[5] They are also outside the scope of this article. Furthermore, trust recipes are also not considered in this analysis.[6] Consequently, unless expressly stated to the contrary, please note that when referring to a *trust* the article refers to *inter vivos* trusts.

---

4 *See, e.g.*, Dávila v. Agrait, 116 P.R. Offic. Trans. 674 (1985). *See generally* Luis F. Sánchez Vilella, *El fideicomiso puertorriqueño III*: *desviaciones fundamentales y accidentales en la ley de fideicomisos respecto del derecho angloamericano sobre trusts*, 37 REV. COL. ABOG. PR 417 (1976).

5 For the history of constructive and implied trusts in Puerto Rico, see generally Luis F. Sánchez Vilella, *El fideicomiso puertorriqueño I: vida, pasión y ¿muerte? del fideicomiso tácito*, 25 REV. COL. ABOG. PR 293 (1965).

6 *See, e.g.*, Puerto Rico Auto Corp. v. Tax Court of Puerto Rico, 77 P.R. Dec. 114 (1954); Uniform Trust Receipts Act, Act No. 3 of October 13, 1954, P.R. LAWS ANN. tit. 10, §§ 611-633 (2013), *repealed* by Commercial Transactions Act, Act No. 241-1996, P.R. LAWS ANN. tit. 19, §§ 401-458 (2013).

I. PUERTO RICO'S LEGAL SYSTEM AT THE BEGINNING OF THE TWENTIETH CENTURY

Prior to discussing the adoption of the trust in Puerto Rico's legal system, it is necessary to understand the political situation of the Island at the time it was implemented. Another important consideration when analyzing the development of trusts in Puerto Rico is to comprehend how the legal system of the Island works. Both considerations go hand in hand as one directly leads into the other.

Currently, Puerto Rico is an unincorporated territory of the United States of America. However, for historical reasons, and contrary to a majority of the states of the United States of America, the legal system is not based on common law but on civil law. Nevertheless, due to its political status Puerto Rico's legal system has been heavily influenced by the traditions of the common law.[7]

Prior to 1898, Puerto Rico was a colony of the Kingdom of Spain. The Island was conquered in 1493 by Christopher Columbus, on behalf of the Spanish crown, Queen Isabel I of Castile and King Ferdinand II of Aragon. The Caribbean Island was subject to Spain's rule until 1898. During this period of time, and for reasons outside the scope of this piece, Spain's legal tradition—civil law—was imposed in Puerto Rico, as well as other colonies of the aforementioned kingdom. This was achieved by virtue of the *Royal Decree of July 24, 1889*, which made the Spanish Civil Code of 1888 applicable to Puerto Rico as of January 1, 1890.[8] However, "[b]y the end of the nineteenth century American political leaders, particularly those heading the Republican Party, favored the development of an American colonial empire."[9] This led the United States to embark into a series of maneuvers that ensured that purpose. One of those maneuvers was the Spanish-American War of 1898.

By the mid-1890s Cuba's claim for independence from Spain gained the attention of the United States Congress.[10] The United States urged Spain to grant autonomy to Cuba,[11] and on February 15, 1898, the Maine, a United States Navy ship, exploded as a result of an underwater mine.[12] This, among other factors, precipitated the intervention of the United States in the dispute between Cuba and Spain.[13] After various developments, on April 25, 1898, Spain declared war on the

---

7 *See, e.g.*, Puerto Rico's Antitrust Act, Act No. 77 of June 25, 1964, P.R. LAWS ANN. tit. 10, §§ 257-276 (2013); General Corporations Act, Act No. 164-2009, P.R. LAWS ANN. tit. 14, §§ 3501-4084 (2011 & Supp. 2018); P.R. LAWS ANN. tit. 19, §§ 401-458.

8 *See* Rodríguez v. San Miguel, 4 P.R. 101, 110 (1903). *See also* Carlos E. Díaz Olivo, *Las organizaciones sin fines de lucro: perfil del tercer sector en Puerto Rico*, 69 REV. JUR. UPR 719, 732-33 (2000).

9 David M. Helfeld, *Understanding United States-Puerto Rico Constitutional and Statutory Relations Through Multidimensional Analysis* 82 REV. JUR. UPR 841, 845 (2013).

10 *See* 1 JOSÉ TRÍAS MONGE, HISTORIA CONSTITUCIONAL DE PUERTO RICO 140 (1980).

11 *Id.*

12 *Id.*

13 *Id.*

United States.[14] As a consequence, on July 25, 1898, the United States invaded Puerto Rico.[15]

As the ultimate result of the Spanish-American War of 1898, Puerto Rico and other Spanish colonies became possessions of the United States by virtue of the *Treaty of Paris*.[16] Specifically, article II of the aforementioned treaty established that "*Spain cedes to the United States the island of Porto Rico* and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones."[17] The *Treaty of Paris* was ratified by the Unites States Senate on 1899.[18] From the signature of the treaty until 1900, a civil government was established in the Island and a military government ruled in Puerto Rico.[19]

From a legal perspective, Puerto Rico's military occupation is usually divided in three periods.[20] These are: (1) from the invasion on July 25, 1898 until the signing of the peace protocol on August 12, 1898; (2) from the signing of the peace protocol until the execution of the *Treaty of Paris*, and (3) from the ratification of the *Treaty of Paris* until the enactment of the *Foraker Act* on May 1, 1900.[21] These periods were recognized by the United States Supreme Court.[22] During these three phases, the applicable law in Puerto Rico was the law that applied during the Spanish rule.[23] In other words, the Spanish Civil Code of 1888. This was based on the General Order No. 101 of July 13, 1898 issued by the President of the United States which stated that:

> *Though the powers of the military occupant are absolute and supreme and immediately operate upon the political conditions of the inhabitants, the municipals laws of the conquered territory, such as affect private rights of persons and property and provide for the punishment of crime, are considered as continuing in force, so far as they are compatible with the order of things, until they are suspended or superseded by the occupying belligerent, and in practice they are not usually abrogated, but are allowed to remain in force and to be administered by the ordinary tribunals, substantially as they were before the occupation*.[24]

---

14 *Id.* at 142.

15 *Id.* at 144.

16 Treaty of Peace Between the United States of America and the Kingdom of Spain, Dec. 10, 1898, 30 Stat. 1754.

17 *Id.* (emphasis added).

18 TRÍAS MONGE, *supra* note 10, at 155.

19 *Id.* at 159.

20 *Id.*

21 *Id.*

22 Ochoa v. Hernández, 230 U.S. 139, 146-47 (1913).

23 *See* TRÍAS MONGE, *supra* note 10, at 160.

24 General Order No. 101 of July 13, 1898 (it should be noted that General Order 101 of July 13, 1898 was tailored for the occupation of Cuba. However, it was assumed that it applied to Puerto Rico as well.).

This military order was the legal basis for Puerto Rico's legal system until the signature of the *Treaty of Paris*.[25] Likewise, from the execution of the mentioned treaty until May 1, 1900, the applicable legal system in Puerto Rico emanated from this order.[26] Consequently, because the municipals laws of the conquered territory were based on civil law**, t**he applicable laws at said time, which were those approved by Spain, remained in effect. Therefore, from July 25, 1898, when the United States Military conquered Puerto Rico until May 1, 1900, when a civil government was imposed in the Island, Puerto Rico remained a civil law jurisdiction.

On May 1, 1900, the *Foraker Act* was enacted.[27] This statute imposed in Puerto Rico a civilian government. The new government was composed of a governor and an executive council (appointed by the President), a house of representatives with thirty-five elected members, a judicial system with a supreme court, and a non-voting resident commissioner in Congress.[28] The mentioned legislation also established that the then current laws were to remain in effect. Specifically, it stated that:

> [T]he laws and ordinances of Porto Rico now in force shall continue in full force and effect, except as altered, amended, or modified hereinafter, or as altered or modified by military orders and decrees in force when this Act shall take effect, and so far as the same are not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, or the provisions hereof, until altered, amended, or repealed by the legislative authority hereinafter provided for Porto Rico or by Act of Congress of the United States.[29]

In 1917, a new Act to regulate the Government of Puerto Rico was passed by the United States Congress. One of the main features of this legislation, known as the *Jones Act*, was that Puerto Ricans were granted the citizenship of the United States of America.[30] Also, in a similar fashion to the *Foraker Act*, the *Jones Act* provided for the continuation of the applicable laws of Puerto Rico.[31] Specifically, it established that:

> [T]he laws and ordinances of Porto Rico now in force shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided for Porto Rico or by Act of Congress of the United States; and such legislative authority shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify,

---

25 *See Ochoa*, 230 U.S. at 159.

26 *See* TRÍAS MONGE, *supra* note 10, at 159-60.

27 Foraker Act of 1900, Pub. L. No. 56-191, 31 Stat. 77 (1900).

28 *Id.*

29 *Id.* § 8.

30 Jones Act of 1917, Pub. L. No. 64-368, 39 Stat. 951 (1917).

31 *Id.* § 57.

> or repeal any law or ordinance, civil or criminal, continued in force by this Act as it may from time to time see fit.[32]

Similarly, Section 58 of the *Jones Act* maintained the laws that were not inconsistent with the legislation.[33] Thus, as with the *Foraker Act*, Puerto Rico maintained its civil law tradition.

In 1950, the U.S. Congress enacted the *Puerto Rican Federal Relations Act*, which, among other things, allowed Puerto Ricans to draft a constitution.[34] This Law repealed Sections 57 and 58 of the *Jones Act*. Notwithstanding, when Puerto Rico's Constitution was adopted in 1952, the drafters set out to maintain civil law as the applicable law in the Island. To accomplish this, the drafters included Section 1 of Article IX, which provides that: "When [the Puerto Rican] Constitution goes into effect all laws not inconsistent therewith shall continue in full force until amended or repealed, or until they expire by their own terms."[35] Once again, because the applicable laws at the time when the Constitution became effective were based on civil law, and the same were to remain in effect, Puerto Rico remained a civil law jurisdiction.

As will be shown in the next section, the fact that Puerto Rico is a civil law jurisdiction entails that the incorporation of the trust into the jurisdiction is not a simple process. In fact, after almost nine decades of recognizing trusts, Puerto Rico faces some of the same problems faced by other civil law jurisdictions when incorporating trusts into their legal system. This reality, as will be discussed, is one of the reasons that support the conclusion that the Puerto Rico trust is simply another type of business organization.

II. DEVELOPMENT OF TRUSTS IN CIVIL LAW JURISDICTIONS

To properly understand the development of the trust in Puerto Rico, an analysis of the different theories to incorporate the Anglo-Saxon trust into civil law jurisdictions must be conducted. Further, an evaluation of the different conceptions of trust must be undergone. However, prior to entering into the previously mentioned discussions, a study of the epicenter of the trust must be presented.

A. The origins of the trust

The first area that must be contemplated in any analysis of trusts, and their inclusion in civil law jurisdictions, is the source from where the legal figure emanated from. Although some scholars have traced the origins of the trust to roman law, the reality is that the Anglo-Saxon trust, as we know it today, was fashioned

---

32 *Id.*

33 *Id.* § 58.

34 Puerto Rican Federal Relations Act, Pub. L. No. 81-600, 64 Stat. 319 (1950).

35 P.R. CONST. art. IX, § 1.

in England.[36] Despite this truth, it is important to take into consideration the developments of the legal figures that resemble the trust in roman law, as they play a very important role in the present conceptions of the trusts in civil law jurisdictions, particularly when attempting to describe the figure in a manner known to civil law jurists.

i. Roman law

In roman law, there were severe restrictions on the inheritance of property. As a way to circumvent the same, the testator made a prayer to the person to whom he was transmitting the property to let the persons with restrictions to inherit the property use the same. This prayer became known as *fideicommissum*. One of the limitations of the *fideicommissum* was its lack of enforceability. Abuses arose and Augustus, a Justinian emperor, ordered the praetors to intervene with the enforcement of the *fideicommissum*.[37] These interventions became a body of laws and, ultimately, a special praetor was appointed to decide over *fideicommissum* related controversies.[38]

Over the years, the *fideicommissum* continued to evolve. For example, if a roman citizen was in another country and could not testate in compliance with all legal formalities, the testator could write to his inheritor *ab intestate* requesting that certain things of the inheritance be given to particular persons. Also, the trustees started repudiating inheritance so they did not have to deal with the *fideicommissum* or, more precisely, so that the trustee did not have to comply with the obligations of the testator.[39] To avoid this, a resolution of the Roman Senate was passed which in essence limited the liability of the trustee to the property received in *fideicommissum*. Likewise, other resolutions were enacted to provide other limitations to this legal figure. This led to the creation of the gradual *fideicommissum,* which allowed the testator to prohibit his heirs, up to four generations, to not dispose of the property inherited in *fideicommissum.*

The *fideicommissum* came into disuse in the Middle Ages.[40] It was substituted by the fideicommissary substitutions, which is a type of gradual *fideicommissum*.

---

36 *See* SCOTT & FRATCHER, *supra* note 1, at 3-33; Ricardo J. Alfaro & Rufford G. Patton, *El fideicomiso moderno II*, 28 REV. JUR. UPR 263, 277-78 (1959).

37 RICARDO J. ALFARO, EL FIDEICOMISO: ESTUDIO SOBRE LA NECESIDAD Y CONVENIENCIA DE INTRODUCIR EN LA LEGISLACIÓN DE LOS PUEBLOS LATINOS UNA INSTITUCIÓN CIVIL NUEVA, SEMEJANTE AL TRUST DEL DERECHO INGLÉS 8 (1920).

38 *Id.*

39 Ordinarily, under civil law, an heir inherits the assets and liabilities of the testator. In other words, this means that the heir also assumes the obligations of the testator. *See, e.g.*, P.R. CIV. COD. art. 1209, P.R. LAWS ANN. tit. 31, § 3374 (2015).

40 *See* Roberto Goldschmidt, *The Trust in the Countries of Latin America*, 3 U. MIAMI INTER-AM. L. REV. 29, 33 (1961).

Over time, and as result of revolutions and wars, the fideicommissary substitutions became limited to two generations or forbidden.[41]

The roman *fiducia* is another roman law figure that must be taken into consideration when studying trusts and their incorporation into civil law systems, as it may show some characteristics of what a trust is today. It has been established that *fiducia:*

> [W]as composed of two transactions, namely, the transfer of ownership by means of the solemn formulae of the *mancipatio* or the *cessio in iure*, and a compact whereby the transferee assumed the duty of utilizing the property for a specific purpose and, usually, of returning it after fulfilling such purpose.[42]

The main purpose of *fiducia* was to give a real property guarantee to the creditor. As the law evolved and started recognizing legal figures like the deposit and the pledge, this figure disappeared during Justinian times.[43]

ii. Anglo-Saxon law

Austin Wakeman Scott and William Franklin Fratcher, both respected commentators on trusts in the United States, indicated that:

> The trust owes its peculiar character to the more or less accidental circumstance that in England in the fifteenth century, and for four hundred years thereafter, there were separate courts of law and equity. But for this, the [Anglo-Saxon] trust, at least as we know it, would never have developed.[44]

Prior to 1217, the Roman Catholic Church had accumulated a vast amount of land in England through various religious organizations or entities.[45] This reality caused great concern to the monarchs and the nobles because the lands were not productive; they didn't pay taxes. In hopes to avoid further amassment of property by the Church, the *Statutes of Mortmain* were enacted in the last quarter of the thirteenth century. These statutes declared that any disposition of property to a religious organization was null.

As a mechanism to avoid the *Statutes of Mortmain*, the *use* was conceived. "The use was a transfer of property by which the grantee undertook to surrender the profits of the property and usually its management, to the grantor, or to a third party, the beneficiary, and upon their request to transfer the property back at any

---

41 *See* ALFARO, *supra* nota 37, at 13-21. Puerto Rico fideicommissary substitutions are regulated by the Civil Code of Puerto Rico, see P.R. CIV. COD. arts. 710-718, P.R. LAWS ANN. tit. 31, §§ 2308-2316. For more on fideicommissary substitutions, see 2 EFRAÍN GONZÁLEZ TEJERA, DERECHO DE SUCESIONES TOMO II: LA SUCESIÓN TESTAMENTARIA 602 (2002).

42 Goldschmidt, *supra* note 40, at 33-34.

43 *Id.*

44 SCOTT & FRATCHER, *supra* note 1, at 3.

45 ALFARO, *supra* note 37, at 25.

time."[46] In other words, the Church vested the legal title of the property in a third party but retained the management and incomes generated by the land. Also, Franciscan friars, who were not permitted to hold property because of their order, utilized the use to avoid such rule.[47] The courts with jurisdiction over the uses were the Courts of Equity and they interpreted it in a liberal manner.[48]

The use was a functional way to avoid the applicability of the *Statutes of Mortmain* until Henry VIII became king and enacted the *Statute of Uses*.[49] According to the *Statute of Uses*, the person who enjoyed the use of the land was considered its owner. Therefore, if the property was transferred to a third person for the use of the religious organization, then it was null based on the *Statutes of Mortmain* because the transfer, as a matter of law, was made to the religious entity. The *Statute of Uses* provided "where any person . . . be seized . . . of . . . land . . . to the use of any other person . . . every such person . . . shall from henceforth . . . be seized . . . of . . . the same . . . lands . . . in such like estates as they had . . . in use."[50]

Both the common law judges and the chancellors interpreted the *Statute of Uses* in a very restrictive manner.[51] Thus, "in three classes of cases it was held that the statute did not execute the use by vesting the legal title in the beneficial owner."[52] It should be noted that during this epoch the words *use*, *trust*, and *confidence* were used interchangeably.[53] Consequently, the legal *use* became known as *trusts*.[54] The first exception to the *Statute of Uses* were active trusts. Thereby:

> If the feoffee [(trustee)] was directed to allow the cestui que use [(beneficiary)] himself to take the profits, the use was executed by the statute; but if the feoffee was directed to take the profits and deliver them to the cestui que use, the legal estate, it was held, remained in the feoffee.[55]

The second exception was based on the fact that the *Statute of Uses* did not refer to *chattels personal* or *chattels real*. The statute referred to "the case where one person is 'seised' to the use of another, and one is not seised but possessed of a leasehold interest."[56] The third exception was the *use upon a use*. "It [was] held that if a use is raised on a use, although the first use is executed, the second use is

---

46 L. A. Wright, *Trusts and the Civil Law – A Comparative Study*, 6 W. ONTARIO L. REV 114, 114-15 (1967).

47 *See* SCOTT & FRATCHER, *supra* note 1, at 13 (citing FREDERIC WILLIAM MAITLAND, EQUITY 25 (1936)).

48 *Id.* at 15.

49 Statutes of Uses, 27 Hen. 8, c. 10 (1535).

50 SCOTT & FRATCHER, *supra* note 1, at 20 (quoting the Statues of Uses, 27 Hen. 8, c. 10 (1535)).

51 *Id.*

52 *Id.* at 21.

53 *Id.* at 22.

54 *See* ALFARO, *supra* nota 37, at 25.

55 SCOTT & FRATCHER, *supra* note 1, at 21.

56 *Id.* at 22.

not."[57] In other words, if a person held the property for the use (benefit) of another (second person) who, in turn, held the property for the use (benefit) of a third person, the *Statute of Uses* vested upon the second person with the title of the property but did not affect the use of the third person.

The development of the Anglo-Saxon trusts continued. To this day, defining a trust is an extremely complicated endeavor. Thus, "[t]here is not a single or a unanimously accepted definition for the Anglo-American trust."[58] In fact, "trusts experts often have great aversion to giving a precise definition of the 'trust'."[59] As Dante Figueroa points out, "[t]he debate as to the core of the Anglo-American trust is extensive."[60] Some of the commentators focus on the duty of the trustee to define the trust, while others focus on the right of the beneficiary.[61] Regardless of this debate, some definitions have been developed. For example:

> [A]n equitable obligation, binding a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called beneficiaries or *cestuis que* trust), of whom he may himself be one, and any one of who may enforce the obligation.[62]

Also, the American Law Institute in the *Restatement (Second) on Trusts* defines the legal figure in question as:

> A trust, as the term is used in the Restatement of this Subject, when not qualified by the word "charitable," "resulting" or "constructive," is a fiduciary relationship with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.[63]

Despite these definitions, it is important to remember that they relate to *inter vivos* trusts. As such, it could be argued that what constitutes a *trust* is defined in relation to the way property is held by a person.

---

57 *Id.* at 23.

58 Dante Figueroa, *Civil Trusts in Latin America: Is the Lack of Trusts an Impediment for Expanding Business Opportunities in Latin America?*, 24 ARIZ. J. INT'L & COMP. L. 701, 708 (2007).

59 Emmanuel Gaillard & Donald T. Trautman, *Trusts in Non-Trust Countries: Conflict of Laws and the Hague Conventions on Trusts,* 35 AM. J. COMP. L. 307, 317 (1987).

60 Figueroa, *supra* note 58, at 708.

61 *Compare* John H. Langbein, *Questioning the Trust Law Duty of Loyalty: Sole Interest of Best Interest*, 114 YALE L.J. 929 (2005), *with* David Hayton, *The Irreducible Core Content of Trusteeship*, *in* TRENDS IN CONTEMPORARY TRUST LAW 47, 48 (A.J. Oakley ed. 1996).

62 Martyn Frost, *Overview of Trusts in England and Wales*, *in* TRUST IN PRIME JURISDICTIONS 13 (Alon Kaplan ed., 2000) (quoting SIR ARTHUR UNDERHILL, LAW OF TRUSTS AND TRUSTEES 3 (11th ed. 1959)).

63 Restatement (Second) of Trust § 2 (Am. Law Inst. 1957).

B. Assimilation – A Partial Solution?

Arguably, the first attempt to incorporate trusts into a civil law jurisdiction can be traced back to Scotland. A civil law jurisdiction within a common law dominated Empire, this now Commonwealth recognized trusts via judicial *fiat*. To accomplish this, Scottish courts combined the contracts of deposit and of mandate.[64] Years later, in 1938, Cuba undertook a similar path to that of Scotland to recognize trusts in its legal system. In a decision by the Supreme Court of Cuba, the tribunal held that the trust is a non-typified contract, subject to the doctrine of *pacta sunt servanda*.[65] Cuban jurists posited that the mentioned legal doctrine allowed for the trust to be a non-typified contract and that the relations it created were administered by the intention of the parties.[66]

Both of these attempts can be conceptualized as an assimilation of the trust to existing legal figures in the mentioned jurisdictions. However, rather than using this method to incorporate the trusts into all civil law jurisdictions, legal scholars devised additional methods to achieve this goal. This is primarily because there were instances where the rigidness of the civil law precluded the recognition of the trust.[67]

C. Panama's Leadership

The adoption of the trust in civil law jurisdictions was pioneered by the Republic of Panama in the 1920s.[68] Although, as previously mentioned, other jurisdictions with the same law regime had found ways to assimilate the Anglo-Saxon trust to some of its civil law figures, the reality is that Panama was the first civil law jurisdiction to enact legislation expressly providing for the recognition of trusts in a context that took into account the civil law system as a whole.[69] Panama's leadership in this area of the law was the direct result of one of its greatest jurists: Dr. Ricardo J. Alfaro.

In 1920, Alfaro, then a professor of civil law at the National School of Law, published a treatise on trusts and how said institution should be adopted in civil law jurisdictions. According to a paper read at the Third Pan American Scientific

---

64 *See* Andrew Freeman, *Trusts in No-Trust Jurisdictions as Seen by an American Practitioner* 8 INT'L LEGAL PRAC. 23, 25 (1983); Ricardo J. Alfaro & Rufford G. Patton, *El fideicomiso moderno III*, 28 REV. JUR. UPR 341, 349 (1959).

65 *See* Cuba, Sentence No. 6 of Feb. 12, 1938, [1938] La Jurisprudencia al Día (Civil) 99.

66 *Id.*

67 *See, e.g.* ALFARO, *supra* note 37, at 31-41.

68 It should be noted that, according to L. A. Wright, in 1888, the Province of Quebec was the first civil law jurisdiction to enact legislation to incorporate the trust. Wright, *supra* note 46, at 121. However, Patton states that this achievement was completed in 1879. Rufford G. Patton, *Trust Systems in the Western Hemisphere*, 19 TUL. L. REV. 398, 410 (1945).

69 *See* Ricardo J. Alfaro, *The Trust and the Civil Law with Special Reference to Panama*, 33 J. COMP. LEGIS & INT'L L. 3D SER. 25, 27 (1951).

Congress held in Lima, Perú, in 1925, Alfaro was drawn to study trusts due to practical reasons.[70] Specifically, some of his clients' situations could not find an adequate solution under Panama law, but could have benefitted from the use of the trust.[71] This led Alfaro to draft a treatise on the necessity and convenience of introducing legislation in Latin countries of a new civil institution, similar to the trust of the English law.[72]

In his work, entitled *El Fideicomiso*, Alfaro traced the origins of the trust as previously discussed.[73] After providing the historical context, he clarifies why the figure of *fideicommissary substitutions* is not a trust.[74] Then, he considers what a trust under English law is.[75] After this, he provides a series of situations that could have benefitted from the existence of the trust in a civil law jurisdiction yet had no solution because of the then current legal system.[76] The fifth section of this article discusses Alfaro's proposed definition for a *fideicommissum* or trust in civil law jurisdictions.[77]

Alfaro finalized his work with a draft of a bill for a law to introduce the trusts—*fideicomiso*, as he named the figure—into Panamanian law.[78] The proposed legislation contained thirty-eight short articles, which were individually explained in the last chapter of the work. In broad terms, the thirty-eight articles discussed: (1) the definition of the trust; (2) the purposes for which trusts could be constituted; (3) the legal requirements that a grantor must comply with to constitute a trust; (4) the rights and obligations of the grantor, trustee and beneficiary, as well as, (5) the termination of the trust. This draft was enacted, with minimum changes, into law on January 6, 1925 by the National Assembly of Panama.[79]

Alfaro's commitment to the trust did not finalize here. Until his death, Alfaro continued to promote the trust in civil law jurisdictions. Proof of this includes his many publications on the subject, which help further understand the nature of the figure in question.[80]

---

70 Ricardo J. Alfaro, *The New Fideicommissum*, 59 BULL. PAN AM. UNION 543, 547 (1925).

71 *Id.*

72 *See* ALFARO, *supra* note 37.

73 *See* Section II, A of this article.

74 ALFARO, *supra* note 37, at 13-24.

75 *Id.* at 25-30.

76 *Id.* at 31-42.

77 *Id.* at 43-50.

78 *Id.* at 51-93.

79 On the Establishment of the Fideicommissum, Panama Law No. 9 of Jan. 6, 1925.

80 *See, e.g.*, Sánchez Vilella, *supra* note 4.

D. The Hurdles to Recognize Trusts in Civil Law Jurisdictions

In various works pertaining to trusts, Alfaro discusses the difficulties associated with the recognition of trusts in civil law jurisdictions.[81] These hurdles were echoed by other civil jurists who had the opportunity to study the Anglo-Saxon trust.[82] Understanding these barriers is one of the most important aspects of studying the adoption of trusts into civil law jurisdictions, as its circumvention plays a significant role in the various theories developed to achieve the goal of adopting the trust in a civil law jurisdiction. It is submitted that failure to properly understand the foregoing creates dichotomies in civil law jurisdictions that incorporate trusts without regard for such obstacles. This, *inter alia*, results in a constraint to the development of the trust in those civil law jurisdictions.

According to Ralph Newman, the obstacles in recognizing the trust "are based on an imperfect understanding of the nature of the trust itself, and consequently of its relationship to civil law concepts of property ownership."[83] The main obstacles in the minds of many jurists was the fact that civil law did not allow for the title of property to rest in more than one person in different capacities at the same time. In other words, the obstacle was the civil law doctrine of indivisible ownership which "is deemed to clash with the trust concept in two ways; because the trust is thought to require successive ownership in the plane of time, and also to require a contemporaneous division of ownership into legal and equitable rights *in rem*."[84] In a more metaphorical way, "[t]o the tightly logical civilian mind, regardless of the number of angles that may dance on the point of a needle, two persons cannot occupy the same point at the same time, and there cannot be two owners, legal and equitable, of the same property."[85]

The second hurdle to recognizing trusts in civil law jurisdictions is the doctrine of apparent ownership. This doctrine precludes the secret ownership of *in rem* rights. As a sequel to the previously discussed hurdle, in civil law jurisdictions where property rights are *numerus clausus*—that is, that recognized property rights are based on a specific list of rights, usually contained in the Civil Code—the ownership of such rights must be recorded in a registry and made public.[86] Therefore, if the property is vested in the trustee, the limitation was how does the

---

81 *See, e.g.,* Ricardo J. Alfaro & Rufford G. Patton, *El fideicomiso moderno I*, 28 REV. JUR. UPR 149 (1958).

82 *See, e.g.*, Lepaulle, Batiza, Sánchez Vilella.

83 Ralph A. Newman, *Trusts, Civil Law Concepts and Legal Realism*, 3 INTER-AM. L. REV. 379, 382 (1961).

84 *Id.* at 383 (emphasis added).

85 John M. Wisdom, *A Trust Code in the Civil Law, Based on the Restatement and Uniforms Acts: the Louisiana Trust Estates Act*, 13 TUL. L. REV. 70 (1939).

86 This is not the case in Puerto Rico, which has a *numerus apertus* system pertaining to property rights. *See* Iglesia Católica v. Registrador, 96 P.R. Dec. 511, 540-42 (1968).

beneficiary of the trust have a property right over the same property in the name of the trustee.[87]

Also, the fact that the trust might be controlled by rules established by a person who might not be alive creates concerns in the minds of civil lawyers.[88] The main preoccupation with this hurdle is the fact that ownership and the disposition of property is limited by the rules adopted by the grantor of the trust who might not be alive when the trustee believes it is in the best interest of the trust (or the beneficiary) to dispose or encumber the property.

Another constraint that was identified was that no specific legal figure under the civil law system could accommodate the diverse applicability of the trust.[89] Even if one figure fitted a particular set of facts, it was unlikely that it would be applicable to other situations. Luis Sánchez Vilella explained that "some of the transactions that [were] effectuated through the trust may [have been] realized through certain institutions of the civil law, but this necessitate[d] the combination of two or more of these institutions."[90] However, in some instances, there may have been no possible applicable legal figures. Alfaro, in *El Fideicomiso*, listed four of these instances and concluded that only through the use of a trust could a proper solution be achieved.[91]

The majority of the obstacles previously identified have been overcome by civil law jurisdictions that possess some type of trust in their legal system. However, to this day, some civil law jurisdictions still face the same dilemmas to recognize the trust in their jurisdictions; for example, we may allude to the Kingdom of Spain, where Anglo-Saxon trusts are not recognized.[92]

E. The First Comprehensive Definition of a Trust in a Civil Law Jurisdiction: Alfaro's Definition

To overcome the foregoing obstacles, after a careful study of the Anglo-Saxon trust, Alfaro defined the trust as:

> An irrevocable mandate whereby certain property is transferred to a person, named the TRUSTEE [(*fiduciario*)], so that the property be disposed of as directed by the party who transfers the property, named the SETTLOR [(*fideicomitente*)],

---

87 *See* Wisdom, *supra* note 85.

88 *Id.* at 389.

89 *See e.g.*, Luis Sánchez Vilella, *Problem of Trust Legislation in Civil Law Jurisdictions: The Law of Trusts in Puerto Rico*, 19 TUL. L. REV. 374, 380-81 (1945).

90 *Id.* at 381.

91 ALFARO, *supra* note 37, at 13-24.

92 *See* Ana C. Gómez Pérez, *Revisión de las principales doctrinas civilistas que impiden la incorporación del trust en España*, 740 REV. CRIT. DE DERECHO INMOBILIARIO 3761 (2013).

> for the benefit of a third party, named the BENEFICIARY [(*cestui que trust*) or (*fideicomisario*)].[93]

In explaining this definition, Alfaro comments that both the *fideicommissum* and the Anglo-Saxon trust have various points of similarities. Specifically:

> 1. *The cause.* Laws which in a greater or lesser measure established restrictions either to receive an inheritance or legacy or to own property, succession laws in Rome, [*S*]*tatutes of* [*M*]*ortmain* in England.
> 2. *The purpose.* To evade such restrictions.
> 3. *The means.* An intermediary person who was not affected by the restrictions and in whom confidence was reposed by the testator or the transferor: the Roman *fiduciarius,* the English *feoffee* or *trustee.*
> 4. *The procedure.* A transfer of property made to the intermediary: by will or testament in the case of the Roman *fideicommissum;* by an act *inter vivos* or will in the case of the trust.
> 5. *The charge.* A request made to or an obligation imposed on the intermediary to give to the property transferred to him the destination or disposition indicated by the testator or transferor.
> 6. *The subject.* A person for whose benefit the intermediary received, preserved, administered, disposed of or turned over the property transferred to him: the Roman *fideicommissarius* and the English *cestui que trust.*[94]

Also, Alfaro points out that the main person charged with complying with the purposes of the trust and the *fideicommissum* is the trustee. Thus, if:

> [B]oth in the *fideicommissum* and in the trust the *fiduciarius* or the trustee carries out a mission of the testator or of the settlor, and if in civil law *mandate* [or agency] is a contract whereby a person charges another with the execution of an act or the administration of property, there can be no doubt that mandate is the civil institution most akin to the trust, and that the trust may be assimilated to a mandate in which the settlor is the principal and the trustee is the attorney [or agent].[95]

Notwithstanding this reasoning, as with agency, the *mandate* can be terminated by the principal at any time. To avoid this, Alfaro characterized the type of mandate included in the definition of a trust as an irrevocable one.[96]

It can be noted that the definition of a trust as stated by Alfaro, addresses three essential elements: (1) the transfer of property; (2) the conditions on which the property is to be administered or disposed of, and (3) the resulting benefit.[97]

---

93 ALFARO, *supra* note 37, at 48 (translation by author).

94 Alfaro, *supra* note 69, at 27. It should be noted that in his first work pertaining to trusts—*El Fideicomiso*—Alfaro only listed four of six points of similarity. However, a careful reading of *El Fideicomiso* reveals that the six factors were considered by Alfaro in his initial work.

95 *Id.*

96 *Id.* at 28.

97 *Id.*

Moreover, the definition conveys those who are considered parties in relation with the transaction when the trust is constituted. An interesting point that can be distinguished is that Alfaro's definition of the trust does not entail the trust as a legal entity *per se*. Furthermore, it does not consider the trust as a business organization. Lastly, the aforementioned definition characterizes the trust as a type of mandate, which in the civil law is a contract.

Alfaro's definition of the trust did not go without criticism. One of the critiques asserted that the "vulnerable point in Dr. Alfaro's logic is that the civilians, though familiar with the civil concept of mandate and its legal consequences, are wholly unfamiliar with *irrevocable* mandates, so that in the last instance this concept will be as foreign to the civilian mind as the equity concept of equitable title."[98] Taking into consideration this criticism, Alfaro contented that no matter what nomenclature were to be given to the trust, the important thing was to protect the essence of the scheme. Consequently, he chose to change the words *irrevocable mandate* to the word *act* in his definition.[99] Despite severe criticism to his conceptualization of the trust as an *irrevocable mandate* and, later on, as an *act*, Alfaro continued to defend his definition of the trust.[100]

F. Other Methods to Incorporate Trusts into Civil Law Jurisdictions

As previously mentioned, trusts are an intriguing legal figure for civil law scholars, particularly, for those who have studied the common law. As such, it should not come as a surprise that other jurists studied this figure and came up with different theories for incorporating trusts into a civil jurisdiction, as well as to the conceptualization of trusts in different manners. So far, two methods by which to incorporate trusts into civil law jurisdictions have been discussed. The first one, is through the assimilation of the trust into existing legal figures in the civil law system (this method was used by Scotland and Cuba). The second one, is through Alfaro's proposed enactment of trust legislation. However, these two methods are not the only ones that have been used or suggested by jurists to accomplish the mentioned task.

According to John Minor Wisdom, three methods can be used to incorporate the trust into a civil law jurisdiction, namely: "(1) expansion of recognized civil law substitutes for trusts; (2) incorporation of trusts in the statutory law in terms of a civil law irrevocable mandate or *fideicommissum*; or (3) adoption by statute of the common law trust as it is known in Anglo-American Law."[101] The scientific doc-

---

98 Luis F. Sánchez Vilella, *Problems of Trust Legislation in Civil Law Jurisdictions: The Law of Trusts in Puerto Rico*, 19 TUL. L. R. 374, 384 (1945).

99 Alfaro, *supra* note 69, at 28. According to Sánchez Vilella, this position was presented by Alfaro in a conference in Río de Janeiro, Brazil in July 1943. Sánchez Vilella, *supra* note 98, at 384.

100 *See, e.g.*, Alfaro, *supra* note 69; Alfaro & Patton, *supra* note 36.

101 Wisdom, *supra* note 85, at 76.

trine coincides with Wisdom's proposition and categorizes the different conceptions of the trust in one of these three categories. For example, Alfaro's method of adoption falls squarely within the second of the aforementioned methods.

Kevin W. Ryan comments that "[p]erhaps the most surprising aspect of the civil law commentaries has been the proliferation of theories as to the juristic nature of the trust."[102] Further, this commentator states that "[f]ive conceptions of the nature of the trust have been expressed, and at least two of these have directly influenced [the adoption of trust legislation]."[103] These are: (1) the trust as appropriated *patrimonium*; (2) the trust as a mandate or agency; (3) the trust as a contract for the benefit of a third party, and (4) the trust as an institution or moral person.[104] Because the trust as a mandate or agency was the conceptualization of the trust adopted by Alfaro which was previously discussed, this section will not consider the same.

Understanding these other methods by which trusts can be incorporated and conceptualized into civil law jurisdictions, is essential to properly assess the evolution of the Puerto Rican trust. As will be further explored, the change in the conception of what is a trust clearly supports this article main conclusion.

i. The trust as appropriated *patrimonium*

Another important civil jurist who attempted to tackle the hurdles of incorporating trusts into civil law jurisdictions was Pierre Lepaulle. A French lawyer who studied a doctorate in law at Harvard University, Lepaulle considered that the adoption of the trust into civil law jurisdictions could be achieved by returning to the *fiducia*. Interestingly, Lepaulle changed his views on the best way to incorporate trusts into civil law jurisdictions. In his earlier publications on the subject, Lepaulle was of the opinion that there was no need to recognize trusts *per se* in a civil law jurisdiction. This, based on the idea that the goals achieved by the trust could always be achieved by other civil law figures.[105] However, after several years of studying trusts more in depth, Lepaulle "proposed a definition of the trust which rejected as an essential concept the idea of a relationship between trustee and *cestui que trust*. . . . [because he considered that] there were only two elements in a trust: an autonomous patrimony and a free destination."[106]

One of the main points of Lepaulle's conceptualization of the trust is that the *partimonium* is ownerless. The only requirement is that the purpose for which the patrimony is dedicated (affectated) is a lawful one. It is worth mentioning that

---

102 Kevin W. Ryan, *The Reception of the Trust*, 10 INT'L & COMP. L.Q. 265, 271 (1961).

103 *Id.*

104 *Id.* at 271-76.

105 PIERRE LEPAULLE, TRAITÉ THÉORIQUE ET PRATIQUE DES TRUSTS 31 (1932).

106 Ryan, *supra* note 102, at 271. In Lepaulle's own words: "[l]e trust est une institution juridique qui consiste en un patrimoine indpendant de tout sujet de droit et dont l'unitó estconstituó par une affectation qui est libre dans les limites des lois en vigueur et de l'ordre public." LEPAULLE, *supra* note 105, at 31.

Lepaulle characterizes the trust as an *institution juridique*, which translates as *legal institution* rather than a *legal entity*. Nevertheless, a critique to this conceptualization of the trust is the fact that in civil law there is arguably no distinction between one or the other.[107]

Lepaulle's conceptualization of the trust was subject to criticism. According to critics, Lepaulle:

> [C]learly misunderstood the scope of the maxim that a trust never fails for want of a trustee; he was on dangerous ground in founding his theory on certain peculiarities of the so-called trusts of imperfect obligation; above all, he confused the two distinct notions of the "separate patrimony" *(Sondervermogen)* and the "purpose patrimony" (*Zweckvermõgen).* Trust property is "autonomous" in the sense that it is subjected in the hands of the trustee to a different régime from that applicable to the rest of his property, and thus constitutes a separate or segregated patrimony. But it is not autonomous in the sense that the trust property no longer forms part of the patrimony of any person.[108]

Alfaro also criticized Lepaulle's conception of the trust.[109] To this jurist, what Lepaulle tried to achieve was to define the trust as the destination of a *patrimonium* to a particular purpose. This was an incomplete definition, as it did not take into account how the destination of the *patrimonium* was completed, the term of the destination, and the parties involved (the grantor, trustee and beneficiary).[110] After all, "there is no trust if it is not created by someone; there is no trust if no benefit is given to somebody; there is no trust if no one exercises it."[111]

Regardless of the criticism, Lepaulle's conception of the trust was well received in Latin American countries. In fact, after experience with the Alfaro definition of trusts, Mexico amended its law to define the Mexican *fideicomiso* following Lepaulle's construction of the same.[112] However, Mexico vested the trust property ownership in the trustee, as an ownerless property was hard to conceive.[113]

G. The Trust as a Contract for the Benefit of a Third Party

Another conceptualization of the trust by civil law scholars was the notion that a trust was just a third-party-beneficiary contract.[114] This notion was adopted

---

107 *See* Peter Hefti, *Trusts and their Treatment in Civil Law*, 5 AM. J. COMP. L. 553, 564 (1956).

108 Ryan, *supra* note 102, at 271.

109 Alfaro & Patton, *supra* note 36, at 288-91.

110 *Id.*

111 *Id.* at 290-91 (translation by author).

112 *See* Rodolfo Batiza, *The Evolution of the Fideicomiso (Trust) Concept under Mexican Law*, 11 MIAMI L. Q. 478, 481 (1957).

113 Ryan, *supra* note 102, at 272-73.

114 *Id.* at 275.

by the Supreme Court of South Africa in 1943.[115] A third-party beneficiary contract, or a contract for the benefit of a third party, is an agreement between two or more persons that benefits a third person.[116]

The difficulty with this conceptualization of the trust is that the mentioned agreement requires the acceptance of the third-party beneficiary,[117] *contrario sensu*, the trust does not require such acceptance. Likewise, the fact that trusts can be constituted for the benefit of a group of persons or minors, which may not accept the benefits, can become problematic. Another obstacle with the conceptualization of trusts as a contract for the benefit of a third party is that the beneficiary is considered the creditor of the trustee. Therefore, the beneficiary has *in personam* claims against the trustee, rather than *in rem* claims over its property rights in the property held in trust for its benefit.

As with the previous conception of trusts, the contract for the benefit of a third party does not consider the trust a separate legal entity.

H. The Trust as a Legal Entity or as a Moral Person

An alternative view that has been presented as the conceptualization of the trust is that it is a legal entity or a moral person. Kevin W. Ryan expressed that "[b]oth these theories are at one in considering that a trust is a distinct legal entity."[118] Both of these theories were analyzed in relation to Quebec's *fiducie*. Briefly stated, Marcel Faribault evaluated the trust as a legal entity and concluded that "the element of authority was present in the person of the trustee and the element of participation in the rights of the beneficiaries. It was solely *vis-á-vis* the trust that the obligations of the trustee, the rights of the beneficiaries, and the rights and obligations of third parties existed."[119] On the other hand, Louis Baudouin proposed to see the trust as a moral person. Under this conception, the obligations of the trustees are to be complied with in relation to the trust. Likewise, the claims of the beneficiaries are against the trust.[120]

In 1951, Lepaulle supported the notion that the trust be organized as a legal person:

> The trustees would be the officers of this legal person, its *Conseil d'Administration;* the trust deed would be its charter; third parties would be protected by registration of the trust: and the *ministère public* would be charged with the supervision of trusts for the benefit of those under incapacity or for charitable purposes.[121]

---

115 *See* Commissioner of Inland Revenue v. Estate Crewe, 1943 A.D. 656, 673.

116 BLACK'S LAW DICTIONARY 325 (7th ed. 2003).

117 *See, e.g.* A.L. Arsuaga v. La Hood Const., Inc., 90 P.R. Dec. 104, 109 (1964).

118 Ryan, *supra* note 102, at 276.

119 *Id.*

120 *Id.*

121 *Id.* at 276 n.37.

Finally, George Bogert perceived the trust as a legal entity, but not a legal person.[122] Nonetheless, "[f]rom the civil-law view-point . . . legal entity and legal person are the same, and in the common law this distinction merely serves to obviate the license regarded as necessary for a legal person."[123]

III. THE RECOGNITION OF THE TRUST IN PUERTO RICO'S LEGAL SYSTEM

A. Before the Enactment of Legislation

Although no source has been directly identified that describes the use of trusts in Puerto Rico prior to the enactment of legislation, a careful analysis of Puerto Rico Supreme Court opinions provides some insights into the period in question. During this period, which ranges from 1900 until 1928, about twenty-one cases consider the word *trust* or, its Spanish translation, *fideicomiso* in them. Although the concept of the trust was mentioned by the Puerto Rico Supreme Court during this time-period, the trust was never fully recognized nor assimilated into the Puerto Rico legal system. This, despite having had the opportunity to do so in *Ramos v. La Unión Local de Panaderos de Guayama*.[124] In this case, the trial court held, based on a case from the Supreme Court of Michigan, that certain funds of a labor union constituted a trust for the benefit of the members of the union. The Puerto Rico Supreme Court vacated the trial court's conclusion distinguishing the case in which the lower court relied on and concluded that the funds were in deposit (a legal figure present in Puerto Rico's civil system at the time) rather than in trust.[125]

It should be noted that, at this point in time, Puerto Rico recognized *fideicommissary substitutions*,[126] which as previously discussed are sometimes confused with testamentary trusts. Therefore, some of the identified case law during this period relates to the latter legal figure.[127] Notably, in the late 1900s and early 1910s, an attorney from the city of Ponce, Puerto Rico, Mr. José Tous Soto, was involved in various cases dealing with testamentary trusts. As part of his arguments, he claimed that the property transferred to his clients was made in trust. However, the Puerto Rico Supreme Court did not consider the argument and did not address

---

122 Hefti, *supra* note 107, at 563-64 (citing GEORGE G. BOGERT, TRUSTS AND TRUSTEES § 712 (1935)).

123 *Id.* at 564.

124 Ramos v. La Unión Local de Panaderos, 32 P.R. Dec. 321 (1923).

125 *Id.*

126 P.R. CIV. COD. art. 710, P.R. LAWS ANN. tit. 31, § 2308.

127 *See, e.g.*, Gavarain v. El Registrador de la Propiedad, 14 P.R. Dec. 123 (1908); Finlay v. Finlay Brothers & Waymouth Trading Co., 8 P.R. Dec. 389 (1905).

the reason why they would not entertain the same.[128] Another important aspect that is to be noted is that *fideicommissary substitutions* needed to be express.[129]

An additional interesting result of the case law analysis conducted is that, from a fiscal point of view, the transfers of property made in trust were taxable. In a series of cases dealing with gift and estate taxation, the Puerto Rico Supreme Court quoted previously applicable law which imposed, *inter alia*, tax liability in any transfer of property made in trust.[130] Because at this point in time the trust was not recognized in Puerto Rico, but fiduciary substitutions were, a possible interpretation is that such substitutions were the ones being taxed. However, the quoted language by the aforementioned court does not make said distinction expressly. This raises the question of whether trusts were implicitly recognized in Puerto Rico via its tax system.

Interestingly, testamentary trusts established during this period were later validated by the Puerto Rico Supreme Court. In *Iglesia Católica v. Registrador*, a testamentary trust created in 1923 was upheld in 1946.[131] Consequently, it can be reasonably concluded that had a trust been organized in Puerto Rico prior to the enactment of legislation recognizing such type of entity, it would had been posteriorly validated by the Puerto Rico Supreme Court via judicial *fiat*.[132] Also, some translation issues that mentioned the word *fideicomiso* as the Spanish translation of *trust* were identified.[133] Further, in some cases the term *trust* was used to describe public office.[134] More so, the word *agency* was assimilated to trust.[135]

Lastly, during the time period in question the Supreme Court of Puerto Rico considered the applicability of resulting trusts in the Island's legal system.[136] However, no conclusion was reached as to the applicability of the aforementioned type of trust.

---

128 *See* A. S. Damas del S. Asilo v. Diana, 18 P.R. Dec. 778 (1912); Señoras Damas del Santo Asilo v. Diana, 16 P.R. Dec. 381 (1910); Vázquez v. Vázquez, 15 P.R. Dec. 89 (1909).

129 Torres v. Rubianes, 20 P.R. Dec. 337 (1914).

130 *See, e.g.*, Rieffkohl v. El Registrador de Caguas, 27 P.R. Dec. 369 (1919); Collazo v. Hill, Tesorero de PR, 25 P.R. Dec. 227 (1917); Sucesión Puente v. El Pueblo, 19 P.R. Dec. 557 (1913).

131 Iglesia Católica v. Registrador, 65 P.R. Dec. 604 (1946).

132 Luis Sánchez Vilella, *Bases para un Código de Fideicomisos para Puerto Rico*, 37 REV. COL. ABOG. PR 463, 464-65 n. 4 (1976).

133 *See* Pueblo v. Martínez, 37 P.R. Dec. 232 (1927); Cádiz v. Jiménez, 27 P.R. Dec. 651 (1919); Ortiz v. Muñoz, Alcalde de Guayama, 19 P.R. Dec. 850 (1913).

134 *See, e.g.*, Pueblo v. Torres, 34 P.R. Dec. 629 (1925); Ex. Rel. Pérez v. Manescau, 33 P.R. Dec. 739 (1924); Jiménez v. Reily, 30 P.R. Dec. 626 (1922).

135 *Torres*, 34 P.R. Dec. 629.

136 Quiñones v. Ana María Sugar Co. Inc., 24 P.R. Dec. 656, 666 (1916).

B. Act No. 41-1928

In Puerto Rico, trusts were recognized by virtue of Act No. 41 of April 23, 1928 (henceforth, "Act No. 41-1928").[137] This Act was enacted following the provisions of the *1925 Trust Law of the Republic of Panama*, which was drafted by Dr. Ricardo J. Alfaro.[138]

i. Legislative History of Act No. 41-1928

In the Commonwealth of Puerto Rico, the enactment of said legislation was promoted by attorney Miguel Guerra Mondragón, the author of the original bill that was enacted into law and who was serving as the vice-president of the House of Representatives of Puerto Rico at that time.[139] According to a letter sent by Guerra Mondragón to his friend Benicio Sánchez Castaño, which was published in a footnote of a law review article by Rufford G. Patton, his interest in trusts was sparked by a series of pamphlets that a banker provided him with.[140] Adding to these previous comments, in connection to legislation recognizing trusts enacted in Puerto Rico, Alfaro comments that:

> A Puerto Rican lawyer has told the story of how it came to happen. He was being troubled with problems that could not be solved under the civil code in force, which is still the Spanish Code of 1889. The problem could only be solved by means of a common law trust, and, of course, he concluded that such a trust was a legal impossibility. One day he glanced over an article I [Alfaro] had published in the Bulletin of the Panamerican Union, having as an annex the text of the Panama law, and immediately he said— "This is exactly what we need in Puerto Rico." He had the bill introduced in the legislature, which promptly converted it into a statute.[141]

Unfortunately, this is all the available legislative history related to the enactment of Act No. 41-1928.[142] According to Sánchez Vilella, "[t]here is nothing in the minutes of the Legislative Assembly of 1928 - neither reports of commissions nor debates in the hemicycles - which refers to the Law of Trusts approved in that year."[143]

---

137 To provide for the constitution of trusts (fideicommissa), Act No. 41 of April 23, 1928, 1928 P.R. Laws 294 (repealed 2012).

138 *See* Dávila v. Agrait, 116 P.R. Dec. 549, 555 (1985).

139 *Id.*

140 Rufford G. Patton, *Los sistemas de fideicomiso en el hemisferio occidental*, 15 REV. JUR. UPR 1, 19 (1945).

141 Alfaro, *supra* note 69, at 30.

142 Sánchez Vilella, *supra* note 4, at 424 n.22.

143 *Id.* (translation by author).

ii. Definition of a Trust

Pursuant to Act No. 41-1928, a trust was defined to be:

> [A]n irrevocable mandate whereby certain property is transferred to a person, named the trustee (*fiduciario),* in order that he may dispose of it as directed by the party who transfers the property, named constituent (*fideicomitente*), for his own benefit or for the benefit of a third party, named the beneficiary (*cestui que trust*) or (*fideicomisario*).[144]

The mentioned definition only has one material difference with the one enacted in Panama, which, as discussed, was the result of Alfaro's study on the Anglo-Saxon trust. The definition allowed for the constitution of a trust for the benefit of the settlor.[145] Additionally, it is important to note that the Puerto Rico Legislature made some changes to Alfaro's project to ensure adequate assimilation with Puerto Rico law.[146] For instance, because Puerto Rico had legitimate inheritance restrictions, an article was added to provide that such system could not be circumvented by the use of a trust.[147]

By adopting Alfaro's version of the trust, the Puerto Rico Legislature achieved the goal of having a legal figure in the Island's legal system that resembled the Anglo-Saxon trust. However, as pointed out by Sánchez Vilella, it was unclear if what Alfaro did in 1920 was "incorporate the Anglo-Saxon trust in the civil law . . . or create a new legal figure that was analogous to the Anglo-Saxon Trust."[148] The distinction between one and the other are of the utmost importance for analyzing the Puerto Rican trust. This was seen in *Álvarez v. Secretario de Hacienda*, in which—after deciding that the Legislature created a new legal figure that was analogous to the trust—in reconsideration, the Puerto Rico Supreme Court changed its view and concluded that the intent of the Legislative Branch was to incorporate the Anglo-Saxon trust in the jurisdiction.[149] In this case, the shift in the conceptualization of the trust in Puerto Rico's legal system altered the final conclusion of the Court.

After *Álvarez*, the Puerto Rico Supreme Court decided that "[t]he Puerto Rican trust is an institution with particular characteristics that incorporates the principles of the Anglo-Saxon trust and attempts to harmonize [such principles] with

---

144 P.R. CIV. COD. art. 834, P.R. LAWS ANN. tit. 31, § 2541 (2015) (repealed 2012).

145 *Cf.* To provide for the constitution of trusts (fideicommissa), Act No. 41 of April 23, 1928, 1928 P.R. Laws 294 (repealed 2012), with On the Establishment of the Fideicommissum, Panama Law No. 9 of Jan. 6, 1925.

146 Alfaro, *supra* note 69, at 30.

147 P.R. LAWS ANN. tit. 31, § 2553 (2015) (repealed 2012).

148 Sánchez Vilella, *supra* note 4, at 418 (translation by author).

149 *See* Álvarez v. Srio. de Hacienda, 80 P.R. Dec. 16 (1957); Álvarez v. Sec. de Hacienda, 78 P.R. Dec. 412 (1955).

our civil law tradition."[150] However, the Court recognized that various legal gaps existed in relation to the provisions that governed trusts in the Commonwealth.[151] To fill this gap, based on the fact that trusts in Puerto Rico incorporate characteristics of the Anglo-Saxon trust, the Puerto Rico Supreme Court turned "to the characteristics [of the Anglo-Saxon trust] to solve, with due respect to our civil law tradition, many of the questions posed by our [statute on trusts]."[152] According to the Puerto Rico Supreme Court, the Puerto Rican trust, as the Anglo-Saxon trust, is characterized by "an unfolding of the property law. . . . [T]he trustee is the owner of the legal title, whereas the beneficiaries have the equitable ownership."[153] Due to this distinction, "in a trust, the assets that belonged to the grantor have been transferred to the trustee, who has all the rights and actions pertaining to full ownership, with the sole limitation that the transfer is made according to the instructions of the grantor, for the benefit of the beneficiary."[154] As a result, once the property is transferred to a trust, the same is no longer property of the grantor. The property unfolds and the trustee becomes the owner of the title, whereas the beneficiaries have the equitable ownership over the same.

iii. Creation and Purposes for which a Trust can be Constituted

During this period, trusts in Puerto Rico could be created by will or by *inter vivos* act.[155] If the trust was created by an *inter vivos* act, it had to be constituted in a public deed.[156] Further, trusts could be created over any type of personal or real property, tangible or intangible, present or future,[157] and for any purpose, as long as the purpose of the trust did not contravene the law or public morals.[158] Also, secret trusts were prohibited in the Commonwealth.[159] Notwithstanding, what constituted a secret trust was not clear.[160]

Trusts could not be organized for the benefit of non-existing persons, excepting future children of the grantor.[161] Additionally, "[a] trust [could] be singular or universal, pure or conditional, for a certain day, for a fixed term, or for the life of

---

150 Dávila v. Agrait, 116 P.R. Dec. 549, 554 (1985) (translation by author).

151 *Id.* at 565.

152 *Id.* (translation by author).

153 *Id.* at 560 (translation by author).

154 *Álvarez*, 80 P.R. Dec. at 21-22 (translation by author).

155 P.R. CIV. COD. art. 835, P.R. LAWS ANN. tit. 31, § 2542 (2015) (repealed 2012).

156 *Id.* § 2543.

157 *Id.* § 2544.

158 *Id.* § 2547.

159 *Id.* § 2551.

160 *See* Rossy v. Trib. Superior, 80 P.R. Dec. 729 (1958).

161 P.R. CIV. COD. art. 845, P.R. LAWS ANN. tit. 31, § 2552 (2015) (repealed 2012).

the constituent, of the trustee, or of the *cestui que trust*, excepting only the prohibition [of Section 15 of Act No. 41-1928]."[162] Additionally, Section 15 of Act No. 41-1928 prohibited the duration of "[a] trust providing for a usufruct, income, or pension in favor of an artificial person, [for] more than thirty years."[163] Such trusts were to be considered extinct after that term expired.[164] Similarly, if a trust depended on the execution of a condition and such condition was not fulfilled in thirty years from the date of acceptance of the mandate by the trustee, the condition was considered as lapsed.[165]

Unless expressly stated to the contrary, trusts in Puerto Rico were irrevocable.[166] In fact, only irrevocable trusts were allowed in Puerto Rico.[167] As such, an irrevocable trust may not be dismantled.[168]

Also, "[t]rusts in which there is established an order of succession extending beyond the lives of two persons in being, such as those generally known under the denomination familiar, perpetual, gradual, and successive trusts [were] prohibited."[169] Further, "[t]rusts constituted to the detriment or impairment of the rights of heirs at law as prescribed [in the Civil Code of Puerto Rico]" were prohibited.[170] Thus, any of these types of trust were null.[171] Furthermore, a trust could "be constituted to grant the use or usufruct of property to one [beneficiary] during his lifetime and the ownership in fee simple to another. But any provisions intended to create a subsequent trust or property given in fee simple to a first [beneficiary would] be null and void."[172] Lastly, "[a] trust intendent to have effect after the death of the constituent, if constituted in favor of any person disqualified to inherit from him for any of the causes determined by law, [was] not . . . valid."[173]

iv. The Parties to a Trust: Their Respective Rights and Obligations

A three-person relationship exists in a trust. First, the constituent, also referred to as settlor or grantor. The grantor is the person that transfers a property to the second person in the relationship: the trustee. The trustee disposes of the

---

162 *Id.* § 2546.

163 *Id.* § 2555.

164 *Id.*

165 *Id.* § 2548.

166 Álvarez v. Sec. de Hacienda, 78 P.R. Dec. 412, 422 (1955).

167 *Id.*

168 It should be noted that other jurisdictions grant the Settlor the right to amend the provisions of the trust if he or she reserves such right in the creation of the trust.

169 P.R. CIV. COD. art. 846, P.R. LAWS ANN. tit. 31, § 2553 (2015) (repealed 2012).

170 *Id.*

171 *Id.*

172 *Id.* § 2549.

173 *Id.* § 2554.

property transferred to him, in accordance with the directions of the constituent established in the trust, for the benefit of the third person in the relationship. Finally, the beneficiary is who benefits of the transfer of property made by the constituent to the trustee. Each one of these persons has rights and obligations depending on their capacity.

a. The Grantor

Under Act No. 41-1928, grantors could be a natural or juridical person, or a group of such persons.[174] If the grantor was a natural person, he must have had capacity to dispose of the property conveyed to the trust.[175] Although, Act No. 41-1928 did not mention it, the same requirement was expected of the juridical persons that acted as grantors. After all, the actions that may be conducted by a juridical person are those authorized by the law that regulates them.[176]

The grantor could create the trust in any of the manners previously mentioned, for any purposes not expressly prohibited, imposing any conditions as it wished, and subject to the trust not contravening the law or public morals.[177] The grantor also appointed the initial trustee or trustees, and could also provide for who the substitute trustee or trustees would be.[178] In addition, the grantor could appoint himself as the trustee of the trust or as one of the trustees of the trust, as long as, in the case of its sole appointment as trustee, he was not the only beneficiary of the trust.[179] In the case of the substitute trustees, the grantor could designate a third-party to name the substitute trustee at a future date or upon the incapacity, removal or death of the trustee.[180] The trustee could also be given the power to appoint its successors, although in the case of incapacity or death it might not have been so helpful.

Further, the grantor designated who the beneficiary or beneficiaries of the trusts were.[181] Additionally, the grantor could seek the court's intervention via a summary proceeding in the following instances:

(1) For such precautionary measures as may be necessary in case the trust property should appear to suffer loss or impairment in the hands of the trustee;
(2) For the appointment of a substitute trustee should it become impossible to continue the execution of a trust on account of the incapacity, removal or death of a trustee for whom no substitute has been provided;
(3) For the removal of the trustee whenever the personal interests of the trustee

---

174 *Id.* § 2561.

175 *Id.*

176 *Id.*

177 *Id.* § 2562.

178 *Id.* § 2563.

179 *Id.* § 2559(7).

180 *Id.* § 2563.

181 *Id.* § 2562.

> are opposed to those of the cestui que trust; or whenever the trustee squanders the trust property or manages it fraudulently or maliciously; or whenever the trustee becomes incapacitated or disqualified;
> (4) For termination of the trust and restoration of the trust property whenever such trust terminates by reason of any of the conditions enumerated in [Art. 852 of the Puerto Rico Civil Code].[182]

b. The Trustee

Under Act No. 41-1928, trustees were characterized as being the persons responsible for the execution of the trust.[183] Appointed by the grantor, a trustee could be a natural or juridical person.[184] If a natural person, the trustee had to have all the qualifications required by law to be a guardian.[185] As previously discussed, the grantor could appoint himself as trustee, provided that, he was not the only beneficiary of the trust.[186] In addition, more than one trustee could be appointed. If more than one trustee was appointed, absent anything to the contrary in the trust deed, any decision had to be made by an agreement of the majority of the trustees or by one authorized to act on behalf of all. However, "[i]f the trustees [were] unable to reach an agreement by majority vote, then the court of competent jurisdiction [would] decide what action [should] be taken."[187]

Trustees were remunerated and were entitled to receive the same fees allowed by law to guardians, unless they had agreed to otherwise.[188] No bond was required to be posted, but if one was required by a court of competent jurisdiction or by the grantor, then the cost of such bond was considered an expense of the trust.[189] Trustees were only liable if they incurred in gross negligence.[190] In this respect, they were "not be liable for any error of judgment, mistake of fact or of law, or act or omission, except his own willful default or manifest negligence."[191]

As the 'legal owners' of the property, the trustee had all the rights and actions inherent in fee-simple ownership.[192] However, unless the trustee was expressly authorized to do so, the trustee could not convey or encumber trust property.[193] Nevertheless, a trustee could encumber or alienate property if the purpose of the trust

---

182 *Id.* § 2565.

183 *Id.* § 2569.

184 *Id.* § 2566.

185 *Id.*

186 Dávila v. Agrait, 116 P.R. Dec. 549 (1985).

187 P.R. CIV. COD. art. 849, P.R. LAWS ANN. tit. 31, § 2566 (2015) (repealed 2012).

188 *Id.* § 2558.

189 *Id.* § 2571.

190 *Id.* § 2569.

191 *Id.*

192 *Id.* § 2572.

193 *Id.*

could not be achieved without doing so.[194] Any transfer of trust property, had to be done in accordance with what was established in the trust deed.[195]

Finally, trustees could only be removed by a court order in any of the following circumstances: "(1) Should his personal interest be opposed to those of the cestui que trust; (2) Should he squander the trust property or manage it fraudulently or neglectfully; (3) Should he become incapacitated or disqualified."[196] Furthermore, the statute stated that "[t]he removal of the trustee may be requested by the constituent, by the cestui que trust, or by the district attorney, the last named in the defense of minors or of persons incapacitated to manage their property, or in the interests of the law or public morals."[197]

c. The Beneficiary

Under Act No. 41-1928, beneficiaries were appointed by the grantor and they could be any natural or juridical person. The grantor could be a beneficiary himself.[198] The only limitation imposed on naming someone a beneficiary of a trust was that the person had to be alive.[199] An exception to this rule were the future children of the trust's constituent.[200] In addition, another required qualification is that:

> In a single trust there [could] be instituted two or more cestuis que trust and for the cestui que trust there [could] be designated such substitutes as [were] desired, in the event that he [was] unwilling or unable to accept the trust, or in the case that, having accepted, he die[d] before the execution thereof.[201]

The beneficiaries of a trust had the same causes of action relating to the trust that were available to the grantor.[202] Furthermore, case law filled in some gaps as to who might be a considered a beneficiary under Act No. 41-1928.[203] In that regard, the Puerto Rico Supreme Court decided that the beneficiary's interest in a trust could not be transferred by the beneficiary.[204]

---

194 *Id.*

195 *Id.* § 2573.

196 *Id.* § 2574.

197 *Id.*

198 *Id.* § 2541.

199 *Id.* § 2552.

200 *Id.*

201 *Id.* § 2576.

202 *Id.* § 2577.

203 *See, e.g.,* Belaval v. Trib. de Expropiaciones, 71 P.R. Dec. 265 (1950).

204 *Id.*

v. The Termination of the Trust

Pursuant to Act No. 41-1928, trusts were considered extinguished:

1. By the fulfillment of the purposes for which it was constituted;
2. By impossibility to fulfill it;
3. By the absence of the condition necessary for its execution or by non-performance of the condition within the required time;
4. By the renunciation of the *cestui que* trust, provided he has no substitutes, or by his death, except as provided in §§ 2550 of this title;
5. By the destruction of the thing upon which the trust is constituted;
6. By resolution of the right of the constituent on the trust property;
7. By the confounding of the quality of sole *cestui que* trust with that of the sole trustee;
8. By express and personal agreement of all parties.[205]

Upon the termination of the trust, the trustee had to "dispose by proper conveyance of all trust property remaining in his control or possession in accordance with the terms of the trust indenture, of the agreement, or of a decree by the court of competent jurisdiction, whereby such trust [was] extinguished."[206]

C. The inclusion of the Trust Act in the Civil Code of Puerto Rico

Act No. 41-1928 was codified into Articles 834 to 874 of the Civil Code of Puerto Rico, by virtue of Act No. 48 of April 28, 1930 ("Act No. 48-1930").[207] Specifically, pursuant to Article 9(f) of the mentioned legislation:

> Section 9.- The final provision of the Civil Code now in force is hereby amended, by adding a second paragraph thereto, which will read as follows:
>
> "All the provisions of the acts stated below, which are [not] at present contained in this Code, and which were incorporated into it by the Code Commission, are hereby included in this Code:
>
> . . . .
>
> (f) An Act to provide for the [Constitution of Trusts (*fideicommissa)* and for Other Purposes], approved April 23, 1928." [208]

This resulted in the Articles contained in Act No. 41-1928, to be incorporated into the Puerto Rico Civil Code as Articles 834 to 874. These Articles were located in Book III, Title III, Chapter III of the Civil Code, which regulates the provisions related to inheritance. The inclusion of the trust provisions in this particular place

---

205 P.R. CIV. COD. art. 852, P.R. LAWS ANN. tit. 31, § 2559 (2015) (repealed 2012).

206 *Id.* § 2575.

207 *Cf.* Act No. 48 of April 28, 1930, 1930 P.R. Laws 368 (repealed 2012) (it should be noted that the provisions of Act No. 41-1928 were not altered by Act No. 48-1930).

208 *Id.* at 392 (it should be noted that the Spanish version of the quoted section refers to Act No. 41-1928, while the English version refers, probably by mistake, to Act No. 42 of April 23, 1928, which regulates Trust Companies).

of the Code were criticized.[209] For instance, according to some commentators, the mentioned Articles should have been included after those dealing with the deposit contract located in Book IV of the Civil Code, which regulates obligations and contracts.[210]

D. The First Amendment to the Provisions of Trust in the Civil Code of Puerto Rico: The Recognition of Charitable Trusts in Puerto Rico

Charitable trusts were incorporated in Puerto Rico's legal system by virtue of Act No. 211 of May 8, 1952 ("Act No. 211-1952").[211] To this effect, the previously mentioned law amended Article 834 of the Civil Code of Puerto Rico to add the following paragraph below the definition of a trust:

> A charitable trust is a trust relationship with respect to property, arising as a result of a statement of the purpose to create said trust, and imposing on the person in possession of such property duties in equity for the exploitation thereof for a charitable purpose.[212]

The Puerto Rico Supreme Court noted in *Sánchez González v. Registrador*, that the definition of a charitable trust incorporated into Puerto Rico's legal system in 1952, was a literal translation of the definition of said type of trust as it appeared in the *Restatement (Second) of Trust*.[213] Additionally, Act No. 211-1952 also amended various provisions of the current trust legislation at that moment. The reason for these amendments was to ensure the proper adaptation of the trust law to recognize charitable trusts in the Commonwealth's jurisdiction. For example, the provisions that dealt with the duration of a trust were amended to recognize that the existence of charitable trusts could be perpetual.[214] Also, Act No. 211-1952 validated any charitable trust created before the enactment of the mentioned law.[215] However, Act No. 211-1952 did not expressly incorporate in Puerto Rico's legal system all of the provisions applicable to charitable trusts in the United States. Thus, as with ordinary trusts, various gaps existed.

Nevertheless, it should be noted that in *Sánchez González*, the Supreme Court posed the question as to whether by adopting the definition of charitable trust

---

209 4-III JOSÉ RAMÓN VÉLEZ TORRES, CURSO DE DERECHO CIVIL: DERECHO DE SUCESIONES 359 n.4 (2nd ed. 1992).

210 *Id.*

211 P.R. CIV. COD. art. 834, P.R. LAWS ANN. tit. 31, § 2541 (2015) (repealed 2012) (the referenced information can be found under the *History*, *Amendments* and *Effectiveness* parts of the annotations for § 2541); *See also,* Sánchez González v. Registrador, 160 P.R. Dec. 361, 370 (1977).

212 P.R. LAWS ANN. tit. 31, § 2541 (2015) (repealed 2012).

213 *Sánchez González*, 160 P.R. Dec. at 374.

214 P.R. LAWS ANN. tit. 31, § 2541 (2015) (repealed 2012).

215 *Sánchez González*, 160 P.R. Dec. at 372.

contained in the *Restatement (Second) of Trust*, the Puerto Rico Legislative Assembly incorporated into the Commonwealth's legal system all the provisions applicable to said type of trust.[216] The Court did not answer the query, as other legal arguments existed that disposed of the controversy in the case.[217] However, since the Supreme Court has turned "to the characteristics of the Anglo-Saxon trust to solve, with due respect to our civil law tradition, many of the questions posed by [Puerto Rico's] statute on trusts",[218] it can be reasonably argued the same conclusion would be reached for charitable trusts purposes.[219]

E. Attempts to modernize the Puerto Rico Trust

Prior to the 2012 legislation—which is the statute that is currently in force—there were at least two instances when attempts were made to modernize the Puerto Rican trust. In the 1970s, Luis F. Sánchez Vilella, who is considered one of the persons who has most studied trusts in Puerto Rico, published a draft of a bill for a new Code to regulate trusts.[220] Also, in 1979, Robert A. Hendrickson, claims to have drafted a new Puerto Rico Trust Code and a draft of the Report of the Committee on the Puerto Rico Trust Code. Both documents were submitted to Raymond L. Acosta, then Chairman of the Trust Committee of the Puerto Rico Bankers Association.[221]

An interesting point made by both, Sánchez Vilella and Hendrickson, is the fact that although other civil law jurisdictions that had incorporated Alfaro's conception of the trust into their legal systems had modernized the figure, the Puerto Rico trust—after fifty years in use—had remained unaltered.[222] This reality hindered Puerto Rico's attractiveness from foreign trust investments as there was uncertainty pertaining to the applicable law.[223] For unknown reasons, neither the Sánchez Vilella draft nor the Hendrickson draft became law in Puerto Rico. However, Sánchez Vilella's *Anteproyecto sobre un Código de Fideicomisos para Puerto Rico* was the basis for Act No. 219 of August 31, 2012.[224]

---

216 *Id.* at 374.

217 *Id.*

218 Dávila v. Agrait, 116 P.R. Dec. 549, 565 (1985) (translation by author).

219 Puerto Rico Trust Act, Act No. 219-2012, P.R. LAWS ANN. tit. 32, § 3355 (2017) (this conclusion is further sustained by the Statement of Motives of the current trust legislation, which will be discussed *infra*).

220 Sánchez Vilella, *supra* note 132; Luis F. Sánchez Vilella, *Anteproyecto sobre un Código de Fideicomisos para Puerto Rico*, 47 REV. COL. ABOG. PR 11 (1986).

221 *See* Robert A. Hendrikson, *The Puerto Rico Trust Code,* 13 INT'L L. 344, 348 (1979).

222 *Id.* at 347-49; Sánchez Vilella, *supra* note 132.

223 Hendrikson, *supra* note 221.

224 Statement of Motives, Puerto Rico Trust Act, Act No. 219-2012, 2012 P.R. Laws 2038, 2039-40.

F. The "New" Puerto Rico Trust

i. Act No. 219-2012

On August 31, 2012, then-Governor of Puerto Rico, Luis G. Fortuño Burset, signed into law Act No. 219, also known as the *Trust Act* ("Act No. 219-2012"). This law created a new legal regime for trusts in Puerto Rico. However, a careful analysis of the bill that became Act No. 219-2012, reveals that Sánchez Vilella's idea of a trust code was not entirely used.[225]

Although the essence of the trust remains very similar to the previously discussed regime, some material changes were implemented. For instance, the definition of a trust was amended to:

> A trust is an *autonomous estate* resulting from *the act* whereby a trustor [or grantor] transfers property or rights, to be administered by a trustee in favor of a beneficiary or for a specific purpose, according to the provisions of the trust instrument and, in the absence thereof, to the provisions herein set forth.[226]

As can be seen from this definition, the trust is no longer a mandate, but rather an autonomous estate. Article 2 of Act No. 219-2012 defined, in turn, *autonomous estate* as "[t]rust property or rights constitute a fully autonomous estate separate from the personal estate of the trustor, trustee, or beneficiary that is limited to a specific purpose as determined at the time of the constitution thereof."[227]

Albeit the language of Act No. 219-2012 does not expressly state so, the reports that accompany House Bill 3712, the Bill that became Act No. 219-2012, conceived the trust as a legal person.[228] In fact, it was an attenuated legal person because it was not fully vested in the trust. An interesting result of the analysis of the legislative history of Act No. 219-2012 is the fact that the definition of the trust, as introduced, defined the trust as the "judicial person that results from the act whereby a trustor transfers property or rights . . . ."[229] This definition of the trust was recommended for approval by the Puerto Rico House of Representative's Judiciary Commission in its positive report of House Bill 3712.[230] Further, the Puerto Rico Senate Judiciary Commission did not mention any amendments to the definition in its report. However, the markup version sent for a vote in the Senate did amend the language to the one that was finally approved and previously quoted.[231]

---

225 *Cf. id.* at 2038 *vis à vis* Sánchez Vilella, *supra* note 220.

226 Puerto Rico Trust Act, Act No. 219-2012, P.R. LAWS ANN. tit. 32, § 3351 (2017) (emphasis added).

227 *Id.* § 3351a.

228 *See* H.B. 3712, 16th Leg., 7th Ord. Sess. (P.R. 2012).

229 *Id.*

230 Positive Report on House Bill 3712 by the Puerto Rico House of Representative's Judiciary Commission of May 8, 2012.

231 *See* Markup of House Bill 3712 by the Puerto Rico House of Representative's Judiciary Commission of May 8, 2012, at 3.

Obviously, the language as approved by the Senate was subject to a conference procedure.

Another important change in the Puerto Rico trust law regime that Act No. 219-2012 implemented was that the ownership of the assets held in trust was of the trust itself and not of the trustee. To this effect, Article 3 of the mentioned Act provides that: "During the effectiveness of the trust, all trust assets shall constitute the autonomous estate of the Trustee, and the beneficiary shall hold a beneficial interest that is fulfilled upon termination of the trust unless it includes income or assets that may be received periodically before that."[232] Based on the foregoing, once property is transferred to a trust, said property is of the trust itself and the beneficiaries of the trust hold a beneficial interest on the assets of the trust. The trustee has the obligation to administer the assets of the trust for the benefit of the beneficiaries.[233] In other words, the trustee is no longer the person that holds the title of the property in trust; it is just the administrator.

Of similar importance, Act No. 219-2012 clarified the duties and responsibilities of the grantor, trustee, and beneficiaries.[234] The mentioned law specifically proclaimed that, absent express instructions or provisions in the trust deed, the law works as a gap filler.[235] For instance, if the trustee is allowed to invest, absent anything to the contrary, the trustee must follow the prudent investor rule.[236] Additionally, the law in question creates the trust advisor position.[237] More so, the law clarified the rights of creditors of the persons involved in the trust against the trust or property given to them by the trust.[238]

Further, Act No. 219-2012 created a special trust registry, where all the newly constituted trusts are to be recorded.[239] Recording of the trusts is a requirement for their validity.[240] Also, Act No. 219-2012 limits the duration of the newly created *inter vivos* trusts to seventy-five years and charitable trust to ninety years.[241]

Pertaining to the constitution of trusts, Article 7 of Act No. 219-2012 requires that trusts be constituted by virtue of a public deed.[242] Additionally, Article 8 of the legislation in question lists the minimum standards that must be contained in the public deed for a trust to be valid.[243]

---

232 Puerto Rico Trust Act, Act No. 219-2012, P.R. LAWS ANN. tit. 32, § 3351b (2017).

233 *Id.* § 3351.

234 *Id.* § 3351c.

235 *Id.*

236 *Id.* § 3353m.

237 *Id.* § 3353i.

238 *See Id.* § 3353j.

239 *Id.* § 3351d.

240 *Id.*

241 *Id.* § 3351e.

242 *Id.* § 3352.

243 *Id.* § 3352a.

Regarding charitable trusts, Act No. 219-2012 changed their definition to trusts "created for the benefit of society in general or a considerable sector thereof."[244] Further, Article 65 of the Act lists various purposes for which a charitable trust may be constituted.[245] Among the recognized purposes for which a charitable trust may be constituted is "any other purpose the achievement of which is beneficial to the community in general, particularly if they are philanthropic, cultural, religious, or scientific in nature."[246] As to the title of the property held in a charitable trust, the law does not provide anything specific. However, based on the new definition of a trust and the language of Article 3 of Act No. 219-2012, it can be reasonably argued that the title of the property should reside in the trust itself. Consequently, as previously discussed, the property held by any person—including a trust—which is not common or public domain property, should be considered private property.[247]

Another point to consider is the applicable law that governs trusts after the enactment of Act No. 219-2012. The language contained in the aforementioned Act does not provide for a transition from the old law to the new. In addition, as the provisions of the Civil Code of Puerto Rico that regulated trusts prior to the adoption of Act No. 219-2012 were repealed, this raises the question of what is the applicable law to trusts organized pursuant to those provisions.

Finally, Act No. 219-2012 provided that any legal gaps were to be filled by turning to the Anglo-American law on trusts.[248] Despite making the former statement, the statute does not point to a specific source of law in the Anglo-American law, and the legislative history of the Act is devoid on the subject.

ii. Amendments to Act No. 219 of August 31, 2012

Act No. 219-2012 has been subject to two amendments after its enactment. Both amendments occurred in 2017. The first amendment was Act No. 9 of February 8, 2017 ("Act No. 9-2017"). The second one was Act No. 102 of August 17, 2017 ("Act No. 102-2017").

a. Act No. 9-2017

The major change to the Puerto Rico trust was the result of Act No. 9-2017. This amendment granted the Puerto Rico trust with complete and independent legal personality. To achieve this, Article 2 of the Act added a paragraph to the definition of autonomous estate. The added sentence provided that "[o]nce the deed of constitution of the trust has been executed and filed in accordance with

---

244 *Id.* § 3354.

245 *Id.* § 3354c.

246 *Id.*

247 *See* P.R. CIV. COD. arts. 256-257, P.R. LAWS ANN. tit. 31, §§ 1025–1026.

248 Puerto Rico Trust Act, Act No. 219-2012, P.R. LAWS ANN. tit. 32, § 3355 (2017).

the provisions of this Act, a legal entity shall be set up independent of the grantor, trustees and beneficiaries that comprise it, enjoying full legal personality."[249]

Of similar magnitude to the previous amendment, Article 11 of Act No. 219-2012 was amended to provide that the title of the assets of the trust were a property of the trust itself.[250] This was done by inserting a sentence at the beginning of the previously enacted section which reads: "The trust is the title-holder of all the real or personal property that were transferred to the trust."[251]

Also, the previously mentioned law was amended to clarify the rights of creditors against the assets of the trust or the beneficiary's interest in the trust.[252] Further, the instances when the trust was terminated were increased.[253]

Lastly, a new chapter that deals with the Pension Plan Trust was incorporated into the trust legislation.[254] Accordingly, various provisions of the Puerto Rico Internal Revenue Code of 2011, as amended, that dealt with this subject matter were amended to provide for the newly enacted provisions of dealing with this type of trust.[255]

b. Act No. 102-2017

Act No. 102-2017 had two purposes. First, it amended one of the provisions addressing when a trust can be terminated.[256] In particular, the amendment eliminated the requirement that the trust deed must provide for the termination by the agreement of the trustee and beneficiaries. Second, it corrected an error in a reference to Article 64 of the *Puerto Rico Trust Act*.[257]

iii. Case Law

To the date of this article, the Puerto Rico Supreme Court has not published an opinion or judgment interpreting Act No. 219-2012 or its amendments. Regardless of this fact, the reader should be aware that the Puerto Rico Court of Appeals has had the opportunity to discuss the mentioned statute.

---

249 *Id.* § 3351a (2017 & Supp. 2018) (translation by author).

250 Act No. 9-2017, 2017 P.R. Laws 472.

251 P.R. LAWS ANN. tit. 32, § 3352d (2017 & Supp. 2018) (translation by author).

252 2017 P.R. Laws 472, 473.

253 *Id.* at 474.

254 *Id.* at 475.

255 *See Id.* at 477–91.

256 Act No. 102-2017, 2017 P.R. Laws 2400.

257 *Id.*

IV. GENERAL PRINCIPLES OF BUSINESS ORGANIZATIONS IN PUERTO RICO

A. The Choice of Entity Problem

As previously mentioned, recent developments in Business Organization Law have increased the different types of entities that may be selected when organizing a new business venture. Consequently, "[t]he number and variety of distinct statutory legal forms of business organization have grown dramatically since the late 1980s."[258] In that regard, "[t]he ever-expanding law governing the formation and operation of business organizations encompasses everything from sole proprietorships to large publicly traded corporations. Amid these extremes resides a seemingly endless variety of business forms and combinations of forms . . . ."[259] However, "all forms of business organization are essentially the same, mere variations on the same theme."[260] On the whole:

> Many states boast over a half dozen separate statutes and codes governing the organization and operation of business entities. States typically consider each organizational entity as wholly self-contained; each statute provides a comprehensive set of legal default rules for a distinct business organization. Each state's enactments often have somewhat unique characteristics, multiplying the morass fifty times over. In addition, the Treasury Department ("Treasury") and the Internal Revenue Service ("Service") have codified several separate strains of tax law to address the issues unique to these distinct business organizations and have addressed the other state-law manipulations on a case-by-case basis, thereby making business organization tax attributes as varied as the business forms that exist.[261]

Puerto Rico is not an exception to this trend. Following the states in the United States of America, Puerto Rico provides businesses with a variety of business organizations forms from which to choose.[262] Namely, the sole proprietorship, the civil partnership, the mercantile partnership, the limited partnership, the limited liability partnership, the limited liability limited partnership, the limited liability company, the closely held corporation, the professional services corporation, and the regular corporation. As in the majority of the jurisdictions, each type of organization has its characteristics, advantages, and disadvantages.

---

258 Robert R. Keatinge, *Universal Business Organization Legislation: Will it Happen-Why and When*, 23 DEL. J. CORP. L. 29, 31 (1998).

259 John H. Matheson & Brent A. Olson, *Call for a Unified Business Organization Law*, 65 GEO. WASH. L. REV. 1, 2 (1996).

260 Robert A. Kessler, *With Limited Liability for All: Why Not a Partnership Corporation?* 36 FORDHAM L. REV. 235, 252 (1967).

261 Matheson & Olson, *supra*, note 259, at 3.

262 *See* DÍAZ OLIVO, *supra* note 3.

Despite the great variety of available business organization forms, "[e]very business organization should have provisions addressing all characteristics of an organization."[263] These characteristics, according to various scholars are: (1) a general statute that governs the business entity; (2) independent legal personality from its members; (3) property of the entity is distinct from the property of its members; (4) limited liability or the fact that the property of the entity's members cannot be taken in execution for the debt of the entity, and *vice versa*; (5) some type of registration requirement; (6) designation of persons to control the actions of the entity; (7) naming requirement, and (8) determined existence.[264]

The previously listed array of business organization forms available in Puerto Rico satisfy these characteristics. For instance, the Puerto Rico corporation is regulated by the *Puerto Rico General Corporations Act of 2009*, as amended.[265] The corporation is a separate legal person from its shareholders,[266] can be the owner of property itself,[267] and provides limited liability to its shareholders provided they had fully paid for their shares.[268] For the corporation to exist, documents must be filed before the Puerto Rico Department of State,[269] and the name of the entity must recognize it as a corporation by including certain words or acronyms that let people know about its limited liability.[270] Also, the corporation is controlled by a board of directors comprised of natural persons.[271] The directors are not responsible for their decisions unless they incur in gross negligence.[272]

Likewise, the Puerto Rico Limited Liability Company (LLC) complies with the same characteristics. Namely, this type of business organization is regulated by Chapter XIX of the *General Corporation Act*.[273] Like the corporation, the LLC is a separate legal person from its members and they can be the owners of the property itself,[274] and provides limited liability to its members.[275] To organize a LLC, the articles of organization must be filed with the Puerto Rico Department of State,[276]

---

263 Keatinge, *supra* note 258, at 36.

264 *See generally id.* at 37-44.

265 General Corporations Act, Act No. 164-2009, P.R. LAWS ANN. tit. 14, §§ 3501–4084 (2011 & Supp. 2018).

266 *See, e.g.*, Liquilux Gas Corporation v. Berríos, 138 P.R. Dec. 850, 860 (1995); Swiggett, v. Swiggett, Inc., 55 P.R. Dec. 76 (1939).

267 P.R. LAWS ANN. tit. 14, § 3522.

268 *Id.* § 3588.

269 *Id.* § 3502.

270 *Id.*

271 *Id.* § 3561.

272 *Id.* § 35631.

273 *Id.* §§ 3951-4006.

274 *Id.* § 3956.

275 *Id.* § 3969.

276 *Id.* § 3962.

and the name of the entity must identify it as a limited liability company by including certain words or acronyms—i.e., LLC or CRL—that lets people know about its limited liability.[277] Also, the members of the entity can elect to control the entity themselves or to delegate such authority to administrators.[278] As the directors of a corporation, the administrators of a LLC are only liable if they incur in gross negligence in the performance of their duties.[279]

A difference between a LLC and a corporation is their taxation. Although the general rule is that both entities are taxed as corporations, LLCs can request to be taxed as disregarded entities and the income *passes-through* to the members of the limited liability company, with the income being taxed at their level.

CONCLUSION: THE "NEW" PUERTO RICO TRUST - ANOTHER TYPE OF BUSINESS ORGANIZATION

To finish the story: Convinced by the store-owner, the mother bought the so–named 'bird', and the child was incredibly pleased. A few days later, the 'bird' was acting strangely, so she took it to the vet. When she started to refer to the animal as a bird, the vet stopped her and said: "Mam, I am sorry, but this is not a bird, it is a dog." Confused, the mother explained that the store-owner had told her it was a bird. The vet, then told her, "the name does not make the thing" and explained why the animal she had was, really, a dog.

Trusts are very interesting legal figures. At some point in time, civil lawyers thought that the same could not be incorporated into a civil law system. Notwithstanding, after careful consideration of what a trust is, some jurists found ways to incorporate the crown jewel of the Anglo-Saxon law into their legal systems.

Puerto Rico, a civil law jurisdiction, incorporated the trust following the lead of Panama and Dr. Ricardo Alfaro. Although conceived as an *irrevocable mandate* in the law, the conception of the trust in Puerto Rico evolved through judicial interpretation. According to the Puerto Rico Supreme Court, what the legislator did when it decided to incorporate the trust in Puerto Rico was to incorporate the Anglo-Saxon trust.[280] Therefore, any legal gap or controversy pertaining to trusts should have been analyzed taking into consideration the common law.

After almost eighty-five years, a new trust Act was enacted. Arguably, Act No. 219-2012 validated the pronouncements made in *Álvarez v. Secretario de Hacienda*, as to the conceptualization of the trust in Puerto Rico.[281] It did so by changing the definition of the trust, as many Latin American jurisdictions did after studying the conceptualization of the trust argued by Pierre Lepaulle, to an autonomous estate.

---

277 *Id.* § 3952.

278 *Id.* § 3973.

279 *Id.* § 3977.

280 *See* Álvarez v. Sec. de Hacienda, 78 P.R. Dec. 412, 419-420 (1955) (reconsidered in Álvarez v. Srio. de Hacienda, 80 P.R. Dec. 16, 35-41 (1957).

281 80 P.R. Dec. at 35-41.

Further, it provided that any legal gap pertaining to trusts were to be filled by turning to the Anglo-American law on trusts.[282]

Unfortunately, the amendments to Act No. 219-2012 made by virtue of Act No. 9-2017, which granted independent legal personality to the trust, rendered the Puerto Rico trust another type of business organization. When analyzing the characteristics of the current Puerto Rico trust one cannot fail to recognize that it complies with the characteristics that identify other forms of business organization.

The Puerto Rico trust has a general statute that governs the business entity. This is the *Puerto Rico Trust Act*. Also, it has an independent legal personality from the persons involved with the trust. This was made clear by the amendments made under Act No. 9-2017. More so, according to Article 11 of the *Puerto Rico Trust Act*, the trust can be, in and of itself, the titleholder of property. Further, the trust provides limited liability to the persons involved in the same: the grantor, trustee, and beneficiary. This is true because, once transferred to the trust, the assets held in trust are protected from the creditors of the persons involved and, conversely, the assets of the persons involved in the trust are not subject of being responsible for paying the debts of the trust. Also, to be valid a trust must be registered per Article 5 of the mentioned law. As to the administrator, Act No. 219-2012 provides that the trustee shall administer the trust. Further, the rights of the grantor and the beneficiaries are regulated in the law, absent any other provision in the trust deed. Another factor that makes the trust a business organization is that the name of the trust must identify it as such. Lastly, the trust has a determined existence, which can be up to seventy years.

Based on this reality, it is inevitable to conclude that the trust is just another type of business organization available in Puerto Rico. Understanding this reality is of the utmost importance for everyone for various reasons. First, conceptualizing the trust as a type of business organization rather than a trust as generally conceived has many consequences in developing Business Law. It provides for new organizational structures, as well as for new tax planning possibilities. Second, domestic and foreign investment might be attracted to invest in Puerto Rico by this entity as they can create to their unique specifications. Third, when controversies arise, turning to the Anglo-American law on trusts would not be of much help, to the extent that the entity being dealt with is not a trust—as conceived in that legal system—but rather a form of business organization.

---

282 Puerto Rico Trust Act, Act No. 219-2012, P.R. LAWS ANN. tit. 32, § 3355 (2017).