

The purpose of this study is to draw on the plane a comparative view of the trust deed, the French experience and that our local, to come out from the perimeter of the traditional review of the continental law opposed the right of common law systems, in an effort to propose to as far as possible, an unprecedented reconstruction and the problem of trust. The goal is to explore the semantics of the trust deed in France and Italy, through the identification of the specific forming segregated investigating the fiduciary transactions and fiduciary properties. Coefficient catalyst of all the research work is represented by the French Law on Trusts, which is unique in the Western continental law scene.

The work was outlined by addressing the macro-areas, which represent so many quaestiones iuris; namely: 1. The external significance of the cause fiduciae French law; 2. The external significance of the cause fiduciae Italian law. 3. The separation of assets; 4. Physiology and pathology of fiduciary transactions, both in practice and in the coding. The survey framework can be so proposed.

We tried to explore the more meaningful aspect of fiduciary, or that of its external relevance and, therefore, if, given the traditional division between cause solvendi due donandi and causes credendi, the cause fiduciae plays an independent significance, or otherwise conditions the explication of the negotiating operations, becoming a mere connotation motivational entire negotiating activities, arriving at a different response from ordering Italian than French. The trust deed comes into French law in a landscape unbundled due to the simultaneous presence of a number of cases, due to so-called assumptions positivizzate, that although they come across in the element Trustee a coefficient unit referential, are equipped with such a polymorphism, to prevent a unified treatment of the trust deed itself. The legislative intervention, which since 2007 has led, on several occasions, the entrance to the trusts into French law, plays a role of evolutionary interpretation of the entire institution of the trust, globally understood. It is observed that there is a before and after the establishment Law, and this time scan conditions the application of the margin trusts named and unnamed. Before the trusts existed, in fact, trust case unnamed, confined to individual cases, provided for by law, posing as borderline cases, after positivised is for the first time, a former professed, the trust deed, in this case the fiduciary agreement to real effects who shall be the chief task of the appointed contract. The trusts becomes, therefore, the legal trust hypothesis, which pertains to a concept C.D. Technical confidence, which involves a reinterpretation of the so-called regulatory consistency innominate trusts which are de facto legitimized recovering and trusts in a slide by default legislation.

Trust, therefore, explicitly accredits a reductio ad unum of the French trust deed with the result that one of the key criteria of the French law trust is represented by C.D. attributive model based on the transfer of ownership of property by the settlor to the trustee, connected with the creation of a trust property.

Thus we witness the overcoming of the principle of unity and dominicale the introduction of the special regime of fiduciary property. This involves the adoption, for the system beyond the Alps, the attributive model as a base model (only for trusts), with a prevalence of so-called Romanistic system (based on the transfer of ownership and the simultaneous creation of an instrumental temporary ownership) and complete disqualification of forms of self-declared confidence. In the second chapter, he addressed the trust deed Italian law, verifying the degree of reception of doctrinal input, in negotiating procedures, to investigate the individual cases related to forming confidence

In Italian law, in fact, in contrast to the French, the positivization process has not had the course. Except those that the doctrine considers, albeit with some doubts, assumptions trusts immanent to the Civil Code (referring to the return contracts, the mandate without representation and testamentary trust) the trust deed remains a reception morbus institution or a institution where the typological conformation and discipline regulations are the product of a doctrinal stratification, subjected to a counterfactual evidence by the courts. Although in Italy it is widely believed the cause fiduciae he does not hold an external relevance, but it is, so to speak, which is included in the articulation of the cause being given and the cause credendi, it was considered in this study that the practice track and devised solutions the doctrine deliver a significant external profile cd mediated, the cause fiduciae.

In the third section was examined the forming sheet separation, proposing: on the one hand, the identification of the separation, which articulation instrument of equity and with it the creation of a new type of property, the C.D. trust property; on the other we have tried to locate the guiding principle of the trust property, linking it to the concept of so-called Technical confidence. In the first case, it tried to outline the common route of continental law, that in France, as in Italy, led to the creation of assumptions to separate assets and equity destinations. It is investigated, therefore, what is the explanation margin of confidence, both as a precept, both as a penalty and if it is able to catalyze the segregated, that substantiates the hypothesis of fiduciary property. Once the relationship between trust and segregated, is some cases are analyzed, which are the so-called symptomatic figures of diffusivity of fiduciary operations. In the French context, the analysis focused on identifying the main pivot points in the so-called case mentioned, namely the difficulties the interpreter encounters in discerning the lawfulness profile from that of opposition to the mandatory rules or of fraud to the law. You tried to define the archetype trusts and progressive conversion, the French legislator has accomplished through regulatory interventions by the unitary option of the trust agreement to the creation of two separate types of contract, broadly corresponding to the trust cum cum friend and creditor.

As regards, however, the Italian law, the individual cases are analyzed, which include the issues of greatest technical and legal significance, in terms of fiduciary transactions. In our national context we have tried to cordon off the solutions allowed by law for execution lead to the trust agreement, if the trustee is recalcitrant, soldering the so-called external importance of the cause fiduciae. It is observed how the Court's legitimacy and that of merit have given concrete operational effectiveness to pactum fiduciae; what findings the Courts have embraced to justify their choices, both in statutory and in the corporate sector. Given the vastness of the subject trust deed was drawn up, for explanatory purposes, the concept of the so-called forming general. This expression means forming a cordon inclusive, relating to a specific institute of general application, striking of splitting into more institutions among themselves interconnected, and whose explanation is necessitated to describe and analyze in terms of regulation, a complex legal reality. It was considered that it could not deal with, in key comparative, trust, except through scanning additional steps, consisting of as many formants, such as property and fiduciary ownership separation, too, at the same time with heuristics effectiveness autonomous, both of heuristic effectiveness cd derived, because they have inferential suitability, in order to forming general confidence.

The concept of technical confidence, which forming and characterization coefficient of the individual cases considered, allows you to select two areas of operation of the trust agreement, in which you can try to enroll for reasons of synthesis, all the sources that have been asked to

examine.

There is a first area of operation, in which you can appreciate a substantial discrepancy between the French and Italian experiences. The codification of the trusts has determined the final transition of the trust, from a reception morbus system, a positive law system, in which almost all the statutory disciplinary fields, they suffer a new course. The liberality of the industry, given the prohibition of trust donations, of which all'art.2013 cc fr., the result is concerned, for the past assumptions of innominate liberality, which through an indirect process, allow the creation of fiduciary transactions, and they receive from Institutional reads a subsequent legitimation. In Italy, there is however still a system relegated to the operations of reception morbus, in which attention seems to focus mainly on the trust of the transaction product, namely the creation of the trust property, according to the development of the concept of separation of assets and subsequent regulatory changes. The individual cases would seem to find a unit dogmatic, only on the assumption of temporary ownership regime induced segregated. It was considered that, due to the instrumental nature of the trust property, is identifiable upstream the pactum fiduciae that, creating a basis of a technical requirement for the transaction as a trust, the other makes the remaining transmission operations of assets and rights, signaling it as a sequence of a larger process. You can not, however, infer from this a unifying feature of the individual trust case, which, therefore, are imbued with their uniqueness, while preserving, as a last resort catalyst that concept of technical confidence, which informs the entire operation and phenomenally It induces the trust property.

From a different perspective, the French system and the Italian, net of the differences set out above have a contiguity profile dogmatic, evincibile especially on the basis of the methodological approach followed hinges, nell'enucleazione of fiduciary case. In both jurisdictions fiduciary operations are investigated, first, on the descriptive level, in order to evaluate the plan differentiate than simulatory case. Simulation and circumvention of the law thus becomes the negative paradigm which must comply with any fiduciary transaction (meaning they should not be integrated any form of circumvention of the law or a simulation). Lacking a positivization process, in Italy the setting of the problem lacks the statement of principle, so often remarked upon by the legislature and by the French doctrine. This does not mean, however, that simulation and fraud of the law are, also for the domestic setting, the limit trajectories, which must not suffer from the intersection of any fiduciary operation. the principle of equal treatment of creditors and the principle of financial liability of the debtor can be defined as many principals of providing guarantees, to prevent the overflow of confidence in simulation or in a device, which produces the phenomena in Italy in fact, the ban commissorio the covenant, of circumvention of the law, globally understood.

This plan of structural contiguity between the empirical reality Italian and French, on the one hand suggests the imminence of a trend of so-called continental law, an alternative to the Anglo-American trusts matrix, on the other predicts, for Italy, the adoption of similar solutions to those of the French model, both as regards the adoption of translative contractual structures, creating a fiduciary transactions with attributive model, both with regard to the so-called discipline temporary ownership, real instrumentum, the entire operation.