

# The Concept Of “Beneficial Ownership” In Anglo-American Law and The Concept Of “Economic Ownership” In the Civil Law Systems of Continental Countries

Raximova Dilorom Xaitbayevna

Teacher at Tashkent State Law University, Independent researcher, Uzbekistan

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**Abstract:** The concept of “beneficial ownership” developed within the framework of equity law as a result of the evolution of trust-based legal relationships. It is a product of the “split” ownership model. The division of ownership into legal title (under common law) and beneficial title (under equity law) is rooted in the unique historical development of Anglo-American law. Within the trust framework, in accordance with the rules of equity, a beneficial owner acquires not only a personal (in personam) right against the trustee, but also a proprietary (in rem) right enforceable against third parties.

In contrast to Anglo-American jurisdictions, countries belonging to the continental (civil law) system recognize the absolute nature of ownership and define the derived limited real rights at the level of national civil legislation. In the civil law of these countries, the concept of “economic ownership” exists, which refers to the owner granting another person the right to use the property and to derive income from it.

**Keywords:** Beneficial ownership, beneficial ownership, economic ownership, common law, split ownership.

**Introduction:** The concept of “beneficial ownership” developed within the framework of equity law as a result of the evolution of trust-based legal relationships. It is a product of the “split” ownership model. The division of ownership into legal title (under common law) and beneficial title (under equity law) is rooted in the unique historical development of Anglo-American law. Within the trust framework, in accordance with the rules of equity, a beneficial owner acquires not only a personal (in personam) right against the trustee, but also a proprietary (in rem) right enforceable against third parties.

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Although some civil law countries' civil codes (e.g., the Hungarian Civil Code adopted in 2013) include the term “beneficial ownership,” its meaning is equated with the limited real right of usufruct, and thus it does not fully correspond to the notion of beneficial ownership as understood in common law.

In order to understand the essence of beneficial ownership, it is important to explore the etymology and historical origin of the term “beneficial owner.” The word “beneficial” derives from the Latin word *beneficialis*, which in turn comes from *bene* (meaning “good” or “well”) and *facere* (meaning “to make” or “to do”). Therefore, the literal meaning of “beneficial” is “one who receives a benefit” or “a privileged person.”

Although the exact historical origin of the trust is unknown, it is established that trusts were widely practiced during the 12th century, particularly in the era of the Crusades. Knights who departed England for long military expeditions to conquer distant lands

entrusted their estates to reliable individuals for temporary management. These individuals, acting as trustees, held full legal ownership over the knights' land plots, including the authority to grant use of the land to others and to collect income from it. However, the knights intended to retain their ownership rights (i.e., the title to the estate), since under English law at the time, the ultimate owner of the land was considered to be the Crown.

Thus, the concept of "split ownership" emerged: courts of equity recognized the knights as the true (beneficial) owners of the land, while common-law courts considered the individuals who exercised control and ownership powers in the knights' absence as the legal owners.

It should be noted that knights typically transferred their estates for the benefit of their family members. This type of ownership was not legal in nature, but rather factual. Consequently, when the crusaders returned, they could not defend their property rights in common-law courts, which did not recognize them as the title holders. Instead, they sought justice in the courts of equity, led by the Lord Chancellor, which based their judgments on principles derived from canon and Roman law.

With the adoption of the Statute of Uses in 1535, the beneficiary under a trust was formally recognized in equity as the true owner of the trust property.

In the Earl of Oxford's Case of 1615, a precedent-setting judgment established the supremacy of equity over common law, including its precedence over the principle of *res judicata*. In delivering the judgment, the Lord Chancellor famously stated:

The Royal Chancery is described as "the keeper of the King's conscience, governed by rules of law and equity, and uniting virtue with justice, whereas other courts (i.e., those operating under common law rules) proceed strictly according to the rigid rules of law. However, in cases where the strictness of the law might result in injustice to the citizen, the Chancery evaluates the matter from the standpoint of equity, harmonizing law with fairness".

Under common law, property is considered an indivisible category, meaning only legal ownership is recognized. In contrast, equity acknowledges a functional division of ownership between different persons — that is, legal title may belong to one person, while the economic or financial interest may rest with another. The latter is referred to as beneficial ownership.

The concept of "beneficial ownership" in equity refers to the existence of an equitable or beneficial interest in

property, distinct from legal ownership. This concept is closely tied to trust law, as it serves to limit the powers of a trustee by ensuring they are exercised in the interest of those who hold the beneficial interest.

Within the trust structure created under the principles of equity, property is divided into two parts and vested in two different persons: legal ownership belongs to the trustee, while beneficial ownership belongs to the *cestui que trust* (i.e., the beneficiary).

The notion of beneficial ownership has been elaborated in several precedent-setting judicial decisions. Indeed, in the case of *Ayerst (Inspector of Taxes) v. C&K (Construction) Ltd*, Lord Diplock emphasized that the fact that a person holding legal title to property may not have the right to use or dispose of its income dates back to the era of the Court of Chancery. The trust is considered the prime example of such "split ownership" under equity. Although legal ownership of trust property resides with the trustee, it is not held for their own benefit but for the benefit of the *cestuis que trust*, i.e., the beneficiaries. *J Sainsbury plc v O'Connor* (HM Inspector of Taxes) *ishida sudya Nours* (Nourse LJ) The concept of beneficial ownership is explained as the ownership of property for one's own benefit, distinguishing it from trustee ownership, where the property is held by a trustee. Beneficial ownership, or legal and economic ownership, exists when property is legally owned by one person, but the beneficial interest (equitable interest in property) belongs to another person.

In the case *Prevost Car Inc. v. Her Majesty The Queen*, Judge Gerald J. Rip described beneficial ownership within the context of a trust, emphasizing that the trustee holds legal ownership of the property but retains it for the benefit of another person. While the trustee is the legal owner of the trust property, they do not possess the attributes of ownership, such as the rights to manage, use, or bear the risks associated with the property. The trustee holds the property for the benefit of another person, who consequently has the rights to use, bear the risks, and own the property in an economic sense.

Under common law, property rights are considered divisible; however, civil law differentiates between beneficial ownership — the true economic owner of the property — and legal ownership. The legal owner holds the property solely for the benefit of the beneficiary.

In the case *Jodrey Estate v. Province of Nova Scotia and Attorneys General of British Columbia and Quebec*, the Supreme Court of Canada defined the beneficial owner as the true and actual owner of trust property. The

Court stated that "although property may be registered in the name of another person or managed by a trustee for the actual owner (the beneficiary), the person who effectively exercises ownership rights over the trust property is the beneficial owner." In other words, despite the legal ownership being held by the trustee, it is the beneficiary who holds the true economic interest and the rights associated with ownership of the property.

In the case *Montana Catholic Missions v. Missoula County*, Justice Peckham explained the concepts of "beneficial use," "beneficial ownership," and "beneficial interest in property." He referred to a situation where legal ownership of property belongs to one person, while the beneficial interest (or benefit) in the property belongs to another person. This right is recognized and protected by law, and can be enforced through a court order. Essentially, the beneficial owner has the right to use and enjoy the property, even though the legal title may be held by someone else, and the law acknowledges and upholds this interest.

As Professor Charles du Toit emphasized, the beneficial owner is the person who holds the fullest attributes of ownership rights. Consequently, the beneficial owner is not the legal owner of a trust property and is not recognized as the legal owner under the Anglo-American common law system, which does not acknowledge the "divided" property rights concept. Although the trustee holds the legal title to the property, they manage it not for their own benefit but for the benefit of the beneficiary. Therefore, the beneficiary is considered the true owner of the trust property in equity.

As we have seen, court precedents recognize the beneficiary as the true economic owner of the trust property. The beneficiary has the right to possess, derive economic benefit from, and exercise absolute control over the property. Moreover, as the equitable owner of the trust property, the beneficiary assumes the risks associated with it, and has the right to enforce the trustee's obligations under the trust agreement and the principles of equity.

Harvard Law School professor Austin Wakeman Scott noted that the rights of a *cestui que trust* (the beneficiary) are divided into personal rights (rights in personam) and property rights (rights in rem). If the trustee damages the trust property, transfers it to another person without informing them of its trust status, or misappropriates the property, the beneficiary — as the true equitable owner — has the right to bring a claim against the trustee for these breaches. Additionally, the beneficiary can demand compensation, not just for the market value of the

property, but also for any profits they could have gained had no wrongdoing occurred. The beneficiary's right to protect themselves against the trustee's illegal actions is considered a personal right (right in personam). This is secured by the law of equitable obligations. As noted by Professor Walter W. Cook of Columbia University, in the Anglo-American legal system, the concepts of "in rem and in personam" rights are applied in four different ways:

1. As a classification of "initial" rights that are protected and can be enforced based on common law and equity law (rights in rem, rights in personam);
2. Classifying claims as property-based (actions in rem) and personal (actions in personam);
3. Classifying court judgments and orders as property-based (in rem) and personal (in personam);
4. Using the concepts of act in rem and act in personam in the enforcement process of court judgments and orders.

Based on the above information, the in rem and in personam rights of the beneficiary as a beneficial owner should not be understood in the context of property law and obligations in the Roman-Germanic legal system. Instead, they should be seen as types of actions provided to protect the beneficiary's "equitable interests" within the trust framework. The beneficiary can enforce protection against third parties through the "actio in rem" (action in rem), while against the trustee, they may take action via the "actio in personam" (action in personam).

Thus, in equity law, the beneficiary, as the owner of the trust property, has the right to protection through a personal claim (actio in personam) if the trustee fails to fulfill their duties or performs them inadequately. This claim is directed at a specific individual. The purpose of this claim is to protect the beneficiary's rights arising from the obligations. These obligations include actions by the trustee in performing their duties under the trust agreement, managing the trust property equitably, prudently, and effectively, and carrying out the duties set forth by equity law for the benefit of the beneficiary.

Protection through a personal claim (actio in personam) is of a relative nature because the subjects of such legal relationships are clearly defined: one person (the beneficiary owner) has the right to the obligation, and the obligor (the trustee) stands before them.

As British legal scholar Frederick William Maitland emphasized, the beneficiary owner has rights similar to property rights (*jura in rem*), but these are not exactly property rights.

The beneficiary (obligee) has both personal rights (right in personam) to protect themselves from the trustee, as well as property rights (right in rem) that should not be intentionally and unjustifiably violated by the world at large. The existence of personal rights (right in personam) leads to the creation of property rights (right in rem).

The law of obligations in equity, like the law of obligations in common law, is dependent on the existence of property rights. This property belongs to the beneficiary. If a third party intentionally and unjustifiably damages this property, the beneficiary has the right to file a claim for compensation for the damage.

Undoubtedly, property rights in equity are protected only according to equity principles. Third parties who violate these rights will be held accountable under equity law, not under common law principles. Therefore, the beneficiary owner has not only personal rights to protect themselves from the trustee but also property rights that are protected against the world at large.

Moreover, the beneficiary owner also has the right to file a property claim (actio in rem), meaning that as the owner of the trust property under equity, they have the right to demand the restoration of their property rights in the face of violations by third parties. This claim is aimed at protecting the beneficiary owner's property rights from unlawful interference and violations by third parties.

The object of the beneficial owner's property rights is the material (proprietary) interest in the trust property. Protection under such a claim is absolute, as it is made against any person who has violated or infringed upon the beneficiary's property rights. However, this absolute protection only exists as long as the property rights of the beneficiary remain unviolated. Since the violation of property rights is carried out by specific individuals, the claim to eliminate the violation is directed at them.

There has been a long-standing debate regarding the existence of property rights (in rem) for the beneficiary owner. For instance, according to Harvard Law School professor James Barr Ames, it is incorrect to refer to the "cestui que trust" as the owner of the trust property, as the legal owner of the trust property is the trustee, and two individuals with opposing interests cannot simultaneously be the owners of the same property.

However, according to the opinion of Alastair Gadsden, Professor of Equity and Law at the University of London (Queen Mary University of London), beneficiary owners possess "equitable proprietary rights" over the trust property. .

As Austin Wakeman Scott emphasized, during the period when the "use" right institution (the right to use another's property) first emerged, which later became the foundation of the trust institution, the rights belonging to the "cestui que trust" person were not property rights (right of ownership). Instead, these were merely personal rights (rights in personam). However, over time, the Chancellor granted the beneficiary the right to protection against transferees who had taken control of the trust property, provided they were aware of the trust's existence.

This right to protection was granted because the individual acquiring the trust property was considered to have acted dishonestly or conspired with the trustee to violate the trust's terms. Equity imposes an obligation on such individuals to compensate for damages caused by the breach of the trust. Similarly, the trustee is also required to pay specific compensation for the breach of trust, if restoring the trust falls within their authority.

Equity law grants the owner (in equity, the beneficiary) the right to hold "equitable interests" over encumbered property, a right that resembles a legal easement (legal servitude). Since an "equitable property interest" is linked to property, just like all other "equitable interests", it may be lost when the trust property is sold to a third party who purchases it for value, provided that the purchaser was unaware of the trust's existence.

British lawyer Robert Megarry emphasized that the difference between legal rights (legal rights under common law) and "equitable rights" (rights under equity) lies in the fact that legal rights are protected against the entire world, whereas "equitable" rights are protected against all persons except for a bona fide purchaser (i.e., an individual who acquires the trust property for value, in good faith, and without knowledge of the trust). Therefore, the beneficiary's "equitable rights" exclude the right to bring a claim against such a purchaser.

Within the scope of the above statements, Professor Gerald Greville Xneberi of Oxford University's English Law faculty examines "equitable interests" as not true in rem rights, but rather hybrid rights, and emphasizes that they are sui generis (i.e., having a unique, distinct nature – author).

If the trustee sells the trust property to someone who has notice of the trust and later regrets this action, the trustee has the right to bring a claim against that person to prevent the transfer of the trust property and to "restore" it, even without the beneficiary's participation. Of course, if the trustee has the right to bring such a claim, the beneficiary also has the right to



compel the trustee to do so. However, if the trustee is deprived of this right due to the expiration of the legal claim period or unreasonable delay, the beneficiary will not be able to claim the trust property through the trustee.

Austin Wakeman Scott emphasizes that it would be unjust to deprive the beneficiary of their "equitable interest" simply because the trustee is incapable of bringing a claim or has conspired with the transferee. If the beneficiary is considered the owner in equity, they undoubtedly cannot be deprived of their rights due to the limitation period or "their own laches" (delay). On the other hand, even if their right is only a personal right, they may compel the transferee of the trust property to compensate for the damages caused by the breach of the trust.

The person (transferee) who unlawfully acquires trust property manages it within the framework of a constructive trust created for the benefit of the beneficiary. From this point onward, the transferee is required to return the acquired trust property either to the beneficiary or to a new trustee appointed by the beneficiary. The beneficiary, based on equity law, has the right to bring an independent claim against the purchaser (transferee), while involving the trustee as a participant in the process.

As we can see, the existence of two owners with different interests in trust property does not imply that the beneficiary holds no proprietary rights over the trust property. According to common law, the trustee, as the legal owner of the trust property, must manage it conscientiously and in accordance with the terms of the trust. However, this management is not done for the trustee's own benefit, but rather for the benefit of the beneficiary, who is considered the equitable owner of the trust property under equity law. In Anglo-American law, the "equitable interests" of the beneficiary do not conflict with the rights of the trustee. The beneficiary has the right to enforce the trustee's obligations under the trust, including demanding the trustee's compliance with their duties through an action in personam, as the trustee assumes obligations based on the contract or tort in favor of the beneficiary.

If third parties violate trust rights, the beneficiary has the right to bring a proprietary claim based on equity law against a person who unlawfully holds trust property in bad faith, in order to protect the proprietary interest in the trust property. That is, a claim can be brought against a person who, despite knowing of the trust's existence, unlawfully possesses the property or otherwise violates the ownership rights. In this case, a constructive trust arises—this is a

trust in which the dishonest purchaser, despite having wrongfully taken the trust property, is required to manage the property for the benefit of the beneficiary, the original owner of the trust.

The beneficiary's proprietary rights or "proprietary interests" in the trust property have been affirmed by court precedents in common law jurisdictions. (Here, "common law" is understood not as an independent Anglo-American legal system, but as common law jurisdictions.).

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