

The Peculiarity of Trust Property in Civil Law System of Property

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The trust property has distinctive characteristics in Civil law system of property. First, a trustee does never have sovereignty on the trust property, while the sovereignty is a core nature of an ownership in Civil law. Secondly, a trust property doesn't cover the obligations borne by a trustee though the trust property belongs to him/her. It is exceptional because, according to the principle of property, all belongings of a debtor must cover his/her obligations. Thirdly, a trust property doesn't belong to the inherited property of a trustee, which is against the principle of inheritance. As a general principle, all belongings of the decedent constitute the inherited property. The last two exceptions might be justified by the fact that a trust property has never belonged to the own property of a trustee, and the trustee may not benefit from the trust. As the trust property belongs to an independent property of trustee, the benefits of the trust also belong to this independent property.

The justification of these distinctive characteristics of a trust property must be taken in consideration to apply the provisions regarding the claim for legally reserved portion to a trust property. As a result, first, the claim for legally reserved portion must be filed against the trustee when an asset of a trust violates the legally reserved portion of an heir. It is because that the trust property and its benefits belong to the independent property of the trustee. Secondly, in the case of a declaration of trust, a trust property won't be

independent from the property of the settler regarding an inheritance until the settler dies.