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TRUST CRUSADERS

Preserving family wealth

Trusts are nothing new. To the contrary, the law of trusts was first developed under the jurisdiction of the King of England in the 12th Century at the time of the Crusades. When a landowner left his home in England to battle in the Crusades, he would convey the ownership of his land to a trusted acquaintance ("the Trustee"). The Trustee would manage the estate and pay and receive feudal dues, on the understanding that the ownership would be conveyed back to the Crusader on this return.

Unfortunately however, Crusaders often encountered refusal from the Trustee to hand over the property and, regrettably for the Crusader, English common law did not recognize their claim; as far as the King's courts were concerned, the land belonged to the Trustee who was under no obligation to return it. The Crusader had no legal claim.

The disgruntled Crusader would petition the King, who would refer the matter to his Lord Chancellor and he would decide the result of the case according to his conscience. The Lord Chancellor considered it unacceptable that the legal owner (the "Trustee") could go back on his word and deny the claims of the Crusader (the "true" owner). He would therefore find in favour of the returning Crusader. At this time the principle of equity was born.

By the end of the 13th Century, England had developed a fairly rudimental set of laws which became known as the common law. The common law rules provided a satisfactory and a fair solution to most issues, controversies and disputes. Initially, these rules were applied in an inconsistent manner, and in order to create a more consistent approach and in the interest of justice, the English courts would strictly follow the decisions and principles laid down in previous cases. This became known as 'stare decisis' or the doctrine of precedent.

In common law legal systems, a Trust is a relationship whereby property is held by one party for the benefit of another. There is a separation of the legal and equitable ownership of the property, the legal ownership being with the Trustee, and equitable title with the Beneficiary.

To this day, a Trust remains an extremely versatile vehicle that can be used to aide succession planning, assist in the preservation of family wealth, and to facilitate the protection of assets in unstable environments, to name a few. We often find that the prospective client appreciates the benefits of a Trust, however, they find it difficult to accept the concept of handing over the legal ownership of their empire to a Trustee. We find that explaining the concept of how trusts originated can help to relieve their initial concerns.

We can generally define a Trust as an equitable obligation, binding a person ("Trustee") to deal with property ("trust property") owned by him as a separate fund, distinct from his own private property, for the benefit of persons ("beneficiaries") of whom he may be one, and any one of whom may enforce the obligation.

Whilst trusts have evolved over the years, the principle behind them remains very much the same, centuries later we still use them just as the Crusaders did, in the preservation of family wealth.