

## Title

Through at least the 1920s (U.S.), the business trust was a ubiquitous “regulation-light” alternative to the corporate form, which remains the case to this day in the mutual-fund space particularly

## Text

Trusts remained common instruments of commerce long after the widespread enactment of general incorporation statutes and long after the Sherman Antitrust Act of 1890 had shut down the trust monopolies. “Judicial opinions show the trust in ordinary, nonmonopolistic companies in a wide array of industries in the late nineteenth and early twentieth centuries, including cotton mills and print works, parcel delivery companies, street car lines, patent pools, hotels, ferries, golf courses, many different types of manufacturers, building and loan associations, foundries, real estate development companies, lumber and salt companies, railroads, railroad terminals, real estate developers, hospitals, retailers, sewing machine royalty companies, mines, cafeterias, theaters, banks, and insurance companies.” John Morley, *The Common-Law Corporation: The Power of the Trust in Anglo-American Business History*, 116 Colum. L. Rev. 2145 (2016). “Every aspect of the corporate form that legal theorists and historians have identified as key to the corporate form’s success also existed in the trust.” Id. Still, a course on corporate law in today’s law school (U.S.) typically “begins with a discussion of the common law general partnership and then moves on to show how the corporation introduced a set of doctrinal innovations, such as limited liability and tradable shares, that solved each of the partnership’s many problems.” Id. There is no mention of the business trust’s critical role in the development of business law. Id.

Likewise, equitable property interests, e.g., shares of beneficial interest in publicly-traded mutual funds, receive little if any coverage in the typical first-year Property course, which tends to limit its focus to the legal property interest only. This is regrettable as on this side of the Atlantic most mutual funds are structured as trusts. In §8.25 of *Loring and Rounds: A Trustee’s Handbook* (2023), accessible via the link below, we consider the marginalization of the institution of the trust itself in the law school curriculum (U.S.). Soon even one’s knowledge of basic trust doctrine will no longer be tested on the national bar exam. See my Dec. 1, 2021 JDSUPRA posting: <https://www.jdsupra.com/legalnews/the-marginalization-of-english-equity-t-49354/>.