

Research of “Commercial Trust Law” in Japan: Past, Present and Future

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After categorizing the researches regarding “commercial trust law” in Japan to date into two types, namely one focusing on legal issues regarding individual products sold by Japanese trust banks and the other aiming to establish a special set of rules applicable to “commercial trusts” as a “theory of commercial trust law” in contrast with the theory of general trust law, this paper focuses on the work of Professor Hideki Kanda as the cornerstone of the latter and seeks to analyze its role and implication in the past, present, and future.

Prof. Kanda’s “theory of commercial trust law”, which defined “commercial trusts” as trusts in which the roles of trustees extend beyond administration, preservation and sales of trust properties, has played a significant role in the discussions leading up to the 2006 revision of the Japanese Trust Act, which deregulated strict rules under the old Trust Act to meet the business needs of today.

The question is, what is the role of Kanda’s “theory of commercial trust law” after the 2006 revision. Some commentators argue that such theory still plays a role in allowing more flexible interpretation of the new Act with regard to “commercial trusts” as they are regulated by the Trust Business Act. However, the author is very skeptical of such arguments.

In the author’s view, the concept of “commercial trust” plays a more analytical role today that enables functional approach by focusing on utilization of trusts in business. And for that purpose, the

author suggests that schemes that use trust for the very purpose of administering trust properties, often stocks of corporation(s), should be also considered as “commercial trusts”.

The paper ends by pointing out two new developments in the field of such “commercial trust law”. First, the Financial Services Agency of Japan has been utilizing the concept of fiduciary duty beyond trust relationships in a strict sense to promote stewardship by institutional investors or customer-oriented business practice in financial industries. Second, developments of new technologies such as blockchain are giving rise to new types of businesses by trust banks and others, which may call deregulation of Trust Business Act in future.