

Devaluation of the Civil Code?—Inheritance Law and Trust as a Means of Property Succession

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Issues have been identified in the succession of property under current inheritance laws such as uncertainty with regard to testaments and the execution of wills, and the inability to respond to the various needs of the Japanese people. In particular, the realization of a decedent's will can be hindered by the legally reserved portion. Under such circumstances, the succession of property through trusts has drawn increasing attention.

The drafters of the Trust Act of 2006 state that, as a matter of course, the legally reserved portion cannot be evaded, even through trust; however, it is possible to question this conclusion. Taking into account the Civil Code's provisions relating to the legally reserved portion and trends in judicial precedents, the Trust Act, which is a different jurisprudence, does not necessarily submit to the rules of the Civil Code. In addition, even if provisions relating to the legally reserved portion were taken as being applicable to trust, the drafters have not clarified how they are applied concretely. There are two theories with regard to the means of applying the legally reserved portion to trusts with a provision for the acquisition of new beneficial interests by another party upon a beneficiary's death (Article 91 of the Trust Act) : (1) The total value of beneficial interests as the property based on the calculation of the legally reserved portion, the beneficial interests as the target abatement, the beneficiary as the opposite

party to the claim for abatement, and co-ownership of the beneficial interests as the result of the abatement and (2) The total value of trust property as the property based on the calculation of the legally reserved portion, the trust property as the target abatement, the trustee as the opposite party to the claim for abatement, and the denial of (portion of) the trust effect or co-ownership of the trust property as the result of the abatement. Matters such as comparisons of outcomes in the case of insurance payouts, the time on which the trust become effective, the possibility of calculating beneficial interests and the calculation method thereof, the effect on other interested parties, and the legal status of the trustee are important when considering which of these theories is valid. Theoretically, both schools of thought are practical, and in the end, the value judgment of how much to protect the legally reserved portion and claimant for legally reserved portion is what influences the final conclusion.

However, seeing as a number of people want a form of property succession that differs to equal inheritance under the Civil Code, even if we attempt to protect the principle behind the Civil Code by strictly applying provisions for the legally reserved portion to trusts and controlling use of trusts and, we may face the dilemma that creating a new system for property succession other than inheritance in the Civil Code would lead to the continued decline in the significance of the Civil Code.