

Trustee's Liability and Comparative Negligence

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The thesis of this article is whether the doctrine “comparative negligence” is applicable in the case of compensating a loss of trust fund (Japanese Trust Law article 40 paragraph 1 no. 1), when the beneficiary is also negligent.

From the point of view in which a trust fund is regarded as a substantial legal entity (“substantial legal entity model”), a breach of duty by the trustee constitutes tort or non-performance against the trust fund. Even if negligence of the beneficiary also contributes, the negligence shall not be taken into consideration because the beneficiary is a different person from the trust fund.

In contrast to the substantial legal entity model, in the traditional view (“obligation-right model”), a trust fund is not regarded as a legal entity, but as belonging to the trustee. On this model, a beneficiary is regarded as a creditor to the trustee, and a breach of duty by the trustee constitutes non-performance against the beneficiary. This is the reason that the negligence of the beneficiary should lead a reduction of damages.

However, there is no rule without exceptions.

Also on the basis of the substantial legal entity model, the negligence of a beneficiary can be taken into consideration and cause a reduction of damages, adapting so-called “negligence of a defendant's SIDE”, above all “the same-purse doctrine”.

In contrast, even on the basis of the obligation-right model, the exceptions of not taking beneficiary's negligence into consideration

should be made when beneficiaries are plural. The reason is that it would be an unjust result that a not negligent beneficiary would suffer a reduction of the trust fund, for which he or she is not to blame.