

The Basic Structure of Anglo-American Law of Trust

Tsuyoshi Kinoshita (Rikkyo Univ.)

According to R. Pound, a fundamental idea in the common law is said to be "relation", not "will". From the idea of relation comes "a tendency to affix duties and liabilities independently of the will of those bound, to look to relations rather than to legal transactions as the basis of legal consequences". The trust is a typical example of an arrangement with such characteristics.

The Japanese private law system is based on the civil law tradition. Its basic ideas can be found in legal transactions based on the will theory, an absolute right idea of "ownership", and the distinction between "obligation" (right in personam, chose in action) and "real right" (right in rem). After enactment of the Trust Act, Japanese legal scholars did not pay attention to the basic structure of the Anglo-American law of trust, but instead explained the trust relation on German obligation theory. As a result, a trust is treated as a contract, the beneficiary's interest as a personal claim, and the trustee's interest as ownership.

In the Anglo-American law of trust, by contrast, the creation of a trust is treated as a property arrangement, the beneficiary's interest as a quasi-real right, and the trustee's interest as "trusteeship" (the power to manage the property).

Thus, if you compare the Japanese law of trust with Anglo-American law, the following issues raised; (1) whether a trust should be treated as a contract or a property arrangement, (2) whether the beneficiary's interest should be treated as a personal claim or as a quasi-real right, and (3) whether the trustee's interest should be treated as ownership or "trusteeship".

The first issue is most significant in the context of the declaration of trust, the second in the contrast between a contract for the third party beneficiary and a trust, and the third in the scholarly debate concerning the legal capacity or entity of the trust estate.

It is the primary purpose of this legal essay to argue these issues.