

On the Status of the Settlor

—With Special Reference to the Alienability and
Inheritability of the Status of the Settlor—

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If we compare the Japanese trust laws with those of the Anglo-Americans, we find that the former recognize the right of the settlor after the trust is created, while the latter do not. That is, the position under the Anglo-American trust laws is that once the trust has been completely constituted by the transfer of the trust property to the trustee, the settlor ceases to have any rights or duties in connection therewith, except insofar as expressly provided under the trust instrument. When the trustee commits a breach of trust, this is a matter which the beneficiary can of course complain of, but not the settlor who has given up all control once he has set up the trust.

On the other hand, under the Japanese trust laws the settlor as a party of the contract is said to be able to enforce the trust after it is created. Furthermore, in order to protect the trust property and the beneficiary, the settlor under the Trust Act (Law No. 62 of 1922) retains various rights such as the right to demand indemnification for loss or restitution of the trust property from the trustee (Trust Act § 27), and the right to demand inspection of the documents related to the management of trust affairs and explanations as to the management of trust affairs (Trust Act §40 (2)).

The difference of the status of the settlor between the Anglo-American and the Japanese trust laws arises from the points set forth below. Under the Anglo-American trust laws the creation of the trust is treated as a property arrangement, and the terms of the trust do not constitute a contract among the settlor, the trustee and the beneficiary which settlor can enforce. The trust property belongs to the trustee and the beneficiary, and the settlor has no standing to have any legal relationship to the trust unless the settlor retains some interest in the trust.

On the other hand, under the Japanese trust laws the creation of the trust inter vivos is treated as a contract between the settlor and the trustee, and the creation of the trust where the settlor is not the beneficiary is treated as a contract for the benefit of a third party.

In this paper, I will, first, try to deal with the status of the settlor under the Japanese and the Anglo-American trust laws, and second, from the standpoint of a man working in a trust bank I will inquire into the questions as to the alienability and inheritability of the status of the settlor. The contents of this paper are as follows:

1. The status of the settlor under the Japanese trust laws
 - (1) analyses of the status of the settlor
 - (2) rights of the settlor under the Trust Act
 - (3) rights of the settlor under the trust instrument and the right to enforce the trust
2. The status of the settlor under the Anglo-American trust laws
 - (1) under the American laws
 - (2) under the English laws
3. Examination of the enactment process of trust legislation in Japan
4. Alienability and inheritability of the status of the settlor
 - (1) alienability
 - (2) inheritability