

Spendthrift Trusts : A Historical Overview

Akira Inoue (Chuo Univ.)

The word "spendthrift trust" is misleading. A spendthrift trust is one in which either by the terms of the trust instrument or by statute the beneficiary may not alienate or transfer his equitable interest and in which his interest may not be reached or may be reached only to a limited extent by the beneficiary's creditors. The word "spendthrift" may suggest that this trust applies only to spendthrift, minor or other incompetent person, but in reality any person sui juris can be the beneficiary of a spendthrift trust. One of the reasons for creating spendthrift trusts is to assure the financial security of the beneficiaries. This can be attained through direct restraint of alienation or transfer, voluntary or involuntary, of their interests.

When compared with other types of trust with similar purposes, namely, protective trust, discretionary trust and support trust, spendthrift trust is characterized by the direct restraint on the alienation of equitable interests. Such restraints render ineffective any attempt by the beneficiaries to alienate their interests or any attempt by their creditors to reach their interests. The idea to restrain free alienation of equitable interests was born in regard to the married woman's separate estate. Around 1800, the English Court of Equity sanctioned a clause restraining a married woman from alienating her beneficial interest of the trust for her separate use or anticipating the income. The recognition of the validity of such a clause provided the springboard for the judicially evolved doctrine of spendthrift trusts, although a similar fetter imposed on the property of a man was held void in England. The Massachusetts Supreme Judicial Court in *Broadway National Bank v. Adames* (1882) first upheld the validity of a spendthrift clause which restrained the alienation of a beneficial interest of the trust for a man.

The author will try in this article to provide a rough historical sketch of the judicial evolution of spendthrift trust from the rule against restraints on an-

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ticipation to the *Broadway Bank v. Adames* ruling. It is a preliminary research on spendthrift trusts before entering into more detailed discussion their possible contribution to the contemporary demand of Japanese society.