

Prudence and Loyalty of a Trustee in Trust Administration

—Some Observations Based on the Law
of Trusts in the United States—

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A trustee is granted a bundle of powers and owes a set of duties as a trustee in administration of trust. Powers and duties he has differ from one trust to another. What is in common is that in any trust administration he shall exercise these powers in order to attain the purposes of the trust for which he is granted them within the bounds set by these duties. To the extent that the grant of power inherently creates discretion, he shall necessarily exercise discretion. He also shall exercise these powers solely in the interest of the beneficiary of a trust. The latter idea leads to a concept of a duty of the loyalty imposed on the trustee; the former idea leads to a concept of ordinary prudence required of the trustee.

A trustee is under a duty to the beneficiary in administering a trust to use care and skill which a man of ordinary prudence would use in dealing with and managing his own property. This duty can be translated as a duty to use reasonable care and skill in administering a trust. A trustee, in exercising discretion, may choose any reasonable means which he judges to be necessary and proper in order to carry out the purposes of the trust. However, he is not free to choose any means he finds fit for that. His choice or judgment shall be measured against a hypothetical choice or judgment of a man of ordinary prudence in pursuing the same purpose as the trustee has undertaken to attain, given the facts the trustee knew or should have known at the time he made a choice or rendered a judgment.

Any choice of means is constrained by a purpose for which a trustee shall exercise the powers. For a trustee is under a duty to the beneficiary to

administer a trust solely in the interest of the beneficiary. Therefore, where a trustee exercises his powers granted to him as trustee, if his motive or purpose is not to benefit the beneficiary or to attain the purposes for which he is granted them, but to benefit himself or any person other than the beneficiary, he violates a duty of loyalty. Some types of transactions may be prohibited as a *per se* violation of this duty : other types of transactions may be subject to strict scrutiny to single out a motive or purpose which underlies a transaction on the part of the trustee.

Trusts can be characterized as a prototype of various fiduciary relations. The duties of a trustee, or prudence and loyalty required of a trustee are typical of a fiduciary who is granted powers which shall be exercised solely in the interest of some one else. Analysis outlined as to a trustee shall hold to other types of fiduciary and fiduciary relation.