

Unification of Obligations and Remedies through Trusts

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In English law, the concept of trusts can be found in various situations. For example, like trustees, agents owe fiduciary obligations to their principals, and in case that the agent breaches the obligations, the principal has the remedies as a beneficiary has in the breach of trust. The same sketch is fit for directors, bailees in some cases, and even for purchasers under voidable contracts.

The trust concept, in this situation, works for the unification of obligations and remedies.

Agency has its foundation in common law and principals remain to have both legal and equitable interests in the goods even after he delivers them to the agent, and in contrast with this, trust is an equitable device and beneficiaries only have equitable interests in trust property. However, these two devices sometimes are used in the same situation for the same purpose; A, who has a certain property, entrusts its management to B and gets the benefit from the management. In these cases, the unification of obligations and remedies through trust concept is highly required for equitable treatment. This function of trust concept in English law is worth attracting more attention.

How about in Japanese law?

Unfortunately, trust in Japan has been dealt with independently from institutions in Civil Code and Commercial Code. Although there are several institutions or contracts which are used in the same situation for the same purpose, only few attempts have so far been made at the unification of obligations and remedies. Property acquired by trustee in breach of trust would be trust property (Japanese Trust Act s.14), while bailee sells the bailed property in his name, bailor can only claim damages or unjust enrichment of the bailee, having no right in rem.

In order to unify the obligations and remedies, it is necessary to emphasize the similarity of these devices, crossing over the codes.