

International Harmonization of Trust Law

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The purpose of this article is to analyze the problems which derive from the internationalization of trusts.

Although there might be several aspects in which we need to deal with international trusts, this paper mainly concentrates on the problem of foreign made trusts: for example how the State A should proceed with a trust which was created in State B under the law of State B but which has among its trust assets some estates located in State A. In such cases foreign made trusts cause serious problems particularly when State A does not have trust law as a part of its internal legal system.

There are two ways to deal with this kind of situation. One is "translation," and the other is "recognition." By "translation" method State A *translates* the trust into the language of its internal legal system and tries to give the "trust" the effects similar to those given under the law of State B. By "recognition" method State A *recognizes* the trust and applies to the trust the applicable law (in most cases the law of State B). The *translation* could be called substantive rule method while the *recognition* could be called conflict-of-laws rule method.

As an example of *translation* method, this paper quickly looks into the French jurisprudence. French courts have a long tradition of *translating* trusts which were created under Anglo-Saxon legal systems and which encompass estates located in France. The author then moves on to the Hague Convention on the Applicable Law to Trusts and their Recognition, which is a model of *recognition* method. Examining what Professor Kötz said in his lecture in Japan, the author tries to analyze the concept of recognition of the Hague Convention.

Professor Kötz gave an example of a trust which was created in California under the Californian law but the trustee of which was a Japanese bank located in Tokyo. Supposing that Japan has ratified the Hague Convention and that a legal issue regarding this trust (for example, whether personal creditors of the trustee have recourse against the trust assets) is brought before a Japanese court, how should the Japanese judge proceed? Professor Kötz seems to misunderstand the recognition concept of the Convention when he explains that the Japanese judge should try to give to the trust, *by applying Japanese law*, effects similar to those given under Californian law (applicable law in the framework of the Convention). His misunderstanding suggests that we need to clarify the scope of issues to which the applicable law of trust is to be applied.

After comparing the two methods described above, the author concludes that the recognition method (conflict-of-laws rule method) might be better.