

# Does the duty of care of trust banks as trustees extend beyond their contracts?

Kenta Sugimura  
(Mitsubishi UFJ Trust and Banking Corporation)

In general, it is natural that trustees should fulfill their obligations in accordance with what is stated in their contracts. However, at times, trust banks are expected to exercise the duty of care beyond the obligations as provided for in the contracts. And, as seen in the analysis of two court cases analyzed in this paper, there are conflicting arguments as to whether trust banks should fulfill the duty of care beyond the contracts, and the answer to this question is not necessarily clear.

Although there are previous studies dealing with the subject similar to the topic of this paper, the author suspects that these studies might not include in-depth discussions. In this paper, from the viewpoint that this problem should be analyzed as a problem of how the concept of trust should be understood, this paper found value in analyzing the Langbein-Frankel controversy, in which the question of whether the concept of trust is different from or identical to contract was discussed, and the subsequent studies in the U.S.

Based on these analyses, the author demonstrates that the scholars such as Frankel who insist that trust should be distinct from contract have grounded their arguments upon the existence of trustees' broad discretionary power. However, as a practical matter, trusts with respect to which trustees have only narrow discretion do exist.

Based on these theoretical premises, this paper examined how broad or how narrow the fiduciary discretionary power of Japanese

trust banks is. Through the analysis of the two court cases related to the pension investment, this paper showed that the discretionary power of trust banks as trustees may be quite narrow.

In addition, if the scope of the discretionary power of trust banks is indeed narrow, the scope of the trust bank's trust business could be specified, and there are some rational reasons to permit the trust banks to interpret the contracts formally and to assume that they will be responsible only within the scope of the specified trust business.

Based on the above, considering the two court cases analyzed in this paper, this paper indicates that trust banks have little discretion, the scope of their trust business can be specified, and the trust banks will be liable only within the scope of their specified trust business. In conclusion, this paper showed that the trust banks don't have the duty of care beyond their contracts.