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Introduction to the Korean Civil Procedure: An Overview

Presented by Judge Si Cheol Kim

Ⅰ. Introduction

It is impossible to understand the legal system of a particular country without understanding its historical and social background and the constitution or statutes that forms its legal system. Any comparative approach in this area should be firmly based on comprehensive and precise understandings of the similarities and differences of the legal systems with historical and social backgrounds in mind.

By mentioning this, a brief historical background of the formation of the Korean legal system will be introduced with the Korean Constitution as the starting point. The first modern version of the written Constitution of Korea can be dated back to 1894, when it was created as a result of a radical reform, called Kap-O Reformation and in the following year, an independent judicial system was first introduced to this country. These changes were in part Korea's modernization process, yet, in early 1900s, these efforts were immediately disrupted by Japanese invasion upon the Korean peninsula. During its colonial period (1910 - 1945), Korea was forced to adopt to the Japanese legal system, which was influenced by the modern European civil law countries. Consequently, the Korean modern legal system is largely based on the civil law system.

This, however, is not without exceptions. Some elements of common law system have been introduced to the Korean legal system after the World War Ⅱ. In regards to rules of evidence, for example, a witness is required to be examined by cross-examination, which is similar to that of the U.S. evidence law. The primary purpose of this presentation is to provide an overall understanding of the Korean civil procedure with emphasis on different features of the law as compared with other common law countries such as the U.S. Accordingly, sufficiently detailed summary of the laws are not provided in this presentation.

Ⅱ. A Discussion on the Civil Procedure of Korea

1. Jurisdiction, Sources of Civil Procedure, and Bases for Venue

Some understanding of the basic features of the judicial systems of Korea is essential in understanding the civil procedures. The following are some of the basic features that should be mentioned.

Contrary to the countries that must consider state and federal levels of judicial systems, because Korea follows a unitary state system, issues associated with federalism are not presented in civil procedure. As to the court systems of Korea, it is generally organized into a three-tier system: ① District Courts {15 District Courts, including Family Court (1) and an Administration Court (1)}, their Branches and Municipal Courts,[1] as the courts of first instance; ② High Courts {6 High Courts, including Patent Court (1)},[2] as appellate courts; and ③ the Supreme Court, as the court of last resort.[3]

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1) Family Court and Administration Court are established only in Seoul, the capital of Korea. In other provinces, each District Court there has a subject matter jurisdiction over the family affair cases and administrative cases.

2) Patent Court has the subject matter jurisdiction over all patent, utility model, design, and trademark cases all over the country. Court Organization Act Article 28-4.

3) The Constitution, in Article 107, Section 1 prescribes, "When the constitutionality of a statute is at issue in a trial, the court shall request a decision of the Constitutional Court,

Primary sources of law regarding civil procedure are the Civil Procedure Act, which was vastly revised in 2002.[4] Furthermore, Article 108 of the Korean Constitution directly vests the Supreme Court with the authority to enact rules concerning the Supreme Court Regulations, and among others, on matters related to procedures of litigations. Of course, these Regulations must not conflict with other statutes enacted by the Legislature.

When determining the court with proper jurisdiction, depending on the amount in controversy, a single or a three-panel judge is vested with the power to decide the particular case presented. More specifically, in cases where the amount in controversy is less than 100 million Korean won (approximately 100,000 USD), a single judge is vested with the power to hear the case. If, however, the amount in controversy exceeds 100 million Korean won (approximately 100,000 USD), the three-judge panel of the District Court has the jurisdiction to hear the case at hand.

Following the civil law tradition, a court, in general, is not bound by the views of another court as a matter of law. In practice, however, there are some substantial exceptions to this principle. One of the exceptions that are worth mentioning is the interpretations of law by the Supreme Court. For example, cases decided by the Supreme Court on interpretations of law generally have *de facto* influence upon subsequent cases of a similar nature, and moreover, in order to modify or change a prior standing of the Court on interpretations of law, two-thirds of all the Justices, including the Chief Justice, must consent to such modification.[5]

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and shall judge according to the decision thereof." In this respect, the legal system of Korea is most analogous to that of countries such as Germany.
However, the unique Supreme Court has a general jurisdiction over not only the civil and criminal cases but also on administrative, labor, tax, patent and family law cases. In this respect, the Korean court system is quite different from that of Germany.

4) The Supreme Court has made steady efforts in order to improve the qualification of civil proceedings in a more substantial and efficient way. Along with the implementation of the new Civil Procedure Act, main hearings are administered in a sincere and efficient manner giving the parties sufficient opportunities to make their oral statements before the court.

5) Court Organization Act, Article 7.

This practice, in effect, could be viewed as bearing functional resemblance to the doctrine of *stare decisis* of the U.S.

On matters of venue, a plaintiff, as deemed proper, may file a lawsuit in the district court where the defendant has his/her residence, where the cause of action arose, or with the court the locus of the *res* is located. For example, a plaintiff can file a real-estate-case lawsuit in the district court where the real estate is located or a tort-case where the event of the cause of action for tort took place. Moreover, the parties may agree on a proper forum for the suit to be brought.

One of the international aspect of Korean law, as prescribed in the Private International Act, Article 2, is that courts have international jurisdiction over disputes that have substantial connection with Republic of Korea. In determining whether such issues are presented, the court should adhere to reasonable principles that follow the overall ideologies related to the allocation of international jurisdiction. Furthermore, the court is to determine whether it has the international jurisdiction in the light of jurisdictional provisions of Korean domestic laws and is to take full consideration of the unique nature of international jurisdiction.

2. Proceedings for Trial

(1) Institution of Action

ⅰ) Pleadings

A civil action ordinarily is commenced by the plaintiff filing a complaint with a District Court, a Branch Court, or a Municipal Court. The complaint must contain (1) the names of the parties and their legal representatives, (2) the demand for relief and alleging facts that enable the court to award judgment for plaintiff, and the legal grounds for the claim.[6)]

6) Civil Procedure, Article 249.

If a foreigner who is a nonresident of Korea, is a party to a suit, and retains an attorney in Korea, then a notarization is required, accompanied by a Korean translation.

In case where the complaint contains defects such as lack of clarity regarding the cause of action, or insufficient court fees were paid, the court may order the plaintiff to remedy such defect within a reasonable period of time. If the plaintiff fails to do so, the complaint is to be dismissed by the court.

When the complaint is filed, the court issues and serves a summon to opposing parties, directing defendants to respond to the complaint or suffer a judgement by default. A copy of the complaint must be attached to the summon, thus notifying the defendant of the terms of the claim. The defendant has a specified period of time, usually 30 days, in which to respond. If, however, the defendant fails to file a written response within the specified period, the court may in its discretion enter a default judgment.

The defendant's response to the allegation of the plaintiff must be made in the answer itself, including denials and affirmative defenses as well. If the defendant submits such a written answer, within a limited time, the court holds a subsequent pleading proceeding, in which facts uncontested by the parties will be admitted and contested allegations will be denied, and consequently, issues of facts will be determine in the case.

Complaints, answers, and other pleading requirements are liberally construed through out the litigation.[7] This is reflected by the provision permitting the plaintiff to amend the complaint until the end of the hearings at the district court or the appellate court level. This liberal amendment, however, does not apply to cases presented before the Supreme Court and therefore, plaintiff is not offered the opportunity to amend his/her cause of action at this level.

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7) There are no restrictions in respect of the number or length of the pleading.

Another similar feature of the U.S. and Korean in civil procedure is related to the pleadings. A plaintiff may allege facts based on legal theories that are inconsistent and may plead such grounds either alternatively or on a hypothetical basis. Also, both parties to the litigation are permitted to plead an alternative or hypothetical versions of the facts.

ii) *Pro Se* Cases and Representatives

The Korean law allows great latitude to the litigant of an action to represent him or herself, and granted this right, there are numerous cases where the party appears *pro se*.[8][9] The majority of attorneys in Korea engage in litigation practice (similar to a barrister in Britain).[10] Since most Koreans rarely maintain a continuous contact with a legal counsel,[11] most defendants initiate a search for an attorney only after put on notice of a suit commenced against them.[12]

A litigant may choose to be represented by an attorney-at-law and if the amount in controversy does not exceed 50 million Korean won (approximately 50,000 USD), the litigant, with the court's permission, may be represented by an individual who is not qualified to practice law. A court-appointed attorney may provide legal assistance for those who are unable to afford legal assistance, if certain qualifications and conditions are satisfied.

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8) Of course, as for large-scale cases, most litigants such as big corporations usually retain their own counsels to act on their behalf. However, as for ordinary cases, a lot of plaintiffs file lawsuits without attorneys' represent in practice. This system is similar to that of Japan.

9) Under the current U.S. civil procedure, representation by an attorney has not been legally obligatory, either. However, representation by an attorney except in small claim cases is a practical necessity. For example, the complicated discovery rules cannot be effectively applied without a participation of both parties' attorneys.

10) In Korea, there are some law firms and practicing lawyers who work as counsels for corporations, government agencies, but this is only a small percentage.

11) Ordinary Korean people consider all the lawyers merely as litigators. For example, they usually make a contract on their house by themselves (or with help of a broker). It is not until some legal disputes occur that they would ask for legal service from lawyers.

12) It is also very common that litigants retain their attorneys during trial.

ⅲ) Service of Process

After the plaintiff files a complaint, a court must serve on the defendant a copy of the complaint giving notice of the suit. Though common law countries places the ultimate responsibility regarding the service of process upon the parties, under Korean law, the authority and duty of the process is placed on the court. On matters of service methods, service of process by registered mail or personal service by the court officer, who is similar to a U.S. marshal, are the primary service manners.

For foreign national litigants who retain legal counsel in Korea, the service upon the attorney will be deemed valid. As for service of process in foreign countries, since Korea is a signatory of the Convention on Service Abroad (Hague Convention), the court may follow the service requirement and means provided by the Convention.

ⅳ) Litigation Fees and Costs

In regards to the recoverable costs of litigation, Korea follows the English rule, which the loser pays for the attorney's fees. The judge in Korea, when rendering a judgment of the court, must also determine the party who bears the litigation fees and costs. In general, courts impose costs of litigation to the unsuccessful party[13][14] and the recovery costs of attorney's fees by the prevailing party can be awarded up to the extent prescribed by the Supreme Court Regulations.[15]

In certain circumstances, security is required for costs related to the litigation. For instance, if a plaintiff is a foreign national with nonresidency having no address, office, or other place of business in

13) Civil Procedure Act, Article 98. There are two exceptions (Cost Sanctions); the court may charge to the winning party the whole or a part of the costs arising from ① irrelevant assertions ② or unduly delayed assertions (Article 99 - 100).

14) If a case is settled in Korean court without making a specific stipulation on costs, such costs shall be borne by each party separately (Civil Procedure Act Article 106).

15) Civil Procedure Act, Article 109. As a practical matter, the attorney fee prescribed by the Supreme Court Regulation is usually less than the actual one.

Korea, the court may order him/her to provide security for litigation costs upon the defendant's request.[16] The primary purpose of this security is to secure defendant's claim for reimbursement of the litigation costs if the defendant prevails against the non-resident plaintiff.

(2) Proceedings

ⅰ) An Adversary System

The Korean judicial system is based on the adversary system,[17] where each party must present their own allegations and produce relevant evidence to support their claim. Although the court has the authority to initiate its own investigation on matters of evidence as it deems necessary, it is not common for a judge to exercise this discretio n.[18]

The litigating parties must submit briefs setting out legal contentions, consisting of legal or factual arguments. The submitted brief, as with service of summons, must be served upon the opposing party.

As for the burden of proof, in civil cases, the judge decides in favor of the plaintiff if he/she has proven the case with high degree of probability, which is similar to the preponderance of the evidence standard applied in the U.S.[19] For criminal cases, the defendant can be convicted only if the judge believes that the public prosecutor has proven the defendant's guilt beyond reasonable doubt.[20]

In addition, documents in foreign language that are submitted to the court must be accompanied by its Korean translation.

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16) Civil Procedure Act, Article 117.

17) As for civil cases, *see*, Supreme Court 95 *DA* 13685, Court Report 3909 (1995).

18) Under Civil Procedure Act, Article 292, the court may (editor's note : not should, but may), if it is unable to get confidence by evidence offered by parties, or if it deems necessary, conduct investigation of evidence upon its own initiative. However, in practice, judges rarely conduct inquires or investigations of evidence upon its own initiative.

19) Supreme Court 59 *DA* 247, 8 Civil Case Report 39 (1960).

20) Supreme Court 84 *DO* 796, Court Report 1322 (1984).

ii) Preliminary procedure

One of the different features of the Korean civil procedure, compared with the rules of civil procedures of the U.S., is that a full-scope discovery procedure is unknown to the Korean legal system. Obtaining evidence necessary for the trial is mostly accomplished during the trial rather than in advance. In addition, preliminary procedures in Korean legal system, influenced by German law, enables the parties to clarify their respective positions on the disputed issues and to set fact-finding within a limited scope. The basic scheme of German model is maintaining an comprehensive "main hearing" given orally, which is prepared for either by an "preliminary hearing(a first hearing in the preliminary stage)" or by a "written preliminary procedure."

Since no depositions outside the courts is conducted during the preliminary stage of the trial in Korea, pretrial preparation mainly concentrates on the exchange of allegations by both parties and evidentiary documents without actual knowledge of the relevant witnesses' statements. The primary purpose of this model is to discourage the court from adjourning between trial sessions and encourage an intensified oral proceedings based on well-prepared pleadings during the main hearing(trial).

During the written preliminary procedure, each party has an obligation to prepare for the main hearing in a manner that permits the litigants to dispose the issues of the case definitely and enables the court enter a final judgment at the end of the main hearing or within a reasonable time. The litigating parties are also required to cooperate with the court during the preparatory stage of the trial on matters including oral arguments and though rarely practiced, the court has the authority to disregard delayed arguments.[21)]

The court in the preliminary hearing, clarifies the cause of action

21) As a matter of practice, it is not common for courts to strike down parties' delayed arguments.

and the written answers, and decides whether to deny or grant the motions by the parties. If motions such as questioning of a witness are requested by a party, the judge determines whether the testimony of the witness will be relevant to the disputed facts.

Though countries such as the U.S. recognize summary judgments, Korea does not enable the parties to request such motions. Therefore, the court in Korea may not render a summary judgment in the preliminary stage of the trial.

iii) Main Hearing

The main hearings of a trial are administered in open court where the general public can attend the trials. As for presentation of evidence, though many exceptions can apply, evidence is generally offered in one uninterrupted court hearing during the main hearing stage of the trial. After the evidence-gathering stage, the court renders a judgment either at the end of the main hearing or at a time the court sets to pronounce its judgment.

iv) Evidence

Since Korea adopts an adversary system without juries in civil litigations, the judge is granted the exclusive right to decide on issues of facts. For an evidence to be admissible in court, rules of evidence in countries such as the U.S. require evidence to satisfy general conditions such as relevancy, probative value, or exceptions to the hearsay rule. In Korean civil litigation, however, only limited testimonial privilege provisions apply to evidence[22] and no other general requirements for admissibility exist.[23] This in effect, permits the parties to present a broad scope of evidence at trial.[24] After evaluating the relevancy and necessity

22) Civil Procedure Act Article 314, 315.

23) For instance, contrary to the evidence rules in criminal procedure, there is no general rule to exclude the "hearsay" evidence in Korean civil procedure.

24) In Korean civil procedure, the scope of relevancy is very broad, so it surely includes

of specific evidence on a case-by-case basis, the court may decide whether to admit the evidence or not.[25]

When a plaintiff fails to produce evidence to support his/her claim, a judgment for the defendant will be entered at the end of the main hearing, since summary judgment is not recognized in Korean civil procedure. The same principle applies to defendant with respect to affirmative defense and counterclaims, which the defendant has the burden of proof. If the burden is met, the judge is to reach a conclusion and decide on the conflicting evidence presented.

There are some exceptions to the above-mentioned general rule regarding the burden of proof. For example, an admission by the party will bind both the court and the parties. Once an admission has been made by a party, he/she cannot withdraw an admission unless he/she is able to show that the admitted facts are contrary to the truth, and such admission was made as a result of misapprehension. Another exception to the burden of proof that is permitted in the Korean civil litigation is the judicial notice, which refers to a court's acceptance, for purposes of convenience and without requiring a party's proof, of a well-known and indisputable fact.

In regards to examination of witnesses, the primary method employed to examine witnesses should be through cross-examination.[26] Direct testimonies of witnesses are usually conducted in a speedy and concise manner because the moving party has already had the opportunity to interview the witness beforehand (contrary to Korean practices, in Germany, the moving party does not contact the witness before trial). Therefore, it is crucial to discredit the testimony of a witness

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conditional relevancy, cumulative effect of evidence or statistics, and so on. Since there is no general qualification rules about evidence, it is hard for a judge to exclude some evidence (especially written evidence) as long as it contains a very slight probative value.

25) Supreme Court 90 *DA* 19121, Court Report 2240 (1991), Supreme Court 91 *DA* 25444, Court Report 1672 (1992), Supreme Court 93 *MA* 434, Court Report 2564 (1993)

26) Civil Procedure Act, Article 327.

through cross-examination since the witness, in direct examination, is inclined to give a biased testimony in favor of the party who called the witness to testify.

In general, before testifying as a witness in civil case, every witness must take the oath.[27][28] Persons giving testimony outside of the court is not regarded as making a statement under oath.

"Hearsay" evidence is generally admissible under the rule of civil procedure in Korea.[29][30] If the opposing party makes no objection, under certain circumstances, the court may permit a witness to make a written testimony rather than appearing in court to testify.[31] Though permissible, this is rarely used in practice, because the opposing party will usually oppose to this manner of testimony without prior knowledge of the content of the actual testimony.[32]

Certain evidences may require examination outside of the court. For instance, on-the-spot surveys of traffic accident may be made outside the court. When such examination of the evidence is performed, it must be recorded in the trial records and the results of such examination made outside the court must be presented at the main hearing, if it is to be used as a bases for judgment.

For foreign laws in the rules of evidence context, the Supreme Court has expressly addressed whether, as a general rule, foreign laws should be treated equally with domestic laws. In those decisions, the

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27) Civil Procedure Act Article 319. Exception Civil Procedure Act Article 314, 315.

28) Unlike Korea, German witnesses generally do not give their testimony under oath in civil procedure {Charles Platto, Pre-Trial and Pre-Hearing Procedures Worldwide 119 (International Bar Association series) (Graham & Trotman 1990)}.

29) Supreme Court 67 *DA* 67, 15 (1) 269 Civil Case Report 3909 (1967).

30) In Korean criminal procedure, on the contrary, the hearsay evidence is excluded in principle.

31) Civil Procedure Act Article 310.

32) Theoretically, the opposing party can cross-examine the witness by submitting his written cross questions to the court. However, like the deposition on written questions in the U.S. civil procedure, it is almost impossible to frame suitable follow-up cross questions without knowing what the witness will say. Thus, this provision has become little more than a mere name.

Supreme Court has held that the issues such as content and existence of a foreign law should be found by the courts, and need not be proved by the litigating parties. The Supreme Court further observed that, in such findings, the courts may resort to whatever method it deems reasonable, and a expert testimony or inquiry to educational institutions are not required. In practice, the courts usually recognize the existence and contents of foreign laws based on documentary evidence submitted by the parties, such as commentaries regarding the laws of the particular foreign country or affidavits of a foreign counsel. However, if Korean courts fail to identify the existence or contents of foreign law after reasonable efforts to find such law, the domestic laws of Korea will be applied. This is based on the reasoning that the general principles of law are recognized and reflected in the Korean law as well.

v) Recording of Procedures

In general, the official record of the proceedings is not taken down in verbatim but only an abstract of each proceedings are recorded in the trial record. The court, if deemed necessary, may tape-record the proceeding in whole or partially, or order a stenographer (i.e., court reporter) to dictate them. If a party requests to record proceedings by tape-recording or stenographically, then the court shall grant such requests unless other reasons exist.[33]

In the official record of the proceedings, substantial matters falling under each of the following subparagraphs shall be specially clarified:[34]

i) Compromise, waiver or recognition of claim, withdrawal of litigation, and confession;

ii) Oaths and testimonies by witnesses and expert witnesses;

iii) Results of inspection;

iv) Matters to be entered under an order of the presiding judge, and

33) Civil Procedure Act Article 159.
34) Civil Procedure Act Article 154.

those to be entered under a permit of the said judge upon motion of the parties;

v) Judgments which have not been prepared in writing; and

vi) Pronouncement of the judgment.

The trial record is used as conclusive evidence with respect to the matters concerning conducting of proceedings such as the attendance of a party.[35] Also, this particular trial record can be used, upon the request of the party, to be read to him/her or be made available for his/her perusal.[36]

(3) Judgment

At the end of main hearing, the judge enters a written judgment, which includes the reasons for the decision. Upon the end of the main hearing, the losing party may seek review of a higher court and appeal the trial court's the judgment. When the losing party decides to appeal at a time prior to a judgment given force and effect of its finality, the court, on a discretionary basis, may temporarily make the judgment as an appealable final judgment. This, in effect, discourage appeals that are overall trivial and avoids time-consuming and unnecessary appeals.

The court will serve authenticated copies of written judgments on each party to the case decided. Furthermore, a court-appointed marshal usually carries out the execution of the court's judgments. If any person obstructs the marshal's official duties, in enforcing the court's judgment, his/her obstruction may constitute a crime.

3. Appeal

(1) Scope of Review

The losing party may appeal to have the decision by the trial court regarding the findings of facts or interpretation of law reconsidered.

35) Civil Procedure Act, Article 158.
36) Civil Procedure Act, Article 157.

A timely filing of notice of appeal is required within the two week from the date the authenticated copy of written judgment is served to the parties and must file a written motion of appeal with the trial court rendering the judgment.

The intermediate appellate court then must examine and review the decisions of the trial court in regards to questions of law and findings of facts as well. The oral hearings at the appellate court can be characterized as "continuous oral hearings" held at the trial court(*de nevo* trial). Therefore, additional factual arguments and evidence can be presented liberally before the intermediate appellate court as a practical matter.[37)]

In contrast, the Supreme Court reviews the judgments of lower courts only in respect to questions of law. In civil cases, the grounds for appeal to the Supreme Court are limited to constitutional issues and law questions of the lower court judgments. The Supreme Court, therefore, rarely reverses judgments of the lower courts.

(2) Appellate Procedure

Depending on whether the single judge or a three-panel judge exercised the original jurisdiction, the appellate procedures differ somewhat.

For cases decided by a single-judge court, the appeal is initially made to a three-panel judge in the appellate division of the District Court. Appellants may then seek review of the lower court's decision by the Supreme Court as court of the last resort. If, however, a single-judge exercised original jurisdiction over civil cases involving claims exceeding 50 million won (about 50,000 USD), then the appellant appeals the case to

37) When a party submit a brief containing new factual arguments, the party need not get the consent of the opposing party or the permission of the court. According to Civil Procedure Act Article 149, the judges in trial courts or appellate courts can strike down the delayed submission of arguments or evidence. However, in practice, the courts have rarely used this power until now.

the High Court as the appellate court.

When judgments rendered by a three-judge panel is appealed, then the appeal is made to a High Court, an appellate court, and the subsequent appeal is heard by the Supreme Court.

4. Special Procedures for Small Claims Action

For more expeditious and informal procedures for resolutions of small claims, civil cases involving claims not exceeding 20 million won (approximately 20,000 USD) are brought as 'Small Claims Action.' The district court, the branch court, and the municipal court all have jurisdictions to hear cases involving small claims action.

The main purpose of the proceedings on small claims is to expedite the adjudication of these claims and various procedures are adopted to meet this purpose. The following are some examples:

ⅰ) When a complaint is filed with no real dispute present between the parties, the court may render a decision recommending the defendant to discharge his/her obligation without requiring the defendant to respond. If an objection is raised by the defendant within two weeks, then the decision becomes void, and the case is transferred to the regular trial calendar. If not, the decision has the same effect as a settlement in court.

ⅱ) Persons with family relations to the parties may represent the parties without the court's permission in a small claims action.

ⅲ) Some of the rules on evidential procedure are waived to a considerable extent in a small claims action.

ⅳ) The court may render a judgement without a written decision stating the support of such decision. Instead, the judge is permitted to explain its reasoning orally.

ⅴ) The possible grounds for appeal to the Supreme Court on small claims action are extremely limited.

The overall proceedings of a small claim, provides expeditious and convenient process for resolving disputes and contributes to the protection of the rights of the public. Less than two percent of the judgments rendered by trial courts on small claims cases are appealed in Korea.

5. Court-annexed Mediation

There are three types of mediators involved in a court-annexed mediation procedure. The first type of mediator is a mediation judge, who is generally in charge of the mediation.[38] The second type is a mediation committee consisting of two neutral non-judge commissioners and one judge who chairs the committee.[39] The third type is the judge who is in charge of the pending action.[40] As this illustrates, Korean judges always play a vital roles in different types of court-annexed mediations.[41]

When an agreement is reached in a mediation procedure, it has the same effect as a settlement in court.[42] If the result of the medication did not produce any agreement between the parties, the mediation judge may make a decision in lieu of an agreement within the scope of the plaintiff's motion. An objection to the decision must be filed within two weeks to make such the decision void and in order to transfer the case to the regular trial calendar. If there is no objection to the decision, it is given the same effect as a settlement in court.[43]

A court-annexed mediation is a proceeding whereby a judge or a mediation committee hears allegations of the parties in dispute, and by

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38) Civil Mediation Act, Article 7, Section 1.

39) Civil Mediation Act, Article 8 through 10-2. The non-judge commissioners are not government officials. About half of them are practicing lawyers, and the rest are various kinds of people, such as architects, businessmen, bankers, and so on.

40) Civil Mediation Act, Article 6 and 7.

41) Therefore, that Korean mediation model may be properly viewed as "court-contained" mediation rather than as "court-connected" mediation. Therefore, the court-annexed mediations are regarded as similar to the settlement in court, as a practical matter.

42) This is equivalent to the consent judgments of the U.S. civil procedure.

43) To summarize, Korean court-annexed mediation is not mediation in the strictest sense, but a special process in which mediation is combined with non-binding arbitration.

taking various factors into account, advises them either to make mutual concessions and to seek a compromise solution or renders a compulsory decision to that effect. The procedure may be used as a successful dispute resolution system, which is convenient, expeditious and inexpensive than a adjudication proceedings, and enables the parties to reach a ultimate resolution of disputes through agreements. The Supreme Court encourages the use of the court-annexed mediation procedure as a method of dispute resolution and the number of civil cases resolved has been steadily increasing over the years. And most recently, according to statistics, in 2006, about 53,000 civil cases were resolved through the court-annexed mediation.