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Understanding Korean Civil Procedure Law*

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I. Introduction

A. Features of Korean Civil Procedure Law

Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil lawsuits. These rules govern how a lawsuit or case may be commenced; what kind of service of process is required; the types of pleadings or statements of case, motions or applications allowed in civil cases; hearings and trials; the process for issuing a judgment; the process for post-trial procedures; various available remedies; and how the courts and clerks must function.

The most notable feature of Korean civil procedure law might be that the Court of Appeal, which is situated between district court of first instance and the Supreme Court, deals with fact-finding as well as questions of law.[1)] In the United States and many European countries, the second instance courts deal only with questions of law, or deal only to a limited extent with factual issues. In Korea, however, the Court of Appeal is fully empowered to re-establish issues of fact.[2)]

Another aspect of Korean civil procedure is that trials are not

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1) Si-yun Yi, Shin Minsasosongbeob [New Civil Procedure Act] 845 (11th ed. 2017) (In Korean).

2) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 710 (3th ed. 2022) (In Korean).

concentrated. In other words, trial hearings are held sporadically, often reconvening every four or five weeks. This style of hearing schedules can also be often found in the continental civil procedure system, for example in the German or French civil procedure practices. In contrast, the common law civil procedure typically calls for a more concentrated trial once the initial pleadings and discovery have taken place.

B. History

As in any sophisticated society, Korea for the past thousand years has had a well-defined legal system. There have been written rules for administrative and criminal law, and adjudicators have been expected to follow such rules. There has also been a robust procedural law and adjudication system since before the medieval age, starting under the Koryeo dynasty and reinvigorated during the Chosun dynasty, which lasted until the modern era. That said, the rules governing civil transactions were slow to develop, and the administrative and judicial powers were not separated during those times. Korea's modern judicial system, which is based on the separation of powers, was imported from Europe through Japan during the so-called Korean 'modernization period', which took place roughly from the late 19th to the early 20th centuries.

In July 1894, King Gojong separated Korea's judicial affairs from his central administrative apparatus by proclaiming that punishment could henceforth be levied as the result of a trial only by a specialist entity. He also banned the arrest of suspects by administrative agencies. Under the Court Organization Act, five different courts were established on March 25, 1895. When the Korean government was put directly under the supervision of Japanese colonial occupiers in 1905, Japan began to intervene in Korea's judicial affairs by sending Japanese judges and prosecutors and their assistants to Korea to "advise" its court system. In October 1909, all the judicial organizations of Korea, including its courts and jails, were placed under the direct control of the Japanese colonial power. About a year later, on August 29, 1910, Korea was finally formally annexed to Japan, and Korea's three-tier, three-instance court system was then introduced on March 18, 1912.[3] The model has remained to this day.

On August 15, 1945, at the end of World War II, the United States placed

Korea under its military rule after liberating the Korean Peninsula from Japanese colonial rule. However, the Americans temporarily maintained the old Japanese legal and judicial systems. The Korean judiciary was formally reborn on July 17, 1948 with the promulgation of a new constitution for the Korean government.[4)]

The Korean Constitution guarantees the independence of the judiciary.[5)] The Court Organization Act, enacted in 1949, provided for a modern legal system based on the concept of a three-tier court system. The Korean Constitution has undergone several amendments since those early days, many of which have been translated into revisions of the Court Organization Act. The three-tier organizational structure, however, remained intact throughout that period.

The Korean judiciary, which began with one high court and three district courts in 1948, now consists of a Supreme Court, six high courts, one patent court, one administrative court, one bankruptcy court, eight family courts, and eighteen district courts.[6)] In addition, the judiciary has a Judicial Research and Training Institute and a Training Institute for Court Officials.

The basic source of law for Korean civil procedure is the Civil Procedure Code (CPC), which consists of 502 articles. Other important sources of civil procedure law include the Civil Enforcement Act, the Small Claims Act, and the Bankruptcy Act.[7)]

C. Outline of Civil Procedure

The procedures for filing a lawsuit, case management and deliberation protocols under the CPC are as follows.

A civil complaint is initiated when a plaintiff who wants his/her right

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3) Si-yun Yi, Shin Minsasosongbeob [New Civil Procedure Act] 46 (11th ed. 2017) (In Korean).

4) Nak-in Sung, Heonbeobhak [Constitutional Theory] 77 (18th ed. 2018) (In Korean).

5) Nak-in Sung, Heonbeobhak [Constitutional Theory] 733 (18th ed. 2018) (In Korean).

6) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 106 (3th ed. 2022) (In Korean).

7) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 15 (3th ed. 2022) (In Korean).

to be upheld through a trial files a lawsuit or complaint. When the court receives such a complaint, it must first conduct a simple review thereof. If there is no defect in format, the court immediately serves a copy of the complaint on the other party (the defendant) through the regular post system. The defendant then has 30 days to submit his/her response to the initial complaint. If a copy of the complaint cannot be served on the defendant for some reason, the plaintiff is required to provide the court with another valid address of the defendant. In some instances, a complaint can also be served by way of public notice.

Once a complaint is served on the defendant, the defendant's answer (or lack thereof) determines the subsequent procedural posture of the case. If a defendant fails to submit an answer within the specified 30 days, or admits the allegations levied against him/her, the case will be referred to judgment without any hearing. In many cases, however, the defendant submits an answer refuting the plaintiff's allegations. In such cases, the presiding judge sets the earliest possible hearing date to allow the parties to have an in-person meeting with him/her. Unlike in the United States, there are no strict distinctions between the various phases of a civil trial in Korea. New claims may be submitted even when the initial complaints and answers have been exchanged or some evidence taking has already been conducted. In other words, the parties may submit evidence on numerous occasions throughout the proceedings.

The initial hearing date is set at an early stage. Subsequent hearings are held by piecemeal, usually every four to five weeks. The hearings themselves are oral in nature. Each party is given the opportunity to narrow down the issues under dispute before the judge, and allowed to rebut the other side's arguments. This process allows the parties to exhaust their assertions and arguments, and the Court can arrive at its decision in a transparent manner by means of oral examinations in open court. The aim is for the proceedings to operate in a way that enhances the participants' trust and sense of procedural justice. Once the parties' positions become clear, the ensuing application for evidence and its examination by the Court can then focus on those remaining issues under dispute.

In addition to the oral arguments in open court, each party must submit or file legal briefs (written documentation of its pleadings and supporting evidence) throughout the litigation process. To substantiate its claims, each

party must complete an application for evidence or produce relevant evidence on its own. Relevant documentary evidence should be submitted together with the legal briefs, along with other necessary submissions, such as requests for document production orders and applications for witness or expert testimony.

During the evidentiary examination hearing, witnesses may be examined one by one. However, as hearings are not concentrated in the Korean civil adjudication process, only one or two witnesses are usually examined at a particular hearing date, with the subsequent witness testimonies examined at the next hearing date.

When both sides have submitted sufficient arguments and evidence, the court closes the trial and sets the date for the delivery of the judgment, usually four or five weeks after the final hearing date.

II. Jurisdiction

A. Concepts

The social purpose of a judicial procedure is for there to be an effective and efficient system for resolving disputes. For a court to be effective, it must have a system of rendering a binding adjudication and a corresponding capacity to enforce its judgments. This raises the question of power: the power to command the parties to a case to appear before the court and the power to enforce the court's judgment. The court's power to enforce its judicial judgment ultimately hinges on the authority of the judges to coerce resistant or reluctant parties to appear before them and abide by their commands. Such authority is termed the "jurisdiction" of the court.

Conceptually, a court's jurisdiction can be further divided into a few sub-issues. First, the parties to a case must be subject to the reach of the Korean courts (jaepankwon in Korean) and not subject to some civil-liability exemption.[8] Second, the case should have a "reasonable link" to Korea so that the Korean courts could exercise their jurisdiction over it under international procedure law. Third, there must be a district or special court within Korea that enjoys both subject and territorial jurisdiction over

the parties to a case (kwanhalkwon in Korean).

B. Exemption of Jurisdiction and International Jurisdiction

In principle, the Korean courts' power to adjudicate civil complaints applies to all those who are physically present in the Korean territory, except those who are exempt from such power. Diplomats are one category of individuals exempted from such power by virtue of the Vienna Convention on Diplomatic Relations. A difficult question is whether foreign governments are exempt from the Korean courts' civil jurisdiction. In the 1970s, the Korean Supreme Court held that foreign governments are not subject to the jurisdiction of the Korean courts. However, the Supreme Court changed its position in 1998 and held that the Korean courts may exercise jurisdiction over a foreign government acting as a defendant in a transactional complaint unless the dispute is, for some reason, closely related to a sovereign activity of that foreign state.[9] Despite this pronouncement by the Korean Supreme Court , it is still unclear whether a court can easily establish jurisdiction over a foreign government because the courts themselves do not seem to adhere to the above principle in all cases.[10]

Even if the parties to a case are not exempt from the jurisdiction of the Korean courts, the courts do not always exercise their power to adjudicate. A Korean court can assert international jurisdiction over a case only if the plaintiff's complaint or the defendant has a reasonable link to Korea (i.e., a significant connection to Korea).[11] To establish such reasonable link, the Act on Private International Law (APIL) of Korea requires a case to have a "substantial relation" to Korea (Article 2(1)). The Korean Supreme Court has held that this means that the parties and the object of dispute must have a relation to Korea that could justify the Korean courts' exercise of such

8) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 100 (3th ed. 2022) (In Korean).

9) Daebeobwon [S. Ct.], Dec. 17, 1998, 97Da39216 (S. Kor.).

10) *See, e.g.*, Daebeobwon [S. Ct.], Dec. 13, 2011, 2009Da16766 (S. Kor.).

11) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 102 (3th ed. 2022) (In Korean).

jurisdiction.[12] This issue is discussed in greater detail in the section on international jurisdiction under the topic of international civil procedure law.[13]

C. Territorial Jurisdiction

People who want to file a lawsuit before a Korean court must first ensure that the court has territorial and subject matter jurisdiction over the case.

The rules delineating territorial jurisdiction are stipulated in Articles 2 to 24 of CPC. At its most basic level, territorial jurisdiction is decided on the basis of the defendant's residence.[14] If the defendant is a corporation, its residence is the place where its main office is located.[15] Territorial jurisdiction can also be established in places where business is conducted,[16] places where a financial or transactional duty is or should have been performed,[17] places where the defendant controls real property,[18] and places where an alleged tortious offense was committed,[19] among others. In cases where multiple territorial jurisdictions can be established, the plaintiffs may choose to bring their cases to any of the applicable courts.

D. Subject Matter Jurisdiction and Venue

In contrast with the courts of first instance in the Anglo-American system, where a single judge usually hears civil cases, in the Korean courts, there are two models of judicial panels. A court can be composed of either a

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12) In contrast, the US Supreme Court requires only "minimum contact" for the US courts to exercise international jurisdiction over a case. International Shoe Co. v. Washington, 326 U.S. 310 (1945).

13) *See* Kwang-Hyun Suk, Gukjeminsasosongbeob [International Civil Procedure Act] 67 (2012) (In Korean).

14) Minsasosongbeob [Civil Procedure Act], art. 3 (S. Kor.).

15) Minsasosongbeob [Civil Procedure Act], art. 5 (S. Kor.).

16) Minsasosongbeob [Civil Procedure Act], art. 12 (S. Kor.).

17) Minsasosongbeob [Civil Procedure Act], art. 8 (S. Kor.).

18) Minsasosongbeob [Civil Procedure Act], art. 11, 20 (S. Kor.).

19) Minsasosongbeob [Civil Procedure Act], art. 18 para. 1 (S. Kor.).

three-judge panel chamber or a single-judge chamber.[20] This corresponds with the continental system's tradition. The three-judge chamber, which consists of a presiding judge and two associate judges, is usually reserved for larger lawsuits where the damages claimed exceed KRW500 million.[21]

Even for three-judge panel chamber cases, however, the parties need not be represented by a lawyer, and *pro se* litigation is permitted. However, if a party chooses to hire a representative, that person must be a licensed lawyer if the case is being heard by a three-judge panel. In cases handled by a single judge, non-lawyers are allowed to represent the parties under certain circumstances, but only with the courts' express approval.[22] The representatives in such cases are limited to family members who have close relationships with the litigants or those hired by the parties and have already executed matters directly relating to the cases at hand.

Small claims cases are those in which the amounts in dispute do not exceed KRW30 million and the plaintiffs seek no form of redress other than either payment of money or delivery of a certain quantity of monetary securities. (This threshold may seem quite high.) In small claims cases, the spouses, parents, and siblings of the parties may represent them without the courts' approval.[23]

III. Initiation of an Action

A. Filing a Complaint

A person can commence an action against another by filing a "complaint" with a district court.[24] A complaint is a document containing a statement of claim in which the plaintiff details the relevant parties, any legal representative or counsel authorized to speak on their behalf (if

20) Beobwonjojikbeob [Court Organization Act], art. 30 (S. Kor.).

21) Beobwonjojikbeob [Court Organization Act], art. 32 (S. Kor.).

22) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 195-196 (3th ed. 2022) (In Korean). *See also* Minsasosonggyuchik [Rules of Civil Procedure], art. 15 (S. Kor.).

23) Soaeksageonsimpanbeob [Trial of Small Claims Act], art. 8 (S. Kor.).

24) Minsasosongbeob [Civil Procedure Act], art. 248 (S. Kor.).

applicable), and the relief sought by the plaintiff. The complaint sets the boundaries of the subject matter of the proposed adjudication.[25] Depending on the amount of damages sought by the plaintiff, the complaint is then passed to either the three-judge panel chamber or the one-judge chamber for further processing.

When submitting a complaint, the plaintiff must also prepay the delivery and stamp fees. The stamp fee increases proportionally to the size of the case.[26]

Under Korean civil procedure law, it is vital to accurately describe the object of the claim (i.e., the conclusion or demand of the complaint). The plaintiff must always define and describe his/her concrete demands. Even in a personal injury case following a traffic accident, for example, in which the plaintiff is unable to continue working and the actual monetary damages can be properly calculated only after physical assessment by a doctor (which typically occurs later in the judicial process), the plaintiff's complaint submitted to the court must state the concrete amount claimed as compensation. In such cases, the plaintiff usually indicates a provisional amount of claimed damages and later revises the object amount of the claim when he/she has already undergone a physical examination by a doctor.[27]

According to CPC, evidence (e.g., copies of written contracts in contract-related disputes or title registrations in land-related disputes) need not be included or attached to the initial complaint. Nonetheless, the court often recommends that the plaintiff does so to expedite the legal proceedings.

B. Assignment of a Case

The chief judge or deputy chief judge assigns cases to several chambers of the district court.[28] This is typically done in accordance with a workload

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25) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 62 (3th ed. 2022) (In Korean).

26) For in-depth explanation, *see* Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 62 (3th ed. 2022) (In Korean).

27) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 63 (3th ed. 2022) (In Korean).

28) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 64 (3th ed.

allocation plan, which is usually promulgated in late February of each year, when district court judges are usually rotated or promoted. (Korean judges do not serve at one district court for their entire careers. They usually serve at one district court for two to four years, after which they are usually assigned to another district court pursuant to the personnel requirements of the judiciary, as detailed in an order issued every February by the Supreme Court.)

C. Review of Formalities

When the chief judge or deputy chief judge has assigned a case to either a three-judge panel chamber or a single-judge chamber, the case is passed to such chamber. Most civil cases are handled by judges sitting alone. In single-judge cases, the singular judge is the presiding judge. In three-judge panels, the most senior judge on the panel usually becomes the presiding judge.

The presiding judge first reviews the complaint to check if the statement of claim meets the requirements.[29] These requirements are as follows: (1) the statement of claim must state all the elements required by Article 249 of CPC (e.g., the names of the parties, the names of the representatives, the type of relief and the claim amount sought by the plaintiff) and (2) the relevant stamp fees[30] must be attached to the written complaint. If any of these requirements are not satisfied, the presiding judge will order the plaintiff to amend his/her complaint within a designated period of time. Failure to do so may lead the presiding judge to either reiterate the order or dismiss the complaint at his/her discretion.[31] Once dismissed, a complaint can be refiled when the plaintiff subsequently cures the previous defects.

2022) (In Korean).

29) Minsasosongbeob [Civil Procedure Act], art. 254 para. 1 (S. Kor.).

30) For amount of stamp fees, *see* Minsasosong deung injibeob [Act on the Stamps Attached for Civil Litigation], art. 2 (S. Kor.).

31) Minsasosongbeob [Civil Procedure Act], art. 254 para. 2 (S. Kor.).

D. Service of Process

If a written complaint has satisfied all the necessary requirements, the court serves the complaint on the defendant or gives the defendant a copy of the complaint.[32] Here, the defendant must be given sufficient time to take effective action in his/her defense. Other relevant documents, such as instructions regarding the Korean civil procedure and the Order to Submit a Written Defense, are usually enclosed with the original complaint and served together with it.

Service is an official act that is to be effectuated *ex officio* by the court.[33] It is usually delivered via a special kind of registered mail through the Korean Post Office. In the United States, the plaintiff is personally responsible for effectuating service, and service must be made within the court's territorial jurisdiction. The rule in Korea is quite different. In the Korean court procedure, the court is responsible for serving notice of litigation, and there are no "territorial limits of service."

As mentioned above, in Korea, service is effectuated through registered mail. In certain instances, however, a designated court official or bailiff can also serve the documents,[34] usually after the issuance of a court order or after a request for such is made by the plaintiff. This is usually done when the first attempt to serve notice through the postal system has failed. The details of how to serve notice are largely the same regardless of the nature of the litigation or the relief sought, varying only slightly on the basis of whether the defendant is a natural or juridical person and whether the defendant's residence, domicile, place of business, or whereabouts are known or unknown to the plaintiff and court.[35]

In the event that the notice of litigation cannot be served due to the unavailability of the recipient, unanswered door knocks, an unclear

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32) Minsasosongbeob [Civil Procedure Act], art. 255 para. 1 (S. Kor.).

33) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 66 (3th ed. 2022) (In Korean).

34) Minsasosongbeob [Civil Procedure Act], art. 176 para. 1 (S. Kor.).

35) For in-depth explanation, *see* Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 66–696 (3th ed. 2022) (In Korean).

recipient, an unclear address, relocation of the defendant, or another reason, the service will have to be tried again. The presiding judge in such situation then orders the plaintiff to correct the defendant's address within a few days, usually seven business days. Failure to comply with this order may result in dismissal of the complaint.

Depending on the reason for the failure of the initial service attempt, the following methods for retrying service can be used: attempting to serve the same complaint at the same address again, attempting service with the support of a court bailiff, or service by public notice. If it becomes obvious that it is impossible for the plaintiff, acting without fault or negligence, to specify the defendant's actual address, the presiding judge may allow service to be effectuated through public notice as an alternative means of service.[36] In such situations, the plaintiff must first apply for service by public notice, and once the application is approved, a public notice of service is posted.[37] The first public notice takes effect 14 days after the posting. From the second public notice, the period before the notice takes effect is shortened to one day.[38] After the public notice of the complaint takes effect, the first hearing date is set by the court. Most of these cases are typically closed after the first hearing and subsequently directly proceed to judgment rendering.

In previous decades, public notices were posted on the district court's bulletin board. Today, they are posted on the court's website.[39]

E. Computerization and Text Message Notice System

Korea has one of the world's most sophisticated digital case management systems (CMSs). All the judges and court officials in any Korean court nationwide today use the judiciary's CMS to digitize all case documents. CMS was introduced in 1998 and has since been updated

36) Minsasosongbeob [Civil Procedure Act], art. 194 (S. Kor.).

37) Minsasosongbeob [Civil Procedure Act], art. 195 (S. Kor.); Minsasosonggyuchik [Rules of Civil Procedure], art. 54 (S. Kor.).

38) Minsasosongbeob [Civil Procedure Act], art. 196 (S. Kor.).

39) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 73 (3th ed. 2022) (In Korean).

numerous times. It was initially used only for civil cases but has since also been used for family, administrative, and insolvency cases.

CMS, however, is used not only by judges and court personnel but also by outside stakeholders, including the litigants themselves. The general citizenry can also discover a wide array of information on the judiciary's website, including relevant hearing dates, documents that have been submitted as evidence in certain cases, and procedural orders issued by the court.

One of the most useful features of CMS is the text message notice system. This system allows litigants to expediently learn via text messages if there is an update regarding their case, such as when a hearing date has been set and when documentary evidence has been filed. Anyone with a civil case pending before a Korean court (including the branch and municipal courts) and his/her representatives may make use of this system after paying a modest service fee.[40)]

IV. Subsequent Pleadings and Hearings

A. The Answer

The disposition of a case is generally the same regardless of whether it is handled by a single judge or by a three-judge panel. Upon receiving a copy of a written complaint, the defendant is required to file a written defense within 30 days.[41)] The answer should be a Statement of Defense.

If the defendant accepts the allegations and/or admits all the facts as stated in the complaint, the court may directly proceed to summary judgment, without conducting a hearing. Defendants who fail to object to the written complaint as served are considered by the court to have admitted all the relevant facts and allegations, therefore leading to the same result.[42)] These provisions are designed to ensure a swift trial in cases where

40) For detailed history and present situations of electronization of Korean civil procedure, *see* Huy-Jae Jeon, Minsajeonjasosong sihaeng 10nyeon, geu seonggwawa jeonmang [10 Years of Civil Electronic Litigation: Achievements and Prospects] 9 (2022) (In Korean).

41) Minsasosongbeob [Civil Procedure Act], art. 256 para. 1 (S. Kor.).

there are no relevant legal or factual disputes.

However, defendants typically contest the facts alleged in the complaints. In such cases, after receiving the defendant's answer, the plaintiff can submit a new set of written pleadings[43] elaborating in greater detail the grounds for his/her original "Demand of Complaint." This document is described as a "preparatory writing."[44] After receiving a preparatory writing from the plaintiff, the defendant can submit his/her own written pleading in response. This document is also called preparatory writing.

B. General Pattern of Hearings

The idealized image of proceedings before the court is that of a series of well-prepared oral arguments. In reality, however, the parties' oral arguments are delivered on the basis of their writings and usually before hearings. After the oral arguments, the court initiates proof taking to determine any facts that may have been disputed in the various exchanges.[45] Further oral arguments to size up and assess the entire case are often made, after which the case proceeds to the final judgment.

The idealized image of court proceedings again suggests that the exchanges described above are carried out intensively during one or two hearings. In reality, however, even in simple cases, this ideal is often not achievable. More commonly, the courts schedule several hearings for oral argumentation and proof taking in any given case.[46] Cases are frequently adjourned for the convenience of the litigants, experts, witnesses, and court, which tends to prolong civil proceedings.

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42) Minsasosongbeob [Civil Procedure Act], art. 257 (S. Kor.); For limitations and exceptions for this summary judgment, *see* Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 79 (3th ed. 2022) (In Korean).

43) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 79, 355 (3th ed. 2022) (In Korean).

44) *See* Minsasosongbeob [Civil Procedure Act], art. 272 (S. Kor.).

45) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 407 (3th ed. 2022) (In Korean).

46) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Act] 339 (3th ed. 2022) (In Korean).

The Korean courts will often set the first hearing date when the parties have exchanged their initial pleadings. After one or two exchanges of written arguments between the parties, the court designates an initial hearing date.[47] The hearings follow a relaxed schedule, and a second hearing is usually held four or five weeks after the first hearing. The litigants use the intervening time to prepare evidence for the second hearing.[48] Depending on the complexity of the case, there can be several hearings scheduled in this way, separated by a period of four or five weeks so that the parties can prepare additional evidence. At each hearing, the court asks both parties to make their arguments and submit their relevant evidence.

The proceedings unfold across a number of sessions, spanning the time from the initiation of the case to the final judgment. This model, as already alluded to above, stands in contrast to the more concentrated trial procedure that can be observed in many common law systems, such as those in the United States and the United Kingdom.

The presiding judge may also order the litigants in a case to go through "preliminary proceedings" to clarify the relevant legal and factual issues of the case.[49] The judge may do this at any point when he/she wishes to classify the case, usually at the earlier stages of the case but sometimes also after several hearings.[50] Preliminary proceedings are designed to clarify and narrow down the facts and legal issues that will be examined in the trial. This is often necessary in complex cases in which the judge feels that there is a need for a separate set of proceedings to map out the structure and logic of the trial.

There are two kinds of preliminary proceedings.[51] The first requires the litigants to exchange legal briefs about the factual disputes and legal issues at play. This is called a written preliminary proceeding. The second requires that the parties appear in court to establish their claims and

47) Minsasosongbeob [Civil Procedure Act], art. 258 para. 1 (S. Kor.).

48) *See* Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 330 (3th ed. 2022) (In Korean).

49) Minsasosongbeob [Civil Procedure Act], art. 272, 279 para. 1 (S. Kor.).

50) Minsasosongbeob [Civil Procedure Act], art. 279 para. 2 (S. Kor.).

51) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 332 (3th ed. 2022) (In Korean).

evidence. This is called an oral preliminary proceeding.

The preliminary proceedings in the Korean system may be loosely equated with the pre-trial proceedings in US civil procedure. However, unlike in the United States, where every case must go through a pre-trial proceedings phase, in Korea, preliminary proceedings are optional, and the court can either order them or proceed directly with the regular trial proceedings.

C. Principles of Pleading and Orality

The iterative sequence of discussions and conferences, collectively referred to as oral arguments, is progressively designed to structure and clarify the content of a case and advance the process of litigation. The procedure is under the "principle of orality".[52)]

In addition, as in most other modern civil procedure codes, the "principle of pleading" serves as a fundamental legal principle in CPC.[53)] This means that a Korean court must also generally take a case as it is presented by the parties themselves. The Korean courts cannot address claims that have not been raised by the plaintiff. It is the parties that must raise pertinent allegations and offer relevant proof for these, including which witnesses to call. The court, on its own, cannot dig up and present evidence in a trial.[54)]

However, there are two important caveats to the principle of orality and pleading in Korea. The first is the observation that, de facto, the principle of orality is actually quite impaired in the Korean system. In actual court cases, the litigating parties, their attorneys, and the judges do not depend much on oral arguments.[55)] Rather, they depend heavily on the written submissions by the parties. This phenomenon is intensified by the

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52) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 259 (3th ed. 2022) (In Korean).

53) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 267 (3th ed. 2022) (In Korean).

54) A notable exception exists in some "family" actions, where the court has extensive sua sponte powers, including the power to call witnesses not nominated by the parties.

55) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 260 (3th ed. 2022) (In Korean).

piecemeal hearing practice described earlier. American lawyers observing a Korean trial will likely feel that the oral arguments lack the intensity of those in a US courtroom.

Second, the judges in Korea tend to intervene much more actively during oral arguments than their US counterparts. The Korean judges tend to take a more active role in courtrooms. Thus, Korean civil procedure feels more like a collective discussion than an adversarial argument. That said, the atmosphere in the Korean courtrooms differs on the basis of a number of factors, including the judge's personal temperament and imagination, level of understanding of the case, and assessment of the overall capacity and energy of the counsel, of the complexity or novelty of the case, and of the overall relevance of the case from an equity or public-interest perspective.

In three-judge court panels, the presiding judge is usually the one who intervenes in the oral arguments.[56] Presiding judges typically prepare themselves to direct oral argumentation and gather the necessary evidence. The two associate judges are generally less vocal during oral arguments. It is the presiding judges who serve as the principal actors for the court, although they may order recesses to deliberate and consult with the two associate judges.

Article 136 of CPC enables judges' active involvement in oral argumentation. It states that "[t]he presiding judge may, to clarify the litigation relations, ask the parties questions, and urge them to prove, on the factual or legal matters." The same article of CPC also empowers the associate judges to do the same "after informing the presiding judge thereof." This is called clarification right. It is also the judges' "clarification duty" inasmuch as it is what is right.[57]

D. Deciding on and Changing the Hearing Date

As mentioned above, the presiding judge unilaterally sets the first hearing date, but such date can be changed with the consent of both parties.

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56) *See* Minsasosongbeob [Civil Procedure Act] art. 135 (S. Kor.).

57) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 278 (3th ed. 2022) (In Korean).

For this, the parties must submit a hearing date change application, along with the written consent of the other party, to the relevant court prior to the hearing date.[58]

The second hearing date is set during the first hearing, after consultation with the parties. The subsequent hearing dates are set in the same way. Changing the second or subsequent hearing date, therefore, is allowed only with the court's permission and only when a substantial reason justifying such a hearing date change arises (e.g., a funeral or marriage of a family member of one of the litigants, a summons from a different court prior to receiving the notice for hearing).[59] To request such an extraordinary hearing date change, the parties must submit a hearing date change application to the court along with the necessary documentation to demonstrate the extraordinary circumstances leading to the request.

E. Change in Claim

After the initial pleadings are made, the case begins to flow and take shape on the basis of the arguments and evidence presented by both parties. However, it sometimes happens that, during the process, it becomes necessary to amend or change the cause of action or alter the concrete remedies (objects) of the claim.

Each jurisdiction's procedural law has its own unique approach for allowing such alterations. CPC is designed not to hold the parties to their initial claims and evidentiary arguments; rather, it allows the parties to amend their claims as the case develops. Korea has one of the most accepting approaches to such modifications.[60] Due to this flexibility, plaintiffs frequently change their causes of action or the objects of their claims.

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58) Minsasosongbeob [Civil Procedure Act] art. 165 para. 2 (S. Kor.).

59) Minsasososonggyuchik [Rules of Civil Procedure] art. 41 (S. Kor.); Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 295 (3th ed. 2022) (In Korean).

60) *See* Minsasosongbeob [Civil Procedure Act] art. 262 (S. Kor.).

F. Effects of Non-Attendance in Hearings

1. Plaintiff's Failure to Attend a Hearing

If the plaintiff fails to make an appearance in court but the defendant makes an appearance, the defendant's attitude can determine the subsequent disposition of the case. If the defendant (often intentionally) fails to provide any legal or factual argument or evidence to support his/her non-liability, the presiding judge sets a new hearing date. If both parties fail to appear at the rescheduled hearing or if only the defendant makes an appearance but again fails to produce any legal defense or exculpatory evidence, the court may abandon the case rather than set another hearing date. If, within one month, the plaintiff fails to apply for the setting of a new hearing date, the court will deem the lawsuit to have been effectively withdrawn.[61)]

If, on the other hand, the defendant makes an appearance in court and provides legal or factual arguments in his/her defense, the case may proceed even if the plaintiff fails to appear in court.

2. Defendant's Failure to Attend

If the plaintiff makes an appearance in court and provides arguments supporting his/her original complaint but the defendant fails to make an appearance or submit any exculpatory response, the court may find that all of the plaintiff's claims have been confirmed.[62)] This rarely happens in reality, however, because the court typically moves for "summary judgment" without conducting a hearing whenever the defendant fails to submit an answer within 30 days from his/her receipt of the initial complaint.[63)]

In such situations, a defendant can always file a petition to resume the case by submitting an answer at any time prior to the judgment hearing.

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61) Minsasosongbeob [Civil Procedure Act] art. 268 (S. Kor.).

62) Minsasosongbeob [Civil Procedure Act] art. 148 (S. Kor.).

63) Minsasosongbeob [Civil Procedure Act] art. 257 (S. Kor.).

V. Evidence

A. Features of Korean Evidence Law

Korean evidence law has several peculiarities. The first pertains to discovery or disclosure during litigation. Here, Korea finds itself at the opposite end of the spectrum from the United States. The United States seems to have one of the most permissible systems globally with regard to evidence gathering and broadly permits the parties themselves to search for evidence confirming their allegations during discovery. The US discovery system was enacted in 1938 with the passage of the Federal Rules of Civil Procedure. The German system seems to have a more moderate approach.[64] In Korea, the parties have great difficulty gathering their own evidence if such evidence happens to be in the possession of the opposing party. CPC's provisions focus primarily on evidence taking by the court and hardly dwell on the gathering of evidence by the parties themselves. This is based on the philosophy that each party should carry out lawsuits on his/her own risk.

The foregoing makes it more challenging for Korean plaintiffs who do not possess crucial evidence prior to the commencement of a trial to adequately justify their allegations.[65] There are many instances in which only one side of a dispute has access to the necessary evidence, especially in cases of alleged medical malpractice, intellectual property cases, pollution cases, and others. Without a proper discovery procedure in place, the plaintiffs in such cases cannot always obtain the information and evidence they need to support their claims, and the judgments sometimes fail to uphold justice. Because there is no developed system of pre-trial discovery in Korea, some major industrial disputes between Korean companies have even been litigated before US courts by virtue of forum shopping.

The second peculiarity has to do with the nature of the evidence that

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64) For comparative looks on range of disclosure in civil procedure, *see* Wonyol Jon, *Minsasosongjeolchasang diseukeobeoli doibe gwanhan geomto* [*On Introduction of Discovery into Korean Civil Procedure*], 501 Hum. Rts. J. 113 (2021) (In Korean).

65) *Id. at* 111.

may be submitted to the court. Due to the system of trial by jury employed in many US trials, the US system is rigid about the kinds of evidence that are admissible in court. CPC, on the other hand, is quite tolerant of the kinds of evidence that may be brought before a court.[66] Korean law assumes that judges, acting as professional and legally trained adjudicators, are capable of making nuanced decisions about the reliability of the evidence presented.

As is well known, US courts do not permit the use of hearsay evidence in court cases. Korea has a similar evidentiary rule for criminal cases but not for civil cases. CPC allows the parties to submit hearsay evidence without limit, and the judges have the responsibility of determining the evidentiary weights of such submissions.

B. Submission and Taking of Evidence

Each party must present relevant evidence to the court to establish the various factual claims in their allegations. The only exceptions to this rule are (1) the facts admitted by the opposing party and (2) publicly known facts. Whenever the opposing party fails to contest a claim, it is taken as admitted.[67] The parties must declare themselves in opposition to any of their opponents' assertions if they wish to prevent such assertions from being admitted.

The provisions for evidence in CPC pertain primarily to motions to examine relevant evidence before the court. The parties themselves must initiate any motion to examine the evidence, and the party seeking to support a claim must submit documents or other items as evidence or seek witness testimony, expert appraisals with the motion. Whenever a party makes such a motion, the court must decide whether to grant it. As discussed above, Korean civil procedure is committed to the doctrine of pleading, the principle that the court must generally take a case as the parties plead it. Consequently, the court will not examine any evidence that

66) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 357 (3th ed. 2022) (In Korean).

67) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 375-386 (3th ed. 2022) (In Korean).

the parties have not motioned to have examined. Furthermore, as the hearings are scheduled piecemeal, the court will not seek all the relevant evidence on contested issues to be presented in one sitting but will sequence the presentations over time.

Although the parties are usually expected to attach all relevant documentary evidence to their initial complaint or answers in the initial exchange of letters, such exhibits are often not exhaustive, and the parties are usually given opportunities later to produce further documentary evidence or witnesses if a need for such arises.

CPC states that all evidence must be submitted in a timely manner.[68] In reality, however, this is often not properly observed. In such cases, the presiding judge may set a deadline for the production of certain evidence. If such period lapses without compliance, the non-compliant parties may lose their right to submit such evidence even if they attempt to do so at a later date.

C. Witness

1. Comparative Analysis

With regard to the examination of witnesses, the Korean system focuses more on the "totality of the evidence" and is far less preoccupied than the American system with a minute investigation of individual factual details or the reliability of individual witnesses. Experienced judges in Korea constantly warn against overreliance on oral testimony.[69] Accordingly, they tend to value the testimony of an individual witness less than their counterparts in the United States do. Nonetheless, witnesses still play an important evidentiary role in Korean civil trials.

2. Submitting an Application for Witness Testimony

A party that wants to bring a witness before court must, before the hearing

68) Minsasosongbeob [Civil Procedure Act] art. 146, 147 (S. Kor.).

69) *See* Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 417 (3th ed. 2022) (In Korean).

date, formally apply for such witness to appear in court.[70] A witness will not be heard in ordinary litigation unless the presenting party petitions the court to allow such witness's testimony. However, only the court itself can call a witness to the witness stand, and it has the discretion to do or not do so and how often to do so over the course of litigation.

When requesting a witness to be called to the witness stand, the applicant should clearly state the purpose for the witness's testimony and the witness's relationship to the matters at play in the litigation. The applicant should also indicate that the witness will appear in court without coercion and provide the witness's telephone number and/or other contact information.

3. Conducting a Witness Examination

Witnesses may take the witness stand only after they are called to testify. When their turn to testify comes, the court asks them to state their name, age, occupation, and place of residence. It also warns them of their duty to speak the truth before the court, reminding them of the penalties for perjury. Finally, all witnesses are asked to swear an oath of truthfulness. The oath is similar to one that a witness might be asked to swear in other countries: "I swear on penalty of perjury to tell the whole truth and nothing but the truth, in accordance with my conscience."[71]

CPC specifies that witnesses shall first be invited to speak in narrative form, without undue interruption, regarding what they know about the matter on which they have been called to testify. Again, this provision of CPC is not always observed, and some attorneys ask the witnesses long-winded and complex questions, demanding only succinct responses from them in return.

In the past, no verbatim report of the witness testimony was made, and only summaries of the witness's testimonies were entered into the minutes. These summaries, however, were typically detailed. One cannot help but admire the skill with which experienced judges captured the essence of a

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70) Minsasosongbeob [Civil Procedure Act] art. 308 (S. Kor.); Minsasosonggyuchik [Rules of Civil Procedure] art. 75 para. 1 (S. Kor.).

71) Minsasosongbeob [Civil Procedure Act] art. 321 para. 2 (S. Kor.).

witness testimony in the trial minutes. The production of such witness testimony summaries certainly made it easier for judges to repeatedly refresh their memories about what happened in the previous trial sessions or proceedings. However, such old system also had serious disadvantages, foremost of which was that nuanced factual details were likely to be lost when the witnesses' stories were only being summarized and not reported verbatim. Often, the color of the witnesses' testimonies was drained in such summaries. For this reason, most witness testimonies today are electronically recorded.

4. Compelling the Appearance of a Witness in Court – Penalties and Imprisonment for Non-Appearance

If a witness fails to appear in court without a reasonable excuse, the court may issue summons to compel him/her to come before the court or to appear in another place where he/she may be examined. A witness who ignores the court's summons without reasonable cause may be fined up to KRW5 million or sentenced to seven-day imprisonment by a civil court.[72] Furthermore, witnesses and experts are criminally liable if they provide false testimony under oath. The litigants themselves, on the other hand, are not criminally liable if they provide false testimony on their own behalf (see section 6).

Court summons may be generally enforced by the police or by an enforcement officer (analogous to a sheriff in the United States).[73] In such cases, the travel expenses of the enforcement officer must be deposited with the court by the party that applied for the summons.

A litigant's spouse or close relative by blood or marriage may also refuse to testify before the court and need not provide any reason for such refusal.[74] The court must also inform any such witnesses of their right to refuse to testify in court.

72) Minsasosongbeob [Civil Procedure Act] art. 311 para. 1 (S. Kor.).

73) Minsasosongbeob [Civil Procedure Act] art. 311 para. 2 (S. Kor.).

74) Minsasosongbeob [Civil Procedure Act] art. 314 (S. Kor.).

5. Cross-Examination of Witnesses

The party that originally requested the appearance of a witness is entitled to examine the witness first ("direct examination"). Afterwards, the opposing party is given the chance to examine the same witness ("cross-examination").[75] The purpose of cross-examination is to verify the integrity of the testimony offered during direct examination. Cross-examination, therefore, may not focus on any matter other than those that arose in the direct examination.

It can sometimes happen that the opposing party fails to understand the nature of the witness testimony offered under direct examination and is therefore unable to conduct an effective cross-examination. The opposing party should therefore listen carefully to the direct examination, note the questions to ask during the cross-examination, and subsequently ask such questions in the proper sequence during the cross-examination.

6. Party Testimony

In common law civil procedure, party testimony is a part of witness testimony; that is, the parties can themselves also provide witness testimony. In Korea, however, as in other civil law systems, the litigants themselves are not considered witnesses. Thus, even though they can take the witness stand to explain their understanding of the facts of the case, their testimonies are deemed to fall under a different category of evidence called party testimony.[76] In reality, however, the process of taking evidence from the litigants is similar to the process of taking evidence from witnesses.

Due to the presumption that the litigants may have a distorted or biased recollection of the facts of the case, party testimony is generally considered to have lower evidentiary weight than other forms of evidence and is therefore deemed to be the evidence of last resort.[77] In addition, the

75) Minsasosongbeob [Civil Procedure Act] art. 327 (S. Kor.).

76) Minsasosongbeob [Civil Procedure Act] art. 367 (S. Kor.).

77) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 453 (3th ed.

constitutional principle of prohibition of self-incrimination is interpreted to extend to the area of party testimony; thus, Korean litigants are not criminally liable for perjury even if they provide what may later be proven to be false testimony.

D. Documentary Evidence

1. Submission of Documentary Evidence

"Documentary evidence" refers to any document submitted to the court as evidence. In most Korean civil trials, this is the most relevant type of evidence.[78] Both parties submit any documents in their possession that may serve as evidence of their claims. A party may also petition the court to compel the opposing party to submit documents in its possession that may serve as evidence for the petitioning party's claim. Such motion is called Application for a Document Production Order (see section 4).

Further, on the basis of a party's motion to produce relevant documentary evidence, the court can request the appropriate public authority or institution to supply documents to which the party does not have easy access.[79]

On the relevant hearing date, a party should submit a hard copy of each document to the court. The party should also provide the opposing party with copies of all the documentary evidence it submits to the court.

Each documentary evidence submitted by the plaintiff shall be assigned a unique sequence number ("*GAP* Evidence No."), and that submitted by the defendant shall also be assigned a similar unique identifying number ("*EUL* Evidence No.").

Any document submitted into evidence that is only a copy and not a transcript or an original document should be certified. For document certification, in addition to numbering the document as documentary evidence as described above, each individual page of the document should

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2022) (In Korean).

78) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 427 (3th ed. 2022) (In Korean).

79) Minsasosongbeob [Civil Procedure Act] art. 344 (S. Kor.).

bear an overlapping seal, proving that no pages have been inserted between those certified to be true copies of the originals. At the bottom of the last page, there should be a line stating "[t]his is a true copy of the original" certified by the seal of the submitter. Legal practice requires doing this not only for the document copies to be given to the court but also for the document copies provided to the defendant. In addition, although it is not essential especially when there are only a few pieces of documentary evidence to be submitted, it is considered a best practice to generate a "documentary evidence list." Such a list can also be used as a cover page for the documentary evidence to be submitted.

2. Admission/Denial of Documentary Evidence

Whenever documentary evidence is submitted to the Court, the Court then must ask the opposing party whether they accept that evidence as authentic. The opposing party may admit or deny the authenticity of the documentary evidence or may profess its ignorance of such.[80)]

When the opposing party admits the authenticity of the documentary evidence, it affirms that the evidence was indeed produced by the draftsperson whom the party seeking to enter the evidence into the record claimed to have produced it. When the opposing party denies the authenticity of the documentary evidence, it contests the claim of the party seeking to enter the evidence into the record that the document was drafted by the alleged drafter. In other words, the opposing party claims that the document is a forgery. Finally, when the opposing party professes its ignorance of the authenticity of the documentary evidence, it is stating that it does not know if the document is authentic or a forgery.

3. Submission of Elucidation of Evidence

In addition to the evidence itself, the parties to a case may sometimes also need to submit an "Elucidation" (clarification) of their previously submitted evidence.[81)] This is particularly important when the volume of

80) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 429-430 (3th ed. 2022) (In Korean).

documentary evidence has become so large that it has become difficult to assess the relevance of each piece of evidence submitted, when the documentary evidence is difficult to understand, when the purpose of the evidence is unclear, or when the drafter of the documentary evidence or the date of its drafting is unclear.

The elucidation of evidence must detail the name of the document, the date of its drafting, the name of the drafter, the purpose of the evidence, and the location of the original document. When describing the "purpose of the evidence," the party concerned must detail the central facts to be proven by the evidence and, depending on the issue, why and how the document was originally drafted.

4. Document Production Order

As mentioned earlier, a party to a case may seek an order from the court compelling the opposing party to produce documents the latter referred to in its writings or at the relevant oral argument, and which are in its possession. The court may also order the opposing party to produce documents that a party has a right to demand or inspect under the rules of private substantive law, such as those set out in the Civil Code.

The court may issue document production orders for documents under the control of either the opposing party or a third party. Such orders must state the document title and purpose, who or what institution has possession of the document, the facts to be proven with the document, and the reason that such evidence must be gathered.

The amended CPC has expanded document holders' duty to submit relevant documents; now, all documents ordered to be produced must be submitted by their holders except when there exist valid reasons for refusing to submit them into evidence. Some examples of valid reasons for rejecting an otherwise valid document production order are threats of criminal prosecution, personal reputational concerns, occupational confidentiality, and fear of revealing a trade secret. Some public documents maintained by public servants are also covered by such privileges.[82)]

81) Minsasosonggyuchik [Rules of Civil Procedure] art. 106 (S. Kor.).

82) Minsasosongbeob [Civil Procedure Act] art. 344 para. 1, para 2 (S. Kor.).

CPC stipulates that absent the aforementioned privilege, failure to comply with a document production order may result in the court's acceptance of the allegations of the other party concerning the content of the relevant document. In reality, however, the meaning of this provision is not clear, and many courts are thus reluctant to apply it.

E. Expert Appraisal

A final category of evidence pertains to expert appraisals.[83] Such appraisals are intended to supplement a judge's capacity to render a judgment. In such situations, third parties with knowledge about and experience with the relevant topic are asked to examine certain pieces of evidence and apply their specialized knowledge thereto and share their expertise with the court.[84]

When a party's application for an expert appraisal to the Court is approved, the applicant must also confirm the cost of the hoped-for appraisal, and confirm that he/she is capable of covering such costs. If money covering the cost of the expert appraisal is not deposited with the court in advance, the appraisal may not be authorized.

VI. Closure Procedure

A. Closure of Trial or Hearings

When the court determines that the parties' arguments and submitted evidence have been sufficiently scrutinized, the court closes the trial. The trial's last session date is the point at which the new legal relationship between the parties flowing from the judgment is deemed to begin.[85]

Occasionally, after a judge moves to close the trial, one or both parties express the desire to continue making arguments or submitting evidence,

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83) Minsasosongbeob [Civil Procedure Act] art. 335-342 (S. Kor.).

84) Minsasosongbeob [Civil Procedure Act] art. 333 (S. Kor.).

85) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 510 (3th ed. 2022) (In Korean).

usually miscellaneous ones. In such situations, many judges try to negotiate with the parties concerned to limit their future submissions and grant only one more trial session. However, the final decision as to whether to close or extend the trial lies exclusively with the judge or judges.

After the trial is closed, a dissatisfied party may submit a "Request for Reopening." Such requests are usually not granted, but if the court, upon evaluating such a request, agrees that the case has not been fully explored despite the trial's closure (i.e., if the court thinks that additional oral arguments or evidence submissions are required to fully understand the dispute), it may reopen the trial without limit.[86] There are no procedural hurdles preventing a court from reopening an already closed trial for further oral argumentation.

In common law systems, the responsibility of providing a legal basis for a claim lies entirely with the party that has the burden of making an actionable claim. Common law judges typically do not hesitate to render a judgment unfavorable to a party that fails to put forward an applicable legal theory of liability. In Korea, however, there is no such obligation,[87] and the Korean judges are typically reluctant to render an unfavorable verdict only on such basis. They usually feel that it is their duty to imply or suggest a basis for potential legal reasoning to the parties during oral argumentation, if only to avoid surprising the parties at the conclusion of the trial. Even while reviewing requests to reopen an already closed trial, judges often look to see if there may have been a potentially relevant legal theory that the parties failed to raise and will sometimes reopen a trial on the basis of this.

B. Trial Closure without a Judgment

Most people believe that the purpose of initiating a lawsuit is to obtain a favorable judgment. In the real world, however, many cases are closed without a judgment from the court. The most common causes of such instances are withdrawal and settlement.

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86) Minsasosongbeob [Civil Procedure Act] art. 142 (S. Kor.).

87) However, explicit statements about the law, even argumentative statements, are in reality not proscribed and are frequent in writings for Korean litigation.

1. Withdrawal

A plaintiff may withdraw a case voluntarily at any time after filing a Statement of Claim. However, if the defendant has already made pleadings on the merits of the case, the plaintiff must obtain the defendant's consent to withdraw the case before withdrawing it. The defendant can either agree to or reject the case withdrawal request within two weeks from his/her notification of such; if the defendant fails to do so within such period, he/she is deemed to have consented to the withdrawal of the case.[88] Voluntary withdrawal of a case is without prejudice unless it was made when a judgment had already been issued.[89] That is, while a plaintiff may still withdraw the case even when a judgment has been made, the judgment will nonetheless stand despite the plaintiff's withdrawal of the case. After the period during which a plaintiff can file an appeal lapses, his/her power to withdraw a case also lapses.

2. Settlements

Frequently, the parties to a case manage to reach an informal negotiated settlement while litigation is playing out in court. In many cases, the court encourages the parties to attempt to reach such out-of-court settlements. The intensity and candor with which a Korean court urges parties to seek out-of-court settlements may sometimes astonish a foreign observer. Few cases proceed without the judge urging the parties to seek an informal negotiated settlement. Judges often set a conference at the courthouse for the parties to the case to attempt to reach a settlement prior to the closing of the hearing. At such conference, the judge may aggressively recommend that the parties negotiate a settlement. Here, the judge often acts as a quasi-mediator, but he/she often sends the case to an appropriate mediator who is a member of a registered panel of court-associated mediators. If the parties manage to reach a settlement, the details of such are incorporated into the minutes of the trial, thus assuming the weight of a formal judgment

88) Minsasosongbeob [Civil Procedure Act] art. 266 para. 2 (S. Kor.).

89) Minsasosongbeob [Civil Procedure Act] art. 267 (S. Kor.).

or verdict of the court.

When the judge feels that a compromise is either feasible or advisable, he/she may even enter the proposed settlement into a formal document ("Decision of Settlement Recommendation")[90] and give the parties two weeks to consider the matter. When the parties fail to make decisions regarding the recommendation after the two-week period expires, they are deemed to have agreed to the recommendation. The Decision of Settlement Recommendation, then assumes the weight of a formal judgment or verdict of the court.[91]

In the United States, the pre-trial period is very long and the discovery procedure is quite intensive. Furthermore, there are long waiting periods before a case is heard. Perhaps for these reasons, the ratio of cases that get settled out of court is quite high. While there are certainly also some civil cases in Korea that are settled out of court, the ratio of cases that go to trial in Korea is much higher than that in the United States. This pattern of ratio is in keeping with that also found in other civil law systems, such as those in Germany and Japan.

In Korea, a negotiated settlement incorporated into the minutes of a trial has the same legal weight as a formal judgment for the purpose of execution. Here, the Korean system departs from other civil law systems: in Korea, the agreement or settlement reached by the parties to a case before a court is as binding as a court's adjudication on the case in a formal trial. Negotiated settlements before a court in Korea are held to be *res judicata* or final and binding.[92] Other civil law systems, such as those in Germany and Japan, also prescribe some binding effect to negotiated settlements but do not consider them *res judicata.*

90) Minsasosongbeob [Civil Procedure Act] art. 225 para. 1 (S. Kor.).

91) Minsasosongbeob [Civil Procedure Act] art. 231 (S. Kor.).

92) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 585 (3th ed. 2022) (In Korean).

C. Judgment

1. Establishing and Rendering Judgments

For cases that proceed to formal judgment, the judgments are not rendered immediately after the final trial session. Usually, a new trial date is set for the issuance of a judgment order,[93] similar to the practice in other civil law systems.

CPC prescribes that no more than two weeks should separate the final oral argument from the pronouncement of a judgment. However, this time limit is without sanction, and most judgments take a longer period to be issued. The time between the final oral argument and the judgment varies from case to case, but the average is four to six weeks. Even when the date for the issuance of a judgment is set, the court may postpone the session or even order further oral argumentation when it realizes that it needs additional input before it can reach a verdict.

Once oral arguments are closed, the judge or judges review the case record to formulate their conclusions.[94] If the case has been brought before a judge sitting alone, he/she then begins to draft the judgment. Judges sitting on three-person panels, however, must first meet in private to deliberate on the case so that they can arrive at a collective judgment. The presiding judge is likely to lead such deliberations.

At the aforementioned conferences, the reporting judge, usually the associate judge in charge of maintaining the trial record, is expected to have detailed knowledge of the case and to fully express what he/she knows about it. The other associate judge is likely to have followed the proceedings without keeping a written record of them or to have rarely studied the trial record. Furthermore, his/her knowledge of the case and recommended legal interpretations is likely limited compared to those of the other judges. Thus, the presiding and reporting judges on the panel are likely to dominate the discussion.

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93) *See* Minsasosongbeob [Civil Procedure Act] art. 207 para. 1 (S. Kor.).

94) *See* Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 484 (3th ed. 2022) (In Korean).

After the discussion, the judges will reach an agreement among themselves on how to dispose of the case. When the judges fail to reach a consensus, a series of rules defining what position should be taken as the "majority consensus" verdict will apply. It is the reporting judge who usually writes the final judgment even if he/she personally dissents to it. The presiding judge usually edits the written final judgment.

All the three judges sign the written final judgment,[95] which is then presented as the collective decision of the court, without an identifying author. In courts of first or second instance, there can be no public dissenting opinion or any published opinion other than the court's official judgment. Dissenting opinions are published only in judgments issued by the Supreme Court.

Judgments are structured to include a summary of the litigants' demands, allegations made, evidence put forward by the parties, and evidence gathered over the course of the trial. The grounds for the decision are also presented, setting forth the court's findings of fact and legal evaluation of the facts of the case. Judgments must be compendious (concise but also comprehensive) and must state the relevant facts and the legal standards serving as grounds for the judgment. Abbreviated judgments are allowed for default judgments. The judges' paperwork burden is quite heavy, driving many district court judges to spend approximately only two days a week conducting trials and the rest of their time processing paperwork and writing judgments at their desks.

2. Res Judicata

After the court renders a judgment, a certified copy of the judgment is given to each party. The losing party has two weeks to file an appeal.[96] The judgment is "validated" (finalized) either when the judgment is of a type that cannot be appealed or when the time for filing an appeal has expired without an appeal being made.[97]

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95) Minsasosongbeob [Civil Procedure Act] art. 208 para. 1 (S. Kor.).

96) Minsasosongbeob [Civil Procedure Act] art. 396 (S. Kor.).

97) In contrast to common law system, judgments rendered by first instance judges in civil law systems cannot be said to be validated or finalized. Judgments in civil law systems

Once the judgment is finalized, it cannot be overturned through the ordinary method of appeal, and a party cannot relitigate the case by filing a new lawsuit. From this point onward, the judgment is said to regulate the legal relationship between the former litigants and is therefore referred to as *res judicata* (literally, the thing that is settled).

The only way to break *res judicata* is to motion the court for a "Resumption of Proceedings," as described in Article 451 of CPC. A party can seek a "Resumption of Proceedings" only on narrow statutorily prescribed grounds and only after showing that the applicant is free from fault for not having raised his/her objections earlier. A motion for a "Resumption of Proceedings" is possible only within one month from the date on which the applicant learns of the facts justifying the motion, and no later than five years after the date of issuance of the original judgment. Such requests are rarely granted.

D. Enforcement of Judgments

A plaintiff in a civil lawsuit may seek various remedies, including delivery of an item or real property, injunctions, declaratory relief, punitive remedies, and others. Nonetheless, monetary damages remain the predominant remedy granted in Korean civil litigation.

Specific performance and monetary remedies are preferred to declaratory relief. The latter is clearly available under Korean law, but in practice, it is usually not granted. To secure a declaratory remedy, the plaintiff must establish a justifiable legal interest in obtaining such relief at the time of the trial.[98] If other forms of relief can better satisfy the plaintiff's interests, the court will likely infer that no such declaratory relief is necessary.

A judgment can be executable in the fullest sense only when it has been validated or finalized. At this point, the plaintiff is deemed to become a

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are not finalized and do not directly have execution power during the period when each party may appeal. For more detailed explanation, *see* Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 494 (3th ed. 2022) (In Korean).

98) For detailed explanations and examples of this "legal interest", *see* Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 249 (3th ed. 2022) (In Korean).

judgment creditor, and the defendant, a judgment debtor.

A judgment can have "provisional executability" even before it is finalized, but only if the court specifically declares this as part of the judgment. As a general rule, judgments are to be declared provisionally subject to execution even without a motion to this effect. Such executability declarations may be suspended later, when the appellant furnishes security.

The actual process of executing a judgment can begin as soon as the service of judgment is made and the creditor secures a certified copy of the judgment with a distinctive execution clause. In judgments for monetary relief that can be satisfied from the debtor's ordinary personal possessions, the court's execution officer can immediately order the attachment or sale of the defendant's property at the creditor's request.

When the execution of a judgment concerns the debtor's claims on third persons or his/her title to real property, the remedies are usually handled by the execution court even when the original judgment was issued by another court. This kind of execution (i.e., the sale of a judgment debtor's real property) is the most frequently used form of compulsory execution. The proceeds of these sales are distributed among the judgment creditors.

VII. Appeals

A. Overview

A final noteworthy feature of Korean civil procedure is its appeal system. To understand the uniqueness of the Korean system in this regard, one must compare it with other legal systems.

In most common law systems, there is no right to have a case relitigated on appeal. The federal court system in the United States began as a two-tier court system with district courts as trial courts to examine evidence and apply the law and one centralized Supreme Court to adjudicate questions of law on appeal. Only when the workload of the Supreme Court in such system became unmanageable were permanent circuit or appellate courts established. At the state level, however, some US states still have the original two-tier system. Even in many so-called continental procedure

countries, such as Germany and France, it seems that there is no existing provision guaranteeing a three-tier court system. The Constitutional Court of Germany once ruled that appeals are not guaranteed under the German Constitution and that the constitutional rights protection system "assumes the risk of the law being incorrectly applied" to give greater weight to the principle of legal certainty and legal peace.

In Korea, by contrast, there is a strong attachment to a three-tier court system.[99] An appeal against a judgment issuing from a court of first instance (*Hang-so*) is even termed differently from that contesting a judgment of a court of second instance (*Sang-go*).

B. Appeal against First-Instance Judgment (Hang-so)

Litigants who want to contest the findings of fact or judgments rendered by a court of first instance are allowed to appeal such judgments. The appeal may be filed either before the issuance of a written judgment or within two weeks from the date on which the judgment is served. To file an appeal, the appellant must submit a Document of Appeal to the court that issued the original judgment.[100]

In general, high courts serve as the primary courts of appeal in the second instance. The only exception to this pertains to the appellate divisions of district courts in cases where the first-instance trial was presided over by a single judge.

The notice of appeal must clearly indicate the name of the appellant, the judgment issued by the lower court, and a statement regarding why such judgment is being appealed. The lower court's judgment typically details the name of the lower court and the case number, case name, date of issuance of the judgment, and the decisions of the court. An appeal may include the detailed reason for the appeal, but this may also be reflected in a written brief to be submitted later. In situations in which the parties have agreed not to file an appeal, they would subsequently have no right to appeal.

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99) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 109, 710 (3th ed. 2022) (In Korean).

100) Minsasosongbeob [Civil Procedure Act] art. 397 para. 1 (S. Kor.).

In Korea, the appellate proceedings in the court of second instance are broadly similar to those in the court of first instance.[101] The parties are granted an opportunity to make new allegations and produce new evidence. This is an important difference between the Korean civil procedure and the civil procedure of most other modern judicial systems. Common law jurisdictions do not allow the submission of new evidence in appellate proceedings. Even in many continental jurisdictions, such as Germany and France, the appellate courts typically set stringent limitations on the ability of the parties to introduce new allegations or evidence into the case. Only Japan seems to have an appellate system model similar to that of Korea.

Consequently, hearings before a high court or the District Court Appellate Division can again stretch across several trial dates. Although fewer in number than in the initial trial, the hearings in a high-court appeal trial can easily be more than 10.

C. Appeals to the Supreme Court (Sang-go)

A party that is dissatisfied even with the judgment of the court of second instance may again appeal the judgment, this time to the Supreme Court, Korea's court of last resort. Appeals to the Supreme Court must be made within two weeks from the date on which the lower appellate court's judgment is served.[102] The appeal should again state the names of the appellant and appellee, their respective addresses, the appellate court's decision, and the extent of purpose to change the judgment.

The Supreme Court will entertain only matters of law. Therefore, all appeals lodged before the Supreme Court must allege that the appellate court erred in its application of the law to the facts or that the appeal process itself was in grave contravention of the law.

Appeals to the Supreme Court may be made to contest alleged violations of the Korean Constitution, applicable statutes, or any orders or rules that may have somehow figured in the appellate court's decision. The

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101) Wonyol Jon, Minsasosongbeob Gangui [Lectures on Civil Procedure Law] 732 (3th ed. 2022) (In Korean).

102) Minsasosongbeob [Civil Procedure Act] art. 396 para. 1, 425 (S. Kor.).

Supreme Court will not involve itself in any renewed fact finding.

The appellant must state the reason for his/her appeal to the Supreme Court in the appeal document to be submitted. Failing that, the appellant must submit an adequate statement of the reason for the appeal within 20 days after he/she receives notice that the trial records have been received by the Supreme Court.[103] This period must be observed, and the court will not tolerate any delay in articulating a proper reason for an appeal. Failure to comply with this requirement will result in dismissal of the appeal.

VIII. Conclusion

As we have seen so far, Korean civil procedure law is primarily based on the European continental civil law tradition. The three-tier appellate system and sporadic hearings for a trial are only two examples of the similarities between the two. However, there are a few peculiarities in Korean procedural law that distinguish it from the procedural laws of other continental jurisdictions, such as the de novo review of a case by an appellate court over new allegations and/or evidence. A comparative analysis of civil procedure laws, as is done in this chapter, may contribute to the improvement and reformation of Korean civil procedure law.

103) Minsasosongbeob [Civil Procedure Act] art. 427 (S. Kor.).