JAPAN

THE PRELIMINARY PHASE AND THE TRIAL AGREEMENT IN JAPAN

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I. INTRODUCTION

The Japanese Code of Civil Procedure (CCP) adopts the Principle of Orality in Art. 87. The history of the procedural Law indicates that the genuine Orality caused to delay the litigation[1]. On other hand, before the 1996 Reform, the Orality has become only a name, because the process degenerates into a mere exchange of brief. The 1996 Reform and 2003 Amendment seek to revive the Orality, in order to produce efficient proceedings. The present problem is accordingly how Orality and Writing take place for efficient Proceedings.

The main object of this paper is to demonstrate how Orality and Writing take place in the preliminary phase of Japanese Litigation and how the court and the parties influence on the course of the proceeding in Japanese Civil Procedure. This paper is organized as follows. I first provide an overview of Orality Principle and the problems before the 1996 Reform[2] (II) . Then, I describe how Orality and writing take place in the preliminary phase of Japanese Civil Procedure( ). Finally, I describe the 2003 Amendment, namely the Schedule of Proceedings and Evidence-Gathering Procedure Based on Pre-Filing Notice( ).

II. THE PRINCIPLE OF ORALITY AND THE PROBLEMS LEADING TO THE 1996 REFORM

1. The Principle of Orality

CCP Art 87(1) provides that all matters should be handled through Oral Proceedings before the court. That incorporates two principles as follows:

(a) A judgment may not be rendered without the Oral Proceedings.

(b) Only the materials presented in the Oral Proceedings, such as the allegations, the documentary evidence and the testimony, if any, can form the basis of judgment.

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[1] See MORIO TAKESHITA, "Koutou Benron no Rekisi-teki Igi to Shyourai-teki Tenbou (Historical significant and Overlook of the Oral Proceedings)", in: MORIO TAKESHITA & AKIRA ISHIKAWA ed. *Kouza Minji-Soshou* Vol.4, Tokyo, 1959, p.1 (in Japanese)

[2] For the general accounts of the 1996 reform of the Code of the Civil Procedure, see YASUHEI TANIGUCHI," The 1996 Code of Civil Procedure of Japan – A procedure for the Coming Century?" *45 Am. J. Comp. L.*, 1997, p.767; SHOZO OTA, "Reform of Civil procedure in Japan", *49 Am. J. Comp. L.*, 2001, p.561; KOICHI MIKI, "Roles of Judges and Attorneys Under the Non-Sanction Scheme in Japanese Civil Procedure", *27 Hastings Int'l and Comp. L. Rev.*, 2003, p.31; for an outline of Japanese civil procedure, see HOUSOUKAI, *Outline of Civil Litigation in Japan*, Tokyo, 2002.

However there are two exceptions to these principles as follows[3]:

First, in terms of (a), the court may order a dismissal (nonsuit), or dismissal of an Appeal without the Oral Argument proceeding, although these are the normal judgments (see CCP Art. 87(3), 78, 140, 290 and 319).

Second, the exception in terms of (b) is "Chinjutu-Gisei", as it is called (CCP Art. 158) . This is the following system: when the plaintiff has defaulted and the defendant has appeared on the first date, the complaint may be considered as having been stated orally, in which case the defendant may present the allegation orally. When the plaintiff has appeared and the defendant has defaulted on the first date, the plaintiff may present the allegation orally. If the defendant has filed an answer with the court beforehand, the answer may be considered as having been stated orally. In addition, when the defendant has not filed an answer and does not appear on the first date but the plaintiff does appear, the defendant will be considered to have admitted the assertions of the complaint (CCP Art. 159(3)). Accordingly, this system functions substantially as the proceedings based on documents[4] (but *only on the first date* of Oral Proceedings).

Conversely, in the proceedings of the Summary Court, CCP Art. 158 applies not only on the first date of oral proceeding, but also on the all dates (CCP Art 277). This provision makes clear that the documents may dominate the proceedings of the Summary Court.

In terms of a proceeding, which ended with a ruling ("Kettei"), the court may decide to do an Oral Proceeding or not in order to proceed quickly (Art. 87 (1), "die facultative mündliche Verhandlung" in German).

What has to be noticed, however, is that there is no other exception the Code admits. Accordingly, the parties may not agree to go forward proceeding without Oral Proceeding[5].

2. Possibility of Written Supplements

The principle of Orality does not mean that the Code prohibits parties and courts from using a document in the proceedings. A document may be more useful to help define the issues and facts in the case than an oral statement. Accordingly, in order to supplement the principle of Orality with documents, the Code provides provisions as follows[6]. (a) The Code requires important procedural acts be in writing, for example, filing a plaintiff (CCP Art. 133 (1)), rendering a judgment (CCP Art. 252) etc.. (b) Oral Argument shall be prepared for in writing

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[3] TEIICHIROU NAKANO, KAORU MATSUURA & MASAHIRO SUZUKI ed. *Shin-Minji-Sosyou-Hou- Kougi (Lecture of new Japanese Civil Procedure Law)* 2nd ed., Tokyo, 2006, p. 222 (in Japanese)

[4] See NAOTO KOMURO, "Koutou-Shugi no Genkai (Limit of the Orality Principle)", *7 Minji-Sosyou-Zasshi,* 1961, p.57 (in Japanese)

[5] See MIKIO AKIYAMA, MAKOTO ITOU, SHINTAROU KATOU, HIROSHIGE TAKATA, TAKAHISA FUKUDA, KAZUHIKO YAMAMOTO ed., *Konmentaaru Minj-Soshou-Hou (Commentary of Civil Procedure Code)*, Tokyo, 2006, p.187 (in Japanese)

[6] Because this paper describes the preparatory stage of litigation, we are not concerned with provisions concerning the evidence examination stage.

(CCP Art. 161 (1), preliminary document). (c) A court clerk should make a Document, which records a progress of Oral Argument.

3. The Problems before the 1996 Reform

Orality is a principle of Japanese Civil Procedure as stated above. However the process under the Old Code degenerated into a mere exchange of legal briefs. There are several causes to this situation[7]. In most litigation, only facts-in-issue are described in a preliminary document; indirect facts are not. Consequently, litigation issues are not focused. On the other hand, parties presented entirely new arguments even after the examination of witness had finished. The preparatory oral proceeding and the preparation proceeding provided by the Old Code were seldom used, because any facts not produced in the proceeding were precluded[8].

Confronted with this situation, practitioners contrived a procedure called "Benron-ken-Wakai" (Oral Argument combined with Settlement) where the preparation for evidence examination, settlement negotiations and substantial oral proceedings were conducted simultaneously in a closed room such as a judge's chamber or a "settlement room". This procedure had no statutory basis, and its legal character was very ambiguous.

To clarify the situation, the drafters of the Code decide to legally authorize "Benron-ken-Wakai", but with necessary revisions. Namely, the Code introduced the Preparatory Proceedings for Oral Proceeding structured as a preparatory procedure. Accordingly, a settlement negotiation retreats behind a facade. This is a main point of a Improvement of Issue-Evidence Management Procedure (see detail on □3). In this way, the Code aims to create "Oral proceedings focused on Issue." Taking these backgrounds into account, the third Chapter describes the structure of "Oral proceedings focused on Issue" under the present Code.

III. THE REVIVAL OF ORAL PROCEEDINGS - THE STRUCTURE OF "ORAL PROCEEDINGS FOCUSED ON ISSUE"

1. Content of the Complaint, the written answer, and the preliminary document

In order to implement the "Oral proceedings focused on Issue", it is important that both parties have a clear view of what is the issue and the necessary evidence in their litigation. A civil action is commenced by a plaintiff filing a document which is referred as a complaint with the courts (CCP Art. 133(1)). The Code requires the parties to make a written answer, preliminary document for preparing to the Oral Argument (CCP Art. 161(1)). Accordingly, the Code provides some provisions for the contents of the complaint, the written answer, and the preliminary document and for deadlines to submit these.

What has to be noticed is that suit may be instituted orally in the Summary Court by merely outlining the dispute (CCP Arts. 271, 273). Moreover,

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[7] See TOSHIO UEHARA, "Soshou no Junbi to Shinri no Jujitu (Preparation of a lawsuit and Enrichment of trial)", in: TAKESHIT&ISHIKAWA ed., *Kouza Minji-Soshou Vol.4* , p.192 (in Japanese)

[8] See Taniguchi, "The 1996 Code" *45 Am. J. Comp. L.*, 1997, p.770

allegation in the Summary Court need not be prepared by the preliminary document (CCP Art. 276(1)).

(1) A civil action is commenced by a plaintiff filing a complaint. A complaint shall specify the parties and contain allegations of the gist and grounds of the claim for which the action is instituted (CCP Art. 133(2). These are the preconditions of a complaint.). Whenever a complaint appears defective in terms of the precondition of a complaint, the presiding judge may order the plaintiff to correct it (CCP Art. 137). Failure to comply with the order results in the judge dismissing the complaint by another order (CCP Art.140).

The complaint in Japanese Law has the nature of the fact-pleading, and this nature is not new to our system. However, we should notice that the 1996 reform makes following provisions on the Rules of Civil Procedure[9] (RCP); a complaint shall contain specific allegation of the fundamental facts, namely the facts from which the claim arises in law. Moreover, a Complaint should contain, with respect to the expected issues, allegation of the substantial evidentiary facts relevant to ultimate facts and clarification of the evidence in the plaintiff's possession (RCP Rule 53(1)). Furthermore, the plaintiff is required to attach to the Complaint such basic materials as copies of the material documentary evidence with respect to the expected issues (RCP Rule 53(2)). It makes thus a complaint useful in making issue and fact identification and clarification easier. However, these elements of a Complaint are not a precondition[10]. Accordingly, defectiveness in this regard does not result in the judge dismissing the complaint. Nevertheless, we should not overlook the fact that the fact- intensive nature of the Complaint will help to identify factual issues at the early stage of proceedings and hence move the case along quicker.

(2) When the complaint is served on the defendant, the litigation is pending ("Rechtshängigkeit"). A summons to the first date of Oral Proceedings is also usually served together with the complaint. Once a complaint and summons are served, the defendant is required to file an answer with the court.

An answer should contain the answer to the gist of the claim. In addition, the defendant should clarify which facts in the Complaint are admitted and which facts are denied. In the case of denials, the reason for them must be specified. Moreover, an answer should contain allegations of any affirmative defenses, and also, with respect to the expected issues, allegations of the substantial evidentiary facts relevant to the affirmative defenses and clarification of the evidence in the defendant's possession (RCP Rule 80(1)). Furthermore, the defendant is required to attach to the answer copies of the material documentary evidence with respect to the expected issues (RCP Rule 80(2)). These elements correspond to the content of the complaint and are intended to provide the court sufficient information in order to decide how the case should proceed toward efficient and adequate disposition.

In circumstances where the plaintiff needs to respond to the answer, a preliminary document is required. It must detail the facts that will be proven and

[9] Rules of procedure are promulgated by the Supreme Court under Art 77 of Constitution. The Rules regulate clerical matters or implement the Code's provision.

[10] In theory, these elements may be contained in a preliminary document.

the evidence that will establish the claim. Documents supporting claims must be submitted with these preparatory documents (RCP Rule 81).

A basic function of the preliminary document (including an answer) is to help define the issues and facts in the case. Accordingly, the documents must be served on the opposing party sufficiently in advance. Hence the Rule provides following provision: The Answer must be submitted in a timely way that permits the plaintiff time to prepare a response at the initial Oral Proceedings (RCP Rule 79(1)). Moreover, the presiding judge sets the date when the answering document is to be submitted (CCP Art. 162). Furthermore, the defendant is, in principle, required to send the answer to the plaintiff *directly* (RCP Rule 83 (1))[11].

(3) All these things make it clear that the Code intends to provide for a decision on the first date of the Oral Proceedings how the case should proceed toward efficient and adequate disposition and to make the Issue-Evidence Management Procedure function well.

However, these rules concerning the contents of the preliminary documents, etc., are hortative provisions[12]. If the parties do not follow these rules, the intention of the Code is not fulfilled. Accordingly, the court in charge may, at any time, require the parties to clarify any vagueness in their allegations and urge them to supplement their allegations or evidence in order to lead the discussion to an expeditious clarification of issues (CCP Art 149). The court may authorize a court clerk to conduct such action (RCP Rule 63).

The Rules' deadlines for submitting preliminary documents, etc., are similarly hortative provisions[13]. However, the general provision of CCP Art.157 provides the court with authority to oversee compliance with these Rules.

(4) Moreover, the 2003 Amendment of the Code permits the court to allows parties to file pleadings and motions electronically (on-line), which the Code normally requires to be made in writing, but the Supreme Court must first identify the types of pleadings and motions and the courts in which this is permitted (CCP Art. 132.10). This permission is now entirely limited[14], it is likely

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[11] The defendant can send the answer etc. to the plaintiff by fax (RCP Rule47 (1)).

[12] MICHIHARU HAYASHI, "Atarasii Minji-Soshou-Kisoku nituite (About new Civil Procedure Rule)", *Hanrei taimuzu No. 926*, 1997, p. 6; GENERAL SECRETARIAT OF SUPREME COURT, *Jyoukai Minji-Soshou-Kisoku (Commentary of Civil Procedure Rule)*, Tokyo, 1997, p.176 (in Japanese).

[13] MIKIO AKIYAMA, MAKOTO ITOU, SHINTAROU KATOU, HIROSHIGE TAKATA, TAKAHISA FUKUDA, KAZUHIKO YAMAMOTO ed., *Konmentaaru Minj-Soshou-Hou (Commentary of Civil Procedure Code)*, Tokyo, 2008, p. 431 (in Japanese)

[14] As this writing, the Supreme Courts has only permitted on-line filing in the Sapporo District Court, which is the only court that has the technological resource to implement this system. In terms of the types of pleadings and motions, the Supreme Courts has only permitted as follows: the motions for setting or changing the date of proceedings (CCP Art. 93(1) & (3)), the offer of evidences, expert evidences or inspections (RCP Rules 106, 129, 150), the offer of the entrustment of investigation (CCP Art. 186), the motion for the entrustment of

that this permission will be extended to other courts and other motions in the future.

Contrarily, the complete electronic proceedings are introduced in the summary proceedings for an order to pay debts (CCP Arts. 397-401).

2. "Tojisha-Shoukai" (Party Inquiry)

As stated above, the Japanese Civil Procedure requires the parties to include detailed information in the complaint, the written answer, and the preliminary document. In order to implement this requirement, it is necessary for both parties to know the facts and evidence, which support the opposing party's claim or defense. Accordingly, the 1996 Code adopted "Tojisha-Shoukai" (Party Inquiry, CCP Art. 163), a method of obtaining information from the opposing party without intervention of the court. This method is basically modeled on the Interrogatories of the United States. After litigation has commenced, a party can make written inquiries to the opposing party about matters necessary for assertions or proof and directly request written responses within a reasonable period set by the inquiring party[15]. Inquiries are, however, limited to matters needed to prepare the case or to proof in the case. The inquiry must be specific and not precise, cannot be insulting or embarrassing to the recipient, cannot be repetitive, may not ask for opinion, may not seek privileged data, and cannot require an overly costly or time-consuming response.

No sanctions are specifically provided against a party who refuses to answer proffered request[16]. It hoped that the bar would cultivate a mutual feeling of collegial obligation to cooperate, in accordance with the professional duty to clients, when one receives a request from another member of the profession[17].

Such inquires could not be made before the initiation of litigation. In this sense, it was not sufficient for a plaintiff to get needed information in a timely fashion. The 2003 Amendment removes this problem (see □).

3. Improvement of Issue-Evidence Management Procedure

(1) On the basis of the complaint, the written answer, and the preliminary document, the court decides how the case should proceed toward efficient and adequate disposition.

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presenting documents (CCP Art. 226), the offer of description of evidence (RCP Rules 137, 148). Submitting the compliment and answer is not permitted yet.

[15] Some studies have claimed that this instrument is not used so often in fact. See, HROSHI TAKAHASHI, MIKIO AKIYAMA, TAKEHISA FUKUDA, KATSUMI YAMAMOTO, "Zadan-Kai Minji-Soshyouhou Kaisei 10nen –Sosite Aratana Jidai he, (Roundtable Discussion -10 years from 1996 reform, to new period)", *Jurist No. 1317*, 2006, p. 22 (in Japanese)

[16] However, it is possible for the court to form an adverse impression of the case or use its discretionary power if a party does not respond to the court's urging to answer request.

[17] If a lawyer does not faithfully answer an inquiry, he may be disciplined by the bar association (Law of Attorneys 58).

When the court finds any issue on the facts to be presented before it, the case will usually be shifted to the procedure for Issue-Evidence Management. The court incidentally may call for a conference on the course of the action before the Issue-Evidence Management procedure in order to clearly the relationship between the issues and the evidence, to make a schedule of case, or to discuss any matter on the course of the case to promote its expeditious disposition.

On the contrary, finding no issue on facts to be presented before the court[18], the court may terminate the oral proceedings and render a judgment for the plaintiff instantaneously on the first date of oral proceedings ("Chyoushyo-Hanketu", as it is called). This point clearly shows that the requirement of a written judgment is loosened. The court orally pronounces the main decision, and summarizes the reasons, and has a court clerk record the specification of parties, the claim, the main decision and summary of reasons into the court record, instead of making an original judgment in writing as is required generally (CCP Art. 254).

(2) In terms of the "Issue-Evidence Management Procedure", there are three types, namely: "Junbiteki-Koutou-Benron" (Preliminary Oral Proceedings) (CCP Art. 164-167), "Benron-Junbi-Tetsuzuki" (Preparatory Proceedings for Oral Proceedings) (CCP Art. 168-174), "Shomen-ni-yoru-Junbi-Tetsuzuki" (Documents-Based Preparatory Proceedings) (Art. 175-178). The second one and third one are not (formal) Oral Proceedings. Preparatory Proceedings for Oral Proceedings may especially be conducted in a closed room such as a judge's chamber or a "settlement room".

The courts select the most appropriate procedure depending on the nature and facts of case, but the Documents-Based Preparatory Proceedings is the exception, due to the importance of having both parties' present[19]. However, in this proceeding, a telephone conference system is available on this proceeding. Thus, a written element of this proceeding is downplayed. Therefore it is fair to say that the Code generally relies on an oral Issue-Evidence Management procedure.

It is the judge's duty to structure proceedings. However, parties may influence the way the proceedings are structured. The Preparatory Proceedings for Oral Proceedings and the Documents-Based Preparatory Proceedings are commenced by the order of the court after hearing the view of the parties (CCP Arts.168, 175), because these proceedings are not Oral Proceedings, per se. Further the court must conclude the Preparatory Proceedings for Oral Proceedings, once the both parties make a motion to do so (CCP Art. 172).

(3) The Preparatory Proceedings for Oral Proceedings is the most popular of the three types of the Issue-Evidence Management Procedure and is used in an overwhelming majority of cases[20]. Because it does not constitute an

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[18] An example of this is a case in which the defendant admits or is regarded to have admitted the facts in the complaint.

[19] See, YOSHIHIKO UMEMOTO, *Minji-Sosyou-Hou (Civil procedure Law) 3rd ed*, Tokyo, 2007, p. 558 (in Japanese)

[20] See, MASAYUKI SUGANO, "Sosyou-Sokushin to Shinri-no-Juujitu (Producing the more quickly process and enriching the trial)", *Jurist No. 1217*, 2006, p. 63 (in Japanese)

(formal) Oral Proceedings, the requirement of Orarity does not fulfill. CCP Art. 173 accordingly provides that the parties shall state the result of this proceeding at the first Oral Proceeding session after the preparation proceedings are concluded. At this point, the facts that need to be proven at the Oral Proceedings are designated (RCP Rule 89). However, it is said that this statement of the results is actually done without mentioning detail by simply referencing a document[21]. This situation is problematic in the sense that the Oral Argument should be substantial.

On the other hand, the main function of this procedure is substantially equivalent to (formal) Oral Argument. When the court holds this procedure, the parties may present their allegation orally and produce documentary evidence, which may be examined by the court. Moreover, the parties may move for various orders for production of documents and the court may rule on them. Furthermore, CCP Art 170 (5) provides that the provisions of (formal) Oral Argument apply *mutatis mutandis* to this procedure.

(4) Once the Issue-Evidence Management procedure is over, the case moves to the stage of examination of witnesses and/or parties. In contrast to the situation before the 1996 Reform, the Code provides that the Oral proceeding is divided into two stages. The first stage is the preparatory stage, and the second stage is the evidence examination stage of the litigation[22]. The following points describe this:

First, in terminating the Issue-Evidence Management procedure the court has to confirm with the parties the facts to be proved by the examination of persons, so as to ensure that the examination will be focused on the relevant issues (CCP Arts. 165 (1), 170(5), 177). When the court deems it appropriate, the court may require the parties to file briefs which summarize the result of the procedure or to put the confirmed facts into the record.

No materials presented during the dates for this procedure from the basis of judgment until they are presented by the parties in subsequent oral proceedings in the form of a statement of the result of this procedure (CCP Art.173).

Moreover, the parties are supposed to raise all contentions and factual issues at the preparatory stage of litigation. Failure to do so will require the failing party to explain the reasons for such failure (CCP Arts. 167, 174, 178). The Code does not provide for a preclusion penalty for failure to raise issues. However, the general provision of CCP Art. 157 provides the court with authority to preclude the introduction of matters not raised in a timely fashion where such failure can unduly delay the procedure applying to the case.

IV. THE 2003 AMENDMENT – SCHEDULE OF PROCEEDINGS AND EVIDENCE GATHERING PROCEDURE BASED ON PRE-FILING NOTICE

[21] TAKAHASHI, AKIYAMA, FUKUDA, YAMAMOTO et al. "Roundtable Discussion ", *Jurist No 1317*, 2006, p. 22 (in Japanese)

[22] Under the old Code, the Oral Proceeding is in theory divided two stags as well as the 1996 Code. However the lines between two stages were not fixed as the Code parmited the parties to submit new arguments and new evidence even afer the Preliminary stage had ended. .

(1) The Issue-Evidence Management procedure has helped to reduce the time that it takes to solve the average case[23]. However, in complicated cases, such as medical malpractice, the Issue-Evidence Management procedure appears not to have reduced the time required. The 2003 Amendments seek to have all civil litigation resolved within two years of the filing of the complaint. The 2003 Amendments introduced also the Schedule of Proceedings (CCP Art. 147.3). If the court deems, because of the complex nature of case, it is necessary to set a schedule for the proceedings in order to realize a just and timely resolution, the court should fix a schedule after conferring with both parties. The schedule should include a time frame for Issue-Evidence Management Procedure, a time frame for the examination of witness and expected dates and times to terminate hearing and render judgment. Each procedural step should be carried out according to the schedule. If the court finds that it is necessary to enforce the schedule, it may set a deadline for producing allegations or evidence with regard to a specific matter. The court can also dismiss allegations or evidence due to a missed deadline if it finds that the violation may cause a significant delay in the progress of litigation (CCP Art.157.2). The Code provides no preclusion after the preparatory stage as mentioned above. In this sense, the Schedule of Proceedings goes further.

(2) In order to produce the efficient proceedings[24] and to implement the Schedule of Proceedings, it would be best for the both parties to have clear view of how proceedings are to progress at the outset of the litigation. It is accordingly necessary for a potential plaintiff to undertake a potential means to obtain information from a named presumed defendant. However, under the 1996 Code, the Party Inquiry was available only after the initiation of litigation. There was also the Preservation of Evidence procedure (CCP Arts.234-242), but it was not enough[25].

The 2003 amendments of the Code accordingly added on the new pre-filing Evidence Gathering procedure. Namely; a party makes inquires of the opposing party in writing about matters necessary for preparation of allegations or proof in future litigation without intervention of the court (CCP Art.132.2-132.3). This pre-filing Inquiry is modeled after post-filing Party-Inquiry procedure in CCP Art. 163 and it is limited by the nearly same constraints as post-filing Inquiry[26] (CCP Art, 132.2). Furthermore, the court may, upon a motion of a party, make pre-filing dispositions to collect evidence such as a request for presentation of a document, a request to government offices or other bodies for investigations, a request to experts for opinions etc, after hearing the views of the other party (CCP Art. 132.4).

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[23] See, "Roundtable Discussion, Towards the Reform of the Code of Civil Procedure: Focusing on Tentative Proposal of Outline for the Reform of the Code of Civil Procedure", *Jurist No. 1229,* 2002, p. 134 (in Japanese)

[24] In order to make a detailed complaint which is required under "Oral proceedings focused on Issue", the plaintiff must especially have a far greater knowledge of the facts of the case before instituting a suit.

[25] This device can be used only when the possibility of interpolation or disappearance of material evidence is high.

[26] See □2

Because there is no pending proceeding, there needs to be some mechanism to initiate the pre-filing Evidence Gathering procedure. This instrument is initiated by a prospective plaintiff by sending a written notice to a prospective defendant.

In this procedure like the post-filing Party-Inquiry, there is no sanction against a party who refuse to answer proffered request.

V. CONCLUSION

The main points of this paper can be summarized as follows.

(1) Writing plays an important role in the "Oral proceedings focused on Issue", in order to revive the Orality requirement and to produce more quickly proceedings. The fact intensive complaint (and answer) will help to resolve the course of a proceeding at an early stage, to identify factual issues at the same time and hence move the case along quicker. The Party-Inquiry and pre-filing Inquiry support this (see □1 & 2, □(2)).

In terms of the three types of Issue-Evidence Management Procedure, we can say that the Document-Based Preparatory Proceedings is exceptional, and that the Code generally promotes the Oral Issue-Evidence Management Procedure. In addition, there is room for reconsidering a connection between the Preparatory Proceedings for Oral Proceedings and the principle of Orality (see □3).

(2) In order to implement the "Oral proceedings focused on Issue", first of all, the parties or the lawyer make efforts to do so. The rules concerning the contents of the preliminary documents, etc., are hortative provisions (see□1 (3)). Moreover, the pre-filing Inquiry and Party-Inquiry have no sanction against a party who refuses to answer (see□2 & □(2)).

(3) It is the judge's duty to structure proceedings. However, parties can influence the structure of the proceedings. For example, the court hears the view of the parties, when the Preparatory Proceedings for Oral Proceedings and the Document-based Preparatory Proceedings begin. Moreover, the court must terminate the Preparatory Proceedings for Oral Proceedings, once both parties make a motion to close it (see □3(2)). The court also holds conferences on the course of action, and on the Schedule of Proceedings.

The Code does not provide for a preclusion penalty for failure to raise all allegations and defense at the preparatory stage of litigation (see□3(4)). The new Schedule of Proceedings goes significantly further than this. We can say that setting deadlines even for other aspects of the case should at least add to the psychological impact on parties and judges (see □).