# Process for Judge's Decision Making in Civil Cases

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## *Section 1 Introduction*

To understand the real meaning of the following explanations, it would be necessary for the reader to know the fundamental structure of legal system of Japan. Unlike the legal system of the United States or the Great Britain, in Japan we have uniformed national statutes covering almost every field of the law, including contracts and torts which are regulated by unwritten common law in the Anglo-American law. Besides Constitution, the most important statute concerning the ordinary daily life of citizens is the Civil Code which consists of more than 1,000 articles.

Here I refer to the articles concerning the examples to be stated afterwards in order to explain the process for the judge's decision making in civil cases. For instance, the article 555 of the Code provides that a sale becomes effective when one of the parties agrees to transfer a property right to the other party and the other party agrees to pay the purchase-price to the former. And the article 587 of the Code provides that a loan for consumption becomes effective when one of the parties receives from the other party money or other things on the understanding that the former will return the money or things of the same kind, quality and quantity.

## *Section 2 Fundamental Construction of Process for Judge's Decision Making*

A judge decides whether plaintiff wins or not according to whether the object of action (e.g. claim for paying money on loan for consumption, claim for paying money as price on contract of sale) exists or not at the time of conclusion of the proceedings. How can a judge find the decision? A judge decides as to existence of the claim by judging whether the ultimate facts (yoken-jijitsu in Japanese) being necessary for the object of the action exist or not. The ultimate facts mean the concrete facts the existence of which directly generates the legal effect.

## *Section 3 Explanations by Using Some Examples as to the Said Construction*

Example one Case of contract of sale

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Main Publications (Japanese)

*The Foundation of the Ultimate Facts in Civil Litigation, 2000,*

*The Foundation of Finding in Civil Litigation, 1996.*

Suppose that there exists such an agreement as provided in article as article 555 of the Civil Code, then the seller can claim the buyer to pay the price of that object.

Then concrete facts which satisfy this provision should be that A and B agreed with sale of the desk in A's home with the price $ 1000. If such facts exist, then they generate the legal effect that A can claim B to pay $1000. These concrete facts are called ultimate facts.

If the foregoing explanation is correct, at first, a judge can recognize the birth of the seller's claim for payment of the price of the contract of sale by confirming the existence of above-mentioned ultimate facts of contract of sale. And if there are no other special situations, a judge should render the judgment for the plaintiff who is the seller.

Example two Case of loan for consumption (typical one is loan of money)

Suppose that there exsts such loan of money as provided in article 587 of the Civil Code, then the lender can claim the debtor to pay the same amount of money on that definite date agreed by the parties for the return. Then the concrete facts which satisfy this provision should be that A lent B $1000 on the promise to return it by August 31, 2000. If such facts exist, then they generate the legal effect that A can claim B to pay $1000 on August 31, 2000. These concrete facts are called ultimate facts.

If the foregoing explanation is correct, at first, a judge can recognize the birth of the lender's claim for payment of lent money by confirming the existence of above-mentioned ultimate facts of loan for consumption. And if there are no other special situations, a judge should render the judgment for the plaintiff who is the lender.

Then what would be the special situations mentioned in the above two examples? I would like to explain such situations of two different kinds by showing simple examples in case of loan of money. Such situations are as follows:

Some facts which occurred after the time of contract extinguish the legal effect once generated. For example, if the debtor had returned on August 30, 2000, of course the claim for payment on August 31, 2000 was extinguished on the day of August 30. A judge should render the judgment for the defendant who is the debtor. The fact of return of the money had occurred after the time of loan. In this sense this case differs from that of the follwing case. Of course the various other facts which extinguishes the claim can be considered besides the return of the money.

And some special facts existing at the time of making the contract hinders the generation of legal effect simultaneously. For example, if the money was lent for buying a gun to be used for murder and the lender knows the debtor's purpose for borrowing the money at the time of lending the money, the loan was void because the purpose of the contract known among the both parties was against article 90 of the Civil Code which provides that "a juristic act which has for its object such matters as are contrary to public

policy or good morals is null and void. Of course various other facts which makes the loan void can be considered besides the above-mentioned cause.

In the latter case, taking this special situation, which existed at the time of loan of money, into consideration, it should be said that the claim for payment had not been generated by the loan from the beginning. In this case a judge should render the judgement for the defendant who is the debtor.

Incidentally, there is an interesting problem in relation to this case. That is whether the lender can claim the return of the money in connection with the article 708 of the Civil Code providing unjust enrichment. I have no time to refer to the problem.

In both cases above-mentioned, a judge should disregard the special situation, if it does not appear in the parties' arguments and case record and also if a judge has no way to know that. The judge has no duty to examine whether such special situation exists or not when there is no circumstances suggesting it. In other words, both the burden of allegation and burden of proof are on the parties who gains by the existence of such special situation.

### *Section 4 Underlying Thought behind the Explanations as to Some Examples Mentioned Above*

Very roughly speaking, the underlying thought behind the explanations as to examples mentioned above would be that once the birth of the claim was recognized, then the claim continues to exist without some special causes for extinguishment of it, and that if there is no special cause found as to the contract, the contract should be considered legally effective. Of course there should be various opinions about such thought and it goes without saying the most important is the real fairness to both parties with respect to the burden of proof. How such fairness can be realized? What kind of facts should be proved by which party? In order to realize the fairness concerning the burden of proof, what kind of regulation should be made regarding the burden of proof? Theoretically speaking there could be possibly recognized even such thought as asserts that non-existence of all causes which might make the contract void should be proved by the party who makes some claim based upon the contract, but such thought is clearly unfair and cannot be adopted, because the burden on the plaintiff is too heavy. It is very difficult work to establish the adequate theory on these burden of allegation and proof (in my terminology, the theory on the ultimate facts), but still it should be done because of overwhelming importance in civil judgment. I have worked on this theory for long time and published the result recently in my small book cited at the end of this paper, namely "The Foundation of the Ultimate Facts". I consider that at first the burden of proof must be allocated fundamentally according to the principle of fairness (of course, only stating so is insufficient at all and various concrete rule must be established), and then the burden of allegation follows on the same party.

Those two examples mentioned in section 3 are rather simple ones. Of

course, there are many complicated and difficult cases in modern Japan such as public nuisance of big scale, medical malpractice, products liability, responsibility for damages arisen by some government administration and so on. Even in those cases, however, the principle itself is not different from that in the cases stated as examples above, namely a judge decides a case by judging whether the various ultimate facts existed, in short by combination of the existence of different kinds of ultimate facts(birth, extinguishment, hindrance), though it goes without saying that the factors to be taken into account are very many and diverse and that the problem to be really fair to both parties in those cases is tremendously difficult.

Besides the problems mentioned above there are very important problems concerning the process of the judge's decision making which I have not stated here. Though I stated a judge decides the case by the combination of the ultimate facts, in stating so it is presumed that those ultimate facts have existed. Unless those ultimate facts have not been found, of course, there have not generated such legal effect based on the existence of those ultimate facts. Therefore, in deciding cases the problems of fact finding cannot be ignored. The problems stated above are those of the decision making of legal problems of the case and there are other kind of problems of the decision making of the case, that is the factual problems of the case. These two problems are equally important in deciding cases.

I wrote two following books on these two kinds of problems mentioned above:

"Foundation of the Ultimate Facts Process of the Judge's Decision Making on Legal Problems"
published by Yuhikaku Co.,Tokyo, in 2000.

"Foundation of the Facts Finding Process of the Judge's Decision Making on Factual Problems"
6th print, published by Yuhikaku Co.,Tokyo, in 2001.