

Study on Application of Foreign Procedural Law (summary)

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The purpose of this paper is to clarify a method to apply foreign procedural law in international disputes. Different from the material issues to which foreign laws may be applied, the procedural issues have been governed by the “*lex fori regit processum*” rule, which means the law of forum governs procedure issues. It is said the rule is recognized in all legal systems as the principle. But according to the recent studies, there is no proper basis that the principle leads the exclusive application of the law of the forum. In addition, it has been clear that the possibility to apply foreign procedural law and its need exist. This paper suggests that foreign procedural laws should be applied under certain conditions.

Mainly two methods are known to apply foreign procedural laws. One is to use the classification of substance and procedure. With this method, even if the issue is procedural matter on applicable law, we will fall it within the rubric of “substance”. By doing so, we can avoid the split the formal law for right and the procedural law for system. The another one is to use so-called “procedural conflict rule”. The rule directly leads to apply foreign procedural laws. So far the rule has seldom been used because the concept of the rule is unclear and there is resistance to apply the foreign procedural law.

But I think the latter rule is more preferable than the former one, because the method to use the classification is unreasonable from the point of view of the enlargement of the concept of “substance”. In compare with that, the “procedural conflict rule” is certainly not clear, but I believe we can clarify the concept by making efforts. The focus of this paper is on the systematization of the “procedural conflict rule”. We didn't so far succeed to distinguish between procedural matters and substantive matters, so I try to divide the regulations into three types following one theory in Germany. The first type is governed by applicable law and the second type is applied to *lex fori*. The third type allows accumulative application of the *lex fori* and the *lex causae*. And I tried to elaborate the rule by giving proper concepts to “*order public*” and “*renvoi*” in the rules.

The aim of this paper was to make a general rule for application of foreign procedural law. I will investigate whether the rule holds all specific procedural issues hereafter and thereby verify this paper's outcome.