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《Summary》

The Late Doctrines on Substance/Procedure Distinction in American Law

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American federal courts sitting in diversity cases are obliged to follow state law as substantive law since *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938) and to follow federal rules as procedural law since the promulgation of Federal Rules for the United States District Courts in 1937. Many disputes have occurred as to whether the applicable statutes belong to substantive law or to procedural law. Physical and mental examinations, the necessity of jury trial, service of process, penalty against frivolous appeals and transfer of case on contractual forum-selection clause are classified as procedural by the U.S. Supreme Court. On the other hand, burden of proof, statute of limitations, res judicata of state court's dismissal, denial of jurisdiction as to the foreign corporation (not filing a written power of attorney designating an agent on whom service of process may be had), security for expenses in stockholder's derivative action, arbitration clause, appellate review of jury verdict on the size of damages and claim preclusion by federal court's dismissal are classified as substantive law by the Court. The latter cases can mostly be seen as procedural on their faces. But they are classified as substantive law because they are combined with substantial effect. The line between substantive and proce-

dural law can not be easily found. The *Erie* Doctrine is difficult to be explained by a fixed theory as so-called outcome determinative test or balancing test.

The United States Supreme Court passed a relevant judgment recently (*Shady Grove Orthopedic P.A. v. Allstate Insurance Co.*, 130 S.Ct. 1431 (2010)). Shady Grove was an orthopedic hospital in Illinois who was assigned the insurance benefit by a traffic casualty. Allstate was an insurance company in New York. Allstate paid the benefit to Shady Grove, but not on time. Allstate didn't pay the interest at two percent per month required by New York Insurance Law. Shady Grove filed a suit in the Eastern District of New York to recover the statutory interest on behalf of itself and a class of all others to whom Allstate owes interest according to Federal Rules of Civil Procedure. New York Insurance Law precludes a suit to recover a penalty from proceeding as a class action. The District Court dismissed the suit applying this law. The Second Circuit affirmed. The United States Supreme Court reversed this judgment by a 5 to 4 vote. Justice Scalia delivered the opinion of the Court. The plurality opinion by Justice Scalia was partly supported by 2 or 3 Justices including the Chief Justice. Justice Stevens filed a separate opinion that concurred in the judgment but partly sympathized with the dissenting opinion. The dissenting opinion was filed by Justice Ginsberg who was joined by 3 Justices. The dissenting opinion looks to be forming the majority opinion in that it insists on looking to the substantive nature of state statute. It is difficult to say that the Shady Grove case showed some distinct lodestaron the *Erie* Doctrine.

International private law in Japan asks the courts to apply the substantive law assigned by provisions of the General Law concerning Application of Law (2006) and to apply the procedural law of Japan as *lex fori*. The *Erie* Doctrine can be referenced, also in Japan, in order to discern the nature of those laws.