

Developments in the Law in 2010: Civil Procedure Law

Shu-Huan Shyu *

Abstract

Among the judgments Supreme Court made in 2010, there are two types of judgments worth paying close attention. One is about the types of surprising judgments and how to prevent it from happening. The other is about the character of the burden of proof and how to distribute the burden. About the former, Supreme Court holds that even finding facts and applying law are the discretion of court, court should still prevent surprising judgment resulting no matter from the process of applying law, fact finding or from the aim of acceleration of suit. In order to prevent the surprising judgments, trier of fact should timely announce the views of law or fact. In this way, parties would have chance to make statements of law or fact and elaborate it thoroughly and appropriately to respond the court. Especially, court should devote in clarifying the issues, including the issues of law and fact. Besides, court should also declare their mental impressions and opinions and further discuss with parties. Lastly, court should confirm the issues with parties and try to reach agreement simplifying issues.

About the latter, Supreme Court affirms the character of burden of proof is a responsibility of behavior. In other word, a party bears the burden of proof with regard to the facts which he/she alleges in his/her favor. Besides, the court claims that when attributing the burden of proof, court should in the same time take substantive and procedural views into account. For example, in concrete cases, court should not only concern the interest in substantive law, but also the procedural interest involved. Among the substantive and procedural interest,

* Professor of Law, College of Law, National Taiwan University.
E-mail: shyuush@ntu.edu.tw

court should try their best to strike the balance between them. Therefore, distributing the burden of proof would verify every single and specific case. Depending on the features and character of the case, it can be possible to let party who alleges in his favor to bear the burden of proof, while it is also possible to lower the degree of prove to lessen the burden of the party alleging in his favor or even switch the burden of proof to otherwise make the opposite party to bear the burden.

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