

Title: Law of Obligations

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🔊[0:21]

So, we thought a little bit about whether a person may be obligated to lend money, right?

And, we have seen that that obligation is not really an obligation, because it can easily be terminated.

So, even if you agreed to lend, you can decide not to do so.

And, if it was an agreement to lend, and the borrower agreed to pay interest, then you will have to pay damage, if you decide not to lend money.

But it may be a little bit difficult to prove that you suffered loss.

Because money is something you can always get from some other sources, right?

If you have difficulty borrowing money from some other sources, then perhaps, the person was doing your favor.

Maybe other people didn't trust you, and will not lending money. And that person decided to lend money. And, later, decide not to lend money.

So, I thought you can claim that you suffered loss, because you are now having difficulty borrowing money from other sources.

So I don't know in reality whether you will succeed in proving that you suffered loss as a result of the other party's refusal to lend money.

At the same time, one can think about the other situation.

So you are all ready to lend money to that person. And then, that person won a lottery, and no longer need your money, right?

And, now, can you sue that person saying if you didn't change your mind, I could have lent you money and then I could have earned interest?

🔊[2:59]

We agreed that you are going to pay me the interest at the rate of, let's say, 20%.



And, now, you decide not to lend money, now pay me the interest.

What do you think?

The parties have not even yet lent or, the money does not even change hands, right?

And the borrower at some point no longer needs the money.

So say “I don’t need your money.” and the would-be lender, can I sue you and force you to pay me interest even if I am not lending you any money to you?

Why? Why are you shaking your head? Why you think I can’t?

But we have agreed, haven’t we? We agreed that you are going to pay me interest?

What do you think?

(Student speaking) ...It is not easy to prove their

Suppose the going raise of interest I could get is 5% per year. But between us, we agreed that he will pay 20%.

Can I not claim that the difference between the market grade of interest and our special rate of interest? That difference constitutes my loss?

(Student speaking)

Yeah, but if I lend money to somebody else, I could only get 5%. Whereas with him, we agreed that he will pay 20%.

(Student speaking)

What principle should be applied?

(Student speaking)

Right.. right...

It definitely sounds a little bit offensive that you will have to pay the interest even if you are not using the money at all, even if you didn’t see the money, even if you no longer need the money.

Simply because you agreed that at some point or on such a date, I will lend you money but you no longer need the money, why should you pay the interest and why should you pay the damage?

🔊[6:12]



So I do think that we should be a little bit critical about talking about obligation to lend money.

If you are going to talk about obligation to lend money, then you will have to talk about the obligation to borrow money which is really absurd, I think.

So either way, it's difficult, in my view.

However, the civil code provision apparently talk about this obligation to lend.

Although they, the provisions, allow possibility to terminate, if the agreement was interest-free loan.

But even with interests, loan with interests, I think we should be cautious about imposing damage liability on a party.

If one party no longer needs money or if the other party no longer is willing to lend money, there will be many ways where that change of mind is going to be justified.

One example is the change of credit worthiness of a party. Then, you can definitely change your mind and decide not to lend money.

Okay, now, obligation to repay. That is the main obligation when we talk about loan.

Obligation to repay.

Once the loan is made, the obligation to repay arises.

And then, you can lend money without any prior agreement to lend money.

You can sort of on the spot lend money, and then, once the money is lent, then the obligation to repay arises.

What about interest?

Suppose you and I just agreed that I lend you 1 million won and you pay me back two weeks later. We didn't talk anything about interest.

Can I claim interest from you?

🔊 **[9:06]**

Do you think I can claim interest from him?

(Student speaking) I don't think so.

We didn't agree about the interest.

He doesn't think so. Why do you think so?



Why do you think you will have to pay the interest to me?

But isn't there a civil How about you? You think he doesn't have to pay the interest?

What about the civil code provisions which talks about 4% interest rate?

Isn't there a provision something like that?

What's the number... What provision is it?

Nobody?

We have a commercial code between merchants, article 54. Let's have a look at article 54.

Commercial coads... So, loans arising out of commercial transaction, the legal rate of interest shall be 6% per annum.

And, the civil code article 379. Let's have a look at 379.

It says if the loan has interest, then the rate of interest shall be 5% per annum, unless there are other statutes to provisions or parties' agreement.

So, how can you, then, explain the situation in light of all this?

We were not talking at all about the interest.

So you said you need money, 1 million won. I didn't even ask 'why do you need the money?', I just lent you money.

And, I only ask 'when are you going to pay me back?', and you said 2 weeks later.

🔊 **[12:12]**

Fine, I gave you.

(Student speaking)

We didn't even specify whether it's interest-free or whether interest will be paid.

If no talk about interest was exchanged between the parties, should it be considered this interest-free loan or loan with interest?

(Student speaking)

You think 5% interest must be paid? What do you think?

(Student speaking) According to the code 379, it says that...



(Student speaking) When there's no explicit agreement. And there should be an explicit agreement about having interest. But in this case we don't have any explicit... actually it doesn't need to be explicit agreement. I mean 'explicit' to be a word implicitly you should have an agreement about having interest.

So you are saying there the article 379 of serial codes applies only when there is an agreement is to interest.

And that agreement about interest can either be explicit or implicit but at least there must be an agreement about interest.

Only then the five percent rate close shall be applicable.

If there isn't any agreement about interest, the default is interest free loan.

I think that's the position of serial code. Okay?

If a law suit is brought to enforce repayment, a special statute to rerate of interest applies from the date following the delivery of the statement of claim.

🔊 **[15:04]**

If however the court finds that there were valid grounds to dispute the claim, the statute to rerate of interest applies from the date, the judgment was rendered.

So that's the article 3 of special acts to expedite litigation preceding.

So it's all up to the judges.

Okay? When they make decision, they can decide to apply this special rate which is much higher rate of interest.

From the moment the statement of claim was served to the other party, to the defendant, usually.

Or, if judge considers that the defendant did have some very, very legitimate doubt, about whether he has to pay or not, whether it's fully justified in fighting the claimant's claim, then judge can decide to apply that rate from the moment of judgment.

Basically if it was more or less obvious that he should have paid, then the court will apply higher rate from the moment the law suit was brought.

If it was not very clear, then higher rate will become applicable from the moment of judgment.

This is all to encourage rapid resolution of dispute, okay?

Is this a procedural law, or is this a substantive law?

This increased rate of interest, it does not appear in civil code.

It appears only in the act to expedite litigation resolution.

Is it procedural, part of procedural law, or is it part of substantive law?

What do you think?

Because it is very often raised issue.

🔊[18:00]

Because when the contract, the party's contract specifies that this contract should be, this governing law contract is Korean law. They say.

But then they agree upon international arbitration.

But if it goes to arbitration, obviously is Korean civil procedure.

The procedure is completely different issue.

What is the procedural law which must be followed in international arbitration?

Well it's the law of the place of arbitration.

Okay? So if the arbitration is going to take place in the Singapore, it's the Singapore's arbitration related laws which will be applicable applied first of all.

And then, various other procedural laws of Singapore will be applicable, not the Korean procedural law. Right?

But if it's substantive law, if this twenty percent interest rate is going to be considered a substantive law, then, you can claim.

If you are the respondent side, you will have to pay this 20% interest.

So do you think this is a substantive law, does it form part of governing law, when the parties agreed governing law should be the Korean law.

When the parties talk about governing law, they would normally talk about, think about breach of contract, mistakes, something like that. Right?

Formation of contract.

All these civil code provisions, right? Dealing with contract, and how contract is formed, how contract is breached, and what kind of remedy of party has...

So do you think this 20% interest rate is part of substantive law or procedural law?

Any idea?

While he keeps thinking about it, what do you think?

Do you think it's part of substantive law, or procedural law?

(Student speaking)

It is procedural law.

So this 20% should not apply in international arbitration.

🔊 [21:01]

It is applicable only to litigation brought to Korean court.

That's what you're saying.

(Student Speaking)

What do you think?

(Student speaking)

Okay, this special rate, whether it shall be applied from the moment of the service of proceedings, to the defendant, or the moment of judgment, that is decided by judge.

So obviously that act itself supposes only litigation.

Arbitration is not part of the consideration of that statute.

But does it not give a substantive right to claim interest?

It is not procedural at all.

Isn't it?

(Student speaking)

So you are saying that in arbitration there can be no such thing as statement of claim.

(Student speaking)

But isn't it the same in the sense that whether it's requested for arbitration, or statement of claim, it triggers off the proceedings.

This is not litigation, so we have to look for some equivalent in arbitration. Right?



Of course, you don't go to court so there would be no judge, no Korean judge will be deciding.

But does that mean that this should not apply at all?

🔊[24:01]

Maybe in Singapore, they have also some similar procedural civil procedure, which applies to Singaporean litigation.

Lawsuits brought to Singaporean court.

But they would not have any provision applicable to arbitration either. Right?

Well, we don't know whether Singapore law has that or not.

But the question is, is this procedural law or substantive law?

If we concluded that it is procedural law, then we cannot apply to that.

What do you think?

(Student speaking)

Substantive law. You think it's substantive law.

Well it is a difficult point, I think.

You cannot apply it strictly because in arbitration, you absolutely don't have judge, don't have statement of claim.

Instead you will have a request for arbitration and you will have arbitrators and you will have an arbiter's word rather than judgment.

But then what percentage of interest?

That is not really procedural issue.

It is substantive question of right.

You will see, you know, 5% or 6% it is all a question of how much you are entitled to, what you are entitled to, and it's really your right, substantive right.

It is with your substantive right.

So when the parties agreed that their substantive legal rights and obligations must be decided by Korean law.

Perhaps they meant that even this special rate of interest that should also be decided even though, look, the parties agreed that they will go to arbitration.

Does that mean that they won't have anything that has to do litigation?

🔊[27:03]

Even if that litigation related law has substantive provision?

I think more reasonable interpretation would be.

When they say substantive law, that's Korean law, and their agreement is that.

Look. If whatever legal provisions which has something to do with substantive law. that those Korean legal provision should be applied.

And if this act to expedite litigation proceedings, if it contains some substantive legal provisions, then that should also be applied.

Maybe that's what the parties agreed. I think it's more in line with the parties intent.

So arbitrators, they can take this clause and they can apply.

Even if they are not judge, May be that's what the parties wanted the arbitrators to do.

If the object of loan was defective, this happens only when loan is about consumables: rice, flour, something like that.

Article 602 applies only to consumables. Not the money.

If the borrower may repay the value of defective things, If the lawn is interest free...

So let's say you borrowed 200kg of rice. But part of it is all rotten, for instance.

Then you can repay the value in money. You can just repay in money, the value of defective things.

The borrower may seek damages of replacement if the lawn was at an agreed interest.

So that part it's a warranty liability clause applied to the lawn agreement.

🔊[30:00]

Interest is in a sense the price you pay for the facility of using the money.

It's not the money itself.



Maybe it's easier to talk about rice.

You have 20kg of rice. If you want to buy it, let's say you will have to pay 100,000won. If you want to buy it.

If you want to borrow it, well one month later you just return the same quantity, quality and same object, same kind with interest.

And that won't be like this. Right? It's only about 1,000won.

Now what is this? This interest is in a sense the price you pay when we talk about price we normally talk about the price to buy something, right?

But interest is a price you pay for the facility of using it or consuming it.

Like money that having that facility for whatever period that agreed period, that financing facility, you buy that facility with interest. You don't buy money.

You buy that facility, that time and that availability.

That is an interest.

So if the lawn with interest then it is something equivalent to sale which involves price.

So it is not a free service. It is a service or goods which are provided at a price

So warranty liability clause keeps in. Okay?

Or if the lender knew about the defect, we are still talking about consumables okay?

🔊[33:00]

So lender knew that the rice he's lending is defective.

Then borrower can demand replacement of the rice which is not defective.

So the idea is that if the lender did not know that this rice is rotten.

Then if it is interest free, borrower cannot demand the lender to lend him proper rice.

Okay if it is interest free and lender didn't know about the defect borrower cannot demand the replacement.

Only when either interest was agreed, then even if the lender didn't know about the defect borrower can demand the replacement.

Because it is not free and borrower is paying for it, so replacement is possible.



Even if it is without interest, interest free loan if the lender knew it, then it's wrong of lender to, you know, lend defective thing.

So borrower can demand replacement for that.

If the borrower was provided with negotiable instruments, sort of other good in the agree of some of money in the application to repay shall be determined, solely on the basis of the value of the goods or instrument at the time of delivery, the agreed repayment amount shall be disregarded.

So this is a repayment date and at this point a negotiable instrument was given to the borrower.

And let's say it says 1million. That's the face value of the negotiable instrument.

And at this point the repayment date, they agreed that borrower shall repay 1million won plus interest during this period.

🔊[36:05]

So that's what the party agreed. Actually what was handed was a negotiable instrument rather than money.

If it was money which was handed over at this point, then this will be enforced.

The only exception would be this is beyond the ceiling of interest.

That's only concern here if it was money, right?

But if it was something else then whatever parties agreed it will be disregarded.

And then the actual value of this fee when this was delivered, negotiable instrument their value fluctuate over time.

It depends on two factors, the value of negotiable instrument.

Roughly speaking, two factors. What are those two factors?

(Student speaking)

Yeah. How long before the maturity occurs, right?

So the time factor. What else?

The credit worthiness of the payer. Okay? So it says I promised to pay.

But if payer is about go to bankrupt then it's just nothing. Use less. Right?



So the credit worthiness of the payer and then the period until maturity date.

So those two aspects determine the worth of this instrument.

So the parties of agreement will be disregarded

And if it was actually was only 0.5 million won at this point.

Taking into this account into these two, then only the agreed interest rate upon that amount needs to be paid back. Okay?

If interest was agreed it should calculated from the moment the loan was actually made or handed.

So they can agree that interest for one year shall be payable. But if the borrower has not actually use the money for one year, this agreement will also be ignored.

🔊 **[39:03]**

The borrower will be obligated to pay interest only for the period he actually was enjoying the money, using the money. Okay.

All these agreement is really nothing.

What really boils down to is borrower will be required to pay whatever the actual thing value he received plus interest during the actual period he was using it.

This also shows that loan cannot really be explained as a consensual contract in a satisfactory manner.

It's much better to approach it as real contract. Well... not the kind of real contract, consensual contract.

Now this, I'm not talking about 물권행위 here, this not in that sense.

Umm... Contra-tus re. Contract which requires passing of thing, actual handing over of money or rice for consumption. Okay?

Unless money is actually handed over, there is no contract.

Only when money is actually handed over, well then we will acknowledge that there is a contract.

Before money is being handed over, the parties can agree, the parties can talk, and parties can just make whatever promise or agreement, consensus whatever, but if no money is actually handed over there is no contract.

So that is a **요물계약**.

In that sense, I'm using real contract here.

Well as consensual contract no things needed to be handed over, only just agreement will have full force.

🔊[41:59]

Whereas loan, agreement alone... does not have full force.

Okay anyway. Now one more thing we need to cover before moving on to lease is an accord and satisfaction.

What is... do you know what accord and satisfaction means? No?

Could you explain accord and satisfaction? Accord, what is accord?

Two parties come to the same mind. Accord

Accord is opposed to discord, right? Accord, discord, accord...

Can you explain accord and satisfaction? What is satisfaction? No?

Loan I borrowed money, when it's time for me to repay, I don't have money but instead I can give you my bike. Right?

What is it called in Korean? Yes, louder?

(Student Speaking)

Yes? Yes, that's accord and satisfaction. Right?

So you must realize that common lawyers, English lawyers, American lawyers they also have this legal term, they have contract as legal term knowledge. Okay?

But they don't use the term contract or agreement about this arrangement where instead of original obligation.

I discharge my obligation by performing something different with the other parties accord. And they call it accords and satisfaction.

They don't say it agreement, they don't say it contract. Okay?

Why? Because it is not contract, because there is only one contract which gave rise to this obligation and this happens only to discharge that obligation.

It is not a new contract. It is not a contract.



And also they always say these two things together accord and satisfaction to indicate that if it is not performed, then it has no power.

🔊[45:05]

Accord which is not satisfied shall not have the power to discharge the original obligation.

So this is not a novation. Okay?

Novation is a new agreement which completely replaces, so the old obligation is destroyed and then new obligation arises.

Well as accord and satisfaction, if it's not actually performed, in other words if it is not satisfied, then the old obligation is unchanged. It is just there.

So they all distinguish. It's same with us. We also distinguish between novation and accords and satisfaction. Right?

Anyway, so this accord and satisfaction can happen at any time after the obligation arises, so from the very beginning the parties can come to an accord that when it's due, I will repay it with my bike.

I borrow money, but I will repay it with my bike. They can agree from the very beginning.

It could be a question of contract interpretation if the parties say I lend you, they say I lend you 1million and then you repay with your bike.

If they agree like that, is it really loan, loan agreement with accord and satisfaction where bike is used to discharge the loan, if the parties from the very beginning agree 'I lend you 1million. When it's time for you to repay you give me your bike' or is it just a contract of sale of bike where prices paid first and then thing sold as delivered later?

🔊[48:03]

There is some questions about it but it's ultimately a contract interpretation question.

But if the party's intent was that it's mainly loan agreement and so party's intent can be interpreted that at the repayment date, the borrower can always repay with money instead of having to deliver the bike then it's loan and accords and satisfaction. Alright?

If the borrower has no choice but to deliver the motor bike, it's not really a loan agreement.

Anyway, the due date is here, but past the due date the parties can also come to an accord and satisfaction.

While debt is not discharged the parties can always come to an arrangement about how the debt is going to be discharged.

So accord and satisfaction is really just a method of discharging your debt.

So that arrangement can be made either before the due date or after the due date.

Now article 607, have a look at article 607.

It says when accord and satisfaction is pre-arranged, it uses the word **예약**.

This is different from option contract, although In Korean, it's the same term.

When you use **예약**, we'd regard to accord and satisfaction you cannot translate it into option contract.

Because why? About a contract, you can talk about option contract.

🔊[51:02]

Because this is binding contract and this is also binding contract. The option contract is also contract.

Well as in here we talk about something which is not even contract. Accord and satisfaction is not contract.

So you cannot talk about option contract to have accord and satisfaction. It's not contract.

You can talk about, you can prearrange accord and satisfaction but you can always ignore that prearranged accord and satisfaction if you have money to repay.

Even if you have prearranged that 'okay I will repay you with my bike'.

But then that means of course, if I don't have money to repay, I will repay with my bike.

So this is not contract.

So I would prefer using prearranged.

So article 607 only applies when accord and satisfaction is prearranged meaning before what? Before due date.

If accord and satisfaction is arranged after the due date, article 607 does not apply at all.

So prearranged accord and satisfaction is valid only to the extent of the principle amounts lends plus interests until due date.

So if the thing offers in satisfaction of the debt is a bike and it's Harley Davidson which is very expensive and it's 5million won.

Let the more than 5 million won, okay 10 million won, work, ok?

At the time the arrangement was made.

At this point, I arranged, ok, I will repay if I don't have money, I will repay with my motor bike.

But at the time, the arrangement was made.

It was before the due date, and at that time, the bike was worth ten million won.

Ok? Actually what I borrowed was only five million won, and at due date, I'll have to pay only six million won.

So, that's what my debt is really worth.

🔊[54:02]

So, in that case, the difference four million won to that extent our arrangement is null and void.

That means, I can handle, I can give my motorbike in satisfaction of this that but I can't demand him to pay me four million won.

Even though, our agreement did not say anything about me demanding four million won.

Our agreement is that in satisfaction of your credit, your claim which will amount six million.

I will give my bike that's our agreement.

I will give the, my bike but I can ignore that agreement, and then subsequently, I can demand four million won probably because to that extend our agreement is null and void.

If this arrangement was made after the due date, I cannot do this.

The whole bike is his, and I cannot...

Of course, I am, now relieve though six million that fine.

I relieve that this debt.

Why there is such a dramatic different depending on whether arrange before due date and off the due date.

Why? Any idea? Anyone?

(Student Speaking)

Right, isn't there a need to protect follower when is the due date has to reached? No needs to protect borrower? Any idea... yeah?

(Student Speaking)

So, once due date reaches, then it's freedom of contract.

You're saying freedom of contract.

Yeah, you know, borrower can have all these options open to him, and borrower freely came to a decision to use his motorbike to repay his debt.

So, that freedom of contract must be respected.

But then, why not before he should be respected?

🔊 [57:00]

(Student Speaking)

Need money! I think that's the, that's the key.

Need money! Now people are under great deal of pressure but, of course, pressure alone with not be enough to undo the transactions they entering too.

Right? That's like a, in reality, everybody operates under some pressure.

Yeah! If there is no pressure, no one would move.

Yeah, no one, no one, no economy activities will happen if there is no pressure.

No one will want to work, for instance, if there is no pressure.

So, every contract is entering to under some pressure.

That's perfectly normal, right?

So pressure alone will not be enough to strike down a contract.



We all accept that everybody acts on the pressure.

Why should one sell something?

Because they need money, they want.

That's why they sell something.

Why would one buy something?

Because they need that kind of thing for something, so un pressure alone is not enough, but having to borrow money, it's considered to be more, more dial pressure, more stronger pressure.

So, before actually, actually, before borrowing, the pressure is highest, and in order to get that money, you can just make any kinds of promises.

That's a sort of assumption there. So, that's the dangerous highest, but once you get the money, where is the pressure going?

You have the money now. You have the money under your, in your pocket already.

Then, you are no longer under that kind of pressure.

So, quite often, the sort of unfair accord and satisfaction will happen before the money is actually tendered.

Money is delivered, but the close simply a sort of decides to talk about arrangement was made before the due date which will obviously include this. But...

🔊[59:58]

So, 91Da25574 if the debt has already fallen due, the accord and satisfaction between the debtor and the creator is not regulated.

So, that freedom of contract will reign if a prior arrangement for accord and satisfaction was made to settle the account over mutual aid scheme.

계| was what was referred to here.

Article 607 does not apply.

Article 607 applies only to a loan agreement, and mutual aid scheme is not loan agreement.

Do you know how, do you know how it works?



I don't really know very well how it works, but mutual aid scheme.

Apparently, if there are, let's say, one, two, three, four, five, six, seven.

Let's say seven members of this scheme.

So, they each will pay a certain amount.

Let's say, a one million every month, ok?

But then, there is number one, two, three, four, five, six, seven.

And number one he will pay in one million, and then, at the same time, he will be receiving eighty million, something like that.

And next month, well, again everybody would all pay in number two, everybody all...

In the first ground, so, all seven members will pay in, and from that money, that the first person will get the lump sum.

And in the second month, again everybody will pay in, and it will be his turn to get that lump sum amount.

And then, some nicely, it runs this way.

[?62:13 – 62:48] In the end, they will, if you all goals is well, they will all complete the so monthly participation, and everybody will be happy because they have some bigger amount of money which they will be repaid in this where is person who gets the money not that person will have a

At the end, he gets that lump sum.

But then, he takes the risk of that scheme going wrong along the way.

🔊 **[63:00]**

Where is the person who gets the big amounts at upfront, does not have the risk?

So, the, the payout tends to different, tends to differ.

But anyway, there is some element of borrowing and a repaying involved, but it's not loan agreement.

So, the [?63:30] held that article 607 does not apply.

The prior arrangement for accord and satisfaction is invalid to the extent of the value of the substitute property at the time of the arrangement exceeds the amount of the principal and interest at the repayment date.

So the debtor may before the accord and satisfaction that means before he actually performs what has been arranged.

Repaid that this regarding the prior arrangement for accord and satisfaction, or opposite accord and satisfaction claim the access amount.

The difference between the value of the thing at the time of the arrangement, and the repayment amount of the principal... from the creditor.

If the substitute is really estate motor vehicle, or heavy plant, and if the creditor is option to acquire it as accord and satisfaction is registered, then the Act Regarding Registration of Option to Secure Debts, applies, ok.

Any questions? Alright. So, Wednesday they won't be end the lecture.