Law of Obligations II

Lease (2)

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[0:18]

Contractual obligation to ensure health and safety of the lessee.

And our conclusion was that in principle lessor has no such obligation, no such contractual obligation.

Of course lessor might be subject to administrative regulations.

Right?

That's completely different matter but no contractual obligation can be established.

The only exception is a very short term lease, such as checking into a hotel.

But then that is perhaps… we have this type of contract which is fairly broad category and we put all kind of lease and checking in at a hotel for one night or two perhaps that's just a completely different type of contract but we simply have no independent category, for that kind of short term lodging, right?

But anyway in that case lessor does have a contractual obligation to ensure health and safety of the lessee.

Okay?

Now, moving onto lessee's obligations.

What in your view, excuse me, are the main obligations of a lessee?

Pay rent

Pay rent is the main obligation and what else?

Contractual obligation, you have to pay rent and what else?

Before restoring return the object of lease, when the lease is finished.

And then what else?

While the lease is going on what obligation?

Duty of care.

Duty of safe keep, right?

So those three are essentially the lessee's obligation now first about the rent, obligation to pay rent.

[2:57]

Since it is a contract which is intended to continue over a period, okay?

The alteration of rent, in other words, increase or decrease is allowed.

So this is a very significant change to the notion of freedom of contract.

Why it is a change to the notion of freedom of contract?

Is it not in line with a freedom of contract?

What do you think, you?

This provision article 628, have looked at article 628.

When the agreed rent becomes unreasonable inappropriate … not unreasonable, is not suitable due to the change of the amount of imposts or economic changes.

So when the tax or local governments varies imposts on the residents becomes very dramatically change or if the change general economic circumstances dramatically change.

Then either party may demand as a matter of right, change of rent.

So is it a challenge to the freedom of contract?

Or is it in line with the freedom of contract?

In line with freedom of contract.

What do you think, do you agree with him?

Excuse me do you agree with him?

This article, is it consonant with the concept of freedom of contract, or is it opposite to the concept of freedom of contract?

Changing the rent along the way.

(Student Speaking)

Why?

(Student Speaking)

[6:30]

Okay what about you?

(Student Speaking)

Really?

On the surface does it look similar of the freedom of contract?

(Student Speaking)

Exactly, I mean whether you agree about the future or not, freedom of contract means once you agree you have to stick with it.

Yes, because you are free to agree to that and once you agreed then that's it.

You cannot change that's the essential core of the freedom of the contract.

If you can change well then, there is the whole system collapses.

If you are free to change afterwards, right?

The very concept of the freedom of the contract means once you agree you can never change.

That's it.

That's freedom of contract.

So this clause is directly against this, direct challenge to this notion of the freedom of contract.

Why?

Because it's a contract which is intended to last for a long time okay?

So, the change of economic circumstances is taken into account.

That's very, very different from a contract which is intended to take place at one point in time, such as sale, contract of sale.

It just takes place at one point.

Even if you pay, your sale purchase price in installment like deposit and first installment and final balance.

Contract of sale is not something which is intended to take place over a period of time.

Contract of sale takes place just at one point in time, that's it, okay?

[9:00]

Paying the purchase price can take place at many different occasions but the contract of sale is not a contract with a duration.

So for that kind of contract, contract of sale, no way to take into account change of circumstances.

For instance, when you agreed the price was whatever level and when it's time to pay the balance of your agreed contract purchase price, the price level just went crazy.

Now shall we alter the agreed price of sale, because things have dramatically changed.

No, no. Why no?

Because you make promise and you have to stick with promise...

But then, why not apply the same idea to contract of lease?

You promised, then you agreed and you must stick with the agreed rent.

Ah…

But then, it is difficult topic.

Perhaps the very ideal of sale.

What is sale?

What is the point of the agreeing to a price?

The very reason why parties agree to a price is they both recognize that they cannot know what future will bring to them.

Both parties recognize and acknowledge that they wouldn't know the price may go up or go down, right?

So they just take the risk and then they just fix the risk and between them there is no

uncertainties.

That's the very points of sale contract.

So we must not change the goal post, you know?

Between them they agreed to just exclude all other changes.

Everything else change, the whole world will change, you and me we agreed to this price and we stick with it.

That's the very ideal of sale.

Whereas rent?

No…. You know….

It can last for many, many years, and then there was no such thing as taking the risk there whereas this one is very different.

So there is even Korean court case, where although, it was case which arose just after the Korean War in the fifties contract of sale.

[11:59]

One party sold the house and by the time of paying the final balance the house price went like a hundred times and uh…

It was a not when the balance was paid.

The house was sold, right.

But then there was a mistake there involved.

So one party rescinded the contract and returned the purchase price and wanted to have the house back and the price in the meantime went up one hundred times.

And the party offered only the purchase price plus interest which is ridiculous of amount now that the price went up one hundred times.

The court was still ruled in a cold hearted minute well, that's it, tough, you know.

It's rescission, you have to return it, just that's it.

That's life.

So be careful not to be too sympathetic, alright?

If you are sympathetic to one party, that means you are doing intolerable injustice to

the other party.

It's tough job to be a judge.

You cannot be nice to everybody.

So, what can you do?

Stick to the rule, ruthlessly.

But this is different.

It's a long contract intended to last for a period.

What about an agreement never to increase rent?

[13:59]

The parties, forsaw, this provision and if they agree we between you and me we'll never increase rent.

Valid or invalid, that agreement?

What do you think?

(Student Speaking)

Why?

Okay, article 652.

Okay, if you look at 652, you will see that article 628 is included there.

So, article 652 explicitly says that 628 is mandatory provision to protect the lessee.

[15:08]

So, if the party is, um, and article 652 declares that any agreement which is in violation of one of these clauses shall be null and void if it is unfavorable to lessee.

So, never to increase that kind of agreement, ah, sorry, never to, not to, how about, how about we shall never increase rent?

That is not against lessee.

(Student Speaking)

Yeah.

We shall never reduce, we shall never reduce rent.

That is clearly in violation of article 652.

But, you and me, okay, we will never increase rent, the rent is fixed permanently.

Is it, I think it is valid.

However, if you look at the case 92다31163, oh sorry, it's 96다34061.

Yeah.

That case was where a police station was leased for 20 years or so.

And the parties agreed never to increase rent.

And, it was somewhere in the Gang-nam area.

So, apparently, when that agreement was made, the price of land was still not very high because, I still remember in the 80s there were rice patties in Nonhyeon-dong, and it was all a bit primitive.

But 20 years later, you know, things changed.

And then there was a very fierce dispute.

[18:03]

The lessor so wanted to increase rent.

And the lessee argued that this agreement is valid because it is an agreement never to increase rent.

And it is not unfavorable to lessee.

And the parties are free to agree.

So, we have agreed never to increase rent.

We explicitly said we shall never increase rent, for the duration of this lease, a whole duration of this lease.

So, we must stick with it.

That's the lessee's argument.

So, how would you decide?

Do you think the party's agreement is valid and we must stick with that?

(Student Speaking)

Any idea? No? Try.

(Student Speaking)

Oh, that's a spectacular claim.

Well, first of all, article 652 clearly and expressively states that only those agreements which are unfavorable to lessees shall be invalid.

So, it is a one-sided clause.

And, if for in this contract, it is not unfavorable to lessee.

Therefore, it is valid.

And your second point, is it, is it conducive to economic efficiency if court allows the parties to change the agreed rent, is it better for economic efficiency?

Or the court just compel the parties to stick with their initial agreement, don't change?

Is it conducive to economic efficiency?

Which is better for economic efficiency?

What is your, court being very inflexible about what the parties have agreed.

Once you have agreed, don't change, we wouldn't allow you change, just stick with it.

[21:05]

That is better for economic efficiency?

Or court allows constant readjustment of the terms of the agreement?

(Student Speaking)

Okay, how about you?

Over there in the back. Which is better for economic efficiency?

(Student Speaking)

Allow, allow parties to change the terms of the agreements in the course of the performance?

What do you think?

(Student Speaking)

What is better for the economy, for the businessman?

If you are businessman, would you prefer to live in a country or city in the society?

Where?

You can always ask the court change the terms of the contract you have concluded.

(Student Speaking)

To be sure that you can rely on the terms of the contract that those terms will be compelled as those you have agreed.

You would prefer that.

If you are a businessman, you wouldn't like your contract to be altered and fiddled with.

Right?

[24:00]

If you are allowed to ask the court to change the contract, well, you can also ask the court to change the contract, and you can never do any business then.

That's terrible chaos for the businessmen.

So, it is much better for the economic efficiency, to just compel, compel the parties stick with the terms of the agreement, that way everybody can predict, everybody can plan ahead, everybody can hedge the risk.

Come on, there are many of dealing with the ways the risk arising from this country, alright?

Just be a bit, you know, sympathetic to the parties… oh my god, they suffer and we must do something about it…, that's just terrible amateurism.

That's just ridiculous.

Just force the parties to stick with the terms, that way you can encourage many other business, insurance or hedging or all these leveraging deals.

Of course, there are many other ways.

And all these deals, they rely on the court being very, very firm.

If court is very soft, none of these business can survive.

And no other businessman can do any contract with any confidence.

(Student Speaking)

Yeah, but if you look at article 652, 628 is expressly referred to, and then say, the party's agreement which is unfavorable to the lessee shall be null and void.

Now, remember, all clauses in the civil codes are only optional in the sense.

The civil court may say this and that, but the parties can agree otherwise, right?

But, when the civil court explicitly says this is not optional, this is mandatory, then to that extent this is mandatory.

So, article 628 may say either lessor or lessee may demand increase or decrease of the rent, that's what the clause says, but the parties can agree differently.

But then, that different agreement, the parties can agree differently, but some of those different agreements are struck down because of article 652.

[27:04]

What survives is, for example, never to increase, that survives.

That agreement is valid.

(Student Speaking)

No. Article 652 is superior, obviously superior to article 628.

Okay? And the 652 is clear that parties' freedom to agree otherwise is limited only to the extent that the agreement is unfavorable to the lessee.

(Student Speaking)

[28:30]

Yes, you are saying that the drafting was a bit awkward.

There was a bit…yes.

Well, but anyway whether drafting is awkward or not, the law is quite clear I think.

Okay.

So, that agreement is valid however the code in this case held that even if such a valid agreement may subsequently be altered on the ground of good faith.

Yes.

So that's a little bit of… well on the ground of good faith and…

So we have a situation, the contract, right?

And then the contract should not be changed in principle.

But article 628 introduces the possibility of change of rent.

Okay.

But then the parties went on top of article 628 by what, by explicitly agree to not to change the rent, okay?

[29:56]

And that explicit agreement must take precedence over 628.

So the codes held that this is valid, but then again introduce this good faith ground to ignore that explicit agreement.

This is somewhat kind of abusive use of good faith, I think.

If the parties explicitly, if the parties didn't explicitly agreed to override this clause, then of course you can introduce good faith, right.

In that case you don't even need to talk about good faith, you can just apply article 628.

But in this case, the parties explicitly you know agreed to not to change the rent, not to increase the rent all right?

But then, it's a bit strange.

And then, finally what the court held was that in this particular case the circumstances does not amount to good faith and we wouldn't allow change of rent.

So…

I don't know what was better.

One, the alternative is, well the parties explicitly agree to override this, so we wouldn't allow any change since that's what the parties agreed.

They explicitly say that for the duration of this lease we wouldn't change, that's good.

So that's alternative line of argument, but Supreme Courts chose 'yes it's valid' but then 'it can be changed' that means which is the… that is not valid.

And that can be changed on good faith means this clause is applicable, because this is based on good faith, yes.

And then finally, on the ground of particularity of the facts the code held not to allow change of rent.

I don't know which is better path.

Anyway, this notion of good faith or alteration of party's terms a bargain, that is something you must approach with great deal of caution, okay?

Korean Supreme Court tends to be too relaxed about talking about good faith and that's not good.

[33:00]

You are not being inflexible because you are cold hearted, you are being inflexible and you insist that the parties must stick with the terms because you have thought more about all other aspects.

You wanted the parties ultimately to be better off by them it's not that you are stupid or you are just a bad person, right?

If the default of rent payment, if the amount of rent in a reals, 'in a reals' means which had not been paid on time, okay, which has not been paid when they have to be paid.

Reaches two installments worth of periodic rent payment, the lessor is entitled to terminate the lease.

So the parties can agree the periodic payment of rent.

Of course the parties can agree that rent shall be paid up front the total amount of rent shall be paid up front.

That's brief, that's fine, you can agree.

Or the rent shall be paid at the end at one go.

You know five years, no rent payment but when it's over just lump sum.

That's fne, the parties can agree like that.

That's also possible but, more usual is to agree periodic payment.

So the parties can agree every three months or every quarter, that's all very possible, all right?

So this clause of termination on the ground of default of rent payment is possible when two such installment periods worth of rent is in a reals.

Now it does not have to be consecutive, okay?

And you have to just add up.

Suppose this period they agreed four quarterly payment of rent, let's assume the parties agreed four payments in a year, okay?

The first quarter about, only about 90% was paid, so we have 10% in a reals. And then at third quarter we had about 70% unpaid, yes, so you just add up the unpaid amount.

[36:07]

It doesn't have to be consecutive default, you just add up when the whole, the total unpaid accumulated unpaid amount reaches 200% of the agreed quarterly rent, then you can terminate.

The lessor can terminate, all right?

There is a question what if a lessee was replaced with lessor's approval?

So while this was going on, a new lessee, a new lessee was brought in and soon after new lessee defaulted for one installment.

Suppose the previous lessee has already defaulted like 105% of the quarterly rental and if this new lessee, here you only violated one quarterly payment but can the lessor add up the whole thing and kick out the whole new lessee?

What do you think, if you are new lessee, you only violated one periodic payment worth of rent…

(Student talking)

Yes, there is no new lease, okay?

There is, the existing lease, the existing lease was going on and the lessee was replaced, not the lease contract was renewed but under the existing lease you have everything, you accept everything and then you become a new lessee, you take the place of this previous lessee.

That is possible you see?

It's not a new lease contract it is the existing lease only the change of party that is possible.

You're such a new lessee and then you fail to pay one quarterly rent, will you be kicked out?

Because this is just one lease contract, however the code held that if the lessee was replaced with lessor's approval, then the previous default shall not be added up, okay?

[39:09]

So be careful about this.

New lessee's default of rent must amount to the required sum, okay?

If the lease of land was to own a building there upon…

So this kind of clause is needed because under Korean Civil Code, land and building are separate things.

I think this is one of the most stupid approach, which were started by Japanese and Korean legislators just uncritically copied Japanese who made this blunder who made this serious mistake.

And in Japan also the reason that was introduced was at the last minute on a not a very carefully debated manner, it was a… in every sense a very unsatisfactory approach.

So only in Japan and Korea building and land are separate things.

In most other countries it's one thing, you know building becomes part of land.

Anyway we have this strange regime where building is a different thing from land.

Now this clause applies when land was leased, okay?

And building is owned by the lessee, so a tenant of land built a building, build a restaurant or something.

So the building belongs to the tenant and the land belongs to a land owner, right?

And this guy as a tenant of this land must pay rent for lease of land and if this rent is in a reals, then lessor of land can terminate the lease, land lease, if land lease is terminated what happens?

Demolition!

Yes, demolition of building!

Absurd result, okay?

Absurd result.

[41:54]

But anyway that's what happens under Korean law, so if that's the case the lessor must notify the secured creditors, creditors who secure their credit with this real-estate, with this property hypotaxis.

[42:14]

Anyway, the secured creditors must be notified.

So, that those creditors can decide to pay rent to continue the lease, so that the building is not demolished, but this is absurd, I mean, perhaps how long, how long will those creditors be paying the rent.

If, if the rent is not paid, sooner or later, the lease will be terminated and the building will be demolished.

And what worth is it, as, as a security.

I mean a building which stands on the leased land, when lease is terminated, it will be demolished.

It's just absurd system where no such things make any sense basically, you know.

All this because land and building were treated as a separate thing.

Anyway…you will see some other things but then let's move on to duty of care.

Uh, basically it's based on article 374 of Korean civil code.

Have a look at 374, what I am talking about, so you can see what I am talking about.

374.

(Professor turns over the book.)

Yeah, until, the, the specified object is delivered, the party who has the obligation to deliver must exert duty, exert good care.

So, that's article 374 and lessee in that position, he has to deliver this specific thing, which he is leasing.

Uh, the lessee has the burden of proof that he diligently discharged the duty of care.

If the thing is damaged, most often, if the thing is burnt down, for example, right.

The lessee must prove that he took good care.

Burden lies with the lessee.

And 9ek64384 case demonstrate that it's still lessee who had to prove that it was due to lessor's failure to maintain the building.

[45:08]

Okay, and uh, another obligation of lessee is when the object of lease is returned, lessee has the contractual duty to restore object to its original condition.

This is very important mostly because parties agree some different arrangement . . . and uh, how to interpret parties of agreement.

That's, that's where a lot of disputes arise.

So, in one case, the court held that ...

(Professor coughs and erases the board.)

Now this requires a bit of attention from you.

So, the first case is that lessee agreed to take care of the maintenance of the building, which is usually in the absence of the party's agreement.

Whose obligation it is, maintenance of the building?

(Professor points to student.)

lessor's obligation.

This particular case, lessee agreed to take care of maintenance and pay for whatever expenses necessary to, to keep the building in good repair.

The court held that if that's what the parties had agreed, we can imply that at the end of the lease, lessee does not have to return the thing in its original state.

Lessee is absolved.

So, duty to restore absolved.

That's through court interpretation.

The party, parties did not say anything about this, they simply agree that lessee shall

look after this building throughout the duration of this lease.

The court held that if that much was undertaken by lessee, it is reasonable to absolve him from this duty.

[48:01]

That's what the parties must have agreed.

In another case, slightly different one.

In this case, lessee agreed that he shall not, he shall forget about reimbursement for the improvement.

So, improvement, reimbursement, he shall not seek.

I may improve, you know, in the course of this, during this lease, I may decorate this thing, this place and I may pour, I may invest a lot, so that this building will become much better, but I won't ask any money in return.

That's what the lessee agreed.

So, the lease was over, lessor asked the lessee to put everything away and put it to the original situation, original state.

And the lessee argued, "Look, I agreed that I am not going to ask any reimbursement for all these improvement. That means that we have agreed that I don't have to put it back to original state."

It might sound a bit reasonable.

The court refused that argument.

The court rejected that argument and say "The fact that lessee agreed to forget about the improvement reimbursement does not mean that lessor does not have to restore."

"Lessee agreed not to seek reimbursement but lessee must restore."

It's a bit, a bit really the border line case, I think.

If the lessor has the duty to restore, why would they have agreed about not seeking the reimbursement?

If everything has to be taken away and torn down to its original station, this question would not even arised, right?

[50:29]

In this case, they agreed that I will forget about seeking reimbursement in respect of improvement that means that I am not, I don't have to take away all the changes I have made.

But court refused.

I think this ruling was clearly in favor of the lessor's, the land, the land owner's position.

The court was being a bit unfair here, I think.

It was just obvious that the party's assumption, obvious assumption is that I don't have to, the lessee does not have to take away everything, tear down everything he has done.

[51:02]

Anyway, anyway that's the precedent which still stands at the moment.

Another case, even if the lease was terminated because of the lessor's wrongful reach, the lessee is not absolved from the duty to restore.

So, for example, this building was leased and it was, it smelled terrible because of the sewerage problem.

The building was in terrible state of repair.

So, the lessee, the tenant invested quite a lot to decorate this building as a nice Italian restaurant.

But because of the terrible smell cannot do it anymore.

And, therefore, the tenant terminated the lease agreement.

But, still, the tenant must put the thing to its original condition.

Even if the lease is terminated because of lessor's default, lessee still has this contractual obligation to restore the thing to its original condition.

(Professor looks print)

What about, if lessor and lessee agreed that lessee does not have to restore the object of lease to its original condition?

Have no duty of restoration.

What if they agreed?

They agreed that lessee shall simply return the thing as it stands at the end of the lease period.

And that will be the end that will be what the lessee is obliged to nothing more.

Lessee can simply return the object as it is at the end of the lease.

What if the building was damaged while the lessee was lived?

What if window panes were broken?

Can't the lessee just return it in a broken state?

What do you think?

They agreed that lessee has no duty to restore.

Just return it as it is.

You don't have to, you don't have the duty for this.

[54:06]

So, I am just returning it to you, you know, it's, I don't have to restore it.

There is no reasonable condition.

Window is broken and carpet was damaged and the whole place is like pigsty, so messy and dirty and now I don't have to restore it

I just return it to you.

(Student is answering.)

But then, haven't they agreed that the lessee has no duty to restore.

What do you think?

(Student is answering.)

Right.

(Student is answering.)

Inferior, it became worse than before.

But isn't it covered by, by the clause that lessee has no duty to restore

To restore means to put it back to the original position, right?

And, precisely that duty was absolved.

So, I don't have to put it back to the original position.

I just return it to you as it stands.

What do you think?

(Student is answering.)

(Student Speaking)

Yeah so that's the third situation, duty of restoration explicitly waived by parties' agreement.

So Lessee's duty of restoration explicitly waived by parties' agreement.

Waived means lessee has no such duty.

Does that mean lessee has no duty of care for the duration of the lease?

[57:14]

He, I think, rightly pointed out, that duty of restoration must be distinguished from duty of care.

And duty of restoration would apply to any kind of alteration to the object of lease regardless of whether the lessee was at fault or not at fault.

Duty of restoration, for instance, lessee had a word with lessor, and they both agreed that we will make another window.

And they both agreed that we'll have another extension to the second floor thing.

Is it in any way, lessee's fault?

No lessee has done nothing wrong.

They both agreed and they made alterations.

Alterations with agreements- it's neither negligence it's neither deliberate all right?

It's just no fault is involved here.

Still, duty to restore would normally apply, right?

Whereas, duty of care becomes meaningful only about the damages caused either negligently or deliberately.

So the question of fault or culpa is at the heart of this duty of care, right?

Whereas duty of restoration could include this, but also includes another completely different situation, right?

Now, everything is absolved is that what the parties' agreed?

When they absolved duty to restore?

He says no.

This agreement must be narrowly interpreted to cover only alterations which were not done negligently or deliberately without any authorization of the lessee.

If the thing was damaged due to lessee's fault, that is covered by duty of care.

So damages must be compensated.

[59:56]

Even though the parties' agreed that the lessee doesn't have duty to restore.

A similar case appeared 97-15953.

Public bath was leased parties agreed that the lessee shall undertake all repair works at its own expenses.

That agreement, yeah?

Lessee shall maintain the building.

The court interpreted this implies an agreement to waive the duty to restore, okay?

But the court held that the lessee's duty of care remains unaffected.

The lessee negligently caused damage and lessee was ordered to compensate.

In this another case, 95다2927, that's also pretty important.

The parties explicitly agreed that the lessee shall not have duty to restore.

Then, the court interpreted that this also means that lessee shall not seek reimbursement of improvement.

So lessee gives up reimbursement claim.

This is again, a little bit sort of favoring the lessor, isn't it?

If they agreed that lessee, at the end of the lease, you don't have to put it back to original state, if that's the only thing parties agreed, and then lessee claimed that, yeah that's what we agreed and we didn't say anything about whether I can claim reimbursement for the improvement or not.

Since we have agreed that I don't have to put back to original condition, I should be entitled to claim reimbursement for the improvement.

That's what the lessee claimed.

And I think it makes quite a good sense.

If the lessee has a duty to restore, well then lessee cannot make any reimbursement claim for any improvement because he cannot leave the improvement then.

He has to put the thing back to the original position.

So he cannot claim any reimbursement.

[01:03:05]

But since the parties agreed that lessee has duty to restore, yes then it was quite natural to claim that reimbursement.

The court held that, no no no, if they agreed that lessee has no duty to restore then, this agreement shall be interpreted to include waiver of claim for reimbursement as well.

Then when can lessee claim reimbursement for improvement?

When?

I mean if there's no duty to restore, lessee shall be required to put back to original position.

Then for no claim for reimbursement is possible.

If the parties agree that lessee has no duty to restore, the court interprets that reimbursement claim is also waive.

Then when can lessee make reimbursement claims?

None!

Basically lessee's reimbursement claims have been destroyed by the court's interpretation.

So, under Korean law, in reality if you take into account Supreme Court's position,

lessee can never claim reimbursement for objective improvement, unless they explicitly agree about reimbursement of improvement beforehand.

Because, you know about duty to restore, if they don't say anything about duty to restore, lessee would be required to tear down everything and then clean it, the thing.

So there is no improvement.

If they agree that lessee does not have to do it, then the court will interpret that lessee also gave up the reimbursement claim.

It's all like favoring the lessor a bit too much.

It's quite, I think, obscene sometimes you know, the Supreme Court's position.

It's a bit, you know, blatant.

These two, uh anyway, lessee's undertaking to meet the improvement expenses does not absolve lessee from the duty to restore.

[01:06:08]

Okay, about this duty of restoration and duty of care, it was a hot issues between the Unites States government and South Korean government about the U.S. military bases in korea which were leased to U.S. military force.

And under SOFA Status of Forces of Agreement, article 4, U.S. government and Korean government explicitly agreed that us shall not have duty to restore the facilities when the lease is over.

The U.S. shall simply return.

No duty to restore and no duty to compensate in lieu of restoration.

That's the language.

No duty to restore means actually do the work to restore it.

And no duty to compensate in lieu of restoration means leave it as it is but pay the expenses to put the thing back to the original position.

So neither of these duty.

U.S. has no such duty.

That's the explicit agreement.

The problem is that all of these lands were contaminated.

Lands contamination is a serious issue.

And the detoxication requires a great deal of expense.

And who is going to bear that expense?

U.S. government obviously claimed using all these clever lawyers saying, “yeah. We have no such duty to restore the land.

It’s Korean government to tidy up the whole mess.
We can just return it and then we can leave.

It’s you who have to clean up after us.

You know we can dirty the thing as we wish and you have to clean up our mess.”

That’s their claim.

And there are no Korean lawyers who can counter that argument.

It was terrible.

I thought it was ridiculous.

All these you know international law professors they thought it’s treaty.

Of course it is treaty.

And then, oh my god, what are we going to do about it?

Come on, this is lease!

Civil law question!

민법 question, come on!

And anyway, have a look at the article I wrote about this.

[01:08:58]

And then these civil laws professors, they were all kind of why does professor Kim talk about SOFA in U.S. military.

Is it a civil law question?

Of course it’s civil law question.

We have already covered fixtures and appurtenances all right we’ll cover shop

premium and assignment of lease on Wednesday.