Title: Law of Obligations

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[0:00]

Yes, it becomes…Oh, that's a very good question, actually.

So, let's take an example of a gas station…petroleum station, okay?

And umm…lessee rented the land, okay?

And there is petroleum reservoir built into the ground.

Now it's impossible meaning if you want to remove it.

You basically destroyed the complete economy value of the reservoir.

In that sense, it is impossible and it became one with the land.

So it is already owned by the land owner.

There is no question about lessee exercising a put option forcing the land owner to buy it.

It's already owned by the land owner.

The only remaining question is umm… to pay whether the…so…It's a very good question.

Do we have a…So under the property law, we have a theory that well...ownership belongs to the land owner but then the one who acceded this object should be entitled to reimbursements of umm…the benefit, right?

That's the property law issue. Fine.

That…these principles will apply in the absence of any contractual relationship between two parties.

This is property law issue and we don't take into account the precise or detailed contractual relationship between the parties, right.

What about lease contract?

It's a similar ...well the identical situation but now you have to add the dimension of lease contract…contract of lease.

[3:00]

So this is a property law aspect but then we need to take into account the lease contract and what the party is entitled to and what the party is obligated to do all to receive, okay?

Now, it is true that this became one. But it is not impossible.

So, if the lessee has a duty to restore at the end of the lease?

Then the lessee has to deal out.

The fact that it became one does not mean that lessee shall be absorbed from the duty to restore.

Duty to restore means that you have to put it back to original condition to the extended is possible.

So, if you are the owner ...land owner…you can ask this question to the lessee.

Is it impossible to remove this reservoir?

Then I can say it is possible but if I remove it then this theme will completely destroyed and then you can ask,so what? If it's possible, remove it.

Now, to reimburse lessee's the expenses and expenses which resulted in objective increase of value object.

Now, how it works.

Lessee may demands reimbursements only at the end of the lease and only to the extent objective increase, that's fine.

Right, the idea is that if the parties agreed that lessee does not have to put it back to the original condition.

In other words, if the parties agreed that no restoration is required…no restoration is required, then it is possible for lessee to demand reimbursement.

If no restoration is agreed, then it is possible for lessee to demand reimbursement.

The other way does not work however, if no demand for reimbursement, no reimbursement is agreed…no reimbursement for increased value is agreed that does not mean that lessee does not have to restore.

[6:05]

Even if no reimbursement is agreed, still restore...lessee has to restore it.

That's the quote interpretation, Okay?

If the parties agreed that lessee does not have to restore the thing to the original condition, then…yes. reimbursement can be claimed but the other way, does not work, okay?

So coming back to this idea.

So a reservoir was buried, okay?

This is not a fixture, this became one with it but the duty to restore would apply.

The parties may of course agree otherwise…the parties may agree that at the end of the lease lessee need not put it back to original position.

If such no restoration is agreed, then lessee may demand reimbursement for objective increase… if it is objective increase but it would be very difficult to succeed that it is objective increase because land owner might want to use it as a gas station…petroleum station.

uh... what about ...is it okay? kind of?...umm..so…

So if it became one with the object of lease then there is no question of put option because there is no need to sell… it's already ...ownership has already changed.

So the concept of fixture does not include such situation.

In reality, however, it is not easy to tell.

For instance, television aerial what we call antenna.

Is it fixture? Is it very difficult to remove?

It may not be very difficult but what about curtains?

Curtains are very easy to remove but still …so umm… the dispute would arise and lessee will argue that aerial must be considered as fixture then the court will have to decide what is reasonable and they must take into account how difficult it is to remove the aerials.

[9:10]

Sometimes it may be quite difficult or sometimes it's very easy but court will take into account how difficult it is and what is the price which is at stake and things like that.

So those points will be taking into account.

Umm...about the…about the fixtures, put option is possible only when those fixtures would introduce with the authorization of the lessor.

If lessor did not authorize television aerial to be put in the first place then there is no question of put option…lessee must to remove it…no doubt about it, okay?…but then there is this other question. 'Buildings installation and trees on a leased land'.

So this is land, now the difficulty arises because on the Korean law, building and land are separate things.

So this is umm...article...what is the article… where ...'Buildings installations and trees on a leased land'…umm...article 643… article 643… you see? …umm… article 643 deals with lease of land, okay?...but the lease is for the purpose of either owning a building or a planting or salt mining or umm... or...what is it…uh…daily farming, okay?

Now when the lease is over, if there are buildings or plants, trees or other installations, okay? …other installations…then, what can lessee do?

[12:00]

Suppose there is a building there, right?

At the end of the lease, if lease is not renewed, what will happen?

If lease is not renewed…demolished.

I mean if this clause is not there, right? If this clause is not there…if lease is not renewed…it must be demolished.

To avoid that, we have this.

In most other countries, they don't need this kind of clause because the moment building is… building...become one with the thing then the question remains the reimbursement of the increased value, right? …but under Korean law, put option clause is there…but curiously, let's say. Let me give you an example.

Let's say. Let me give you an example. When I first rented the ground there was nothing.

And I didn't tell the lessor, the land owner. I just built a building.

Lessor didn't even know. And then the lease was completed and the lessor does not want to renew.
Do I, can I exercise put option? No, you can no.

It would depend though, it would depend. Article 643 does not say anything about lessor's approval order.

Now it would depend, I said it would depend because if the purpose of lease, if the purpose of land lease,

Is not really about me owning a building, or having a building part of that land.

If that's what our lessee contract was like. Then if I build something then the lessor would have objected.

Lessor would have claimed that I violated the lease. So the lease must be terminated right away.

If that's the nature of our lease, then of course I cannot claim that you must buy.

If that's not the case, if it was ok then if I didn't breach the lease contrast by building a building then it doesn't matter

Whether lessor authorize building owner.

So we have a supreme good case.

Which specifically deals with this question.

Saying article 643 does not require lessor's approval of the building.

The only exception is when the building is unexpectedly expensive.

In that case lessor shall not be forced to buy the structure.

So no authorization by lessee is required. It is 93.34589 case.

How can then reconcile with this two principles.

Regarding fixtures introduced to a building inside the buildings let's say curtains.

[16:00]

If it was not with authorization of the lessor I cannot exercise put option I have to remove it.

Where buildings I don't need authorizations, and I can exercise put option.

How can you reconcile. If you do small little things then you will be self punished when you do big bad things then you can exercise?

Yeah I think that's it. It's the inherent defect of our system.

Where building is a separate thing from the land.

To remedy this inherent defect we need this kind of clothes.

There is another case. 2007 3456. So in this case the building is owned by the lessee and the

Value, worth of the building let's say it's like forty whatever million worth building.

But then there is a hypothec, there is a creditor who secured he debt with this building land

Belongs to the lessor, but the building belongs to the lessee and lessee needed money and the

Landlord had the hypothec on the building. And amount of debt secured by the building is let's say

20 million. Now in this situation can the lessee exercise put option.

Yes. But the question is at what price? The quart must decide the price. Sale price right? It is forced sale.

So the quart must decided. How at what price. So surveyors will say ok the market value of such a building 40million.

So should 40 million be the put option price? Or since it is hypotheced to 20 million deduct 20 million and 20 million will be put option price, which one?

[19:04]

But creditor, (to student) what is your view.

The sales price must be set at 40 million simply because the hypothec there is a possibility that in

The end it's just canceled. Because the debtor, most probably the lessee might have borrowed this amount if the debtor somehow pays back and it's canceled. In that case if quart sets put option

Price 20 million, the buyer will be just be benefiting unjustly.

So the quart said don't take in to the count to secure the mount of debt just set the put option price at the surveyed value market value.

But the buyer in this case the lessor can with hold payment of this put option price to the lessee to the extend of this secured debt until hypothec is canceled.

Quite reasonable.

93.42634 deals with the case when only this much land was owned by the lessee and that part is owned by somebody else third party.

If the building cannot reasonably be divided in other words if the building as a whole must be bought then the lessee cannot force any of them the part of the building.

Why would that be?

If lessee is forced to buy it then lessee will have to negotiate with the neighboring land owner.

A terrible mess.

And neighboring land owner might say no you should demolish it then it is just chaos.

So in that case the lessee cannot force the land owner to buy any of it.

It says about the installations and we have case green house was built on a lease

Land and at the end of the lease the Land owner refused renew the lease.

[22:26]

So the farmer who had greenhouse relied on article 634 this is installation.

So you must buy it. So what do you think?

Do you think greenhouse counts as installation within meaning of article 643.

It is a bit difficult.

As he pointed out it is either this article 643 or fixture also.

You can claim that this is fixture so you have to buy it.

Now if you want to rely argue that this is fixture then authorization [?, 23:55] if you rely on this

You don't need to prove the lessor authorize.

And in this particular case the quart tell that greenhouse it's not installation.

It may be expensive to remove it but it's still economically viable.

So you can remove it.

We would simple treat greenhouse as just kind of movables, some kind of furniture.

Rather than installation.

In that case I think the lessee could not prove that lessor approved that building of greenhouse.

If the land was leased for the purpose of farming greenhouse must of course have been approved.

Can you argue that?

Not necessarily.

That farming don't always need greenhouse to farm right?

You rented your land to a farmer he said he will do let's say whatever pepper, sweet potato of chilly you don't necessarily give permission to the farmer to build the greenhouse.

If you have clearly authorized ok you can build greenhouse then you will be bound by this.

So the installations under article 643 means some structure which is a little bit more close

[26:00]

A little bit difficult to remove.

So, we have some kind of completely separate object, furniture.

That's completely separate from the object of lease.

And then, we have fixture.

And then, we have installations, on the article 643.

Fixture… What is the article? 646. So 646.

And then, accession, which became one with the building, right?

But accession would not work regarding real estate

That’s the trick, that’s the difficult

Anyway, now one more point about...

Now, coming back to this fixture thing and restoration and reimbursement of increase of value,

We know that whether lessee can claim reimbursementor not, it really depends on what they have agreed.

So, if the object of lease, whether it's building or land, if the object of lease is so old to somebody else, who is not a party to this lease contract, the lessee cannot claim reimbursement of expenses for improvement or expenses for maintenance to a third party, who now has the object of lease.

Because it must be regulated by this contract and such a reimbursement claims can only be brought to party to the lease contract.

If this party is not a party to the lease contract, you cannot claim.

[29:10]

So, to summarize, reimbursement claims arising out of the lease contract may only be brought to party to lease contract.

You cannot rely on article 203. okay?

Alright.

So, let's talk about lease deposit.

Lease deposit is very important economically

It's usually quite a lot of money.

Many people who are in the position of lessee, tenants, right?

People who are in the position of tenants are perhaps the majority, their major assets are these lease deposit which they gave to the landlord.

Anyway, so the upon termination of lease less so must returned the deposit to lessee of the deducting any, some owned by the lessee.

So, can decide,

It's like landlord can decide at anytime during the lease to deduct whatever lessee owes to him.

But, lessee may not claim the deduction in the course of the lease.

So, like this.

Lease contract goes on, and let's say one month lessee failed to pay rent, the tenant failed to pay rent.

Now, lessor…so, the landlord can decide to deduct that unpaid rent.

Thus, reduced the deposit, the lease deposit,is substantial amount.

And if lessee fails to pay rent,

So, landlord can decide to just take a bit of deposit and consider that rent having been paid.

But, tenant cannot ask landlord to do that.

And let's say another failed payment of monthly rent.

[32:10]

Then, lessor… the landlord can just kick it out, saying “you have failed to pay two periodic pays.”That argument, tenants cannot bring.

2002.52657 deals with a case, where the lease deposit, the lessee's claim

Okay, we have tenant here and we have landlord here.

And the tenant has a claim to receive back the deposit at the end of lease. right?

And tenant assigned that claim to a third party.

And the lease was terminated, alright? and third party exercises "okay, now returned deposit to me."

But, in the course of the lease, there was substantial change which was made to the object of lease and now in order to put it back to original condition, you need quite a lot of money.

Landlord now claims to deduct that amount and pay to the third party substantially reduced amount, saying “oh, I need this much money to put the thing to restore.”

The quote denied this defense of the landlord, saying that ‘you, landlord did not demand restoration when lease was terminated. You cannot now claim that you want to restore it.’

‘You have to deal with, you have to thought out the restoration issue when the thing was returned to you, now it's too late.’

[35:04]

In other words, even if the lessor has the right to demand restoration, it the lessor actually did not demand restoration at the end of the lease, lessor may not subsequently demanded in respect to the third party.

What about change of tenant? Sorry.

What about change of landlord?

The lessor if the object of lease is so old to a new owner,lessor changes,

We have apparently conflicting two cases.

The tenant did not have any protection of the tenancy.

[39:07]

The lessor transfers the ownership of the object of lease to a new owner.

And on that occasion, there was a negotiation between the parties because if this guy just sold it and then does not make sure that the tenant enjoys the tenancy until the period.

Then, he will be sued, right?

Of course the new owner can kick out the tenant, tenant will be kicked out but then tenant can sue him for bridge of lease.

So, in order to avoid that situation there was an egotiation.

And the new owner, the transfer of lessor's position was all negotiated the bridge in three parties.

So, in such a situation if the parties did not make it clear that the old lessor shall be absolved from the duty to return the deposit.

The old lessor will continue to have the obligation.

The new owner is nearly in a position to perform that duty to return the deposit on behalf of the lessor.

Basically the object was sold, right?

The ownership changed but lessor did not change.

That's the case.

2000, 690-6, only the ownership changed but lessor remained the old guy.

Whereas in the 1960, 39216 case lessor has changed.

So, that's the difference.

Now, shop premium…

Yeah, um…that's a good point.

It would all depend on weather, lessor there has changed all simply ownership has changed, right?

In the case of protected tenancy, I would tend to think that if the previous lessor authorized introduction of the fixtures, right?

Then, the new lessor will be forced to buy fixtures.

In the case of near change of ownership how it'll be resolved.

It is lessor's duty not the owner's duty, right?

[43:33]

So, lessor will be forced to buy not the new owner of the object.

So, it'll be the lessor who sold the object of lease to a third party will be in a very awkward position in that situation

Because he end up buying curtains, that says curtains to an apartment which is no longer he is, right?

So, when he sells the apartment she will arrange all those issues he will need to tied up those issues beforehand.

But of course we lawyers are needed because people failed all forget to do that kind of tiding up beforehand.

And I think it's in habit to call that.

The new owner is not under any obligation to buy it.

The new owner is not even party to the lease of agreement.

The new owner is nearly assisting the lessor.

Shop premium, it is a price which you pay to become a lessee.

In Korean, we have this expression 'gwonligeum'.

Now 'geum' means purchase price.

And 'Gwonlidae' means the right to be the lessee.

So, if you pay that premium and if you become the lessee, then that's it.

That the purpose of payment is completely fulfilled and you can never ask it back again.

Unless you're kicked out if you lose the lease prematurely.

So in return for a payment of shoppremium, the lessee acquires a guarantee to have the lease for an agreed the period of the time.

A right transfer the lease to a new lessee unexpectation that renewal of lease shall not be unreasonably refused.

The third point is not clear though, so we have a situation we have lessor usually of a shop, right?

And lessee, this person runs the shop.

And then new lessee, now shop premium is paid to whom.

Yeah, to lessee one.

When the shop first begins, the first lessee is unlikely that there is any premium there.

[47:29]

It's when the business is going well and it's largely due to the shop owner's skill and his business and his goodwill and customer base and that kind of things.

That also is reflected in the shop premium.

Anyway the price is paid to this.

Then why such a price should have an effect on lessor?

Such as a guarantee to have the lease for an agreed period of time.

In other words, the lessor cannot give notice and terminate the lease agreement in less than two years.

That's the idea.

At least I'm entitled to that full lease period.

I should not be kicked out prematurely.

Of course if the new lessee fails to pay rent.

Of course he will be kicked out.

But if there is no such reach of lease contract.

The lessor may not terminate nearly by giving notice.

But why such a payment should have that kind of restricting effect on lessor.

It is difficult to tell.

I have … explaining that aspect.

Also, the right to transfer the lease to a new lessee usually that is not allowed.

Why is so…

Yeah, that's a one way of seeing the thing.

But then quite often the change of owners, the shop owners do not take the form of transfer of this it could take former completely new lease.

The change of management, you know new shop keeper may come in.

The change of management take place either in the form of sublet or transfer of lease or new lease, right?

And this case of shop premium would apply to all these situations.

So, a lot of it is actually governed by customary law.

So, if the new lessee is kicked out for instance prematurely, of course the person who receive that premium needs to return.

That's for sure I think.

[52:00]

In any case lessor did not receive any money in the first place.

Okay.

So I will modify the lecture in the …

Now let's move on to assignment of lessee.

In principle assignment requires lessor's approval.

Let's have a look at article six to nine.

It's expressly stipulated in this very part.

Lessee may not transfer or sublet without authorization of Lessor.

Suppose Lessee agreed upon a sublet.

That agreement alone will not justify Lessor's termination because agreement is one thing and then whether a new sub tenant will indeed come in or not is another.

So only when actually a new stranger come in, then it is material fringe on the part of the tenant.

Under special circumstances however an authorized assignment is permitted.

So we have a couple of cases.

In one case, it was like a couple who was living there and initially the lease was on the name of the husband.

And then they were divorced and then remarried and they're now together again.

And the Lessee, the lease of transferred to wife now.

And Lessor may not claim that to be breach of contract.

The substance is more less the same.

Even if it's breach, it's not material.

[55:22]

The other one is building was subject to a (?55:26) and creditor exercised the for sale.

So there is a new owner of the building.

The building on the in that case the Lessor is landlord.

The original Lessee of the Lease contract was the building owner.

And the building was put on auction and the new owner came in.

And what about the Lessee position?

In that case this new the transfer of Lessee does not amount to breach of this contract.

They did to protect the building I think.

So in such a case the assignment of Lessee is committed.

Usually when the Lessor approves of the assignment of Lessee, they will also have

the least deposit also.

Sub Lease means a contract between the Lessee and the sub lessee.
No contract exists between Lessor and sub Lessee.

But the contractual obligation is imposed by virtual statute.

Sub lease is only between Lessee and sub lessee.

That's the sub lease.

Direct obligation rises between Lessor and sub lessee.

Sub lessee has obligation to Lessor.

That is by virtue of article 6 30.

The sub lessee directly bares the obligation to the Lessor.

Lessor may not deny lease to sub lessee on the basis of agreed termination because they these two are still parties to the lease agreement.

Sublet does not affect the existence or duration of the lease agreement.

So they may agree to terminate the Lessee but that should not affect sub Lessee.

[59:43]

If Lessee breaches contract these contract then of course Lessor can terminate it.

If [?58:52] is not paid then of course Lessor can terminate.

Sublet does not affect in any way Lessee's obligation to pay rent.

Of course Lessor will not be doubly compensated.

Someone must pay from the point of Lessor.

He or she now has two parties who has obligation to pay rent.
Okay?

And he would Lessor can demand direct from Lessee or direct from sub Lessee.

But whichever pays is as long as it's the full amount of rent fine.

And as long as the object of this is properly taken care of, looked after, fine.

No reason, no oppose for terminate.

In such a case, they, between theirs can not agree to terminate the Lease.

That's what this means.

Yeah not paying the rent, then the sub Lessee would be kicked out yeah.

No doubt about it.

Because the protection under tenancy protection act simply does not cover [?1:01:51] where rent is not paid.

[61:53]

The tenancy protection acts only residential tenancy protection act or commercial tenancy protection act it only covers when the ownership changes.

What happens to the destiny of the Lease?

That's the main thing.

If lessee poorly looks after the object of b so fails to pay the rent, of course they must be kicked out.

Stupid no no.

Well still that's stupid of sub Lessee.

Sub lessee should never pay rent to them.

Because if this guy just appropriates the money he just receives from sub lessee, Sub lessee if he wants to stay or remain must pay again the rent and then pursue this guy and then receive it …

I don't know how you can protect sub Lessee for such stupidity yeah.

There is no way to protect sub Lessee.

Alright next time we'll move on to contract sort of completed piece of work.