

# Title: law of obligations

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🔊[00:00]

Exam is 9 on 15<sup>th</sup> no lecture on 13<sup>th</sup> of November.

So you have to go to the court in person?

(student)

That is stupid, just like court you know?

Why do they insist that you should come in person.

(student)

So silly.

(student)

Really ?



That is insane.

(student)

That is really terrible.

If you become judge please don't be like that you know?

It is just awful.

Such a bureaucratic rubbish.

I hope this gets the air, bureaucratic rubbish, which is committed by Korean court.

Alright, today we will quickly go through negotiorum gestio.

And then partnership agreement.

Negotiorum gestio varies no satisfactory expression of terminology to describe this.  
in English.

Because, English law does not recognize this simplistic.

So, it is a continental European legal rule.



And there were this written Negotiorum, 'Negotio' means transaction of business..

And 'Gestio' means management.

So management of business, but here business means somebody else's business.

So dealing with or taking care of somebody else's business.

That is the negotiorum gestio.

'Gesto' means the party who takes care of the business., ok?

So that is 'Gesto'.

It is a statutory relationship.

Now in the common law, jewelry stiction, they don't recognize negotiorum gestio.

So, if you take care of your neighbor or somebody else's business, without having been invited to do so or without having been requested to do so, even if it is beneficial you are interfering with somebody else's business and that can in many cases constitute that, thotial interference with somebody else's business.

But in reality if it is beneficial the party would benefitted would not sue you, but um.

Also it would be in many cases difficult to seek discouragement of benefit, from the party who benefitted.



Because, you will most often be considered as having donated your service.

What about the expenses?

It would, there is very little room for seeking reimbursement of expenses also on the common law jewelry stiction.

So it is of all difference of approach, why these the way to govern a community, whether to encourage or whether to discourage interfering with other, somebody else's businesses.

In Roman law, this whole idea arose from Roman law.

And during the Roman empire.

Lots of Roman citizens were away from home, from on military exposition.

And lawyers, juries wanted to encourage people to take care of the other people's affairs.

That is one of the background.

The idea is to first to ensure proper handling of the affairs.

That means, gesto is under a duty of care.

So that is one aspect.



And secondly, strike a balance between the party who takes care of affair.

And the party who benefits from that management.

So these two parties neither parties should benefit.

Well it is beneficial, so it is to the benefit of the party whose affairs are being managed.

But the party who manages the affair, is never entitled to any fee.

The only thing that the gestor can claim is the expenses, ok?

So what if your neighbor takes care of your business with all good intention.

But if he does it in a very poor manner.

And if you suffer a loss.

Then you can claim damages under this heading.

But even under Korean law, you can argue that, that is total.

Total interference, if your business, your affair or your property is damaged, you can claim that that is total



But the problem, because there is the rule, you can claim that the gesto should have carried out the business properly.

That argument is possible because of this rule.

When can a gesto seek a reimbursement that is a very difficult, it can be quite difficult question.

But the basic rule is that a gesto should have managed other's affairs with intent to seek reimbursement that is very important.

What was the intent of the gesto.

If you helped others without meaning to seek cost.

You cannot later change your mind. and ask reimbursement of course,

Whether you had that intend in mind, that is difficult to prove, ok?

For example, you saw someone lying on the street, suffering from some kind of whatever struggle or some.

And then you hire the taxi and you put that person in the taxi, took him to the hospital.

Can you ask reimbursement of taxi fare?



Can you?

You saw someone lying on the pavement.

(student)

Yeah, you helped.

And you have to pay taxi fare.

(student)

So in that case, if it is reasonable to conclude that you meant to seek reimbursement, ok?

But then there was the oil spill on Tae Ann coast right?

And a lot of people went down there, tidying up the coast, cleaning the beach.

And that went on many months, for many months. .

And then, there was a movement some people started to argue that, wait a second, why do we have to do this, I mean, who is to blame.

And it was um, there was.. you know that case, what was the oil company?



Is that SK oil or..S-oil?

I don't know what was the company.

Let's say that was S-oil, ok?

And then the oil tanker was chartered by S-oil.

So, the shipper, carrier of the oil, right?

Not the shipper, the carrier.

And then there was a crane, tower crane, which was operated by the Sam sung heavy industry, which is different company, ok?

And that Sam sung heavy industry, that had nothing to do it all but they had a crane, which they were moving from Incheon to Busan at that time.

And then the local government, local government of whatever Chungchungdo government.

So whose businesses is it, to tidy up the mass?

Yeah people didn't like Sam sung of course.

And Sam sung caused the oil spill, it is true that they caused the oil spill, they smashed the carrier which punctured the haul.



And who caused the oil spill, well Sam sung partly caused it.

And also SK, let's assume that it was SK, SK was also partly to blame, because they chartered a very cheap oil tanker, which did not had protection, in such a crash accident.

It was a single haul vessel.

Modern oil tankers mostly have double haul.

So that there is inner haul and outer haul.

So even if outer haul is punctured, oil is nor easily spill.

But that is expensive so they hired very cheap vessel.

So they are also partly to blame, but mostly the blame was on Sam sung, who was very negligently arranging the tower from Incheon to Busan.

But then local government they also have to responsibility to tidy up the beach.

So, whose businesses is it?

So people mostly say that is was mostly Samsung's business, ok?

Ultimately they will have to pat the damages.



Now we must seek reimbursement from Samsung.

All those man power, man hour.

So many people went there spend days.

So let's calculate daily wage and then let's seek reimbursement from Samsung under negotiorum gesto.

Of course before who voluntarily went down, to clean up the beach, it was not there business.

That is clear, so it was not their business. .

And second point is a wage, daily wage, is it expense or it is part of the fees?

I went there I had to take leave from my work.

And then I went down, and I spent one day there, and I came back.

Obviously train fare or bus fare, that would be expenses that is clear.

Bus fares that is clearly expenses.

But what about the wage on that day I could not earn, because I was there.



I think that is also part of the expense if you normally earn wage.

🔊 [16:00]

What about meal?

It's also expensive.

What do you think? meal?

Student1 : It's also expensive.

(Student Speaking)

You have to eat. I think normally, meal cost is not expensive.

So anyway, there would be some expenses. right?

Of course, they would not claiming that they should charge fees.

Because that is not allowed under Negotiorum Gestio.

Anyway, so only expenses.

The question is however, ultimate question is easy claimable.



Assuming that there are those expenses is claimable.

What do you think?

It's somebody else do businesses. So, a lot of people incur expenses.

Samsung is just benefiting. Can they not be forced to reimburse expenses?

(Student Speaking)

Pardon?

(Student Speaking)

They volunteered. So her comment is that they volunteered and that's it.

I mean if you volunteer where you don't need your services

🔊 [17:45]

Not only service, the expenses, your only expenses, you don't need to them.[?]

You didn't mean to see green reimbursement in the first place.



🔊 [18:00]

And you can subsequently change your mind and the green reimbursement.

That's what I think even if you may not like Samsung.

You must clear about legal rules and the...

So the intent is important.

But then, whether you did have intent to see green reimbursement or not, you cannot agreeely approve or disapprove purely on the basis on what was going on in your mind.

Because it's a something, subjective.

No one can approve or disapprove what's going on the mind of somebody.

So it all have to be inferred from out of circumstances.

In the case of all the sphere, people were all kinds of in the spheroid of...  
voluntarism.

They are all comming there spontaneously.

That's enough, that's proof enough.



Of what's going on the mind of those people.

Maybe, a few people among them, they have very firm determinant 'I want to see green reimbursement.'

But it wouldn't be allowed.

If some of them just put down in their diary saying that tomorrow, I'll go down to Taean, but I intent to see green reimbursement expenses.

Maybe, they can.

On the other hands, on the case of repairing your neighbors' roof, for example.

When it was raining, your parents are away on holidays and you could clearly see the roof's damage, if you don't do repair work, further damage will happen and you went to hats, did the repair work.

In that case it's very reasonable to conclude that you are not doing it for free.

You intent to see green reimbursement.

So the question of proof is tricky point here to establish what was intent.

But the rule is very straightful.

if you did not have in mind to see green reimbursement, basically if you don't nate



your service, you cannot later change your mind.

🔊 [21:09]

Little bit more detailed analysis is required to distinguish whether something to Negotiorum Gestio.

There are two cases, 1907.26326 It was a someone was in a dispute and that person had to compensate for that victim. but that person did not have enough money.

Initially, so there is a person, and he initially asked X to pay victim B, twenty million one in settlement of dispute.

So, X said Ok, I will do that.

So A issue promissory note under X name.

SO X allowed you can issue promissory note under my name.

So the note was given to this man. and the payment day arrived, B presented the note, demanded the payment from A .and X denied. X said oh, that's forged.

Terrible thing, but he did, anyway.

He declined the pay, refused the pay.



Then, B pressed charge again.

A was being threatened with police investigation. A are under pressure.

Another person Y, could you please pay him this time 25 million one in settlement?  
And Y agreed, Y in infact, paid.

And subsequently, Y asked A to reimburse.

A did not have money. right?

Y sued X, claiming that look, your promissory note is in the hand of B.

🔊 **[24:03]**

Then, if the promissory note is not paid off, what happens?

B press charge against X.

For what?

For violation checks and promissory note.

If you issue a checks or promissory note, no in that you cannot pay on the payment date, you will be punished.

That a check's criminal punishment.



So your promissory note remained unpaid, and if you didn't manage to pay, you will be criminally punished. now, I paid on your behalf, so you will be criminally punished.

So this is Negotiorum Gestio.

So, you didn't ask me to be fined.

Negotiorum Gestio, it's, you know, obviously managing somebody else's businesses without being to do so.

I did manage you there. and then, now I claim expenses such as up to twenty millions.

I am not claiming twenty five millions.

I am claiming twenty millions.

To that extent, it's your business. So that's the dispute situation.

How do you think?

(Student Speaking)

I didn't mean why decide to pay, why new that X had private notes.

And this is the same dispute It's basically settlement fees and settlement payment which must be made to be paid.



X could not do it, when Y is stepping in to do it.

So it's a tricky point X had intent to do.

What do you think?

**🔊 [27:03]**

(Student Speaking)

It's against the principles.

It's against of the principles.

It's very good point.

It denied offensivity of the promissory note.

And X was declining to pay.

So Y is claiming that Negotiorum Gestio.

However, there's little bit more texture to that.



Ok, promissory note. X said it's forged.

It's clear that X did not want to pay. but what about the cash or the other means?

X had to pay, isn't it?

X agree to pay.

Is it in a obligation?

Maybe, there isn't a contract between A and B.

But there is a contract between A and X.

If X agreed, A asked X to please pay to B twenty millions.and X said yes.

That is a mandate?

X had a obligation under contraction of mandate to pay B.

Does not necessarily have to be formal promissory note? but in whatever, cash?

Then, what about that other obligation?

Did A why not carry out that obligation?

Somewhat like A is a garrent hall.



Can you get argue that?

Any ideas?

(Student Speaking)

No, no, promissory note itself was given to B, not as a damaged.

(Student Speaking)

🔊 **[31:10]**

There is no underlying relationship between X and B.

And several obligation of the parties who pay damages can't be applied to this situation.

Promissory note was given. and if it is paid, then that's it. There is no other...oh...

It's no reimbursement situation.

🔊 **[32:01]**

So I don't think that would work.



So in some sense, there are some aspects of carrying out X's business.

In the sense X undertook to do something and somehow X does not or cannot do it while that was going on somebody else did it.

So in that sense yes, there are some aspects to it.

However, I think what was the decisive blow to why was it, well it was your business.

Maybe it's X's business but it was equally your business because A asked why and why agree to do it.

And that is your business so you did your business and done, done, done.

But others you agree to do something and then that's it.

That's your business, it's none of somebody else's business, it's your business.

So it's not negotiorum gestio even if it has some element of somebody else's business.

Uh, so the quotes in the end very briefly and very cryptically give some reason for this case.

The quote said intend to manage the affairs it's the other's affair is required.



That meant that this payment was you hadn't intend of doing your business, carrying out your business.

And then another point, as she pointed out, the management should not be against the wishes of.

This second point is very effective because Y was arguing about this promissory note.

Y was arguing that I paid so that X does not get prosecuted.

That's Y's argument, and Y's claim about negotiorum gestio almost entirely relying on promissory note being discharged.

Whereas X clearly said that he does not want to pay for this promissory note.

X was not saying whether he wish to ignore A's request and agreement about A's request.

And X was not making any reference to that is that X was only saying that that was forgery.

Didn't mean that X was never paying to P, but only about this.

🔊 [35:06]

And then, Y was only talking about this.



So it's clearly against the wishes of X.

Uh, the second case what were the facts?

Can you see the, could you read out the second case?

Can you not see there? 59943.

Could you just summarize what was going on?

I forgot, just remind me what that case was about.

I have such a short memory to spend.

I just uploaded it, just before coming to the lecture, in this morning but I forgot.

How about you just tell me what that case was about.

(pointing to a student) Yeah, yeah you.

Was it so complicated?

<student speaking>.

Ah, okay, that's that case, alright.



Okay, okay now I remember.

The second case was um, about um bus, very old and condemned bus if you can no longer operate the bus uh, because it's too old.

So you run a transport company.

Okay? So you can sell off those condemned bus, its scrapped metal. Scrapped autopart.

So this transport company was selling and the, there was a guy adogy(adulged?) character who was buying those scrapped bus.

And he was reselling it with a bit of an advantage, a bit of profit.

That's what this man does.

And T bought 9 scrapped buses and he only had money to buy 7.

So he had outstanding that to the company, the company was demanding pay-off for two.

🔊 **[38:06]**

If you don't pay-off we will just terminate the contract of regarding remaining two buses.



Seven buses have already been delivered, already been paid off, so no problem.

But there are two buses and X did not have money.

Now and that point, P came to the horizon, and P wanted to buy five of those.

So X said, okay, okay, I can arrange your purchase.

And X asked P to send money to someone in the company.

So P believed that he was paying money for those 5 buses he was buying.

And then X got in touch with the employee here, and then X use the money to pay for the two buses that he previously bought.

When P inquired about 5 buses, the company said what buses?

So that's the dispute situation.

Um, P sued the company.

I think most naturally P would have pursued X

But I think X is already bankrupted or fled or there's no possibility of getting satisfaction from X.



So P wanted to get some compensation from T.

And then relied on negotiorum gestio, arguing that you are caring out my business which is to keep the money and use the money for the right purpose.

Of course you didn't, I didn't ask you to do it but you voluntarily did it.

You are keeping my money and you should have handled that money with you care.  
But you didn't and as a result, I suffered loss.

So you have to pay me, you have to compensate.

🔊 **[41:00]**

So P argued that T was the gestor of P's business.

Failed. What was the quotes in your view, how did the quote explain?

-student speaking

You didn't understand the case.

How about you?



-student speaking

Excellent. That's very good. Because that's what X told T.

X didn't say that the money which arrived in the bank account was about this.

T didn't know anything about it.

Or even if T knew about this kind of deal, T thought that the money which came was about this, not about that.

So T had no intent or no awareness that it was doing somebody else's business.

Yeah. That's it. I think.

Ah, why, I mean, if you are P's lawyer look, you, if you, yes, if you were P's lawyer you were basically cheated by X, right?

And then, you were persuaded to send money to T, and you have nothing.

So if you are P's attorney, how would you approach?

Assuming that X is bankrupt, insolvent, so how are you going to deal with T?

Can you not argue, you know unjust impeachment.

I pay you in, I was mistaken.



P cannot rely on sale contract, because there is no sale contract. It seemed.

It was no sale contract.

There was a sale contract, probably a sale contract with X and P because that's how X was doing business.

He bought scrapped buses from P, so there is a sale contract.

🔊 **[44:00]**

And then, P sold it to some other people. Previously he was doing this all the time.

He bought the scrapped buses from company and P sold it to them.

But of course, P would conclude this kind, lack of transaction first, and then he will buy and then performed that part.

That's perfectly possible.

So he was doing this.

X,P. They concluded sale contract.



And then X will buy the bus from T and then delivery.

So P cannot rely on sale contract, these are the T.

But can P not rely on unjust impeachment?

I think that could have been more straight forward rather than the negotiorum gestio.

Maybe there were some other facts.

Factual details, which made it difficult for T to rely on unjust impeachment.

But negotiorum gestio is not an easy claim to mount.

<Student Speaking>

Maybe, yes, that could be a valid point.

Although the payment was made by P to T, the party who is entitled to uh, seek unjust impeachment\_must be X.

That's what you're saying.

Uh, when the sale contract is terminated, then T must return money to X, and X must return it to P.



That's true, and in that case, since the two scrapped bus contract have been fully discharged, money was paid, again money was paid.

And scrapped buses have been delivered, that contract was satisfactory concluded, and there is no ground to terminate.

So T, there is nothing unjust about the money T is enjoying.

So P cannot rely on unjust imbreachment

If P can seek disgorgement of money then T will be in a very awkward situation, he already delivered the bus and why should he have to return the money so T must be allowed to keep the money.

That's what he suggest and that's why unjust enrichment claim cannot be brought against any person.

If there is if the money is paid if so called the enrichment was made in the context of a country then unjust enrichment claim can only be brought by the party to the country.

Good

As long as the jystore had the intend to manage there is another meaning not himself but somebody else it does not matter whether the precise identity was mistaken.

Managing others affairs believing that they are ones own or believing that one has a duty to manage the affairs.



In these cases it cannot be negotiorum gestio.

And it is not donation either

Unjust enrichment issues may arise if you did something believing that you are doing.

You are improving your own good and your own property for example and then if it turn out that if the property belongs to somebody else and then unjust enrichment issues may arise.

Or you did something believing that you are contractually obliged to do it but then it later turns out that the country has already rescinded or terminated then unjust enrichment issues can arise and it cannot negotiorum gestio.

Managing others affairs will intend to arrogate the benefit to himself that's not negotiorum gestio either.

Negotiorum gestio means doing something for the benefit of the other person.

🔊 **[51:00]**

Jestore's duties would be a statutorily defined statutorily duty to act in the best interest of the principle that is a very peculiar expression.

I don't think have a look at article 734.



In the first paragraph the party who manages other affairs without a duty to do so must manage the affairs in accordance with the nature of the matter.

And now this is interesting using a method which is most beneficial to the principle so to act best interest of the principle that is the term.

Slightly different from duty of good management.

Not there is duty not to act against the wishes of the principle otherwise it would amount to wrongful into interference so any laws regardless of whether jestore was at fault must be compensated if it was against wishes.

Article 735 defines emergency situation if jestore management was in the interest of the public or to avoid imminent danger to the principle's life, person, reputation or property.

Jestore will be only reliable only for cross negligence of that faith.

There is duty to notify as well, article 736.

So that the principle can decide whether to continue the jestore(?) that spontaneous undertaker's management or to terminate tell that person to stop and then arrange for his own arrangement.

Duty not to discontinue once started that's article 737

Duty to complete, duty not to discontinue so it's ok if you didn't get involved in the first place you can just ignore you don't have a duty to get involved but once you get involved you cannot just leave you will be sued if you leave half way through.



If you didn't get involved in the first place you won't get sued.

Jestore's expenses necessary or usefully must all be reimbursed the result doesn't matter even if you have invested you have put in resources and efforts and the result didn't come out good still you can seek reimbursement.

Jestore's lost in the sustain in the course of the management without any fault of the jestore must be compensated.

But then there is limit to the extent that the management was beneficial to the principle.

That is there is slight difference mending and negotiorum gestio.

If mandatory, someone who is carrying out somebody(57:00) else's request suffers loss in the course of carrying out the request then the loss must be compensated.

There is no sealing to the loss.

The reasons why I asked my friend to buy me computer from a particular person and my friend is going to that person and that person's house was on fire unfortunately at that time and then my friend was severely injured I have to compensate fully compensate right even if the computer was worth only 1 million won I have compensate more than 1 million won.

There is no sealing.

But regarding negotiorum gestio the compensation there is a sealing I don't have to



compensate more than I benefited from the management.

So in that sense also there is slaking of balance between these two practices.

If jessore(?)'s management was against the wishes of the principle there will be no duty of reimbursement.

97.58507 case police sold ceased property P must be suspended.

Police sold it to avoid deterioration.

The suspect protested and was later found to be innocent so police should have released the ceased property but the property is no longer there police sold it.

The police claims reimbursement of expenses.

It's bit interesting

So this person was kind of unfairly arrested by the police.

Police did not mean to arrest the person police honestly believed that this person committed the crime, ceased the property but later the person was acquitted.

🔊 [01:00:00]

Now the person only received money from the sale of the peanuts but then the police is asking expenses to carry out the auction.



Does the person have to pay to the police? for selling off these properties which should not have been seized in the first place.

Police seized it and then sold it.

The court told that police cannot seek reimbursement of cost of selling it.

Selling it is management to avoid perishment that is management enough but the police cannot rely on negotiorum gestio why?

It is managing somebody else's affair peanut if you don't sell it will all go back to avoid that you sell it and you do it without being asked to do it.

So it's negotiorum gestio isn't it?

Good I think so that's what the courts had in mind the court held that this cannot be negotiorum gestio however the court held that unjust enrichment must be discouraged.

So the person had to pay to police for the auction expenses.

I think the police did the auction with the mistaken belief that they must do it.

It's not that they must it's also police duty to investigate and punish right?

So the police honestly believed that this person committed the crime so the police



started the investigation and they believed that this person must be charged and then persecutor continued the case and ultimately it failed.

So in the during this period police(1:03:00) did the auction believing that it is necessary.

They not only have the right power to do it but they also had the responsibility to do it. And that's why they can claim reimbursement from the person.

If they had no duty, if they thought, if they did not think they had the duty and responsibility to do it then they cannot seek reimbursement under unjust enrichment.

There must been some element of error involved.

So police acted with erroneous belief that they have to do it that's why when it turned out that they did not have to do it, still if what the police did was beneficial to that accused to that defendant than police can seek reimbursement.

Not under negotiorum gestio.

