Title: Law of Obligations

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[0:19]

Two or more individuals or it can be… Can cooperation be a partner? Yes or no?

(Student speaking)

I think cooperation can also be a partner. That's possible.

So, when two or more persons enter into a contract, in order to pursue a joint-undertaking, common objective, so that's the partnership contract.

And, you need to distinguish partnership contract under Korean civil code on one hand.

And, on the other hand, a partnership company under commercial code, ok?

The commercial code provides roughly four different types of companies.

In many countries, there is a company law.

And, the countries where they have company law, they don't have commercial code.

Anyway, so, one of the types of companies is a partnership company.

And, that is different from civil code partnership contract, ok?

Partnership company under commercial code is governed by commercial code, whereas a partnership agreement is governed by civil code.

Now the difference is that if you register your partnership as a partnership company with company's register, then you become a partnership company under commercial code.

[3:01]

If you do not register, then, you do not become a company.

Partnership contract is just a contract. Therefore, you do not create a new personality.

So, civil code provides various provisions dealing with the rights and obligations of

the partners. And, that's what we need to study a little bit.

Each and every partner owes various contract duties to all partners, and if one partner fails to, for example, make contributions to start a partnership, then all the remaining partners jointly demand the defaulting partner to perform.

It is not, of course, you can..

So, there are, let's say, four people agreed to start a partnership.

So, the partner one agreed to provide the building, and the partner two agreed to provide the equipped kitchen, and the partner three agreed to provide the skill, so he's a good cook. And he[2] agreed to equip the kitchen, and he[1] agreed to provide the building.

And partner four agreed to stop running his restaurant which he used to run. So, refrain from business. That's also.. It can be partnership contribution.

Suppose partner two failed to equip the kitchen.

Now partner one or partner three alone, they cannot sue partner two to do it.

[6:02]

They must join hands. All three of them.

The reason is that maybe the partner three doesn't want this partnership to go ahead. There is a possibility, right?

So all must act together. That's the idea.

But of course, the actual handling of the lawsuit can be done by partner 3 alone. That's possible.

As long as they all agreed to that number three carries out the lawsuit against number two. That is the different matter.

Suppose they elected that number one should be the executive partner.

Then number one can bring lawsuit against number two and just handle the lawsuit, but that lawsuit must be brought… the plaintiff of the lawsuit must be [number] one and [number] two and [number] three.

It cannot be just [number] one doing it. But then number one will be actually carrying it out. And he will be representing number two and number three.

So that's the idea about an executive partner.

Every single partner must be listed as the …

What about warranty liability of a partner to the other partners?

Partner A agreed to contribute building. What if the building is leaking, for instance?

Can the remaining partners demand some kind of, instead of reduction of price, because nobody paid any price, but they all kind of calculated the worth of the contribution.

So, his contribution was calculated at 12 million won, but it's now leaking, and it costs like one million to repair it.

Now, can the remaining partners demand partner A to pay one million won to the partnership?

That's the idea whether warranty liability applies.

[9:36]

In some sense, partner A failed to fulfill his partnership duty.

So in that sense, maybe the remaining partners should be allowed to demand partner A to pay additionally one million won.

What do you think? Warranty liability?

(Student speaking)

You think that's possible.

(Student speaking)

Let's say partner four agreed to pay in cash ten million won. And if he only paid nine million won. Of course, the remaining partners can sue him to pay the additional one million won.

There is no doubt about it.

So in that case, it's breach of contract. So the remaining one, he must pay.

He has contractual obligation to pay in ten million won, and he failed to do that. That's clear, alright?

But here, it's not breach of contract. He did provide the building, but it's just the defect.

What about it?

It seems that it is not a situation where this person, this party, sells the property to

the other party, X, in return for agreed price.

Because, this thing is offered not only for partner two, three and four, but it is offered for him as well.

[12:10]

So warranty liabilities; you cannot really apply in this kind of situation.

So what needs to be done is that they should all renegotiate their partnership agreement and contribution, and then they can all agree that you freshly make one million contribution in cash in addition to the building.

In the end, it's the same thing. But, warranty liability should not in principle be applied to this kind of situation.

And you need to distinguish between warranty liability and breach of contract as well.

I am not saying that you cannot enforce the partner to keep the promise.

Use your rules about termination on the basis of a breach of contract. Do not apply. That is a very tricky point.

So number three agreed to provide labor, he agreed to cook, ok?

But, he often just fails to show up. He had wild parties. He likes to party, and fails to show up.

So the remaining partners are all upset.

Can they, all three of them, in one voice, tell number three that you are fired?

They cannot say so, because it's not employment relationship, okay? Yeah, they are all equal partners.

So no one is hiring anyone and no one can fire anyone. That's for sure.

So instead of saying you are fired, we terminate the partnership contract.

We don't want you to be partner anymore.

Can they do that?

So that's the question of termination of contract.

No.3 breached the contract? Can you say that No.3 breached the partnership contract?

Maybe yes. Can they, then, terminate the partnership with only regard to No.3?

Definitely no.

[15:03]

What needs to be done is that you need to renegotiate the relationship and then you need to persuade partner 3 to leave the partnership.

Of course if the partner three resist, and he thinks that this is a good business, and he wants to continue this partnership, then all three, all the rest, they don't want to continue the partnership.

In that case this partnership needs to be dissolved. That's it.

So you cannot terminate the partnership agreement against one partner on the ground of that partner's breach.

So, no termination. Instead try to renegotiate if the situation is voluntarily resolved, fine.

But if the difference cannot be dissolved, then the partnership needs to be terminated.

So you apply to court. Partners 1, 2, 4 will apply to the court that this partnership should be dissolved against partner 3.

That's how to sever the relationship between partners.

(Student speaking) What about the article 718?

718, let's have a look, article 718

Yeah, that's possible. That's great.

That is not a termination of the partnership contract. That's just removing one partner.

The remaining partners, if they all agreed to remove partner 3, they can do so.

But that is possible only while the partnership is still valid.

The partnership contract is still valid.

Of course the partnership contract itself may stipulate that you don't need unanimity of remaining partners.

[18:08]

The contract itself may say 2/3 of partners may decide to eliminate the partner.

Fine, that's also possible.

But if the contract does not say anything about removal of a partner, then a civil code provision applies that provision.

And that means that the contract is still there. It is terminated.

So the termination of the contract must be distinguished from removal of the partner under 718.

Good point.

However, what if the contract itself says termination, what if the contract itself contains clauses about terminating the contract?

Let's say that these four partners, they drew up a contract when they started this restaurant business.

And they had a clause of termination and they stipulated the detailed situations where this contract can be terminated.

In that case, they can terminate the partnership because the civil code is subsidiary.

If they explicitly agree about the terms under which termination can be done, well then that's it.

There are several similar ideas.

Apartment owners where each of them own a separate unit, the residence cooperative they are considered to be in a relationship of partnership.

[21:03]

But I don't think that can always work, because the residence association is it more like cooperation without legal personality? Maybe.

There is this tricky problem, however.

The joint venture agreement.

Like Korean company, let's say 'K Co.' and the foreign company, let's say 'F Co.'

They agreed to start a joint venture company in Korea under Korean law.

So they say, okay, they both agreed to setup a new company which is a joint stock company under Korean civil code, I mean commercial code.

Joint stock company: 주식회사, okay? They decided, agreed to setup a joint stock company.

And they each agreed that ‘K Co.’ will have 50 percent share. ‘F Co.’ will have 50 percent share in the ‘New Co.’

So the ‘New Co.’ itself there’s no doubt that it is a joint stock company under the Korean commercial code.

But what about the contractual relationship between K Co. and F Co.?

Is it not a partnership agreement?

Or there can be more companies.

There might be J Co., a Japanese company and the French company and the Korean company three of them agreed to setup a joint stock company.

In Korean company agreed to have 34% and F Co. will have 33% and J Co. will have 33%.

[23:59]

So three companies they enter into a contract.

And this contract set out how they are going to run their joint business using New Co.

So joint undertaking that is what partnership is all about, right? Joint undertaking.

Now you can execute, you can carry out your joint undertaking without necessarily creating a joint stock company, like restaurant.

It is joint undertaking, ‘we don’t need to create a joint stock company.’

So you just do the business that way.

But you can decide to create the joint stock company if you think that that is useful.

But that does not make these partners disappear from the scene, right

So joint undertaking is still there, joint stock company is just means of carrying out the joint undertaking, so the relationship between them still needs to be somehow regulated.

So there are two possibilities.

One is just to treat as a contract not necessarily a partnership contract.

Second approach would be, well it is partnership contract, and in other words, when these partners, joint venture partners, when they setup a joint stock company, do they seize, do they stop being partners? or do they continue as partners of partnership contract among them, and then they setup a joint stock company as well?

Usually, look, joint stock company under Korean commercial codes, the shareholders, between the shareholders or among the shareholders, of a joint stock company, is there any contractual relationship?

[27:00]

Excuse me, you. If you hold a share, let's say KTF, you have 10 shares of KTF, you are shareholders of joint stock company, KTF, okay?

Suppose I have 20 shares of KTF, so you and I are shareholders.

Between you and I is there any contract?

No contract. Okay?

Among shareholders, there's no contract, fine.

But, in some cases there can be contract and how to explain that contract which exists between shareholders of a joint stock company.

This is a problem and this is a question which is known as how to deal with closed company. non listed, 비상장회사 closed company 폐쇄회사.

They take the form of Joint Stock Company. They have shares.

But then the share holders in reality are very, very closely connected.

It's not like she and I each holding some shares of a big company.

I don't even know her. It's not like that.

In this situation, they closely corporate and actually no one else can buy the shares.

Because it is not listed at all and because the contract governs that you must not sell your shares without our approval.

That's normally how they agree. It is a closed company. It is a part joint venture partnership.

They use join stock company as a convenient vehicle of their joint undertaking.

So you cannot say that as soon as the new co is registered with company's commercial company's registered.

The contract disappears. No it continues. the share holder's agreement.

It is no called share holder's agreement, usually abbreviated as SHA.

Now if you handle an international arbitration dispute involving commercial company's where Joint Venture Company is set up.

[30:00]

You will always come across this share holder's agreement. What is it?

Because it provides for what kind of rights and duties there are among this share holders.

Of course it is completely different matter from company law issues. Uh?

Company law issues only deal with the relationship between your co and its share holder's or its creditors.

That's what company law deals with.

Where is civil court, where you will be asked to come to the scene and in an international arbitration.

You will only deal with this aspect, not this aspect.

Because it dispute about this aspect must go to court.

Arbitral tribune can only deal with the contract issue aspect of this.

And there are few cases under Korean court which suggest that joint venture partners who decide to set up joint stock Company.

Their relationship still remains to be a partnership contractual relationship.

So in one case I think it will … the very end of my lecture hand out 20003 to 22448.

And that case, the court held that if they agreed

Let's say in this situation, four of them they decided to actually set up a joint stock company which sells neighbor bestowal.

So they decided to Inc.

They had a very nice French restaurant and they decided to set up a joint stock company.

And they each of them have 25% share, and what they do is exactly same.

Number one contributes building. Number two equip the kitchen.

Number three does the cooking and number four, refrain from you know shut down his previous restaurant.

[33:02]

And they decided to set up a joint stock company.

Just to shield from their individual asset.

Now the business will be run through the, this vehicle of this.

And if they decided to stop the business, this company must be liquidated.

Therefore commercial court provision must apply for the repudiation of this joint stock company.

You cannot ignore commercial co.'s provision, simply because, in reality it was a partnership agreement.

And what they did was just you know among partner's business partners(동업자).

Because you set up a joint stock company, you must adhere to commercial court provisions. That's what that case.

The Supreme Court ruled and that Supreme Court added

if after the repudiation according to commercial court, there may be some unfinished business.

In that case, the civil court provisions dealing with a partnership agreement must be applied to split the remaining assets among partners.

So, this case recognizes that when joint venture partners sets up joint stock Company under commercial court.

Actually we have two relationships to deal with. One is the commercial court to company law issues.

And the other is civil court partnership contract issues. Both exist. Okay?

Alright, I already explain partner's contributions and partnership assets.

You cannot dispose of your share, okay? Only when all partners agree can you do that.

What about… right. This building, beautiful building, restaurant building, which A agree to contribute on a partnership business.

[35:54]

If they do joint set up stock company, then this company as a legal person will own this building, right?

But they decided not to set up a joint stock company in that case this building will be own jointly by one two three four. Okay?

It maybe still registered under A's soul name. But then now under the current registration, that is illegal.

So number one will be furnished for doing that.

And number one two three four they also be furnished for doing that registering under somebody else's name because in truth, this building is jointly owned by one, two, three, four.

Now, they…. Let's say, one two three decided that this building is now outdated

and they found beautiful far more you know nice building at a much nice neighborhood and they want to sell this building.

And they already bought this building. Number four does not like it.

Number four is really in love with this building. So number four does not agree.

Number four says over my dead body. While I am alive I wouldn't agree you guys to get rid of this house. This is my… where my soul lives alright?

What happens then?

X voted. one two three, decided to sell this to X. and number four protest.

What happens?

(student)

You mean the solution (student) the solution of partnership.

(student)

They don't want… that's the another point.

We have apparently two conflicting provisions under civil court.

Article 272 appears to suggest that A jointly held property.

[39:00]

A property held jointly by partners.

In order to dispose of such property, consent of all partners is required. It seems under property law section.

And that close is not subject to the party's voluntary alteration. It is mandatory provision. Isn't it?

You cannot alter the property law clauses.

So there are 272 which is a mandatory provision.

Property jointly owned by partners in order to dispose it, you need consent of all partners.

Uh article 706, however, 706. Paragraph 2. It says the partnership business must be decided by the majority decision of partners.

If there are executive partner, if there are more than one executive partner, the majority of executive partners decision.

Now suppose number one was the executive partner.

Can he not decide to sell it?

Or… So that's one question.

And second situation is that they decided not to elect any executive partner.

And one two three, three partners agree to sell this property.

Selling the property, and buy another building to open up the restaurant.

Is it not partnership business? Is not the partnership business, what is the partnership business? It is partnership business, right?

So, how to deal with this apparent conflict?

In my view, when they agree to hold and start a partnership project, they agree you know we do this, we do this our business in this manner.

[41:55]

And if they want this building to require consent of all partners, they should have put that thing.

However, in order to dispose of this building, all partners must agree.

They should have put in this kind of close if that is so important.

If they didn't say anything about it, and they didn't even choose to elect exact partner that means, well, never you know which is not expressly stipulated here.

We will have to result to civil code.

That's what they… Let's say they specify, ok, our partnership business must be decided by majority of partners if they said so.

Oh, if they said two thirds, two thirds will decide that means, even if the non-agreeing partner, non-agreeing partner shall not have a veto power.

That means if they decide to sell it, then the non-agreeing partner is deemed to have consented to the disposure. Isn't it?

It's, he cannot insist on Article 272 because he agreed to abide by this partnership contract.

So, by virtue of this partnership contract, his consent is deemed to exist even if in reality, yes he disagrees.

It is another way of saying that he does not have veto power.

If he wants to actually avail himself of this close, he should have put in.

About that property, every partner must agree.

If he didn't do it, and he maybe in a position, you know, all these partners may decide to do it, or we don't know what will happen but whatever will happen, if two thirds of partners decide, then the rest must follow.

That's what they agreed.

Therefore, this is fulfilled, all partners agree because none of them agreed to have the veto power.

[45:00]

So, it's the power of contract, the partnership contract which provides this legal fiction, valid fiction that every partner agrees in the end.

(Student Speaking)

Saying, my client, my client does not agree to this disposure, yeah?

That's what you're saying.

(Student Speaking)

Yeah! You can leave, there is a close about leaving partnership, right?

Article 716, so, at any time, you can leave, and then you can decide.

You can demand appraisal, and then you can demand whatever your share is worth.

You can leave, fine.

Yeah, that's another way of resolving the situation.

(Student Speaking)

Not much I think Article 272 although it says all partners consents is required.

In reality, I don't think it's useful at all.

It, it's the partnership agreement which governs the situation, and if the partnership agreements said all partners must agree when real estate, or property is disposed, then that close will reign, and if partnership agreement only says the majority partners, then the minority the opposing partner.

If he or she really does not like this situation, the only choice open is as he said, leave the partnership.

Otherwise, he is unhappy but if he nevertheless wants to be part of his partnership, he just go along, and this disposure is perfectly valid because he is deemed to have consented even if he does not like it.

He is in the minority, and that situation is already in vision, already in vision by the agreement.

[48:00]

(Student Speaking)

206, let's have a look. 706, yeah, 706 override 272, yeah?

It's the more as the same thing.

In the end, result is same I think but I don't like to say that one particular civil code provision overrides the other one.

I just want to say, I just want to see to be able to tell that every civil code provisions are there for some purpose, yeah but, you can explain it.

(Student Speaking)

No, no, no, no what I saying is that the partnership contracts do not aim to sub-alt or alt 272.

They actually presupposes that this, this contract is based on the assumptions that all partners present is needed to dispose of the property, partnership property, but if they stipulated two thirds or the majority can decide in the contract.

Then, what they mean is that non-consenting partner shall be, shall now agree that they will be deemed to consent?

If they are not in the majority, if the non-consenting minority partner really want to have their voice heard under 272.

They should have stipulated the veto power.

The fact that they didn't say anything about veto power would mean that they all agreed that they should be deemed to have consented.

[51:00]

It's a thin lying but anyway…

(Student Speaking)

Well, to tell you the broad general principals if partners agree to elect executive partners, then the executive partners decide with their majority the other partners cannot interfere.

That's what they agreed.

If they didn't decide to elect executive partners, then the majority of partners shall decide.

Minority cannot veto.

That's how things work, I think.

But, of course, they can decide in their partnership contract that everything must be done with unanimous decision.

They could have done it, but they didn't.

That means that minority partners must go along even if he isn't in the minority.

On this issue, he is in the minority, but on the next issue, he maybe in the majority.

So, the thing will go on, and if he thinks that this is really impossible for him to

continue any more, he can leave, fine.

It's his decision.

Even if he does not like it, you can continue.

It's like marriage.

You know, you might not be happy all the time, but you decide to stay on.

Thinking that you know… there will be more happiness and miseries.

Ok, there is this notion of partners carrying out the partnership business, partners executing the partnership business.

So, the executive partner is the partner who is elected to be the executive partner, ok?

[54:02]

If they, if the partner decided not to elected any executive partners, then any partner may execute the partnership business if it is supported by the majority of partners.

So in that case, the partner who actually carries out the partnership business is...

Have a look at, Article 707.

It says, a partner who executes partnership business, alright?

That's, that's it.

So that means not, it can be, so partner, partner executing partnership business.

It can be a partner who actually carries out partnership business, or the executive partner who carries out partnership business, ok?

It does not necessarily mean that Article 707, does not necessarily mean the executive partners.

Because not every partnership has executive partner.

So whether you are an executive partner or whether you are not an executive partner, as long as you are carrying out the partnership business you, or you should care.

What about liability?

All partners bear the partnership liability in proportion to the loss sharing ratio. I say loss sharing ratio, okay?

Let's say 1, 2, 3, 4 they agreed that the partner for does not share any loss.

[57:02]

So his loss sharing proportion is 0.

He only gets 20% of the benefit of this restaurant business.

His contribution? Nothing. He just stopped his previous restaurant. That's his contribution. And he gets 20% and he gets no loss.

Is it valid agreement?

You guys bad version I don't carry any loss, I only get the benefit. You guys take all the risk, I don't want risk.

Is it valid?

In majority of you seem to nod, so it is valid. Yeah it is valid.

If they do not specify loss bearing ratio, then the profit sharing ratio would also be interpreted to apply to loss sharing ratio.

That's fine but partners can explicitly agree about the loss sharing ratio and 0 is also possible.

What if the cook he agrees that… well … I only receive salary.

I wouldn't participate in the benefit. So my benefit share ratio is 0. And my loss sharing ratio is also 0. Is it possible? Is it? Is it possible?

We know that 0 loss agreement in other words no risk agreement is possible.

If that is possible why not no benefit agreement?

(Student answering)

Good. No benefit is not a partner. He simply is not a partner.

You know if become a partner in law firm that means you share in the benefit. That's it.

[60:00]

That is the key to the partnership. The very idea, the fundamental point of our partnership is that you share in the benefit.

If you don't share in the benefit, then you're not a partner so that is not possible

It is even not a partnership agreement.

This guy is a partner because he shares the benefit.

You don't have to bear the risk, that's possible.

That's what other partners also agree.

This guy's participation is so important so they want him into that.

Now umm… that say he just, the remaining guy they agree, you know just 1/3… sorry.

Yeah 25%. He shares in 25% benefit. So they all share 25% benefit, all right?

Umm… the restaurant all that to the supplier of food and vegetable. Okay.

Let's assume that there is 10million debt and this party Y he can sue partner1 and demand how much.

10million won? He will bring a lawsuit, and in this lawsuit he will stipulate a plenty fees Y and defendant partner1.

First, is it possible to have this lawsuit with only partner1 designated as defendant?

And questions2 is how much can Y ask? 10million won or 2.5millon won? 2.5

[62:56]

Even if partner4 does not carry any loss, he can demand 2.5 assuming all 4of them equal

But if he can, if Y can prove that actually these 3 guys although all 4 of them have 25% of benefit share ratio, about the risk the loss bearing burden actually 1,2,3 they only, they 3 of them have 33%, if Y can prove that he can actually claim 33.3million from A okay?

And only partner1 can be singled out and be sued partner cannot defend that you should have named 1, 2, 3 that is not a valid defense.

So if Y knows the benefit share ratio, then the non-ratio, up to the non-ratio. If Y does not know then equal ratio.

And in reality if that is what is in the sharing ratio, 33% and if Y just claim 2.5 assuming that they all equally sharing then partner A will keep quiet about the actual sharing ratio, all right?

And he will try to defend then this that does not exist though it had already been paid or whatever various defenses but he will not talk about the loss sharing ratio.

But if internally this guy only bears 10% and then among these 2 45% okay? If that's what they internally agreed then partner A will bring forward that defense saying his loss bearing ratio is only 10, so he will only be liable up till 1million.

That's the kind of defense A will bring forward. Right?

So it is just safe if Y is plant if just start out with the equal loss bearing ratio.

[66:00]

That's it. That's what thirty codes arouse.

So up till that amount if partner 1 is designated as the defendant, there is no distinction between the partnership assets and partner A's personal assets.

It's complete co-mingling of assets. All right?

So partner1 as a defense, he cannot say "Oh, there is this partnership property of this house and that kitchen equipment so I will be held liable only to this stand of my share in those properties." That is not a valid defense.

His liability limited only to the amount but up to that amount he will be liable up to all the personal property, you know his villa somewhere, his other investment and his personal and private banking account doesn't matter.

It just liable without any distinction between personal property and partnership property.

But there is a limit about the amount according to the loss bearing ratio. Okay?

Resignation and dissolution, fine, setting of joint-venture company just the last, at the end of my lecture handout I listed a law accord case, right?

That case if useful in these kind of scenario when join-venture partners set up a joint venture company.

When in forming a partnership, a partner was not honest was hiding something, then you can site that case and say that is a ground to put an end to this partnership relationship.

Why? Because partnership is a contractual relationship which is grounded upon the notion of good faith.

[68:57]

It is a continual relationship and trust among partners is a very important foundation of a partnership agreement and if one partner try to cover up something in forming a

partnership you can of course talk about mistake, you can talk about fraud, you can argue that your fraudulent in used into concluding a contract and a… those are useful points to keep in mind.

All right. So this concludes this lecture. I hope you all do well in your whatever exams, okay and I also hope the very best in your future career.