Law of Obligation Ⅱ

Deposit(Arrhes)

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It took a long time, because there were people who were living there.

And they were, they were just trespassing basically, they didn't have the proper title to remain there, it was all kind of illegal..well, technically illegal building, but the residents were protesting.

There were some diehards who refused to move away.

And law faculty didn't want to get involved in the eviction proceedings, because it's very, you know, it attracts bad publicity.

So the land contract itself specified that it's seller's duty to...obviously it's seller's duty to deliver clean possession of the land.

Clean possession means...what does that mean? Clean possession.

[student answer] No restrictions, what else? Clean possession.

What else could it mean? When we talk about land, clean possession.

If there are some squatters, do you think it could count as delivering clean possession of the land? No.

You're right.

So that means seller has to evict all the occupiers and then allow buyer to enter into...

so that's part of the sale contract.

And the seller was already engaged in eviction lawsuit when contract was entered into.

It's a little bit interesting.

Look.

Seller was already engaged in eviction lawsuit, to...

And then there is a contract here, about this land.

And of course, deposit was exchanged.

And then eviction lawsuit dragged on, and eventually the seller prevailed in the supreme court.

So there was a final court decision which provided the ground to actually kick them out.

But then it attracted other considerable amount of bad publicity and some of the residents launched protest in front of the main administration building, and, you know..'down with this law faculty and down with Korea University'...

But anyway there were things were going on, and then the buyer began to worry a little bit because meanwhile the price went up, and buyer was worried..what if seller exercises the right to terminate at will? So, someone asked me, 'is there any way to prevent or preempt or just foreclose the seller's exercise of right to terminate at will? What can buyer do? Shall we offer to pay?' What do you think? Do you think seller in that kind of example can exercise the right to terminate at will? The situation is that only deposit has been exchanged, and nothing else has been done from the part of buyer.

What do you think? [student answer] So you think seller can exercise the right to terminate? What about you? Yeah.

No idea? That is not the answer I would accept.

You have to make a decision, yes or no, and explain why you think your answer is..is it yes or no? Seller can exercise, or may not exercise...? Seller can exercise.

What about you? Anybody else? What about the eviction lawsuit? Seller was diligently pursuing the eviction proceedings even after the contract was entered into.

Is it not part of seller's performance? What do you think? I mean what's the..what, the parties, once performance is begun, you may not exercise the right of termination, right? Normally seller don't have anything to do, just, you know, sit tight, and then when it's time to present, to give the paper, then the seller prepares the paper and that's it.

But in this case seller has a little bit more to do to perform the contract, wasn't it? So the seller was in fact engaged in lawsuit, and then seller was really pursuing, enforcing the judgment to kick the occupiers out of the land.

And all those efforts were being done by the seller.

What do you think? Seller can nevertheless exercise the right to terminate...or not?

Any argument? Any idea? [student answer] You, you, yes, yes.

[student answer] Aha.

Alright, right..

So your argument is that eviction effort is not necessarily a part of seller's obligation, right? [student answer] Ah, we'll see.

We'll see that point a little bit later.

But just coming back to earlier comment, I..it's true that eviction is not usually part of sale contract.

Sale contract usually does not include this element.

What do you think about this comment? How about you? Louder, louder yes.

[student answer] Okay.

So eviction lawsuit already began without any sale contract.

So this eviction effort cannot be regarded as beginning the performance of the seller in the sale contract.

But what about this particular contract? This particular contract has a provision saying 'seller shall deliver clean possession of the property.' So it's quite difficult case, right? Difficult case.

In the end it was satisfactorily resolved, the law faculty did not, decided not to do anything, hoping that the seller would not exercise the right to termination...if the, even if the seller does try to terminate, then we'll argue that seller has commenced the performance, but seller in the end didn't exercise the right of termination, so no dispute.

So we'll never know what the..is the answer.

In my view, in my view..it can be considered as forming part of seller's contractual obligation.

And seller, indeed, began to perform.

But then we have to deal with his comment, his idea is that usually, only when the other party begins to perform, then this party may not exercise the right to terminate at will.

Because the very idea of foreclosing the right to terminate at will is to protect the party who invested in the performance of the contract.

So in this case, if this party invested in the performance whereas this party didn't do anything apart from paying the deposit, why not allow this party to terminate the contract, if this party is prepared to forget about or sacrifice whatever he has invested in the meantime, if this party is happy to forget about this and nevertheless exercise, terminate this contract, there is nothing wrong about it.

Let's just allow it.

So that's his comment, alright? We will have a look at this.

There is another case, 97 다 9369.

Okay? Have you had a look at that case? Look at me, please.

Yes.

It's about a sale of land located in an area which requires minister's permission to sell.

And 220 million won, I think? Was the deposit amount, is it? Yeah.

2 억 2 천만원 was the contract deposit.

It's a pretty substantial piece of land, okay? Around...but they also had separate liquidated damage agreement, 60.5 million liquidated damage payable by seller if seller for whatever reason fails to secure minister's permission to sell the land.

Although this permission, minister's permission, both seller and buyer must apply, jointly apply, it's principally seller's responsibility to secure the permission to sell.

So, the parties agree that for whatever reason, if you cannot secure that permission, you pay me 60.5 million Korean won.

That's liquidated damage.

But contract deposit is 220.

Okay? So, what happened? [student answer] Yes? Seller somehow regretted the sale contract.

Seller felt that he sold it too cheaply.

So seller terminated.

It's..now, contract was entered into, here, that's the deposit amount.

And then seller terminated, offering only 220 plus, was it, 50...

60.5 liquidated damage.

So 280.5 million.

Seller was offering only this amount, and argued that 'I terminate this contract.' Buyer, as he rightly pointed out, disputed that this is not the proper termination.

You have to offer double, and plus perhaps..and this.

And not only buyer dispute the validity, buyer purported to pay the entire balance of the contract price.

Buyer really wanted this land, okay? And seller really does not want to sell this land, so seller actually later gave the full amount, two hund...already he, seller offered 280.5, and subsequently seller offered 220 million won.

So at this point, double the amount of deposit was in the end offered to the buyer.

Now the question is, what about this? Buyer paying the remainder of the contract price.

Of course, seller refused to accept.

So buyer paid into court, so that seller can withdraw in exchange for whatever documents, right? So my question back to you is, how are you going to assess the validity of buyer's early payment of the balance of the contract price? Is it valid? Does it foreclose the seller's termination at will? Earlier case, we saw a case where, when height restriction was lifted and land price was soaring, seller tried to terminate with smaller amount, offering smaller amount than the seller should offer, or seller demanded buyer to pay more, and buyer paid early, earlier than agreed, right? And court held that, that is possible, and once payment is made, seller can no longer terminate at will.

We saw that case.

Now, how are you going to assess purchases, attempted payment in this case? Does it not...

I think if you are going to apply the earlier case to this situation, then you must conclude that buyer cannot terminate at will once..

I mean, seller cannot terminate at will once the buyer pays the balance, right? [student answer] Yes? Oh, you are saying that...oh.

Oh you're saying that since the parties agreed 60.5 is the liquidated damage, in the event the contractual relationship breaks down, you're saying that offering 220 plus 60.5 is enough to terminate this contractual relationship? Therefore, there is no point in buyer trying to pay early? His idea is that the contract is definitely terminated here.

So there is no point in paying after it was terminated.

What do you think? Do you agree with him? But apparently according to the court, you have to offer 220 more.

That was not enough.

This agreement was on top of, on top of this deposit agreement.

So this agreement is valid even without termination at will, for whatever reason, if the seller fails to secure the permission to sell, then the seller have to pay this amount to the buyer.

So this does not have anything to do with termination at will.

So this is in addition to the usual deposit agreement which applies to termination at will.

And in this case, seller is trying to terminate at will.

So seller must offer 220 plus 220, 440, in order validly to terminate at will.

So at this stage, the termination is not yet valid.

So buyer can perform early? If you conclude that buyer can perform earlier than agreed, then you have to conclude that seller may not subsequently supplement this amount and try to terminate.

So, what do you think? Can buyer perform earlier than agreed? What's the difference between these two cases? The earlier case, 2004 다 11599.

And compare that case with this, 97 다 9369.

So what's the difference? Yes.

[student answer] Yes, yes, yes...

excellent.

Very good.

Earlier case, it's very similar.

Contract was entered into with a deposit, seller was not happy, and seller made all these signs of trying to terminate at will, and then buyer, fearing that seller might terminate at will, rushed into early performance.

But in this case, the contract was valid from the beginning.

So there was this..purchaser can validly perform the contractual obligation here, earlier, right? In this case, the contract is not valid, with the only exception of enforcing or binding the parties to apply to get the permission.

The contract is binding upon both parties only to the extent of binding the parties to cooperate to get the permission.

And once the permission is obtained, then retroactively the full contract will be binding.

So while the permission is not issued, there is no contractual obligation to perform.

I think that's why court held this earlier attempt to perform as not foreclosing the seller's right to terminate at will.

In fact, there was no..it is simply not possible to perform while there was no permission.

Of course, another difference is that in this case, there was a fixed date for final payment.

And the purchaser paid earlier than that fixed due date.

In this case, when the balance shall have to be paid, nobody knows.

When the permission is granted, then things will begin to move on, right? So purchaser was trying to perform something which was not sure to be a contractual obligation.

In other words, both parties knew that after all, nothing will come out of this.

And in that case, only 60.5 liquidated damage buyer is entitled to - that's both parties' expectation, actually.

And in this case, purchaser was becoming a little bit more greedy, I think.

They both perfectly well agreed that nothing would come out of this, and in that case only I'm entitled to 60.5, and purchaser wanted a little bit more than what they both agreed to expect.

So that's the subtle difference between these two cases, alright? In this case, buyer did a little bit more.

Buyer not only tried to pay early, buyer sued the seller and demanded title transfer or...sued the seller and 'you shall cooperate and you shall transfer this property to

me, I have already paid the full price to the court, now, you..it only remains for you to perform the contract'.

Or the buyer ask the court to declare that the seller has contractual duty to perform.

Buyer succeeded partially in having court's confirmation that seller has..what? Seller has to do what? To cooperate in order to get the permission, minister's permission.

Only to that extent.

The parties have a binding contract only for the purpose of seeking and securing the permission.

And so buyer won to the extent of getting court's confirmation that seller has that obligation.

And buyer was claiming that he was investing in the performance of this whole contract.

This effort of bringing lawsuit must also be counted as beginning the contractual performance.

And court rejected that argument - bringing the lawsuit does not count as beginning a contractual performance.

Okay.

Now, 94 다 17659.

I think we can now come back to your earlier comment.

Does anyone volunteer what this case was about, 94 다 17659? You've seen that case, haven't you? It's a simple case.

Or you..you can read.

Yeah, what the case was about.

Just tell us a little bit about..

94 다 17659.

It's about sale of a house I think, yeah? And what was the amount of deposit, initial amount of deposit? 0.3 million, the parties initially agreed to have 0.3 million.

And what happened afterwards? [student answer] Yeah, so buyer paid, not the full remaining amount, but the first interim installment of 2 million.

So when 0.3 deposit plus 2 million have been paid from the buyer, they both agreed that seller shall give possession of the house to the buyer.

So buyer began moving into the house, and they both agreed that 2.3 should be new deposit and the contract shall have the remaining balance of whatever amount.

That was the parties' new agreement.

And then seller wanted to terminate this contract.

So seller offered double the amount of newly agreed deposit.

So 2.3 was..initially 0.3 was deposit, and then first installment is 2 million, and at that point they agreed that 2.3 is the deposit, and here, seller wanted to terminate this contract so offered 4.6 million, and saying, 'I terminate.

Because this is our newly agreed deposit, and nothing has been done since then, and I terminate.' So what did the court rule, the termination is valid? [student answer] The court said...look...can? Cannot, cannot terminate the contract? The reason? Why, why did the court rule that the seller in that case may not terminate the contract at will? What are the reasons? [student answer] Yeah, seller also began to perform.

What, by doing what?

By giving possession, yeah.

Seller's duty, what in a contract of sale, what does seller do? What does seller have to do, in a usual...if you sell this computer to me, what do you have to do? What is your obligation as a seller? Yeah, you have to give the possession to me, right?

At least.

That's the minimum, core of the seller's obligation.

And in this case, seller already began performing and usually seller does a little bit more than that.

Give possession, and..what? Title transfer, yes.

That's what seller usually do.

We will think a little bit more about what precisely are seller's obligation in a contract of sale, but for the moment let's just say title transfer, or various steps which are necessary to ensure that buyer is not evicted from the thing sold.

Anyway, if seller successfully makes the buyer the owner, then owner will not be evicted by some..some other people.

So that's what usually seller...what seller usually do.

Anyway, in this case, seller already did this much.

And also, court did not really consider 2.3 as true deposit, I think.

The court just held to the initial deposit agreement and it was just, already the parties began performing.

So at this point, even if they agreed 2.3 to be new deposit, the court did not give full effect of deposit agreement to this new agreement.

And the rationale for not treating this as new agreement as a full deposit agreement...the reason why the court did not treat this as the deposit agreement in its full sense is, the parties - both seller and buyer - began to perform by the time they entered into this new agreement.

Therefore this new agreement cannot have full power as deposit agreement.

Now, not only purchaser who pay this, but also seller performed his part of contractual obligation.

And that's why the seller may not terminate.

And court was, court in this case was talking not only about this party's performance, but also seller's performance to explain why seller cannot terminate.

So in other words, although his earlier comment does contain some good common sense, but that is somewhat inadequate because it is not only to protect a party who has invested, the idea about foreclosing the right to terminate at will is not only about protecting one party's economic loss, but also protecting the contract itself.

So if you began to perform, you may not terminate.

So in other words if either party begins to perform, then neither party may terminate at will.

Even if it was you who began to terminate, you may not terminate.

The idea is that contract law would not allow individuals to change their mind frivolously.

Yeah? When you agreed, you have to stick to your agreement and you have to be responsible for what you have agreed, hmm? But of course, this deposit, both parties agreed that during this period, neither of us are a hundred percent committed to this.

So we observe certain rules in terminating our relationship.

They both agreed to stick to that kind of conditions, that's why it is possible to terminate.

An agreement to pay..

2007 다 73611 is a very interesting case, really.

This is really very interesting case.

Anyone? Just tell us, a broad kind of..what happened? It's kind of exciting case.

Have you had a look at the case? No? What, what happened to the case? Not yet, hmm.

So 60 million contract deposit was agreed, I think, right? And 60 million is 6 천만원.

Okay? And purchaser didn't have money at that time.

So, saying 'tomorrow, I will send that money to you.

I have 300 만원, 3 million with me, so I give 3 million, and 57 million I pay you first thing tomorrow by bank transfer.' So buyer got the seller's bank detail and everything, and then..unfortunately that very night, seller regretted.

And the seller telephoned the following morning, 'yeah, I don't want to sell this contract.' Buyer really wants this, and then dispute erupted.

And the question is, can seller terminate the contract at will? What do you think? Tell us what you think.

I'm listening! [student answer] Why? Usually, let's say..good, good, good.

So 60 million deposit agreed, okay? And only 3 million actually paid.

Now, my question is..if 60 million deposit had been fully paid on that day, on the day contract was entered into, the following day, can seller terminate the contract? But in this case, you are saying that seller cannot terminate the contract.

Do you think it's sensible? If full amount of deposit had been paid, then seller may terminate the contract, but in this case seller cannot terminate the contract.

Do you think that's reasonable? What do you think? [student answer] So you think seller in this case should be allowed to terminate the contract, that's what you think? How would you respond? [student answer] You also think that in this case, seller should be...anybody who agrees with supreme court's case, in this classroom? You all think that this case was wrongly, wrongly decided? What do you think? Come to rescue our supreme court justices.

They all think that, you know, it's reasonable to allow the seller to terminate the contract.

But supreme court justices somehow decided that no, seller should not be allowed to terminate.

[student answer] Don't, let's not go into this area.

Think a little bit more.

Think a little bit more..you know.

You know in boxing, there is this style called 'in-fighter.' In other words just, you know, grab that thing and just go in deeper and deeper...think a little bit more.

Yes.

[student answer] Oh well, actually paid, that's one element, and then what the parties agreed, also.

Yeah.

[student answer] 3 million.

[student answer] So you think...

[student answer] For that night? [student answer] So you would consider the 57 as forming part of the rest of the performance.

So your conclusion would be, seller should be allowed to terminate, by offering how much? 6 million won.

Only 6 million won? That's where supreme court justices disagreed with you.

Because it was clear that the parties wanted 60 million to be the deposit.

They clearly agreed that if this contract is going to be terminated in the meantime, one party must give back 60 million won.

That's what the parties agreed.

If the seller in this case wanted to exercise termination at will, seller must pay 1200 만원 instead of just 600 만원.

To allow termination at will at mere payment of 3 million plus 3 million, would be completely against the parties' agreement.

I think that's why.

You see? I think it's perfectly sensible decision.

It was clearly, the parties clearly agreed 60 million to be the deposit, and only 3 million was paid, and both parties agreed that this is not the full payment of the deposit.

Yeah? And if you just interpret that 'oh, deposit, 3 million which was actually paid, that should be considered as deposit,' then you'll be rewriting the contract.

You have no right to rewrite the contract.

Judges should never try to rewrite the contract.

Parties have decided, and judges should not decide or change what the parties have agreed, you see.

I think it's very interesting case.

[student answer] That's another very, very interesting point.

If, if buyer..so in this case, supreme court held that seller cannot terminate at will, right? So when buyer pays the remaining 57 million, then, yes, seller can terminate at will.

But then, how much money seller will have to pay to buyer? Yeah, 120 million.

Is seller prepared to terminate with this much of financial loss? I mean his net loss would be 60 million.

Yeah, if seller is happy to forget about, you know, throw away 60 million won, and nevertheless terminate, well go ahead it's your right, and that's what you have agreed.

[student answer] Oh, oh, oh, at this point, if 120, if purchaser, I mean seller, offers 120 million when he only received, actually received only 3 million...

[student answer] He cannot do this.

He can only do this when the remainder is fully paid, then he can offer the double the amount.

At this point, while the remainder has not yet been paid, there is no ground to offer 120 million won, either.

Yeah.

So it's uh..initially, you might be misled to think that 'ah this is ridiculous'.

The court's ruling seems that while this has not yet been paid, the only thing seller can do is to demand the remainder of the deposit amount, and if the purchaser refuses to pay, then the buyer can..

if this payment of deposit is essential to the contract itself, then seller can terminate this contract.

But also you, it is also true that as we talked about, if the remainder is paid, then seller may exercise the right of termination at will.

But that's perfectly sensible I think, because of this financial burden or implication.

Yes.

[student answer] Ah, not okay, that's not okay.

Definitely not okay.

No.

We have this case, before moving onto that far, how about 99 다 48160.

99 다 48160.

Court was talking about liquidated damage in this case.

But actually, this case is exactly what we just talked about.

When the parties in a sale contract agreed upon a deposit - I don't know exactly what was the amount here - how much was the agreed amount here? 얼마? 3 억.

So 300 million, is it? Now...so 300 million is agreed to be the deposit.

And no amount was actually handed over.

Just an IOU.

Yeah, just a piece of paper saying, you know, I have received 300 million won.

IOU means means, literally, 'I owe you 300 million won', you know.

Nothing was paid.

Can it be treated as deposit? No.

Deposit, in order to be, in order for the deposit to have the full power as deposit, it must be actually paid.

We saw, just earlier case...

in this case however, what it did was when one party failed to perform, then the other party shall pay the amount as liquidated damage.

That's what it did.

In other words, it has half the power of a deposit.

I'm saying half the power because if deposit is not handed over, neither party can have the power to terminate.

You don't have power to terminate.

But if your counterpart terminates, then you can demand payment of that as liquidated damage.

So it does not have full power as deposit agreement, but it is nevertheless a valid agreement for liquidated damage.

And in this case, buyer terminated the contract.

In other words, buyer refused to buy.

They agreed to buy, buyer agreed to buy with 300 million deposit and buyer didn't pay a thing, just wrote an IOU, and buyer just decided not to buy, and seller is now suing buyer 'pay me 300 million won.' And buyer is arguing 'this is not even a deposit.

So I don't owe you anything.' And the court said 'no no no no...

this is valid agreement of liquidated damage.

Therefore you have to pay 300 million won.' But in the end, there is very little difference.

Why? If money is actually paid...okay? 300 million won had already been paid, then buyer can have power to terminate.

But then, in order to terminate he has to forget about 300 million won he had already given, you see.

If he hadn't given, and instead wrote that, you know, IOU, whatever, if buyer terminates the contract, then buyer will now have to pay 300 million.

So it's..there is little real difference.

But uh..

legal explanation is somewhat different.

If money is actually handed over, both parties have the power, have the right to terminate, but in order to exercise that right you have to sacrifice the money you have paid.

[student answer] Um, no, in this case, the..

I don't think the court distinguished, well, we don't know what the court meant by 'breach.' The court simply talked about breach.

Buyer's breach.

And in this case, buyer, it seems that buyer refuses to pay, okay? And the court held that this is liquidated damage, okay? But presumably buyer's refusal to perform occurred before the first installment.

I think.

So as we talked about last time, to interpret deposit agreement as an agreement for liquidated damage, this agreement for liquidated damage is applicable to breaches before the first steps of performance.

Regarding contracts provisionally valid, I think we have already adequately covered...such a contract is completely null and void, it cannot bind the parties except that the, both parties have obligation, legally enforceable obligation, to cooperate.

So the deposit contract cannot really have the power, either.

When the permission is granted, then retroactively deposit agreement does have the power.

Now, any questions about deposit? No? Okay, moving onto option contract.

Now, option contract is a separate contract from the main contract.

So the main contract is what one has an option to do.

So if the main contract is sale, then an option contract means that one party has an option to purchase.

Or one party has an option to sell.

So there can be two options, one is call option and the other is put option.

Put option means option to sell.

Call option means option to buy.

But they are different contract from the sale contract itself.

But you can have option contract not only in sale, but any other kind of contract you can have an option to [소리 안들림 - 01:00:08], okay? One or both parties may have the option to conclude the main contract.

Whether only one party has the option or both parties have the option, that will be determined by..what? By the parties' agreement.

The parties may agree that only you have the option, or the parties may agree that both of us have the option.

But it..they agree that both have the option, then they will obviously agree that the party who exercise first has the deal, right? But all the details of how that option shall be exercisable will be agreed between the parties as well.

Notice of the exercise of the option is sufficient to conclude the main contract.

No separate offer acceptance is required.

So.

You are all very familiar with this idea of offer and acceptance, right? So the parties may enter into an option contract here.

And they agree that, for instance, on such a date, or if such an event happens, like if you breach our..this other contract, like you and I enter into partnership and we are doing this business together and then you have these congtractual duties, I have these contractual duties, if you fail to carry out certain of your important duties, then I may exercise my call option or I may exercise my put option.

They could agree, right? That means that the party who has the option can simply notify the other party, 'I exercise the option.' Then there is no need to talk about offer and acceptance for this contract.

The contract is concluded.

In other words, at this point the parties have already agreed about the future offer and future acceptance already, here.

And the only thing remaining is to notify, that notice triggers that offer and acceptance which became dormant, which was sleeping, yeah? Had no power, but when notice is given, they...poof! comes alive and suddenly comes binding.

I don't think there is any need to talk about obligation to accept.

Some scholars talk about this notice as if it is an offer, and if that offer is made on the basis of an option contract then the other party has an obligation to accept.

That's one way of explaining this situation but I think it is a very very strange way of explaining.

There is no need to talk about obligation to accept, no need to accept separately because the parties have already accepted with the condition that exercise of option shall be notified in the agreed manner.

On that condition, the parties have already accepted.

Have already offered and have already accepted at the time this contract was concluded.

Okay? Actually, this is also a contract.

Therefore, there is negotiation.

With a view to entering into option contract, right? Of course there is negotiation, very heavy negotiation about whether to enter into this option contract or not.

And then there was an offer also.

Offer to enter into option contract.

And then acceptance to enter into this option contract.

And in my view, this offer and this acceptance of option contract already contains the offer and acceptance of the main contract.

But the only thing is that that offer and acceptance becomes only valid when the party who has the option duly gives notice.

So there is no need to talk about a separate offer and acceptance.

[student answer] Ah.

Yeah.

Yeah yeah yeah, that's the whole point about this option.

They have the option not to enter into the contract.

That's the economic purpose.

If they definitively enter into contract, then they..

both of them are committed to this contractual terms.

And they don't want it.

Neither party wants it.

So both party, well sometimes, only one party has the option.

Yeah? And this party has the option not to commit, just, you know, not to engage, not to commit at all - but have the power to bind the other party if this party wants.

So it's a very very powerful..yeah.

Powerful position.

Option, to have an option means very very powerful position.

Perhaps even more powerful than actually being a party, definitively bound by....

so you are not even bound, but you have the power to bind the other party.

Okay, so that's option contract.

Now, the important point is uh..well, two things.

One is the duration of the option, and the other is when there are multiple parties to an option contract.

Fairly straightforward.

About the duration, one thing to remember is ten years.

And it is absolute cut-off period.

No excuse, no stopping and no extension.

Okay? So 1999 다 18725, it's about department store.

The merchant who run the various shops in a department building, they wanted to buy the shop but the department store owner offered to lease the shops for ten years, and then upon successful ten years of lease, the leasee shall have the option to purchase the shop they have been leasing for the past ten years.

That's the terms.

So the parties both agreed, and ten years they have run the shop successfully as a leasee, as a lease holder, and when the ten years have completed, they, the shopkeepers, shop owners, now wanted to buy that space.

And of course they must have agreed about the price or how to decide the price.

And now the department store does not want to sell it.

Can the shopkeepers exercise their option to purchase? What do you think? Department store argued that 'oh well, it's impossible to fulfill this contract because there is a statute which make it illegal to sell the individual shops within a department store.' But that argument turned out to be false because there used to be a statute like that, but now that statute is gone, and you can sell part of the department shop space.

Anyway, the lower court in the end allowed shopkeepers' argument.

So lower court found that shopkeepers can exercise option contract, becase they exercised almost immediately after ten years have lapsed, right? Supreme court held that 'no no no no, you have to reconsider because this option contract has absolute cut-off point of ten years, so even if parties agreed that you can exercise option only after ten year, that means that this option contract is useless.

Unexercisable, yeah.

They agreed that you can exercise ten years after you cannot exercise within ten years, that means there is no option, exercisable option.

This is nothing.

If the duration is not specified, the counterpart - the counterpart means the party who does not have option, okay? Because that, that party, the counterpart is in a very vulnerable position.

Because the party who has option is such a powerful position.

So this vulnerable party can do something.

Propose a reasonable period within which the option must be exercised.

Upon lapse of the period, the option expires and that's a statutory protection given to the counterpart.

Even if the parties agreed that the option may only be exercisable after a period, the option expires upon ten years..from when?

From the agreement of the option.

So, the parties agreed that this option is exercisable five years from now.

You can exercise from then on.

But option expires ten years from here.

Ten years.

Not from ten years from the exercisable point.

Ten years from when the option first agreed, was first agreed.

So that's what 94 ㄷ카 22682 is about.

Why this absolute cut-off point? Any idea? Why? Why the court ignores parties' agreement...

just ten years and then that's it, you cannot exercise option.

What's the point? Why? [student answer] Vulnerable, yeah? That's it, yeah yeah yeah..because of the extreme vulnerability of the counterpart.

So that's how you should understand this department store case, yeah? Alright, we'll continue option contract on Wednesday.