# Law of Obligation Ⅱ

## Option Contract

- ✓ Instructor : 김기창
- ✓ Institution : 고려대학교
- ✓ Dictated by : 이은지

Obligation on the other hand, which is contract law issue, alright? So we did talk about that, and why these two concepts are, even though they are very closely connected, but nevertheless they are distinguished quite consistently.

So in reality, seller usually transfer title to the buyer, but that is not the seller's obligation in fact.

Seller's obligation is just to ensure that buyer enjoys the thing sold.

And then stop short of saying, or involving the concept of ownership, or title.

But we do, now, from now, especially for this lecture and next, we do look at the situation where purchaser loses title.

Purchaser believes that he has now acquired the title, but then the true owner - but we never know who is the true owner, but someone or some party who claims to be the true owner - succeeds in pursing his claim, and purchaser loses the thing sold.

And then what happens? And here again, the fact that the purchaser lost title is not really the core of the problem.

Then what is the core of the problem here? When the thing sold turned out to belong to some other true owner.

Then what is the core of the problem? What is the problem? If title is not the core of the problem, what is the problem? [student answer] Yeah, that's what I'm trying to say.

The title is not the issue here, then what else can be the issue here? [student answer] Exactly, the buyer cannot enjoy the thing he bought.

So the ultimate idea is that buyer paid something, right? It's not free, buyer paid something in the hope that he could enjoy it as if it's his or at least nobody would bother him anymore, because he bought it.

It's not that he borrowed it, he bought it, and with his good money, alright? But then, as she pointed out, he could no longer enjoy it.

That's the core of the problem.

Title is not the core of the problem, right? So you must keep that in mind, always.

So we must have a sense of equilibrium.

When you bring title at the core of the scene, it becomes difficult to talk about equilibrium, right? Because title is absolute.

Absolute in the sense that, you know, you can assert it vis-a-vis anybody in the world.

But then where is equilibrium? Where is the notion of equilibrium? It's difficult to talk about equilibrium whereas, if we shift the focus to what she pointed out, from the

buyer's point of view, buyer paid money, and it is just and right that buyer should be enjoying the thing he paid for.

But then the true owner appears and then just deprives the thing from the buyer.

That's when equilibrium is broken, and what kind of remedy we have to restore the equilibrium, that's the topic here, okay? Now, we do distinguish sale of specific good on the one hand and sale by description on the other hand.

Let's get that concept clear.

Can you think of any example - you, can you think of any example of sale of specific items, specific good, or specific property? Just give us some examples, what we are talking about.

House, yeah, house.

Anything else? Car.Like...Lanos, what kind of car are you talking about?

Let's..specific car.

What if you go to a showroom of..let's say, Mercedes, and you have this model, I don't know the model number but Mercedes, whatever model, and 'right, I want to buy Mercedes, whatever model..' I can see that thing in the showroom, I'm not buying that car, right?

But I'm buying Mercedes, whatever number and whatever...is that sale of specific good? In your view? Do you think it's a sale of specific good? I don't think so, because I don't even care what serial number the car which will be delivered is, all I care is that it must be Mercedes, a particular model.

That's all that matters, right? So that is not a sale of specific good.

If the dealer wants to get rid of the car which was on display for a year...now the dealer no longer needs that car because new models are coming up, so dealer offers good discount, and they want to sell that particular car - then it is sale of specific good, right? Because no other car, even if the same model, same mark, I'm not buying any other thing.

That particular thing I'm buying, that is specific, right? But if I'm buying, let's say Sonata, Hyundai Sonata, whatever 2.1, 2.0 liter engine and 2011 make.

Then it is sale by description.

It is not sale of specific good, sale by description means the identity doesn't matter.

The specific identity doesn't matter as long as that thing which is ultimately delivered to me fits the description.

Then seller's obligation is fulfilled.

So that is sale by description where identity doesn't matter.

So that's a fairly important distinction, okay? All trade in second-hand goods are sale of specific good.

Because that particular thing is at issue.

Sale of horse, racehorse for example.

Do you think it's a sale of specific good or sale by description? Yeah? Racehorse.

I think in most cases it's a specific horse.

We are not talking about any horse, we talk about that particular horse, right? I talk about sale of horse because I might be talking about sale of horse quite often.

But anyway.

So you get that concept clear, alright? We will be thinking about sale by description once we deal with questions relating to sale of specific good.

So, for the moment, don't think about sale by description, okay? Like, you know, buying..two hundred bottles of 삼다수, for example.

That's not sale of specific good, alright? Whereas if I buy that particular bottle of 삼다수 of her, it is specific good, sale of specific good.

But for the moment let's not think about sale of specific good.

Let's..uh, sorry, let's not think about sale by description.

Let's focus on sale of specific good, okay? Now, first topic is sale of a third party's property.

Now, if you look at, let's fist look at article 570 and 571.

Okay? 569 declares that sale can take place whether or not the thing sold belongs to the seller, which is obvious.

Because contract of sale is not, does not depend on title, right? So you can sell thing which does not belong to you.

Then how are you going to fulfill, excuse me, if you sell a thing which does not belong to you, how are you going to fulfill your duty or your obligation as seller? [student answer] Yeah, that's it.

You either buy, or you rob it, or...or you somehow persuade the owner to allow you to sell that thing to the purchaser.

So if the current owner conveys the title directly to the purchaser, that's again, fine.

No matter what you do, just somehow make the purchaser enjoy the thing free of any disturbance ever again, then it's okay.

But usually, as she pointed out, you will buy the thing from the owner and then convey it to your purchaser.

Now, article 570 talks about a situation where seller is unable to acquire the right.

Notice here again civil code does not talk about 'ownership.' Does not talk about title.

It only talks about right.

And that right is very broad and that right, the concept of..the terminology itself can cover the idea we talked about all the time.

The idea that seller must just ensure that buyer enjoys the thing without disturbance.

So, some kind of right which is necessary to do that.

Somehow seller cannot acquire that right, and cannot transfer that right to the purchaser, then purchaser may terminate the contract.

Obviously, if something belongs to me and I am not inclined to part with that thing, then no one can forcibly grab it and sell it to somebody else, right? So purchaser cannot get it and seller cannot sell that thing..make the purchaser enjoy the thing.

So the contract between seller and purchaser becomes impossible to perform, right? So in that case, the civil code allows purchaser to terminate the contractual relationship.

However, there is a distinction which must be made.

If a contract was about something which is impossible to perform in the first place, then what is the validity of that contract? What do you think? If you and I agree that I sell you the moon, and you buy the moon from me, what is the validity of that contract? Yeah, void, null and void.

It's impossible from the beginning then it's void, right? Nothing can bind us, right? But what about a contract which becomes impossible to perform after it was entered into? Does it, does the contractual bond dissolve automatically, or does one party have to terminate? Let's say, let's say a land belonging to the seller was sold to purchaser.

And they agreed that conveyancing will be completed on first of September.

But first of May, the land was acquired by state.

Okay? The government wants to make road.

So the land was acquired by state through the statutory power.

What about the destiny of this sale contract? What do you think? Is sale...

pardon? Yes.

If..okay, at the time of entering into sale contract, the land belonged to the seller.

Before the completion date, the government acquired ownership of the land.

Now, my question is, is the sale contract still valid? It is still valid and binding, right?

Yeah, I think so.

What about a situation..but can you not say that it became impossible for seller to perform the contract? What do you think, anyone? She thinks that it is still possible, that's why she believes that sale contract is still binding.

That's right, right? You think that this person can still somehow repossess or somehow acquire that thing and then perform it? But how realistic is it? But still, she thinks that it is possible, that's why she thinks that contractual bond is still intact.

It is still binding.

Everybody agrees? I think so, I also agree.

Although in reality this high unlikely that the government, having just acquired the land, sells the land back to the person so that person can perform this contract..

So in practice it's almost impossible but as a matter of law, it is still possible, therefore the contract is still binding, and that's why..that's why civil code talks about terminating the contract.

Because, think about another example.

Selling a house, it was there, it belonged to P, I mean the seller S, and the due date, the completion date, conveyancing date, was first of September.

On fifteenth of August, the house was burned down.

What about the sale contract? You.

What about the sale contract, where seller and buyer agreed to buy and sell the house? Is it still binding? Ah, is it still binding? How, then, you have to terminate the contract, is it? Oh, do you agree? Do you agree? The house is completely burned down, but the sale contract is still binding.

Do everybody, does everybody agree? Come on.

Is it still possible to perform that contract? Completely burned down house? Come on, this is not a question of title belonging to third party, it's just, you know, complete destruction.

It's impossible to perform.

So the contract is just automatically terminated.

The party need not terminate, and there is no contract to terminate.

It's, it's just..

it comes to an end when it's destroyed.

So that's the big difference.

Ownership belongs to a third party so that seller cannot perform.

Cannot, cannot perform, but as a matter of law, there is still a possibility, right? So the contract is still binding.

Complete destruction, even from legal point of view, it is impossible.

Here, ownership belong to some third party, it is not impossible, it's still possible.

But somehow seller cannot do it, although it is possible, because, look..you cannot do everything that is possible, isn't it? Even though it is possible, seller cannot do it, but here it is impossible so you don't need to terminate, okay? Alright? There, if it's destroyed, all that remains is the question of risk allocation, okay? The question is whether purchaser has the obligation to pay the purchase price or not.

Under Korean law, if that happens, purchaser need not pay the price and seller need not convey, I mean, seller simply cannot convey, okay? Alright.

So, the reason article 570 talk about termination, 570 stipulates that purchaser can terminate, if the seller cannot acquire the right and transfer to the purchaser, purchaser can terminate.

That means purchaser can be freed from the contractual bond.

And, although the first sentence does not say, you can deduce from the second sentence - usually the purchaser can not only terminate, but also seek damages from the seller.

So that's how I summarize article 5..it's about article 570, if the seller is unable to acquire the property, either party may terminate the contract, I think.

Although the statute only talks about purchaser terminating the contract.

So, let's stay with this example for the moment.

At the time when it is..when it is time to perform, the thing sold belongs to some third party, okay? And seller cannot acquire the thing, then purchaser can terminate the contract.

That's perfectly sensible.

And also purchaser can demand compensation if purchaser can prove that he suffered loss as a result of this contract being impossible to be performed, okay? It all depends on what kind of loss he suffered, but as long as he can prove that, because this contract could not be performed or was not performed, he suffered this amount of loss, that loss can be claimed from the seller, okay?

But the qu...my question is, if it turn out to be impossible for the seller to convey to purchaser, can seller also terminate the contract? The statute does not say so, but I think in that case seller should also be allowed to terminate.

But of course, seller will have to pay damage to the purchaser.

Okay? So as far as termination is concerned either party may terminate, regarding damage, seller must pay damage to purchaser, if purchaser did not know that the thing sold belonged to third party.

If buyer did not know at the time of contract that the property belonged to a third party, buyer may claim damage, whether or not seller was at fault.

At fault about what? At fault..

The seller failed to acquire the property from the third party, alright? And whether seller was negligent or deliberately failed to acquire the property, seller's fault is not a requirement.

So no fault is not a defense, okay? But that is possible only when buyer did not know, at the time of entering into contract, that this thing belonged to a third party.

Why buyer cannot claim damage if, buyer knew that this thing belonged to a third party, why? Why article 570, the second sentence, requires buyer's lack of knowledge at the time of contract? It says buyer may not claim damage if he had known that the thing belonged to a third party at the time of entering into contract.

Why? Any reason? So they..

the seller and purchaser, right? Let's say buyer.

Buyer and seller.

And B knew that..

so the seller is selling shoes which belonged to Michael Jackson when he performed 'Thriller'.

So it doesn't belong to seller, but seller somehow was confident that he could acquire it then sell it.

So buyer also knew that he's buying something which didn't belong to the seller.

And it turned out that seller cannot acquire it, and in that case buyer may not claim damage.

So why buyer cannot claim damage? Any suggestions? Anyone? You, again? Yes, you? [student answer] Exactly, buyer took the risk of seller being unable to acquire it in the end.

Why? Because ultimately it depends on this owner's good will.

Owner's...

it's up to owner's decision, it's..you know, if the owner is not happy or is not willing to sell it to [? - 29:22] sell it, somehow part with the thing, then it cannot be then.

So, when they enter into contract they already knew that the destiny of their contract depended on that party's will.

So if it turns out that that party is not willing, then buyer cannot claim damage, because it's already part of the risk buyer took.

Okay? However, there is an interesting case.

Even where buyer knew at the time of contract that the property did not belong to the seller..so they knew that they were buying and selling something which belonged to a third party.

And they obviously expected that seller would acquire it and then transfer it to the buyer.

That's what they understood, right? Even in that situation, if seller was at fault in failing to acquire the property or to transfer it to the buyer, then the buyer may claim damage.

I gave a question there.

So it's a fairly simple situation but a situation which can happen quite often.

A sold land to B, and before this sale contract is completed and before B became the owner of the land, B sold the land to C.

Okay? Now, this contract is a contract of something which does not belong to the seller, isn't it? This is seller.

And C is the buyer.

So this sale contract is at issue here.

And C also knew at the time of entering into this contract that the land did not belong to B, but B will somehow acquire it from A and ultimately convey it to C.

So that..it's called sub-sale, isn't? Sub-sale.

Means when purchaser, in this case, in this sale contract B is the purchaser.

So when purchaser sells a thing sold further on to sub-buyer.

So it's a sub-sale.

Why there is sub? Well, when the sale was entered into, before the first original sale is completed, okay? So that's sub-sale.

Now, what happened was that they, B and C agreed to have their completion date..you know what completion date is? Completion date is when the balance of sale price is paid and title and possession is conveyed to the purchaser.

When everything is completed, right? So the completion date of their sale contract, they agreed to have it coincide with the completion date of this sale contract.

That also happens quite often.

Because B does not really have his own fund.

What B intends to do here is to get the arbitrage.

Get the additional price difference.

He buys it at, you know, 5 million..uh 50 million won, and he sells it at 55 million won, and he just wants to get 5 million profit there.

So he does not intend to come up with 50 million won, he expects C to pay him so that he pays to A.

And has..so B is basically a broker here.

But anyway, B is a purchaser in this contract.

And they agree that the completion date of this sale contract coincides with the completion date of this sale contract, alright? When that date came, C refused to pay.

A disaster for B because B does not have fund, right? So B refused..could not pay to A, either.

So A refused to convey to B, so B could not convey to C.

So that's what happened here, alright? That's what happened here.

Now, first question is: is this a sale of something which belonged to a third party? Yes.

This sale.

We are talking about this sale, okay? So, sale of third party's right or title.

So that's okay.

Two, did buyer of this sale knew at the time of contract that this thing sold, or thing which he's buying, belonged to a third party? Did buyer know? Yes, buyer knew.

Now, it turned out that seller cannot acquire it.

So it's..now it's time to think about termination, right? Can buyer terminate the contract? Yes or no? Yeah, yeah, yeah.

Because seller cannot acquire it and cannot..the objective of sale contract cannot be met.

So buyer can terminate.

Can terminate.

Yes.

And in my view, seller can also terminate, but anyway..buyer can terminate.

Now the crucial question.

Can buyer seek damage from seller? That's the question.

Now, if buyer knew at the time of sale contract that the thing belonged to a third party, article 570, what does it say? The second sentence.

'Cannot seek damage.' Because buyer took the risk.

So do you agree? Does everybody agree there? Have you had a look at the case I talked about? So what do you think? Buyer in that case, C, cannot claim damage? How about you, what is your view? [student answer] Claim damage? Buyer can terminate the contract, but cannot claim damage, that's your view? Do you agree? You also agree? Everybody agrees? Ha.

You're right, you're right that buyer cannot claim damage on the basis of 570.

But buyer may claim damage on the basis of article..yeah.

What did I say? Article 390.

This is breach of contract.

So let's have a look at this contract.

This is seller and this is buyer and seller failed to perform what he agreed to perform.

Now the question is, if seller is at fault, then seller have to compensate on the basis of article 390.

It's a breach of contract.

Now the only question is, was B at fault in not being able to perform? That's the only remaining question, alright? In talking about article 390 we are not talking about warranty liability.

Warranty liability, no.

Because buyer already knew, knew at the time of buying, he already knew.

He already took the risk.

So he cannot claim..

he cannot seek warranty liability from the seller.

But he can seek breach of contract remedy.

So if you look at article 390 of Korean civil code, C can claim damage and B can avoid having to pay damage only when B can prove that B was not at fault, okay? Now in this case, B claimed that 'look, I'm not at fault because you didn't pay me, we agreed to have the completion date coincide, and I depended on your fund to pay to A, and you didn't pay me, that's why I couldn't pay to A.

So I'm not at fault, it's your fault.' That's the defendant's defense in a lawsuit which was brought by C against B on the basis of article 390.

So C was claiming that B breached the contract, and then B defended, 'maybe I breached the contract, but I was not at fault.

It was your fault.' [student answer] Fault is either deliberately breaching a contract, right, or negligently breaching a contract.

Now the question is negligence.

What does that mean, right? [student answer] Hmm.

Ah, well, we have to look at the terms of this contract, right? And this contract only says, stipulates that on this date, B shall convey and C shall pay the balance.

That's all that, all that this contract stipulates.

And then the question is, C could not convey, and C did not pay, right? And then C claimed that it was B's fault and B denies that fault.

Now how to assess whether B was at fault or not? B claimed that 'we understood, there was an understanding that I would depend on your fund in acquiring the property from A, and you failed to provide the fund.

So I, I...it was not my fault.' I think if they did put that in writing, saying on such a date C shall provide fund to B so that B can pay to A, if they did put that thing in there - this contract - then B's claim that he was not at fault is right, I think.

B will win.

They didn't put that thing, they only said 'on this date we do the conveyancing.' And C didn't pay.

Korean supreme court ruled that B was at fault, because it's B's responsibility to find fund, in this contract B has obligation to pay to A, right? And A doesn't care where B gets the money.

They didn't even talk at all about how B will get the money.

So basically B breached the contract as a purchaser in this contract.

And that's how, why B failed to acquire the property.

So B was at fault in this contract, and B was at fault in this contract as well.

It's B's responsibility to finance his economic dealings.

So court found that the seller in this contract, the seller was at fault, therefore, breach of contract applies, although warranty liability does not apply.

Breach of contract applies, therefore B shall compensate C.

If C proves any loss.

Okay? Alright, so that's sale of third party's property.

Now, intended by seller.

Seller knew he was selling somebody else's property.

The only difference, the only thing we..seller already knew that he was selling somebody else's property, buyer also knew, buyer may not claim damage, if buyer didn't know buyer can claim damage as well as terminating the contract.

Now, moving onto sale of third party's property, but, unintended by neither seller nor buyer.

Actually this is happening very, very often.

Both parties to a sale contract believe that it was just perfectly ordinary sale contract.

I'm selling my..whatever thing, to him, believing that it belonged to me, and then it turned out that true owner comes up and then, you know, takes that.

That's what I meant 'unintended.' Neither party were thinking that they were trading in something which they didn't, which didn't belong to them.

Or which didn't belong to seller, right? But somehow true owner appears and successfully claims.

Now, this happens very rarely.

In reality this happens very rarely in regard to movables.

Why, any guess? [student answer] Yeah, good faith purchaser of movables under Korean law...

A and B became seller and purchaser, and if it's movables, if purchaser was in good faith - bona fide purchaser - then purchaser immediately acquires ownership.

So true owner X is defeated.

So true owner cannot come and remove the thing from purchaser.

So this sale contract prevails over ownership, basically.

That's Korean law.

However, immovables, real estate, there is no such thing as good faith purchaser's acquisition of title.

So both parties were all honest and innocent, but a true owner can come and recover the thing, then something goes wrong with this sale contract, okay? Therefore we must come up with some remedies to tidy up the mess here in the same contract.

Okay? So, if the thing sold turns out - that obviously presupposes that seller didn't intend it to be some third party's property, seller thought that it was his to sell - but it turns out to belong to a third party, and if the seller is unable to acquire it and transfer it to the buyer, seller may also terminate the contract.

Because it's something which seller didn't expect.

But buyer may not claim damage, if the buyer knew at the time of the contract that the property belonged to a third party.

Yes.

[student answer] No, buyer may not claim damage, it means that buyer shall not be allowed to claim damage.

Yeah, that's..

that's what I meant.

So I think there isn't any difference of view between you and me.

'Buyer may not claim damage' means that buyer cannot claim damage.

Buyer will not be successful even if he claims damage, alright? If buyer knew that property belonged to a third party..have a look at article 571.

Now, if..if the seller did not know that the thing he sold belonged to a third party, the seller may terminate the contract and pay, compensate the purchaser, okay? In the second paragraph, if the purchaser knew that the thing belonged to third party, then the seller may simply notify that the seller cannot acquire and cannot transfer the right to the purchaser, and the contract may be terminated.

That means that purchaser may not claim damage, okay? If buyer should have known..if buyer should have known that the property belonged to a third party then the buyer's contributory negligence must be taken into account.

If you look carefully at the second paragraph of article 571, it only stipulates a situation where purchaser knew.

It doesn't talk about 'knew' or 'should have known,' it only talks about the situation where purchaser knew that the property belongs to a third party.

Then the question is, what if the purchaser didn't know, but it was so easy to find out? What if purchaser was, you know, careless? An ordinary purchaser would have known that this thing does not belong to this seller.

But this particular purchaser stupidly didn't realize that he was buying something which didn't belong to the seller.

And seller also didn't know.

So this is a situation where both parties were, as it were, negligent, okay? In principle, purchaser's negligence does not prevent or foreclose purchaser's claim for damage.

Purchaser can nevertheless claim damage.

But the amount of damage award will be reduced, taking account of purchaser's negligence.

Okay? 71 다 218, what was that case about? Could you tell us what that case was about? Who bought what from whom? [student answer] Yeah, yeah yeah yeah.

So a local government bought a plot of land from the central government.

[student answer] Exactly, yeah.

경기도 bought it, believing that it, the land belonged to the central government.

But it turned out that the land actually belonged to some private citizens.

So 경기도 lost the land, because the land registry was all completed in 경기도's name, and 경기도 thought that they bought the land, but then true owner came and brought lawsuit against 경기도 and had the registration cancelled, and 경기도 lost the land, alright? And you must realize that, look..

when something is sold, purchaser pays money.

And now, purchaser lost the land.

So it's a big loss which must be somehow dealt with, right? And 경기도 lost the land, so 경기도 terminated the contract, okay? And then sought damage from the central government.

And damage obviously I think the purchase price obviously will have to be returned.

But then, but then..

the land price might have gone up quite considerably.

Let's say the purchase price was 50 million.

A few years later the true owner came and recovered the land, and by that time it was like, you know, 70 million.

And purchaser might try to claim, you know, 20 million in addition to 50 million damage.

50 million is something he paid out of his pocket, and he lost the land obviously, that must be compensated.

But the purchaser may also claim additional damage, saying...and the court held that the local government were also in a position to realize that this land didn't belong to the state.

Probably because it was a land which was part of..public highway, road.

So it cannot be subject to agricultural land reform.

The reason state believed that it belonged to the central government was that it was a agricultural land, and it was not cultivated by the owner.

In the 60s, the government had a revolution, agricultural land revolution.

There was this serious problem where which wealthy people bought up land and then rented it to farmers under very disfavourable..unfavourable condition.

So farmers were suffering.

The government had this radical statute whereby land owned by someone who is not actually cultivating the land, such land is acquired by state automatically.

And state just pays to the owner.

And then state redistributed to cultivator.

But then this land was not culvating land, it was not agricultural land, and local government should know about this.

So that's uh..local government was negligent in not realizing that they were buying something which didn't belong to the seller.

So that's the situation.

But this case is somewhat tricky but still very important to realize because we are talking about warranty liability of a seller, okay? And we don't need to think whether seller was at fault or not.

Because seller's no fault was not a defense in warranty liability, okay? Whether seller was at fault or whether seller was not at fault, seller will be liable to pay, but this case is where purchaser was at fault in not realizing this situation.

So this is, this has nothing to do with warranty liability being strict liability.

That principle is not affected by this case because the court still maintains that we don't examine whether seller was at fault or not.

And seller was not claiming that he was not at fault in this case.

And seller perfectly understands that whether or not he was at fault, he will have to pay the damage.

But seller claimed that buyer was negligent, which was different issue, okay? It is 79 다 564.

Have you, you, have you had a look at that case? Tell us a little bit about that case.

It's a fairly simple case.

[student answer] Handed over all the documents, right? [student answer] Yes.

Complete the registration of title, right? And then while the buyer was delaying it, what happened? [student answer] Good.

So, seller can no longer perform the duty as the seller, right? Buyer can no longer register the property under buyer's name because now the property belongs to X.

X had some credit against A, and while B was delaying the registration, B had all the documents needed to complete the registration, but B was delaying it...

while that was happening, X forced sale of A's property including this particular one.

So thing was auctioned and now the thing belongs to X.

And X has no intention of selling it to A or B, right? So this became impossible.

Now the idea is that 'ooh, this is sale of something belonging to third party, but it was not intended.

So it's article 571 situation.

And look at article 571, there was no talk or no requirement of seller..

seller's fault.

Okay? So seller shall be required to pay damage regardless of whether seller was at fault or seller was not at fault at all.

That's what buyer claims.

You have to pay damage to me.

I terminate, obviously because now it's impossible, the thing belongs to X now.

I terminate, and on top of that you pay damage to me.

Seller felt that it was quite an absurd claim because seller gave all the documents necessary, and buyer was delaying it, and if buyer didn't delay, this thing wouldn't happened in the first place, right? But nevertheless it's strict liability, that's what buyer claimed.

So buyer says that 'I'm not saying that you're at fault, alright? I'm not saying you are at fault.

But article 571 is no-fault liability.

Regardless of what you did or didn't do, this thing couldn't be conveyed, so you have to pay.' But of course, I think..

B paid money.

That's where no-fault liability comes into play.

Somehow, B can no longer enjoy the thing, right? B fully paid the price, right? So no matter what happens, just pay damage, that means give my money back.

Okay? Part of the compensation - the civil code only talks about damage.

It only talks about damage.

But that includes the money B paid to A, right? That is part of the damage A will be required to pay.

But if there is some more damage, then that can also be claimed.

But let's think about this case.

B obviously must have paid the full purchase price, otherwise A would not have given all those documents.

But B was holding onto those documents, delaying the registration.

And now B lost the thing.

Now B claims the money back, 'it was your fault', or..

B was not saying 'it was your fault', 'whether you are at fault or not, I'm entitled to have the money back', that's B's claim.

And court held that 'no, you cannot.

You cannot.

We are not denying that article 571 is strict liability, we are not saying that we require A's fault.

We are not requiring.

And although A shall be required to pay damage even if A was not at fault, this is a situation where the thing was deprived, B lost the possibility of having it registered under his name entirely due to his fault, and this is not a situation which is covered by 571.

Basically, A did not do anything to trigger article 571 situation.

It's..the court was not talking about A's fault or no fault, A..the court was not going into that point, the court focuses very narrowly on whether A did anything to trigger off 571 situation, A didn't do anything to trigger off this..

it was entirely B's fault that 571 situation came about.

And in that case, B may not seek damage.

It's not even adjusting the amount of damage, which was 71 다 218 case, but in this case, B cannot at all claim any damage, okay? Basically I think that the seller in this sale contract fully performed what seller should perform.

Everything.

Completely done everything.

And then it was 100% due to buyer's laziness that this situation apparently, an apparent situation of 571 was..

came into being, and in that situation, the court does not allow buyer to claim damage.

Okay, any question? Alright, see you on Monday then.