Law of Obligation Ⅱ

Seller's obligations(1)

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Which was this thing sold.

And the first question is what is defect.

We are talking about a sale of a specific good which is usually a second hand item if it's movable, right? or a sale of a real estate: house or building.

Let's say you bought a house like hundreds story building in Singapore and it turned out that this building is tilted about 3 degrees.

Now is it a defect? What do you think? Is it a… (student answering) It is defect.

How about you? Suppose there is no problem whatsoever in using this building for its purpose.

It is tilted about 3 degrees.

No one really notices.

Only the experts when they measure it very carefully.

They can discover "oh it's tilted" Pardon?(student speaking) Safety issues.

What if the safety experts says "well this wouldn't cause any problem." What do you think if the safety expert says "yes it's tilted but that can happen quite often.

Everybody lives in slightly tilted buildings especially if it's a very high building." You think it's not a defect.

If it causes some issues about safety or usability or inconvenience or economic

laws… so it is not exclusively an issue for the experts.

Ultimately it will have to be determined by judges whether it is a defect or not.

But the judges will take it to account what the experts say.

And the experts might say yes it could cause some health issue or safety issue.

Then of course it is a defect.

About the brand new products however you bought an ipad, for example, brand new ipad and you received the delivery.

It looked very nice.

You opened the box and you started to use it.

And then the screen begins to blink for no apparent reason.

Do you think that is defect? That is defect especially if it is a brand new product, right? Um Excuse me, you.

The example of brand new ipad, do you think this article, what article is it, 5..580 applies to that same of ipad? brand new ipad? Is it a sale of specific item? (student answering) Excuse me? For delivery.

When the item was selected for delivery, What close you can refer to?(student answering) And that is, that is provided at article 581, paragraph 1.

So by the virtue of paragraph 1 article 581, closes, article 580 becomes applicable to sale of non-specified items.

That does not mean that you know you buy and sell unspecified items.

You do specify what you are buying and sell.

And that is called sale by description, okay? Like an ipad whatever model make and 32 gigabyte hard disk drive.

So you describe what you are buying and you don’t specify which particular object.

Any object will do as long as that object complies with the description you agreed with the seller.

So that is sale by description.

It is not a sale of specific piece.

Even that once a specific piece is selected for delivery, then you, article 580 becomes applicable if there is a defect.

Okay.

Umm. So the idea, the fundamental idea is that things sold must have the quality, or performance, ordinarily expected, now it's important, given the nature of the sale and the intent of the party.

So you bought a second hand car and then it causes, it has problems starting in the morning.

Okay? The weather just suddenly became very cold and it ran quite alright for a month or so and then when the weather got a bit cold you had difficulty starting the car.

So you could not use that car in that morning.

You had to call the service and you had to spend a lot more money.

So do you think that's a defect?(student answering) So you can ask money back reductional price from the seller you can ring up the seller "I want my money back" or "you must give me some further discount" you can do that.

If it is a defect, yes you should be able to do that.

(student speaking) So? What kind of agreement? (student speaking) Oh you are saying that if the seller did not give any guarantee about this car having no problem starting, then the buyer cannot come back to seller and ask for reductional price.

(student speaking) With some problems.

people expect that this second hand car would probably have some problems here and there.

That's what you are saying.

(Student speaking) Yeah about the weather or for no obvious reason.

I think that's it.

I mean you get what you pay for.

You buy the car at a much cheaper price because it's second hand car so what do you expect? You expect to have some problems here and there.

So it's not a defect at all.

It's, you know, perfectly normal for a second hand car.

So you cannot argue that it is a defect.

If it's a brand new car, of course, you know if it starts to problems after about a few months, if it does not start at one go in the morning, then it is a defect.

Why? Why? Why it is a defect if it is a brand new car? And it is not a defect if it is a second hand car.

(student speaking) not perfect.

Let's be careful about our language.

Let's not use the word perfect quality.

What quality? The quality expected from the kind of contract.

Yeah? So the quality expected from a brand new car.

And if what you have received for short of that level.

Then it is a defect.

But the crucially important question is what the parties expect from this particular contract and it will vary depending on whether it's a sale of brand new item or whether it's a sale of second hand item.

And it's ultimately a question of what you are paying for.

And if you pay cheap price, you expect low, you have low expectation, of course.

And you should watch out, you should be careful so you don't fall into this trap.

So that you don’t make this mistake of asking your money back when you, in the first place, paid very cheap price.

So if you pay cheap price, well, you have to take all the risk.

So that’s what I meant, given the nature of the sale and the intent of the party.

The fact that you paid the cheap price, that tells a great deal about the intent of the parties.

What the parties are intended.

Okay? And also, prevalent technology and reasonably economy expectations will all be taken into account in assessing, in determining whether a particular malfunction is indeed a defect.

And, of course, as he pointed out, the expressed warranty or expressed representation of the seller would certainly be taken into account.

Even a second hand car, the seller might give a warranty, saying 6 months we promise that this car will have no problem.

Then if it has problems within 6months period, yes it’s defect.

It failed the expressed warranty.

And this expressed warranty may work the other way around in the sense that the seller may explicitly exclude any warranty.

Saying no warranty whatsoever.

You just buy it.

If you want it, you take it.

Otherwise, just don’t buy it.

No warranty.

And you buy it and come home and it looked beautiful and the following morning, it doesn’t start.

Still no remedy whatsoever.

You took the risk.

So it is possible to exclude warranty liability.

Explicitly exclude warranty liability.

Any problem? Excuse me, you.

Do you see any problem of allowing seller to exclude any liability whatsoever? (Student answering) okay I am a second hand car dealer, alright? I know that this car does not start.

And I am selling it.

And I just put a notice ‘no warranty, no return, no refund, take it or leave it’ I know that this car does not start.

So this car indeed did not start.

Do you think my warranty is valid? If you are the buyer, do you think you can ask for reduction of price or you can terminate the contract and return the car to me? (Student answering) Cannot do that? (student answering) Pardon? Yes? Right.

So you think that the seller can validly exclude liability from defect.

So do you agree? Have you.

Have a look at article 584.

It says seller, even if seller excluded warranty liability, the seller may not be exonerated in respect of known fact which seller withheld.

So how are you going to reconcile his remark with article 584 we just read.

I know that this car does not start (student) Should apply? So, the purchaser can come back to me and ask for refund.

What do you think? (student) Didn't tell the buyer.

Buyer has specifically ask me, "Does this car start well sir, in the morning?" and I responded "I can't tell you.

I can't tell you, it's up to you to decide, man.

You take it or leave it.

I can't tell you." (Student) So, exclusion of liability is valid.

In spite of article 584.

I knew that this car does not start, I didn't tell the buyer.

(student) One point here, the price.

Anything else you can think of? (Student) Explicitly picked out by whom? (Student) Seller in this example gave no representation, no warranty whatsoever.

Not only seller didn't give any warranty, seller explicitly exclude.

(student) But what about article 584? (student) What if seller said that, "I cannot give any warranty with regard to any aspect of this motor vehicle.

Its color, speed, nothing.

I cannot.." YES or NO Seller can or cannot? (student) So it is possible for the seller? In spite of article 584? OK.

She pointed out we need to look at the 'price'.

Anything else we need to look at? What about patent defect or latent defect? This distinction.

I think these two are all linked together, okay? But the fact that the car does not start, is it an obvious thing? Or is difficult to find out? That's also a very tricky point.

If it's easily spottable then of course we cannot talk about defect or warranty liability in the first place.

Because if the defect is obvious, then even if seller stupidly didn't realize it, but nevertheless this obvious defect must have been reflected in the price, okay? So this will not be an issue about warranty liability in the first place.

Let's say there is a, you know, fronts head lamp just one head lamp completely smashed.

It's for everybody to see, and buyer just bought it and then returned it saying 'this is smashed.' No, this is not a question of warran..defect.

But not starting? That might be a little bit more difficult to spot.

Or it's quite easy to spot.

I don't know.

But at least, during the daytime the car may start alright, but only every morning the car fails to start then maybe it's difficult to spot, I don't know.

But price is an important part.

And I think in this case, if the price is sufficiently low, then the expectation of the

parties is also at issue.

If this car was sold, in view of the price and the context of the sale, if this car is sold as a means of transport, no matter how poor it is, if it's nevertheless sold as a means of transport and if the seller knew that it cannot start, it does not start in the morning, it requires some additional help every morning for instance, then I think it is a defect.

And seller cannot exclude liability by saying "I cannot be held responsible.

It is at your risk." Even if seller put a sign that, you know, 'no warranty', as long as it can be considered as a latent defect and as long as the price and the context of the sale itself..if it's a shop where second hand motor vehicles are usually sold.

But those motor vehicles are not sold as a scrap metal but as means of transport, how can we tell? Well, based on the price, and based on the kind of display and everything must be taken into account.

And then we have to decide.

Of course if you run a second hand garage, you can sort of put a specific marker there.

And then there might be a section called 'scrap' and you can sell it there, right? No problem it is.

But as long as you sell it as a car, and if it does not start, then it is a defect.

And no matter whatever sign you put on, if you knew, if the seller knew and nevertheless put on that sign, it’s basically cheating.

You cannot put a sign and say 'I should be protected'.

Because basically knowing that this car does not start and nevertheless putting up that sign, that is just a way of cheating, isn't it? So I think article 584 should kick in as long as it was sold as means of transport.

If he knew he should have sold it as scrap.

Article 580 applies only to hidden defect, we have already gone through many times.

If the buyer had actual knowledge of the defect, then it must surely have been reflected in the price.

That's why warranty liability does not apply, the principle aim of warranty liability is to ensure that the bargain to place in a fair situation.

Fair bargain means where each party's bargaining skills could take its full course.

That's fair, okay? So if one party has great bargaining skill and the other party has poor bargaining skill, fairness requires that the party who has great bargaining skill gains quite considerably.

That's fair.

If the defect is patent enough, then a reasonable buyer should have known it.

So patent enough, so patent that the reasonable buyer should have known it, then no need to protect the careless negotiator.

The court or judicial system in general has no business to side with one party and protect that party.

That's the point.

Both parties are grown-ups and they should be left alone.

So that they can bargain on an equal footing.

The law's.. the contract law, Korean contract law's mission is just to provide level playing ground and then stay away from the parties.

And then on that level playing ground, one party who has a great skill should win, of course, that's fair, alright?

So if the court should not intervene to protect one party who has been careless in the negotiation - being careless means that this is patent obvious defect and nevertheless this buyer fails to notice it and bargain and pay a quite high, elevated price, well that's his loss.

And he must loss, and that's fair, okay? He must lose, and that's fair.

Seller has the burden of showing that buyer knew or should have known the defect.

What about this point, the final bullet point here.

Suppose the seller knew the defect and the buyer negligently overlooked, what if the seller kept quiet about the defect.

And secondly, what if the seller deliberately misled the buyer.

So, we are talking about a sale of a horse, okay? I'm selling a horse to you.

And I know that this horse has a kidney disease.

And I kept quiet.

This is race horse, okay? It's pretty expensive.

Let's say, hundred thousand US dollars, okay? And I knew that.

And I kept quiet.

And she eventually decide to buy it.

And we agreed the price to be one hundred thousand US dollars.

And I received the money.

So, have I done anything wrong? (student) And I responded.

You know, keeping quiet is one thing.

And answering in response to her question, "Is this horse healthy?"and answering, "Yes it is healthy." That's completely different, right? If I just kept quiet in response to...if I refused to answer, then I didn't lie, right? Now, seller knowing the defect and keeping quiet usually does not pose any problem, any issue about seller's fraud.

Article 110 I think, on the Korean contract law.

I think it's 110, is it? Yeah.

Article 110 provides a remedy for a party, who was cheated by another party or a third party, okay? Now, keeping quiet normally does not amount to cheating.

So in this scenario, where I kept quiet, refused to answer her question, then her only remedy would be under article 580.

She bought it, she can buy it, and then she can come back later if it turns out that this horse has kidney disease.

Okay? Because it's defect, I think.

It's defect.

But she cannot rely on article 110 to rescind the contract.

The problem is she realized soon after she took the delivery, she realized that this horse has a kidney disease.

And she was not quite sure what to do about it and then six months has passed, okay? And she can no longer rely on article 580, okay? Then she might try to rely on 110 to rescind the contract.

Her point is to not to lose out, right? She wants her money back and this horse is

useless now, okay? She wants her money back, and if she could rely on article 580, of course she could terminate the contract and get her money back, but she knew, she realized that this horse is useless and nevertheless she was not sure what to do, and then six months went by, and then she might try to argue that I cheated.

Then this might be an interesting point, right? So you must realize that seller has a fairly wide room for not being fully honest, but still not considered to be cheating.

Actually in this example seller was being very honest.

Seller refused to answer.

If I refused to answer, what kind of inferences she might deduce from my refusal? She might really, you know, suspect.

So I honestly let her pursue her suspicion.

If I said, “Yes, this horse is healthy” then I deliberately dissuaded her from inquiring more about this horse.

Then it’s cheating.

Okay? So if I answered “Yes”, knowing that this horse is ill, then she can rely on 110 even after six months, even after realizing the disease and six months left, and she didn't do anything, but still she can rely 110 to rescind the contract.

What if I argue, saying...you, I'm going to ask you, what if I'm the seller of this horse and I say “look, I didn’t prevent you from examining this horse and if you have examined the horse with a vet..vet, veterinary medicine, the animal horse doctor, right? If you had your own horse doctor and had that doctor examine this horse, you could have figured out that this horse had a kidney disease.

It's your fault.

I didn't, you know, warranty this horse is healthy.

I just sold this horse as it is.

So this is not a defect." What would you respond? What do you think? Do you think if you're buyer, do you think you can win? You can get some money back, or substantial part of your money back, or not? What do you think? If you're buyer, you can get your money back, substantial part of it? Why? Right, very good, very good.

Buyer is under no obligation, no obligation to take care, to examine the thing sold, okay? Although each party, whether buyer or seller, each party must look after its own interest, so in that sense seller has no duty to inform to the buyer.

But the buyer has no duty to investigate.

Neither party has any duty, okay? But then there is just this basic stance of contract law to protect the institution of sale and purchase.

So whatever market expects from the kind of deal, contract law tries to impose, using warranty liability...so, if this horse was sold as a race horse, okay? Even if buyer did not carefully examine, if buyer carefully examined, buyer could have discovered, but still, as long as it is not patent defect, buyer has a remedy.

If it's sold as a race horse, alright? Patent defect would mean if this horse has one leg already limping, alright? For anyone to see.

Well then that's patent defect.

But this kind of kidney disease, it's not easy to spot.

Of course, if you go through very thorough examination you could find out, but buyer should not be burdened with that obligation.

Buyer has no such obligation.

Seller should not have sold it as race horse in the first place.

We are not talking about seller's fraud, we are just talking about what seller should be doing, and in a normal market situation, okay? This is not a question of fraud, it's just what seller should be held liable under warranty liability.

These two cases we have already gone through, they are considered to be defect of..defect under article 580.

Physical defect, okay? Even if it is rights to build or rights to run the taxi as a taxi, okay? These two cases, they all arose in the context of whether..where is it, warranty liability..uh, article 578, warranty liability in the context of auction may be applicable to this particular sale.

And court held that these sales, these defects, physical defects, therefore purchaser, the successful bidder in the official auction has no remedy, okay?

And article..the case 98다18506 has another complication.

The buyer changed the plan.

The land was sold..when it was sold, it was warranted to be buildable for a dwelling house.

So individual dwelling house.

Buyer bought it, and then buyer applied to build apartment complex.

And the local government refused planning permission for building apartment.

And court held that that is not a defect of right, okay? Defect of title.

The remedy under article 580 is not available if the sale was concluded in an official auction, okay? That is paragraph 2 of article 580 that we have already gone through.

The principle remedy under article 580 is reduction of price.

Now, there are some competing views about the measure of damage here, and what exactly does it mean, the reduction of price? One possible candidate is the difference between the market value of the defective thing, assuming that the defect is known, and the contract price.

So let's think about various possible scenarios.

Okay, a notebook computer, okay? I'm terrible at drawing..

So a notebook computer.

Second hand notebook computer, okay? Its market value, I don’t know how you can but an expert in second notebook computer can tell you that well, its market value is 100 US dollars.

The seller and the buyer..buyer had very good negotiation skill.

So he managed to buy it at a very cheaper price.

Let’s say he bought it at 80 dollar.

Market value is 100 dollar, but seller managed to negotiate it at 80 dollar.

WiFi receptor.

You know WiFi, right? Wireless Internet..

WiFi receptor.

It turned out that it was not functioning property at the time of contract.

Let's say this is worth about 20 dollar.

So now, when this is known, the market value of this would be 80 dollar.

100 US dollar, that means, you know, properly functioning notebook computer, right? With WiFi and everything.

But now, when the defect is known, well expert would all say 'yeah it's worth only 80 dollars'.

Now, buyer.

Is buyer entitled to anything now? He thought that 'yeah I got a good deal, you know, I managed to put the price down and I bought this secondhand notebook computer at 80 dollar.' Came home, and then there's no WiFi.

And then now buyer goes back to seller, 'now, give me some money back.' First, do you think buyer can terminate the contract saying 'there's no WiFi, I won't able to..' Yes? You can, you think..such an essential part of modern day computing, that's what do you think? It's such an essential part? So material that without WiFi I won't have bought this computer.

You can terminate? Do you all agree? What? Pardon? You can repair, have it repaired? You can have it repaired, you can replace the WiFi chip? So as long as it can easily be repaired, you cannot terminate the contract? Or even if the WiFi does not work, you can purchase a WiFi card working on USB, so you can stick that thing in and you can have WiFi connectivity.

Basically, she might regret 'oh shit, I don't like this anymore.' So she wants to have her money back and completely undo the transaction, but I think he is right.

Once you made up your mind and once you signed the deal, no going back.

Yeah.

You cannot change your mind, you see.

You can only have your money..reduction of money, okay? So WiFi is very important, of course, I agree it's very important, but there are a lot of alternatives.

So in that sense, you cannot use this as an excuse to undo the transaction you are not happy about now.

The whole point of our contract law is that even if you regret, you must abide by what you promised.

Now here, now coming back to...

So, with the defect known, the market value is now only 80 dollars.

And if you say it, the reduction of price you can ask, must be worked out by the difference between the market value with the defect known and the contract price, then the buyer is entitled to nothing.

I don't think it's right.

So how are you going to… So the first candidate, we should not adopt.

So the first one difference between defective goods, defective goods' market value and contract price that we wouldn't adopt.

Another would be, if this notebook had no defect, what will be the buyer's economic position? Well buyer will be equipped with some product which is worth 100 dollars, right? So buyer is 100 dollar… buyer would have been 100 dollar worth better off with this thing, right? But actually buyer is equipped with something which is only 80 dollars.

So the ideal or the promised position, economic position and actual economic position.

This might allow us the conclusion that the buyer shall be entitled to 20 dollars, right? This might sound OK.

That would mean that this particular buyer will end up paying only 60 dollars for this notebook.

He paid 80 dollars, the market value was 100 dollar, but it turned out that there was

Wi-Fi not working.

So he will have further reduction and he will get this cheaper price.

This might produce a quite satisfactory result, this method of working out the damage.

But let's wait.

Another possibility is, if the defect is known, how much less the buyer would have paid.

OK? The buyer negotiated 80 USD because buyer had good bargaining skill.

But he arrived at this level, at this figure because he didn't know about this malfunctioning Wi-Fi.

If he had known about this, he would have driven the price even lower.

OK? So what, the third method is, you subtract from contract price, the worth of the defect.

This defect, buyer didn't know when buyer concluded the contract.

But now it is known.

So what is the worth of this defect? And you subtract that from this.

Now the idea is that contract price reflects the parties' bargaining skill, the disparity of bargaining skill.

That must be preserved, OK? That must be preserved.

So you try to maintain that equilibrium, whatever was reached as a result of the parties' bargaining skill.

You try to preserve it as much as possible.

And you only adjust it, reflecting what is now known defect.

This was not known when the parties agreed at this price, now it is known, you just subtract it so that this party still enjoys the benefit of bargain.

It was due to his skill that he negotiated a price, which is cheaper than the market price.

He must enjoy it, even when the defect is now known.

So in order to preserve it, you can do this.

These two may appear to lead to the same conclusion, right? But then, when you think about it, if you look at the third example question, which I only put up this morning, so if you printed out yesterday you wouldn't have that third question at the end of this lecture handout.

Suppose this Wi-Fi was defective when the parties were contracting, OK? No one expected this Wi-Fi to be defective.

Or at least, buyer did not expect this Wi-Fi to be defective.

And if it turns out that it was defective from, already at the time of contracting, then yes, it is a warranty issue.

OK.

What if, after the contract was concluded and delivery was scheduled in one week's time and seller stupidly spilt coffee on the keyboard? And a few keys, not everything, but a few keys, if all the keyboards were damaged, then wait… Anyway.

A quite a few keys were damaged, no longer working.

And to repair that, let's say 10 USD would be required.

Is this a warranty issue? Breach of warranty issue? What do you think? There was no problem with this keyboard at the time of contracting.

And one week later it must be delivered, right? One week after the contract was concluded.

So it's the seller who has to look after this thing until delivery, right? But the seller negligently spilt coffee on the keyboard of the computer which he sold already.

He was only holding on to it until it's being delivered.

So that loss, is it a question of breach of warranty issue? Of course it is specific good.

So sale of a specific item...

It is specific item, it is specific.

It is second-hand… this very notebook, you know, not any other sir, this particular piece, this one.

You sold me and then it had no problem with keyboard when we contracted and our price was negotiated and agreed upon on the basis of it having no problem with keyboard.

And it did have no problem with keyboard.

But afterwards you spilt coffee, negligently.

Is it a warranty issue? What do you think? Breach of contract.

Seller has the duty of care to look after the thing which he sold and not yet delivered, right? The thing which is in his custody.

He is holding on to it, and he has a duty of care.

At a very high level of duty of care, duty of good manager.

Duty of care, of a good manager.

And he failed there, so this is a breach of warranty issue, right? How are we going to work out the damage? I think we just apply this, right? If seller did not breach his contractual duty, what the buyer will be enjoying, he will be in possession of something which has no defect in keyboard, right? But which has defect of Wi-Fi, so if seller has not breached his contractual duty, the buyer will be possessed with something which is worth 80 dollars.

Now that seller did breach his contractual duty, and actually buyer is possessed with something, which is worth only 70 USD.

So we work out the difference and that's how damage in the case of breach of contract is worked out here.

So I think this is a proper measure of damage in the case of breach of contract.

And in a situation which does not involve any breach of contract, only the defect which existed already at the time of contract, I think the proper method of working

out the damage is this.

Not this one.

Alright. So basically the assumption is that the buyer would have paid less, so it's all… readjusting the contract price, OK? Buyer would have paid less with his bargaining skill, unchanged.

Right? If the defect was known to buyer.

So we just reduce the contract price corresponding to the worth of the defect.

So that's the principal remedy.

And a Roman jurist already explained this, in this way, Quanto minoris essem empturus, si id ita esse scissem.

So, si id ita esse scissem means, if it had been known, if the defect had been known to the buyer, now the first part of it is: how much less that thing would have been bought at? At how much less price, that thing would have been bought, if the defect had been known to the buyer? That much must be paid back.

So that's a Roman lawyers' solution and I think that's still quite satisfactory approach.

Termination is available only when the defect is serious, objectively serious enough to defeat the purpose of the contract.

Subjective change of mind or subjectively pissed off.

Because of his… That does not just defy nomination, OK? It is available for six months, from learning the defect.

So 2003ㄷ나20190, what was that case about? Mushroom germs, yeah? Ok, what happened? (student) Germination.

Okay.

And buyer… (student) Okay.

Buyer delayed bringing lawsuit for a very long time, ok? But still buyer succeeded in relying on Article 580 in this case.

Why?

[student answer] Defect.

Very good.

The result was very bad.

He bought the mushroom germs, shiitake mushroom germs, and hardly anything came out, it's basically they all, you know, died.

Nothing.

Very very poor germination rate.

He knew already when they didn't come out, he knew that it had, the result was very, very poor.

Let's say an ordinary shiitake mushroom germ gives about 60% germination rate, okay? Let's just assume.

And in this particular case he had only about 5%.

So he immediately knew it.

But then he was not sure whether this poor result was due to other conditions, such as the weather or that year it rained very heavily, or whatever..the particular, the quality of his land, the earth, right? There can be various reasons, but it only..

it took him quite a long time to realize that it was indeed due to the germs that he bought, not the other condition.

So when he realized that, he..still, within six months that he brought the lawsuit.

So six months is an important cut-off point.

Then the question is, if you miss the deadline, that cutting-off point of six months, let's say in this example of me selling the race horse to her.

And one year later, the horse showed very clear sign of kidney disease.

And she realized that this horse had kidney problems, okay? And still six months later, she didn't do anything.

She was trying to, trying to cure the disease and you know, showing to this horse doctor, to that horse doctor, she spent a lot of money and a lot of time.

So about eight months after realizing that this horse had kidney disease, can she come back to me and claim that I breached the contract? Claiming that if you had performed as agreed, if you had performed as agreed, I would have been in possession of a horse, that horse..sorry.

I would have been in possession of a horse which is worth 100,000 US dollar.

But you breached your contract and now it is worth, you know, 10,000 US dollar.

Just meat.

Horse meat price.

So you breached the contract.

We agreed, you and I, we agreed to buy and sell a race horse which is 100,000 dollar worth.

You breached that contract.

Now I want money.

Damage.

And there is no cut-off point, no limitation period except ten year limitation period.

I accept that I delayed, you know, more than six months, but you breached the contract.

Can you do that? What do you think? [student answer] Okay.

What, what, what do you think? Can the buyer resort to breach of contract remedy? You think so? How about you? Buyer can resort to breach of contract? If buyer missed the cut-off..six month cut-off period...? Mm hmm.

What about you? [student answer] So it is possible to exercise vigil? But what did the parties agree? Did the parties agree to buy and sell some abstract notion of race horse which is worth 100,000 US dollars? What exactly did parties agree? Yeah, I am selling her this very horse which is in the stable there.

I am not agreeing to provide her with a race, 'a' race horse which is worth 100,000.

If that was our contract, if our contract was about buying and selling an unidentified abstract horse, race horse, which is worth 100,000 dollars, then yes I breached the contract.

But this is not a sale by description.

What breach I committed? I mean, she examined the horse.

She herself examined the horse.

I let her examine the horse.

I couldn't discover the disease, she couldn't discover the disease at that time, and she was happy to take that horse with her, well, that's it.

What breach I have committed? I mean, if, if, have we agreed in a very abstract manner, you know, a proper horse with no disease...? No.

In that case I would not have sold that.

I don't think there's any breach.

So here's this problem.

I think a lot of people say that breach of contract remedy, breach of warranty remedy, they should be available concurrently.

I disagree, I disagree.

There is a situation where they do coexist, alright? There is shiitake mushroom germination defect case, there is another case, potato seed, okay? A farmer bought potato seed at..which was worth, let's say, 1.5 million Korean won, alright? Potato seed, potato seed themselves was already worth 1...about 400 sackful of potato seed.

The seed potato, okay? And then the farmer put in 2.5 million won worth of labour, alright? Fertilizer, and then the farmer also put in 3.0 million rent for the field, okay? So a lot of investment.

And then the result was very poor, for instance.

Result was horrible, let's say.

So the farmer could get only about 4 million profit.

That whole season, that whole year.

If the potato germ was normal, had normal quality expected of such a price range, okay? Then he would have gotten about 15 million benefit.

Having put in all these resources of his own.

The germ itself is worth only 1.5 million, okay? Now, it is clear that there is defect there.

What kind of remedy can you get? Of course you can get reduction of price, in this case termination just does not make sense, you cannot terminate, it is all rotten there in the..it all germinated and it disappeared.

You cannot terminate it, alright? So you can ask for reduction of price, that is breach of warranty issue.

But what about this loss of earning? That is not breach of warranty issue, I think.

But then in this case, even if the seller didn't damage the potato seed after the.. entering into the contract, okay? Seller and buyer they, both of them had a look at

this potato seed, all these bags there, and those particular potato seed, let's say.

But still if that happened, then yes, I think the purchaser can resort to some remedy to get that difference, I think.

Not only the price reduction.

Price reduction, how much can you get reduction if you only paid 1.5 million? Actually the loss you suffered is about, what, 11 million won loss, right? But you should get some price reduction as well as this remedy.

And this remedy should not be..the buyer should be allowed to seek this remedy which is..which is basically loss of earning, is it? And this is typical breach of contract remedy.

So in that sense, yes I do think that breach of warranty remedy and breach of contract remedy can coexist.

Yes, I do agree, but in this case the horse..if..what have we agreed? We agreed to sell this very horse, and..

I don't know.

It is difficult.

And also it is quite difficult to prove that the horse was already ill at the time of contracting.

How can you prove that it didn't catch disease after it was delivered? How can you prove the beginning point of the disease?

[student answer] Ah, that's..that's a point.

But if it's a long time after the delivery was done, let's say I delivered the horse, about six years later, they come back and 'look, this horse was already ill, you know, about six point..' [student answer] Yeah, it's a question of burden of proof.

You're right.

But I still haven't figured out what is the, the satisfactory answer.

For the moment, I'm thinking along this line: breach of warranty and breach of contract, they are different remedies, you cannot rely on these, both these remedies in order to get what you should have gotten using breach of warranty.

In this horse scenario, all that the buyer is trying to get is something he should have gotten with breach of warranty in the first place.

Nothing else.

He is just resorting to breach of contract because he failed the deadline in this case.

In that case, this remedy, this loss of earning, could not get with breach of warranty in the first place.

Even within one week or something, right? This remedy is not available because it's not reduction of price anyway.

So it's not a case of missing the deadline and trying to resort to some other thing, this, the only method, the only way to get at this remedy is to rely on breach of contract in the first place.

This is not a 'trying to cover your ass when you failed to meet the deadline', that's not that kind of case.

Whereas in this case, the buyer is not looking for any extended loss, buyer is looking exactly what he should have sought in the first place, relying on breach of warranty remedy.

So in that case I don't think you..buyer should be allowed to just ignore this six month cut-off period.

What do you think? Well, let's keep thinking and then we'll..we'll look at those cases about consequential loss, right?

On Wednesday.