

Law of Obligation II

Seller's obligations (2)

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Let's think about two cases.

They both involves in some way greenhouse, right? So the first one, 2002다35676, could you tell us what that case was about? (student) Which one? What case? 20190, the shiitake mushroom case, you want to talk about it? Yes, please, go ahead.

(student) Yes, okay.

Mm hmm.

Even if buyer delayed bringing the lawsuit for more than six months, counting from what? Counting from the date of contract? Or the date that the outcome, the germination rate was disastrous? There are many time points, here.

Do we have a..could you go and get that, thanks.

There are several time points we can think of.

So, the buyer delayed for more than six months counting from the date of contract,

obviously, and also, the date when he realized that these seeds just..the results are terrible, okay? Thank you.

So that's the date of contract.

Does the remedy under 580 must be exercised within six months from the date of contract? You.

Article 580, we are talking about article 580.

Does it have to be exercised within six months from the date of contract? It's a simple question which can be answered in a simple manner, yes or no.

Pardon? No, no.

Okay, then six months from..from when? When the defect was known to the buyer, right? When the buyer realized that what he bought has a defect.

So it must be knowledge, knowledge of buyer.

That's the starting point where six months begins to run.

In this back to you, in this shiitake mushroom case, buyer delayed more than six months counting from the moment when he realized 'oh, these mushrooms are disastrous.

They don't give any good decent results,' right? So he delayed more than six months.

How did buyer succeed in this case? There is another moment.

What is that moment? So bad harvest, very bad harvest in this case.

But then there..the court held that that is not the counting point, starting point.

What is the starting point? (student) Uh-huh.

Seed, not from other conditions, right? Or tearing, or weather, or his own skill, right? There may be many factors contributing to bad harvest, and buyer did not know which one really contributed to it, but when he realized that it's mainly because of the seed quality he had bad harvest, and that's the moment that actually, there is a defect of what he bought.

Then, it was within six months.

Okay, that's good.

But notice that in this case, what the buyer was claiming was under 580.

So I think it's about a reduction of price, okay? Now move on, let's move onto 2002다35676.

Air heater or air conditioner.

So could you tell us what that case was about? Some kind of agricultural cooperative was involved, and farmers were the claimant...

(student) Was sold by whom? Cooperative, okay.

(student) For damage.

Damage corresponding to what, the price of the burner? The greenhouse.

Let's say a burner costs 2 million Korean won.

The buyer claims that it's defective, it has a defect.

Hidden defect.

And the burner overheated and then as a result the entire greenhouse burnt down.

Maybe the loss is, let's say, 200 million.

Now the claimant is seeking 200 million damage from the seller.

Is this remedy under article 580? What do you think? Is this case about article 580? (student) Is there a dispute? Is there a dispute among scholars whether a case like this is under 580 or under article 393? I don't think there is any dispute among scholars about this point.

There is, this case is definitely not about article 580.

Because what is claimed is so-called 'extended damage', okay? And article 580 is not there to cover extended damage claim.

If the claimant was arguing 'look, this is defective and this is useless, I want my money back, I'm returning this, give me back 2 million.' So that is termination.

Or if the buyer says 'well this is horrible, this is very, you know, there is some defect, I want it to be repaired,' or 'I want some price reduction.' That's like, you know, whatever.

I want half price reduction, or give it, give me that burner at half price because it has

defect, whatever.

So, price reduction.

Anyway, up to 2 million.

What one can, what buyer can claim under article 580 as far as damage is concerned, it's maximum 2 million.

You cannot get more than what you paid under this article 580.

This case is actually about article 393.

It's a breach of contract claim.

Breach of contract claim.

It is not a seller's warranty liability.

In this case, buyer lost the lawsuit.

Why? You, have you..do you know why buyer lost in this claim? Do you? Does anyone? (student) No fault, yeah.

Purchaser is seeking damage alleging that seller breached contract.

So we can imagine that actually, what was agreed was a proper burner, air conditioner.

It's really a sale by description.

It's not about sale of specific, that particular burner.

No.

It was, you know, a proper burner.

Not any particular burner but a proper burner.

So it is really a sale by description issue.

And seller failed to comply with the terms of the agreement by delivering defective burner.

So it's not a breach of warranty case, it's a breach of contract case.

So buyer can seek damage but seller can avoid having to pay damage by proving that the seller was not negligent, and seller did not deliberately cause the loss.

So basically seller successfully demonstrated that he was not at fault.

He should not be held responsible for this amount.

If it was a price reduction or return of the good, refund, which is termination of the sale contract, then seller cannot avoid, seller cannot resist these claims even if he shows or he proves that he was not negligent.

Because seller's fault is not a requirement.

It's irrelevant.

But since it's a claim under 393, it's a breach of contract claim, seller successfully

resisted having to pay.

So buyer in this case lost, the claimant lost in this case.

Yes? (student) A cooperative.

Agricultural cooperative.

(student) Oh, this foreseeability.

You are talking about foreseeability issue.

Okay, that is required if claimant in this case were to succeed in their claim, they need to prove that the seller could foresee that this amount of loss will happen if the burner is defective.

If the burner overheats, okay? I don't know whether the buyer can succeed in proving that the seller could oversee this much of damage to result in.

But even if sellers, even if buyer successfully proves that seller foresaw, seller can still avoid by showing that he was not negligent so the question of fault is different from question of foreseeability and in this case whether buyer successfully proved, demonstrated that seller could foresee whether buyer succeeded on that ground or not? Seller succeeded in demonstrating that he was not at fault so whether he could foresee or not is different issue from whether he was negligent to it or not.

What is the any other question about this case? Let's move on to the next one.

You can always ask question about this case or the other case anyway.

So 96-39455 what is that case about? Could you try? You yeah.

(student) Right.

In the middle of the night yes.

They were all frozen and the farmers are seeking what? What do farmers seek here in this case? What are they asking?(student) frozen flowers.

So it's a very similar situation.

This time it's a heater or burner.

In both cases, the difference is that in the first case it overheated and everything burned down.

And the second case it stopped functioning so it's frozen.

So one case was very hot, the other case was very cold.

Okay? That's the difference.

And the rest is quite similar.

And in this case, I think still it is a breach of contract claim because what is being claimed is an extended damage, extended loss.

Could you tell us what's the difference between extended loss and direct loss? (student) the direct loss.

Your very expensive designer clothes which is worth one or two million won whereas the value of that particular pen is at best five thousand won.

And direct loss cannot be more than five thousand won.

At most it can be five thousand won.

If it's really useless, if it turns out that it has really no value then your loss would be five thousand won.

That's it.

That's the direct loss.

But if it spills and if it damaged your two million won designer clothes.

Abercrombie and Fitch or whatever, then it's extended loss.

And here it's similar story.

It is a extended loss.

But for some reason, court also talked about the concept of defect here.

What was at issue? In this case? In the second case? What product? What product was at issue? The quality of what product? Could you tell us? You, over there? In the second case? What part or what product was at issue? It's a coupling.

It's a coupling which connects.

There is motor and then there is a shaft which turns.

And the rest of the mechanism, the mechanical mechanism which just is the burner.

So that movement must be somehow conveyed to the rest of the mechanism.

So there is a silicon coupling.

You stick the shaft, motor shaft on one side and then the rest of the mechanism also has a shaft on this side so this coupling connects these two parts and if that cracks, motor will keep turning but the rest of it cannot function.

So what was at issue was this one.

The coupling was horrible.

It was poor quality.

So the claimant argued that this had a defect.

The coupling had a defect.

Who was the defendant in this case? Is it the seller who sold the burner? Or (student) the seller who sold the coupling.

Because the burner seller settled with the farmers.

Now the farmers are suing the coupling supplier.

So the question was really about narrowly focused on the coupling.

So... The point put forward by the buyer is that this coupling is clearly defective because it cracked basically.

Coupling should not crack.

So that's the buyer's argument.

What was the seller's defense?(student answering) if it's properly used, it would not have cracked.

What do you mean properly used? Within the acceptable temperature range.

It cracked because it got very brittle when the temperature is very low.

It's a silicon coupling.

It has some no operating temperature range.

But that night it was very cold then it got very brittle, very hard and then it cracked.

The seller as he pointed out, argued that look this coupling should be used in the normal temperature.

You should not have used it in this extreme condition.

So we have these two sides.

One argues that look this cracked and this is very bad quality coupling and on the other side well you should not have used it in that very terrible condition, weather condition.

So which one do you think is more convincing? (student) Louder please could you? What did you say? (student) Not the silicon not the silicon coupling manufacture.

Okay.

I think that's what the ultimate result is.

She is right.

But as far as this silicon coupling is concerned, the buyer might feel a bit helpless when silicon supplier says that you should use silicon within proper room temperature or something.

Because what's the purpose of burner? It's to heat up when it's very cold.

When it's very cold you need a burner to heat up the place.

And by definition, burner is to be used in a very cold (student).

Yes, that's another very interesting and good point.

So there is a silicon supplier and then there's burner seller, the seller of burner and there's ultimate purchaser there.

And what she points out is that there's no contract between silicon coupling supplier and burner purchaser.

But I think in this case, the purchasers became plaintiff and they became defendants because the burner seller is now bankrupt.

And they, the purchasers have claim only against burner seller but in order to insure that they can exercise claim, they the purchaser take the place of this burner seller because their argument is that you have a claim against them and you are not exercising it, we are going to exercise it in your position.

It's a what is known under Korean law, action oblique.

It is where a claimant exercises the debtors' right on behalf of the debt.

So there is a contract between them.

So this contract is at issue because these purchasers are in the shoes of the burner manufacturer.

So that's a good point.

That's why this silicon coupling was at issue.

But I think the court rightly held that these are ordinary grade silicon in other words, they are cheap silicon.

If you wanted a silicon which can still hold a coupling, which can still hold, which can function properly in extreme temperatures.

These company suppliers, coupling supplier had those proper well, more expensive

silicon couplings.

But you bought cheap one and what do you expect? You expect poor quality.

And that's it.

That's not defect.

Because it's cheap.

So the notion of defect must be assessed by taking into account a number of things and among them, price is very important.

If you buy cheap product, well it has poor quality.

So there is no defect.

And in any case I don't know I can't understand why court felt it necessary to talk about the concept of defect under article 580 because what they are claiming is extended damage

Because on the article 580, what you can get at maximum, is the price of the complete, which could be, you know less than a dollar or something.

In order to seek compensation for consequential loss by almost first, a reach breach of contract and prove breach causation and foresee ability.

Those are all buyer claimants burdened.

The burden lies with the claimant that a breach occurred, in other words the other party failed to comply with the agreed terms so you have to prove that.

And then you have to prove causation between the breach and your loss that casual connection And thirdly you have to prove that the seller could foresee that the buyer, me, i would sustain this much loss.

If he breach that way.

So these are all buyer's burden.

And seller can defend, means that seller can successfully avoid having to pay, if seller proves that he was not at fault.

(student) Product liability law has a quite narrow scope of application.

So it applies only when damage or loss occurred to human being, as a result of defect of the manufactured product.

So let's say, a car ok? and because of a defect, if injury occurred or people died, then private liability legislation applies.

And in this case also the product liability law legislation would apply if damaged was caused to other property, than what the product in question? So if the green house was burned down, yes product liability legislation maybe applicable in that case.

But the product itself, the damage to, that this product is defective for instance, that is not covered by product liability legislation.

Product liability legislation covers only two extended damage, damage to human beings, injuries or damage of property other than this product.

And, we've already talked about potato seed case 89다카15298.

It is a potato seed which turned out to be very defective.

I recently updated this case.

So if you printed out the hand out, you might not have it.

It is 89다카15298.

It's a similar situation as Shitake Mushroom case.

It's a very poor harvest, you know, and this case is important in the sense that the court gave guidance as to how to calculate the damage.

And this case was not about 580.

This is again about breach of contract.

So the farmer who had very poor harvest, claimed, let's say the price of a potato seed was 1 million won.

But the farmer put in labor and put in fertilizer and the farmer had to pay rent for the field.

So farmer invested quite a lot more than the seed itself.

And in the end, the expected income, if it was of normal quality, could have been let's say 20 million won.

But it was very poor harvest and he could only get about 10million won.

So, the lower court held that well there was 50% of defect.

So all these input, you should get half of what you invested.

And Supreme Court held that is wrong manner of calculating.

You should calculate how much ultimately this farmer would have enjoyed.

And then, how much this farmer actually has enjoyed because of this poor quality potato seed.

So you must work out that difference.

And then you must award 50%, if the defect is 50%. But these are all about article 593 issue not 580.

Just let's think about one question, about selling of a company.

(student) Yes, ok we will cover this when we talk about 'Sale by description'.

I accepted that question but we will cover that question when we study 'Sale by description'.

Now this is a case i was involved in a little bit.

So a company was sold.

This is a sale of a specific property ok? This particular company is sold, no other company.

Let's say just a imaginary company, in the real world, let's say, Pear Computer Company.

And a purchaser of this company, this company is being sold, and there are several.. it is extremely difficult to gauge assess the worth of a going concern.

And one method is known as 'Enterprise Value' EV means enterprise value.

It is a valuation method and it is also known as 'EBITDA', a multiple method.

So, EBITDA is earnings before, what is it? Interest, taxes and depreciation, amortization.

So earnings before interest, taxes, depreciation of its capital asset or properties amortization.

So you don't take these factors into account you just put this company is law earning power, it consider that it is some kind of work horse and how much it can earn.

These will come afterwards.

But let's have a look at how much this company can earn.

And then on the basis of that earning, amount, you multiply some magic number.

You don't really, it is really difficult to come up with this magic number.

Because of these EV, this earning, is only for one fiscal year but you are buying a company, you know, which will hopefully remain forever.

So you have to multiply by certain number.

It could be ten, six, fifteen.

And how to arrive at this multiple? You know, you go to this consulting firm and you figure out how much to multiply.

But anyway it is all up to you, the buyer.

And seller negotiate.

They all negotiate over everything right? The buyer relies on the seller's representation about the earnings.

The company has financial statements right? balance sheet and cash flow and everything.

So they all are at the basis on the calculate of EBITDA, earnings.

And then the buyers apply this multiple, which the buyer came up with.

So they, the company they both negotiate, they agreed upon the price of this company.

A huge amount anyway.

After the sale, the takeover transaction was concluded, and the buyer now took possession of the board of director.

Now the buyer is the owner of this new company.

They did a careful scrutiny of the previous financial statement.

And they realize that actually this financial statement was a little bit puffed off.

A little bit exaggerated.

So let's say about 20 million US dollar was exaggerated after all.

So EBITDA value itself was so inflated about this much.

It is a defect on the article 580 on the Korean law.

That's the issue in this arbitration.

What kinds of remedy can buyer have? In this particular case, the EBIDA a multiple the buyer applied was nine.

So basically it's the 200..200 million US dollar was the ibita, which was calculated on the basis of financial statements provided by the seller.

Afterwards, they carefully redone a re-examined the buyer the sale was all concluded buyer re-examine and they realize that actually it's 180 million US dollar.

So they applied nine, so that's the purchase price of this company.

But if the financial statements were accurately prepared.

It would have EBIDA 180 million and multiplied by nine, what is it? So..so..this much US dollar.

They would the buyer is claiming that they would have propose only this much.

So the difference would be 180 US dollar of purchase price, okay? They would have propose different purchase price.

Now, what is the how much can buyer claim in this case? And seller said, "okay, okay..we accept that we exaggerated the financial statement a little bit, but the difference is 20 million, so we'll pay you 20 million.

And buyer said, "That's absurd, that's ridiculous.

No, we want 180 million US dollar from you.” So which one is this? I think this can be a..defect but is it physical defect?

Um...I don't know, or is it a sale of agreed quantity? It would be difficult to say that it's a sale of agreed quantity.

It's just one company.

It's a way of calculated a manner of calculating the purchase price.

But what is the defect? I don't know whether it's a..but it's very similar to defect of things sold, right? A hidden defect, more of.

And if the ultimate goal of warranty liability under article 580 is to readjust the price.

Then, I think that amount must be compensated under article 580 because the idea is that from buyer's point of view.

If we had known that your financial statement had this much of defect or deficit between what you present, represented to us and what is the accurate actual figures.

If we had known about this difference, we would have negotiated a different price.

Isn't it exactly the same situation as a buying and selling a notebook the computer with a WiFi defect which was not apparent which was hidden defect, buyer is claiming that “Look! If I had known about this defect, I would have negotiated a different price, we negotiated and I was happy to pay 100 dollar for this notebook, if I had known about this defect, I would have negotiated 80 US dollar because this is worth 20 dollar.” The defect is worth of 20 dollar.

It's a defect which is equivalent to 20 dollar.

So I would have negotiated 80 less.

Now here, because of this multiple which is involved in arriving at the contract price.

The buyer can perfectly well claim that if I had known about this 20 million difference.

I would have negotiated 180 US dollar less so give us back, give us 180 US dollar.

I don't know.

The seller is saying, "No, we'll give you 20 million.

We didn't know that you're going to use nine.

We didn't care.

Why are you insisting your own figure on us we didn't agree that we're using nine?
There's no agreement you just unilaterally used nine.

Why should we seller be bound by some arbitrary figure you came up with? We never told you to use nine.

It's your decision to use nine why are we bound by that? So, that's the complication here.

Here, there's no multiple involved.

It's just you know the notebook computer.

And what buyer thinks is right price, what seller think is the right price.

And they negotiate and they arrived at a price.

And if a defect is there, then you work out what if this worth, and then you just subject that.

That is the price adjustment enough.

But I think it is even if there is this multiple involved if we consider this as a defect, the worth of defect, we need to work out the worth of defect anyway.

Just as in this case we need to work out the worth of this particular physical defect.

We need to work out what this is worth, and it would be quite reasonable to apply that multiple to work out this.

But of course the court can apply different multiple.

But it would be sensible for the court to use the multiple which was used by the purchaser.

Because purchaser was not being very irrational here, yeah? Purchaser and seller, they were negotiating very very tough and if multiple is too high.

Purchaser was a bit stupid, he bought it at a very very high price.

Anyway it's a lot of interesting topics are involved there.

Okay.

Let's move on to sale by description, okay? Sale by description.

It's a...when seller and purchaser agree that they are buying and selling an item whose quantities, quantities are described.

They are not buying and selling a specific idea, but they were selling some item which is identifiable only by a description of quantity and quality.

And...in this kind of sale, there must be implied condition.

Now the word condition is very important.

It's different from warranty.

So far we have thinking about warranty.

Which is additional undertaking by the..by either of the party to a sale contract you even buyer can give warranty to seller, right? Which is a bit unusual, but it's possible.

So there is an important concept to be distinguished.

Condition forms part of the terms of the contract.

So if you buy violate some contract condition, then you'll be breaching the contract.

But condition must be distinguished from warranty.

Breaching a warranty does not necessarily lead to breach of contract.

But this distinction is not recognized under Korean contract law.

On the Korean contract law whether it's breach of condition or breach of warranty,

they're all breach of contract.

But the remedy is..would be different even under Korean law.

Although they all breach of the contract, some you can only claim under article 580, some other kind of breach you can claim under 393.

But in a sale by description, there is implied condition that goods shall correspond with the description.

If the delivered goods, in order to deliver the goods must be selected and definitively designated.

So when final delivery is made, the thing delivered is a specific good.

If the delivered goods failed to correspond with the description, it will be a breach of the contract.

Now, since as she ask, article 581 provides that even for sale of..ah...sale by description article 580 which applied to sale of specific good shall also apply to sale by description when the thing is selected for delivery.

So we have a situation where article 580 becomes ultimately applicable to sale by description as well.

Now what is important is to distinguish to..to...to be able to tell whether this particular sale contract is definitely not a sale by description.

I'll give you an example.

I'll sell a raised horse, which is called "Victory", this race horse is called "Victory" and

she buys that horse from me.

Is it sale by description? Definitely not, right? This very horse were selling or I sell my house in Bukchon Hanok Maeul.

This house..my house..

Is this sale by description? Definitely not.

This visa very clearly not sale by description, okay? That is fine.

I will give you another example.

Shiitake mushroom germs.

We might not even have a look at what we are buying and selling.

Just 500kg of shiitake mushroom germs.

It's a sale by description, right? But, when it's time for me, seller, to deliver I'll definitely choose some and deliver.

Then Article 580 becomes applicable.

And if it turns out that this mushroom germ is sub-standard, if this has defect, then purchaser actually has two remedies.

Breach of contract, because it is sale by description.

And breach of warranty, because it is, the Article 580 is applicable.

At the time of, for delivery, I inevitably have to choose something, some specific mushroom germs.

Although we contracted at abstract manner, this 500kg, but I cannot deliver abstract manner, right? I have to choose and select a specific 500kg of germs.

So the advantage of relying on, or, not only advantage, but price reduction or termination, you don't need to prove the seller's fault or whatever, seller's fault is

completely irrelevant.

That's the advantage of Article 580.

But if you want to get extended loss, then you have to overcome the seller's defense of no fault they are all at issue here.

What about potato seeds, in a 10kg of potato, seed potato? Let's say, it's in the shop and we both look at that, potato seed.

Yes, I want that seed.

Or, I walk to shop where they sell flower seeds, alright? And it is neatly packed in this thing, and it was on display and I am buying that particular packet.

Is it sale by description or sale of specific good? I walked into a shop and it was on display, that particular packet, items? What do you think? Is this... (student)
Do you think its sale of specific description... excuse me, look at me.

So do you think it's a sale of specific good? Because I walked into a shop and I picked that particular thing? What do you think? Is it sale by description or sale of specific good? (student) Yeah! You know, it's on the shelf, it's on the shelf of the shop and I picked that particular thing.

The seller didn't object me selecting the thing, of course.

Is it sale of specific good, do you think? I'm the only one who thinks its sale by description.

Do you think, do you think purchaser, in the mind of purchaser, 'I'm ready to accept whatever fault it has, as it is, that particular packet I'm buying.'

I don't think so.

It just happens to be on display.

I expect that to have same quality as any other individual packet of the same brand, same, you know, packaging.

For me, I am really expecting to have the quality.

I'm not interested in that particular packet, right? It's completely different from me selling a race horse and she's not interested in any other horse, but this particular

horse.

But when I'm... I walk into a shop and I just pick, I don't care which of the... I'm not; let's say that particular seed is in an envelope, right? And there are about 10 envelopes on that particular shelf.

I don't care which one.

All I care is what brand, and what seed and I expect it to have that abstract quality and quantity.

So even if I see it, it's not sale of specific property, it is sale by description.

Isn't it? So that's why I explained this in... If the buyer relies solely or principally on the seller's description, sale of specific goods may also be regarded as sale by description.

There is a possibility.

An example would be, first, if a specific thing is sold as nearly new through correspondence or through internet.

In that case, buyer has no opportunity to examine whatsoever.

Buyer has to rely entirely on seller's description of this specific item.

It's different from me selling a house.

In that case, buyer can come and have a look, right? Buyer knows what he's buying.

Can you spy and sell a house by preventing prospective buyer from having a look at the place, I'm selling my house, don't come in and look at my house.

That will not happen.

Buyer will have an opportunity to look and see examine... but this is completely different where buyer has to rely entirely on sale by description.

And in that case, even if it's a specific good, if the ultimate thing does not correspond with what the seller described, then it is breach of contract.

So we cannot treat this kind of sale of specific good strictly under Article 580.

We must allow the possibility of relying on breach of contract claim.

Ok.

(student) Yeah you cannot ask for replacement.

(student) Yeah it's not sale by description but what I'm trying to say is that the breach of contract claim should be permitted.

In the case of horse sale, a race, a particular horse sale, if I really delivered it, properly looked after it; I don't think there can be any breach of contract claim.

If the horse turned out to have a hidden disease, I didn't know about it, ok? But then it's entirely under Article 580 I didn't breach any contract but still I shall be held responsible under Article 580.

So that's a sale of specific good.

But, in the case of buyer having to rely entirely on seller, of course buyer can rely on Article 580 because it's warranty remedy.

But also buyer can rely on breach of contract, claim.
Which means buyer can get remedy even after 6 months.

Although buyer cannot ask for replacement, because it's unique thing, but buyer's remedy can extend more than 6 month.

In the horse sale scenario, I think buyer has no remedy after 6 month.

You can't seek, you cannot, obviously you cannot ask for replacement but you can ask for damages even after 6 month if buyer relied entirely on seller's description.

And, another example is, a thing displayed in the shop so buyer could actually examine, it's different from buying on the internet or relying entirely on correspondence.

So the buyer can actually examine it, but seller said it's authentic, whatever, Charles I property or it's a jean which was worn by 서태지 for example.

And if it turned out that it's not such thing, than even if it's sale of specific good buyer can have remedy even after 6 month.

Of course 6 month of realizing that it was actually not worn by 서태지 of course, buyer can immediately bring lawsuit under Article 580.

Fine. No problem.

But having known that it's not what it was represented to be, buyer should be able to bring breach of contract claim.

That means, after 6 months.

And also sale of seeds, like all those examples, they are basically sale by description, ok? Even if... let's say oh, the remaining potato seeds are in the shop or a heap of potato seeds are there and, farmer walked into the shop.

Yeah, I'll buy, you know, 200kg of potato seeds so could you just weigh them and... The idea is that, yeah, I expect the quality of a potato seed from them even if I see, even if no other potato seed is being contemplated.

Buyer is not thinking that I'll accept whatever defect it is.

The buyer expects... think about the price difference.

If the seller says, 'Look. You just buy this and don't come back for whatever, you know, quality defect.' Then it's a very different price, ok? But if no such express waiver of warranty liability is made by seller, the buyer would just expect the kind of quality you would expect from potato seed.

So even if it is a specific pieces or specific seeds are being bought and sold, there may be quite often what the buyer thinks and what even the seller thinks, is that they are trading, buying and selling by description.

It just happens that selection of a particular item for delivery is conveniently done there.

At the time the contract was made, the selection was almost simultaneously done.

That's all. Not much difference, right? Ok.

Sale by description when the thing ultimately delivered, fails to meet the described description, then breach of contract remedy is available.

And buyer can demand replacement also because replacement is possible.

What if buyer just asked for damage and seller insists on replacing it? Buyer does not want it, in fact.

But seller insist, 'you bought it, and I have this proper thing, I will replace it.' Is it

possible? What do you think about it? Maybe the buyer regrets, you know, and buyer wants money back and seller insists, 'No, no, no, we have replacement jean, you bought jean.' Uniqlo shop, alright? So you bought jean and it has defect, 'I want my money back.' 'No, no, no' Is it possible? We'll think about it, next class.