Law of Obligation Ⅱ

Hire Purchase

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How about you? Have you ever been a party to hire purchase? (student) Is that an iPhone that you have? (student) What kind of contract are you on? Is it with SK or KT? (student) KT.

Now, who is the owner of that iPhone? In your view.

Do you think it is yours? Who has the title to that thing? In your view, who owns it? (student) Well, this is, I mean if you don't know, then who knows this kind of question? Isn't it a legal question? How about you? What kind of telephone do you have? (student) Pardon? Blackberry, ok, that must be with SK? How long have you been having it? (student) For one year, right.

And how long is your contract? Is it two year contract? or..

(student) No contract? So, you paid up? (student) Five month, you paid up in five month.

The price of the machine the phone itself you paid up right? So, that machine, I think it is yours right? (student) How about you? (student) Yes, You are still paying it.

And I think most probably that's phone belongs to KT I think.

You are not the owner, you might have thought that you are the owner.

But if you fail to pay up the installment, KT can what, what can KT do then? (student) By how? By doing what? I mean, you are entitled to hang on to it.

You are entitled to possess it and use it.

On the basis of what, on the basis of your contract.

So, KT will terminate the contract then, you lose the legal basis on which you can claim that, 'I am entitled to possess it and use it' right? So you lose that possession.

And then the remaining question is, who belongs, who owns that phone.

Well, KT still owns it, the ownership has never passed to you, ok? So, it is KT's phone, until you pay up the purchase price.

Where as in her case, she paid up, and the moment when the final installment is as sent to SK.

The ownership vests in her, so if she fails to pay the phone charges for example, monthly telephone and text that kind of charges.

If she fails to pay, then
SK can terminate the contract.

But the machine the Blackberry phone, that device still belongs to her, ok? So, that is the overall picture of hire purchase.

What if while you are using this phone.

And while you are still paying the price.

You dropped it and completely broke the thing.

In that case, will you have to pay up the rest of the purchase price? (student) Why? (student) Not tort you.

On what ground can you terminate the contract? You have no ground to terminate the contract.

You were /5: 04 person/ jumped in, keeping the thing.

So, your contractual obligation to pay the price, purchase price, remains intact.

So, you can not avoid that contractual obligation to pay, even though the phone is completely broken down.

What if it was not your fault?

What if some earthquake happened for example.

Or what if some completely unavoidable circumstances happened? What if lightning struck and it was completely destroyed.

(student) The question is, will you still have to paid up for that phone.

What do you think? (student) You were using the phone.

You haven't yet completely pay the price.

But, earthquake happened for instance.

Or lightning struck the phone.

It was not your fault it was not SK's fault.

Nobody's fault.

But the thing was completely destroyed.(student) Yes.

Who bears the risk? (student) Pardon? Obligee.

(student) What do you mean, basically do you still have to pay the remainder of the price, the phone price? The phone is gone now, the phone is completely destroyed.

But do you still have to pay the purchase price? (student) No, you think no.

How about you? Ah you already said that the no umm..

Well, suppose it is not hirer purchase, suppose you are buying a house.

And you are going to pay up the well, you have not yet been enjoying the possession of the thing, right? You are buying an apartment.

And the seller is still ho, possessing it.

And you paid like, you know the first installment.

And the balance which you haven't paid yet, is about let's say about half of the purchase price, right? But you have not had the possession of the apartment.

And then fire broke out.

It was nobody's fault let's say.

Neither the seller nor the buyer, was at fault, ok? And the thing sold, it was totally destroyed.

So in that case do you still have to pay the remainder of the purchase price?
What do you think? The house is gone, destroyed, and do I still have to pay the remaining purchase price?

What do you think? No, you don't have to pay, under Korean law, ok? If the contract becomes impossible to perform, due to no fault of the parties, right? And if it was a synallagmatic contract which means where both parties have obligation arising out of the same contract.

If one obligation becomes impossible to be performed,
then the other one also is discharged, extinguished automatically, right? So if the house is destroyed completely, you don't have the obligation to pay the purchase price.

That is the passing of risk under korean law.

But suppose you, the house was delivered to you for instance.

Although the ownership still lies there with the seller.
You have been using it and you are still paying it, right? Paying for the price.

And then fire broke out.

It is not your fault.

It is nobody's fault.

But the thing was completely destroyed.

Now do you still have to pay for the price? (student) No, the purchase price.

you were you bought the house.

But you had agreement with the seller, and the seller agreed to deliver the house which means allow you to live in the house.

Even before you paid up the purchase price, ok? Now, while you are still paying for the house, let's say an earthquake happened.

And the house was completely destroyed.

Now do you still have to pay the price? The remaining price of the house.

Because it became impossible for the seller to perform the sale contract, right? Is it? Is it impossible? Or it is clearly impossible for the seller to convey the title to the purchaser, right? So, in that sens it is some it is an obligation which became impossible to perform.

Then can you argue that well my obligation should also be discharged? What do you think? (student) But what kind of a..it is gone.

It is destroyed by earthquake and there was no nothing left.

And let's say there is no insurance payment or nothing, right? It is really the question of risk.

Normally it is safe to conclude that risk posses with possession of the thing sold.

So, it is not really title which is at issue.

In the case of buying an apartment.

If the possession is still with the seller.

And while the seller was possessing it the thing was completely destroyed.

Then you can argue that I do not have to pay.
But if the possession passes to the buyer, and the thing is destroyed.

Even if the title had remained with the seller, you must conclude that possession are the risk is passed to a buyer.

Together with the possession.

Because the party who has the possession is in the better possession to take precautions to protect the..the object, right? And of course, we're not talking about the fault.

We're not talking about deliberate destruction or negligence destruction, we're talking about accidental destruction which is due to no fault of any party, but still it makes better sense to..to have the party who is best positioned to take precautions

effectively better risk.

That will enhance overall efficiency, right? So the party who possesses it must bear the risk in the..that means if the purchaser has acquired possession of the thing, regardless of whether the title has passsed the risk passes.

That means even if the house is gone, you have to pay the remainer of the purchaser price.

That means the purchaser now bears the risk of destruction bold out.

Likewise, the hire purchaser, the title remains with the seller, okay? But, while the purchaser is still paying up the purchaser price if the thing sold is destroyed, through no fault of any party.

Then, you'll still paying up the remain because of your possessing.

It's not your fault.

But generally speaking, you're in the better position to avoid..ah..the risk.

So you must bear the risk.

That's overall picture of hire purchaser.

Okay.

Ah.. let's just go through the handout.

Um.. seller remains the owner the purchaser becomes the hirer.

Okay.

So there is sale contract together with a...hire..contract of hire.

So seller lends the thing sold to the buyer.

So buyer only acquire possession.

What do you think? But, when the sale price is fully paid, the title automatically passes to the buyer.

This arrangement is inapplicable to immovables motor vehicles or heavy plant..

heavy plant..some kind of bulldozer does all this mechanic shovels of this.

Um..the reason is that title belongs to the registered owner regardless of the parties' agreement.

Um..the..the whole idea about hire purchase is that the ownership, the title is retained by the seller.

Even if the thing delivered to the purchaser, okay? That's the whole idea.

Whereas with realistic the ownership does not pass on the basis of delivery, okay?

Ah..regard to real estate or motor vehicles or heavy plant.

Ownership passes entirely on the basis of the registration.

So there is no room for talking about a..hire purchase.

Two aspects have important hire purchase, one is a title is retained..title retained with the seller, okay? And second point is that title passes automatically to the purchaser upon full payment.

So these two are essential feature of the hire purchaser, and the real estate or motor vehicles.

You have a no..no..way of making this happen automatically party, I think.

You have to change the registration without changing the registration.

There is no way that this will happen.

The automatic passing the title can never happen with motor vehicle sold heavy plant all inmovables.

That's why you cannot talk about hire the purchase regarding these objects.

Um..so this hire purchase is mostly used with movable such as phones, car.

Yeah.

Phones.

But then under Korean law, this was a very um..restricted use or commercial significance.

Because, third parties can acquire the thing if third party is good..good faith of possesor, so let's say "A" sold a..the good example would be.. "steel beams" and "steal bars" which can be used in construction work, okay? Steel re-enforced concrete in the..you know what I'm talking about.

So a huge several tones of stealed bars are sold to "B" at a price of.

Let's say..you know one million..one million dollars huge quality of steel bars are sold to "B".

Ah..let's say "A" retained the title, so this is hire purchase until "B" pays up construction world.

It would rarely happens that you pay in cash up front a lot of things depends so you buy..but you pay little by little.

So, "A" retains the title until the full price is completely paid up.

So, "B" holds it and suppose "B" sold to "C", you see? Without telling that ownership is retained to "A".

And if "C" was in good faith, then "A" loses the title.

The whole point about hire purchase of hire purchase is that "A" wanted to have what? What's the purpose of purchase? Yeah.

"A" wanted to have security over "B"'s obligation to pay purchase price, right? He is releasing the thing sold very valuable thing, right? But he wants to have some means of making sure that..he can get the money from "B".

And by having the ownership retain with him.

"A" can exercise and recover the thing.

And that's all a very effective means of putting pressure of "B", right? That's all point about hire purchase.

Thereby, "A" can ensure "B" pays the purchase price.

But, if "B" sells it all, and "C" is..let's say..in good faith, then "A" loses the whole thing.

And “A” only has now unsecured claim against “B” which is basically worthless, right? So because of this a...good faith a..article 249.

That’s the..article 249..(Student) It’s a..steel..steel beams..and steel bars.

So movables.

Yeah..movables.

So good faith possessor a..purchaser acquires a..good title, and that’s article 249, and that basically..largely killed the economic effectiveness of hire purchase on the Korean law.

Um.. and the motor vehicles are very often sold a...and the purchase price is paid in installment, but in that case, ah..we don’t need to talk about hire purchaser either because the title passes only with registration, right? So..

I added the case this morning 2009다15602.

It is not in the handout, but 2009다 15602..22009다 15602 case is an..interesting because this case involved a sale of steel bars with title retained.

Ah..however, this transaction is very different.

It was not sale, okay? “B” was basically a builder.

He was a builder.

And “C” is just the household and “C” commissioned building to which will be built by “B”.

So B built a building which belongs to C with that steel beams.

Steel reinforced concrete.

So the thing sold became completely a part of this building.

So accession took place, ok? Which means the steel beam became one with the building.

It lost its own identity.

It disappeared, basically as a thing.

It's no longer an independent thing right? And the building belongs to C, it's C's building.

There is no doubt about it.
And… there were… first question is A brings a claim against C saying: A wanted to exercise his ownership but it is now impossible because the thing disappeared, right? So instead A sought disgorgement of unjust enrichment from C.

A's argument is that you, C benefited from my… what was my object.

Yeah.

And therefore you must pay back.

So unjust enrichment claim was brought.
Yes there is a Civil Code clause which says, 'when two objects became one, the owner, the previous owner of this acceded object is entitled to compensation from the owner of the resulting thing, right? But the court held that that principle will not apply if the parties are connected with contractual relationship because there is sale contract between A and B.

So your dispute must first of all be resolved with sale.
So you have claim on the basis of sale contract against B.

You can claim B to pay the contract price.

So don't talk about unjust enrichment.

And here, there is building contract, ok? Building contract.

So don't talk about this unjust enrichment claim.

So this failed.

The court also held that C acquires the ownership of the bar, not through, not only through accession but also C was in good faith.
And Article 249 should be applied 'mutatis mutandis' but this aspect of Supreme Court's argument is a little bit doubtful in my opinion because the contract between B and C was not about passing of the title.

It was just B will build a building.

They were not talking about any specific steel bar, right? So I don't know whether 249 should have been involved or not.

But anyways that's a case you need to look up.

Seller can repossess seller's right in hire purchase.

Seller can repossess if purchaser fails to pay the purchase price, that's ok.

If purchaser goes bankrupt, seller can exercise every right of the owner of that thing.

So let's say not in this case, ok? But just a hire purchase between A and B.

And B goes bankrupt and then all B's creditors; they will all… all get at B's assets, right? And A can claim that these should be excluded from B's asset which will be subject to B's creditors' attack.
Because it's not B's property.

Basic… simple as that.

So that applies both in the case of bankruptcy or attachment also.

If one creditor of B applies for court order to preserve B's assets… so if the court makes an attachment order with regard to B's properties then A can successfully object to the attachment order regarding the things which was sold with title retained with the seller A.

So if the purchaser is subject to official auction, the seller may file a claim to separate the thing from the purchaser's estate.

So it's all the same idea.

Purchaser's right upon full payment of purchase price, the purchaser acquires the title while the price has not been fully paid the thing may be sold to a sub-purchaser with the knowledge of the hire purchase.

The sub-purchaser becomes the owner upon full payment of the price.

This is something like…B can sell it off to another person while he has not fully paid up.

Now normally between A and B they will agree that B cannot sell it off to somebody else.

That's mostly typically the case with phones, something like that.

So if B does that, that will… that will be a breach of this contract, ok? That will be a breach of this contract.

But if C did not know about this restriction, ok? Then this contract is valid.

C only knew that this is hire purchase and C only knows that now about 50% of the price remains to be paid, ok?
But C did not know that A prohibited B from selling it off to somebody else… if C did not know about it, then C can validly claim ownership by paying the remainder, 50% to A.

And when C does that, A can no longer claim ownership.

Yeah.

If A managed to make it known to C that B cannot sell it off, then this contract will not be valid.

But then of course, another possibility is that they, between A and B, they are happy that B can sell it off to somebody else.

Fine, yeah?
In that case, yeah the sub-purchaser will only need to pay the remainder of the purchase price to acquire ownership.

Then what about this: whether B is fully discharged from the obligation to pay the hire purchase price to A.

No. B can sell it off to C but still it's B's responsibility to pay the remainder of the thing sold.

In reality C will pay direct to A, ok? Because C has an interest to make sure that A does not exercise the repossession.
Why? Because C will have paid some money to B already to buy it, right? And then C has only a little bit left to pay to A.

And if C does not do it, then he will lose the whole thing because A will exercise his right.

So normally C will make sure that the money is paid in time so B does not have to care, right? But from the point of A, A doesn't care to whom this thing was sold.

A only needs to attack B.

Doesn't care.

As long as money keeps coming in A has no reason to attack anybody.

But if the money somehow stops coming in, then A does not have to look after C, A can only attack B and claim ownership of the thing wherever it may be, right?
So C will lose the thing because B fails to pay it.

So the obligation to pay the remainder of the purchase price still remains with B even if B sells if off to C, ok.

That's the subsale.

C will… in reality B has no incentive to pay anything, ok? And it's C's business and if C fails to pay up the remainder, C loses the thing and also C loses whatever he, C paid to B to get this thing, right?
You might get the picture.

Alright.

Any questions about hire purchase? Yeah go on.

(student) Possession is important.

(student) No I think she possesses it.

That handset, who possesses it? I think SK or KT in her case.

KT delivers the handset to her.

So this is KT, between KT and the student, the contract was entered into at this point.

And then at that moment, possession passes because she gets the thing right? Ownership does not pass.

Ownership passes when full payment of price is made.

The possession is now with purchaser at that point onwards.

And accidental destruction happens here, let's say.

I think since the possession is already with the purchaser.

Purchaser bears the risk.

That means purchaser will have to pay the remainder of the purchase price.

(student) The risk passes with possession.

Not, not with title.

Because title, when the handset is destroyed, the title was still with KT.

If risk passes with title, then since title has not passed to the student, the student does not have to bear the risk.

That is a wrong conclusion in my view.

(student) Yeah.

No. No, the court rejected this argument.

(student) Yeah that's it.

That's what I tried to explain when the parties are bound together with a contract then the dispute must, first of all, be resolved on the basis of that contract rather than relying on unjust enrichment claim.

Unjust enrichment claim, in its pure form should be applicable only between one party who made a payment or who did some action or who gave something to the other party.

For instance, typical example is that A was operating under a mistaken belief.

That he has to give these steel plates, or steel bars to B and A delivered them and realized that actually I had no obligation to do that.

So it was a payment or a delivery or performance which was made in error, then return it.

So that’s unjust enrichment.

You enriched at my expenses and I gave it to you so you return it to me.

That’s the most typical form of unjust enrichment whereas if B sold it off to C, it’s not possible for A to claim unjust enrichment against C because A didn’t give anything to C direct, right? And C there is nothing unjust about, about the fact that he is retaining it because he didn’t do anything wrong.

He entered into a good contract.

And he paid his good money and as a result, he is holding it.

So it’s not an unjust enrichment issue.

Of course, if A has the ownership, if A has the ownership, A can recover the thing on the basis of his ownership.

It’s not unjust enrichment issue.

It is just reclaiming what is yours, and in that case, A’s claim which was based on that must fail.

But A’s claim which is based on ownership, should succeed if it is still A, if A still has the ownership.

Should succeed.

Even if the thing has lost its identity.

Even if the thing is no longer there.

But the claim of ownership can take the form of, take two forms.

So someone stole my watch.

You stole my watch, okay? And then the watch is still mine.

I can claim, I can demand her to return my watch but if this watch is destroyed while it was under her possession.

I can demand her to pay the value of the watch.

So ownership, a claim based on ownership can take two forms.

One is return the thing itself and the other is return the value of the thing if the thing cannot to be returned.

So these two are both based on ownership.

So the court's analysis was that unjust enrichment must fail.

Ownership based claim should succeed whether it is destroyed, or whether it is now one with the building.

It does not matter.

You can either claim the thing itself must be returned or the value of the thing must be returned.

So it should succeed if, this is the crucial, the crucial point if A has not lost the ownership when the thing became one with the building.

And there the court held that unfortunately A lost the ownership actually because C was similar to a good faith possessor I mean good faith purchaser.

There I find most, I find the court's analysis most difficult to accept.

I mean first two very good.

No problem with this and everybody would agree but here is C really similar to good faith purchaser of the steel bar? Did C buy the steel bars? I don't think so.

C only entered into contract with B whereby B would build the building.

C wouldn't care which steel bar B might be using it's just not the parties' concern.

But anyway supreme court treated C as if he was in the same position as or a similar position as a purchaser of the steel bar in good faith.

Therefore A lost the title simultaneously the moment when the steel bars merged to the concrete and lost its independent existence.

At that same moment, A also lost the title because C was in good faith.

Therefore A can no longer bring a claim on the basis of him, meaning A being still the

owner.

Neither of this thing would succeed because A is no longer the owner.

That’s the analysis.

Any other questions about hire purchase? Let’s move on to loan.

Loan is money or consumables.

Money or consumables.

Rice, for example.

I borrow two kilos of rice or butter, Gochoojang, something like that.

Consumables.

The reason I borrow Gochoojang is not just to keep it but to eat it, consume it and then later I will return not the same thing but the same quantity and quality, the thing with same quantity and quality.

And the ownership when the lender hands over the thing to me, the ownership vests with the borrower.

So the borrower consumes what is his.

What became his.

The money also.

The ownership with the money vests with the borrower and the borrower is using and consuming his own thing.

But the structure is this.

Whether it’s money, whether it’s money or consumables, a bag full of rice, when A delivers these to B, it becomes B’s property, B acquires title.

And instead B has an obligation to give equivalent thing plus interest, if interest is agreed between the parties.
Upon delivery the object of loan becomes the property of the borrower who has an obligation to return the same kind quantity, quality, together with interest if interest is

agreed.

So this basic structure of loan agreement.

Now the first question to deal with is: does A, the lender, does A have an obligation to lend if they agree that 'okay, I will lend one million dollar to you on 1st of December 2010,' for instance.

If they agree that 'okay, I will lend you money.' But that day came and A says 'I won't.' Now, do you think B can sue A and enforce A to lend him money? Because it's contract.

What do you think? (student) Aha.

She, her answer is on the basis of rather dogmatic idea that a contract must be kept.

And your answer tends to refer to the kind of damage, loss, or difficulty caused by A's breaking promise, right? But what about, hmm..

Korean law, under Korean law the position you must distinguish between whether the agreement of loan involved agreement of interest.

So, if the agreement between A and B was that A will lend one million won interest-free, then A can refuse at any moment.

Interest-free.

A can refuse at any moment.

But if by A's refusal B suffers loss, A must compensate for that loss.

So what kind of loss can we think of? B relied on A's promise and didn't take any preparation to finance on his own, and as a result B suffered a great deal of loss, will it count as B's loss? What do you think? 'I trusted you because you said you will lend me a substantial amount of money interest-free, so I counted on you, so it's the..

the closing date for, you know, my son's university registration and then you refused to lend me on that day and my son fails to register with that, you know, university.

So you have to pay my loss.' Do you think it will count as loss? Yeah, I think it's...

I don't think it's a loss.

Why? Well, you should know that that kind of promise can always be withdrawn.

You should not have relied on it.

You should have taken other measures.

You're at fault as well, right? And especially if it's money or consumable.

You could always find alternative sources of financing.

There is..no one forced you to rely only on that person who is just generously offering you to lend free of interest.

You cannot even argue this, either.

For instance, 'look, this is a contract and according to this contract I could borrow interest-free.

Now, second, you failed, you breached that agreement and the market interest rate is, let's say, 5%.

If I want to borrow that amount of money, I have to pay 5% interest.

So you agreed with 0% and the market, I will now have to pay 5%.

Now, my loss is this much.' That argument will fail.

So although under Korean law, loan of money or consumables is described as contract, you must be very careful about what it means.

Until the money is lent, until the thing is delivered, the bond is very weak.

Former law, during the Japanese rule, they described contract as a contract which requires actual delivery of the thing loaned.

In other words, until it is delivered there is no contractual obligation, okay? And that idea, it makes some sense, it makes some sense, alright? So still, under modern Korean law, under the present Korean law, it..the obligation to lend is very weak, very questionable.

And if the agreement to lend was interest-free loan, then basically there is no obligation to lend.

Whereas obligation, once the thing or money is actually lent, the obligation to repay, yes, there is no doubt about this obligation, okay? But in older legal systems when you talk about loan, you talk only about this.

You didn't talk about that, okay? Which is sensible.

Because it's money, it's not..you don't have to depend on one source of financing, right? But if the agreement to lend was with interest, then yes, you can enforce.

The reason is that you also undertook.

You also kind of incurred, you also charged yourself with an obligation to pay interest.

Whereas if it was interest-free, one party had incurred no burden whatsoever and the bond, contractual bond, is non-existent there.

There is some parallel with the common law notion of consideration here.

Because agreement as to interest-free loan, while the thing is not yet delivered, while the thing or money has not yet lent, this party, the party who borrows, that party incurs no burden whatsoever, right? Because A has not yet given the money or rice, whatever, B was going to borrow.

So B has no obligation to return it either, right? And B did not make any promise to pay any interest either.

So B really had nothing there, so B cannot really enforce on the basis of just bare promise of A to lend the thing.

But an agreement to borrow something with interest, B also made promise to pay interest.

So even under modern English law, one party makes one promise and the other party makes a counter-promise, these two are considered to be a good consideration and these two are enforceable, yeah? If one promise is made by one party, another promise, counter-promise is made, they both bear some burden and that's enforceable.

And likewise if the loan was with interest, then it becomes enforceable.

Executory.

Executory contract.

Any idea what that means? Executory contract, or contract which is still..

'executory' means a contract which has not yet been performed.

Which will be performed, okay? And the opposite would be 'executed'.

Executed contract means a contract which had been performed, right? So while loan agreement is still executory, which means, which has not yet been performed, right? While the loan agreement is still executory, if one of the parties goes bankrupt then the loan agreement is no longer binding, okay? But if it's executed, of course it is binding even if one party goes bankrupt.

If the parties' financial position or credit-worthiness changes significantly, what about it? Is the loan agreement still binding? We have article 599 which clearly declares that the executory loan agreement is..loses power.

Here, look at article 599.

The..before the thing loaned was delivered to the borrower, right? So that means while the loan agreement is executory, yeah, has not yet been executed - if one party goes bankrupt, the loan agrement loses validity.

Loses binding power, right? What about on the verge of bankruptcy? I mean do you still have to pay, do you still have to lend money, I mean it's..their credit relationship has not even begun and one party's credit-worthiness seriously is being jeopardized.

Do you..I don't think so.

I think while it is still executory loan agreement the binding power should be held very very weak.

If this party is about to go bankrupt and if you're lender, you agreed to lend, you should be able to refuse to lend, yeah? Even if you agreed upon interest.

It's like forcing him to suicide, something like that, forcing him to harm himself.

No, you cannot do that, yeah? And likewise, B is okay, let's say, B's financial position is quite alright, now they agreed that A will lend, but now when the day came A is about to go bankrupt and A has really no money to lend.

Can B enforce A to lend money? I don't think that's sensible, yeah? I doubt whether it was a wise thing to change loan agreement into a purely consensual agreement, I

doubt whether it was a good thing or not.

In reality, you won't be able to enforce it if it..

if it's still in executory stage.

The main obligation arising from a loan agreement is the obligation to repay, okay? And that occurs when the loan is actually made.

We'll go through that next week, Monday.