Termination of contract

1. On the basis of a contractual provision

- Right to terminate as stipulated in the contractual term (in addition to the statutory right of termination)
- Contract interpretation (regarding ‘materiality’ of a breach). Parties may agree to terminate the contract even on the ground of an immaterial breach?

2. On the basis of a breach

- Material breach (□□□ 1997. 4. 7 □ 97□575 □□, 2004Da67011; 2005Da53705 painting booth case; 2003Da15518)
- Late performance + expiration of a reasonable extension granted by the creditor; Late performance + expression of an intent not to perform (Art. 544)
- Late performance when time is of the essence (Art 545)
- Impossibility of performance (Art 546)
- Repudiatory breach: 2004Da53173 (repudiatory breach recognised on the ground of “good faith”); 2008Da29635 (repudiatory breach recognised on Art 390 of the KCC); 2018Da214210
- Question of fault? Relevant only when the other breaching party proves that the performance was rendered impossible by causes attributable to the other party or to none of the parties. (Art 546, 537, 538)

3. Method

- Notice
- Irrevocable, unconditional
- indivisible (Art. 547) unless agreed otherwise

4. Preclusion of the right to terminate

- When asked to reply whether to terminate (Art. 552): Expiry of the reasonable time for termination shall destroy the right of termination (if any). Nothing but a clear, unequivocal notice of termination within the reasonable period can save the termination right (if any).
- When the object is altered or damaged (Art. 553)
- When the claim is foreclosed upon expiry of limitation period
- Lapse of 10 years (2000Da26425)
- Waiver of termination right by express agreement. □□□ 2006.11.9 □□, 2004□22971 □□. "□□□□□ □□□ □□□□□□ □□ □□□□□□ □□□□ □□□ □□ □□□□□ □□□ □□□□□ □□□□ □ □□□□ □□□□□□ □□□□ □□□ □□□ □□□□□□ □□□ □□ □□□□□ □□□□□□ □□□□□ □□□□□□ □ □ □□ □□□ □ □ □□ □□□□ □□ □□□□□ □ □□□." Parties may agree to exclude the right to terminate the contract; but such an agreement must be expressed in a clear and unambiguous manner. (The contract stipulated, "After the balance has been paid, the contract may not be terminated, however, in the event the seller terminates, double the amount of the balance payment shall be paid in compensation." The court interpreted that the statutory right of termination in the event of the other party's breach is not excluded by the language.)

5. Restitution (Art. 548)

- Title reverts automatically, immediately.
- Monies received must be returned with interest calculated from the date they were received. Disgorgement of unjust enrichment. The interest is not of the nature of "delay damage".
    - Interest must be paid notwithstanding the defence of simultaneous performance (return). 2000Da9123.

- However,
    - Upon termination by mutual consent (including implicit consent), no obligation to pay interest. (95Da16011, 97Da6193)
    - When the contract has expired, is void, or voided, Art 548(2) does not apply. 92Da45025 (Where contract is voided, a good faith possessor is entitled to keep the fruit, not obligated to pay interest on the money received.) 96Da54997 (Where the contract is void, Art 548(2) does not apply.)

- Benefit/profit of using the thing must also be disgorged. But the portion of the profit attributable to the possessor's skill or investment must be deducted from the amount to be disgorged. □□□ 2006.9.8, □□, 2006 □26328 □□
- Whether the possession was in good/bad faith is irrelevant. □□□ 1997.12.9, □□, 96□47586 □□

6. Third party's interest (Art 548(1), proviso)

- While the title reverts automatically upon termination,
- a third party who has acquired a right opposable to others shall be protected
    - 95Da32037 (when the property was let by the purchaser with the seller's approval, the tenant will **not** be protected)
    - 96Da17653 (when the purchaser let the property once the property was under his name, the tenant is protected)
    - 99Da40937 (the creditor who attached the property while it was under the purchaser's name will be protected)
    - 99Da51685 (the creditor who attached the right to demand conveyance will **not** be protected)
    - 2005Da6341 (a third party who relied in good faith

on the real estate register entry shall be protected even if the entry was no longer valid due to termination)

7. Damages

Termination does not affect the damages claim. Art. 551