

Fundamental Unfairness

1. Fundamental unfairness

- laesio enormis
- usury (Regulation of Interest Act)
- Consumer Contract
- Art. 339
- Arts. 607, 608
- Art. 652

2. Art. 104

- unfairness of the bargain
 - imbalance of exchange
 - At the time of the contract
 - But, see 65Da610: Contract upheld if it is not unfair at the time of performance (The case was about an accord and satisfaction. Court ruled that unfairness must be determined not at the time of the accord, but at the time of the satisfaction)
- circumstances affecting the party
 - dire circumstances
 - rashness
 - inexperience

3. Causal connection and intention

- Intention to use the circumstances affecting the party as a leverage.

4. Null and void

- Restitution
- Ob turpem, iniustam causam?

5. Cases

- 94Da34432 (Art 104)(Kukche Group)

(In a case where a borrower company's shares were sold by the shareholders themselves at the nominal price of 1 KRW per share to the purchaser who is designated by the lender, the Supreme Court ruled that the price may not be viewed as excessively low and that the transaction was not "manifestly unfair" under Article 104 of the Korean Civil Code. In making the ruling, the Supreme Court referred to, among others, the fact that the company's total liabilities exceeded its assets and thus the net worth of the company was in the negative. The case was not about a pledgee's disposal of the pledged property. It was the shareholders themselves who decided to sell their own shares when the company was on the verge of bankruptcy and the trading of the company's shares was suspended by the Korea Stock Exchange and the government was announcing drastic measures aimed at corporate restructuring of the group of companies in question.

The case was about whether the sale contract voluntarily concluded by the shareholders themselves should be declared null and void on the ground of "manifest unfairness" under Article 104 of the Korean Civil Code, which is based on the Roman legal rule of *laesio enormis*.)

- 93Da49482 (Duress)(Shinhan Investment Financing, owned by a son-in-law of KukChe Group's Mr. Yang)
- A pledgee has a duty of care in the disposal of the collateral. If, however, the pledge agreement stipulates a method of disposal, then there is no 'general' duty to sell the collateral at a reasonable price. As long as the pledge agreement is abided by, the reasonableness of the disposal price is not an issue (2007Da11996) or unreasonableness of the price alone is not a ground to invalidate the exercise of the pledge right (2018Da304007).