

'Material' breach

1. Breach

- Non-performance of contractual obligation, or a performance which is not in accordance with the contract, would constitute an instance of breach.

Wrongfulness of a breach

- 2000Da47361 (dated 27 December 2002; an agreement to donate concluded under duress was not performed; non-performance was held to be *prima facie* 'wrongful'): Breach of contract is in itself assessed to be 'wrongful'. Only in exceptional, extraordinary circumstances, it may be possible that the breach can be found to be 'justified'. (re-affirmed in 2011Da85352; land owners challenging the housing re-development project and – erroneously – refused to convey the lands. The refusal was held to be *wrongful* and the land owners judged to be 'at fault')
- 2011Du2477: A pension fund withheld some portion of pension payments to some of the retired public servants in accordance with a statutory provision which required withholding of a portion of pension payments if the retiree has other incomes (Public Servants Pension Act, Article 47). But the statutory provision was later declared unconstitutional by the Constitutional Court. The retirees brought lawsuits to claim withheld portions together with delay damages. The Supreme Court held that since the relevant provision is retroactively invalidated, the pension fund who withheld the portion of payments must, in principle, be found to be in wrongful breach of the pension contract (even if it only did what the statute required it to do at the relevant

time). The Supreme Court, however, ruled that the delay damage (delay interest) need only be paid after the date the statute was declared unconstitutional as the breach was exceptionally “not wrongful” because i) the unconstitutionality of the provision was not self-evident; ii) the pension fund was required by law to abide by the statutory provision while it was not struck down; and iii) the pension fund had no power to influence the legislative process.

Fault

- The party committing a breach is presumed to be at fault. (Art. 390. The party in breach must argue and prove that its act was neither intentional nor negligent.)
- In practice, other than *force majeure*, the court rarely accepts the defence of no fault. 2001Da1386: (買賣契約 買主 賣主 瑕疵 責任 證明 責任 歸屬 問題 法院 判決 結果 說明 理由 及 法律 依據。)
- 關於 2007. 12. 27 日 2006年9408 號：買賣契約 買主 賣主 瑕疵 責任 證明 責任 歸屬 問題 法院 判決 結果 說明 理由 及 法律 依據。
- Sale, contract for a work, lease: if a breach is committed, the breaching party's fault is almost always recognised.
- Contract to treat a patient: if the physician applied procedures which are within the bounds of acceptable

practice, fault is not recognised. It is not even clear whether a 'breach' can be recognised in the first place.

- For the purpose of termination, fault is mostly irrelevant. (KCC, "KCC Article 546, 537, 538", KCC, 2003)
 - Fault is relevant only when the 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)

2. Effect of a breach

- The aggrieved party may compel the performance in so far as it is possible to do so (Article 389 of KCC);
- Alternatively, the aggrieved party may, if the breach is material, terminate the contract, usually with retroactive effect (Articles 543-553);
- Additionally, the party may seek compensation for any foreseeable loss incurred as a result of the breach (Article 390 of KCC).
- The victim of a breach may choose between a reliance measure of damages and a performance measure of damages. Supreme Court Judgment 2002Da2539, dated 11 June 2002; Supreme Court Judgment 2001Da75295, dated 23 October 2003.

3. Materiality of a breach

- Supreme Court Judgment 2005Da53705, dated 25 November 2005
- In order to terminate a contract, the breach must be about an obligation which is indispensable to achieve the purpose of the contract. A breach of an incidental obligation which has little importance would not be a

‘material breach’. In order to be ‘material’, the breach must be about an obligation which is important enough so that without its proper performance the purpose of the contract cannot be achieved and the parties would not have entered into the contract.

- This is a question of fact which must be assessed in light of the parties’ intention which was expressed or reasonably inferred from objective circumstances existing at the time of entering into the contract.
- While a particular obligation may not, in itself, be of great value, if its discharge is of critical importance to the parties, the breach thereof will be judged to be a material breach.
- The content and the purpose of the contract, the consequences of non-performance of the obligation in question should all be taken into account in this assessment.

Further reading:

- 謝國興, “國際私法 國際私法 國際私法 (1994.12.22 通過, 93年2766 號)”, 國際私法 國際私法, 國際私法 國際私法 1994年 國際私法 (國際私法 國際私法) 176- (國際私法 國際私法 國際私法 國際私法 國際私法 國際私法)
- 2005Da53705 (painting booth)

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