

4. Shortage of quantity, partial destruction at the time of the contract (Art. 574)

- Applicable to sale of a **specific** property.
- Contract of sale for an **agreed quantity** of the property:
 - (1) quantity must be of importance; (2) contract price negotiated and determined on the basis of the quantity.
- 2002Da65189: In preparing for an auction, the court designated the location (address) of the property, the size in square metres and the minimum price per square metre. The description is merely to identify the property and the global price. The contract is for the sale of the property itself. It is not a contract for an agreed quantity of the property. Compare 99Da47396 In an 'initial' sale of apartments, the portion of land (corresponding to each unit of apartment) turned out to be smaller than agreed. Shortage of quantity. After the 1 year limitation, price reduction is no longer claimable; the buyer may not claim "unjust enrichment" either. Art 390 damages claim would not be available if the goal is to achieve "price reduction".
- 2001Da12256: If the unit price (price per square metre) was the basis for negotiating the contract price of the property and if the parties had known that the size of the property was different they would have reached a different contract price, then it is a contract for an agreed quantity (even though the contract itself does not specify the size of the property). "It was difficult to see

and ascertain the precise extent and size of the land in question _____

_____”

- 98Da13914: Even if the unit price was used in the calculation of the contract price, where the parties considered the property as a whole (and the physical extent of the property is easily recognisable) and came to the contract price, then the contract is for the entirety of the property, not for an agreed quantity of the property. “Considering that the plaintiff (buyer) surveyed the land in question twice before the conclusion of contract, the contract was for the sale of the land delimited by the boundaries, rather than a sale of an agreed quantity. 買賣契約係以土地之界址為標的，而非以約定之數量為標的，故該契約應為土地之全部所有權移轉契約，而非部分所有權移轉契約。200 年 11 月 2 日，買賣雙方簽訂買賣契約，約定買賣土地 2 公頃，並約定土地之界址。嗣後，原告發現該土地之實際面積僅為 1.8 公頃，遂向法院提起訴訟，請求被告返還已付之買價。被告則辯稱，該契約係以土地之界址為標的，而非以約定之數量為標的，故該契約應為土地之全部所有權移轉契約，而非部分所有權移轉契約。法院認為，原告於簽約前已多次前往現場查看，並與被告共同測量土地，故原告應知該土地之實際面積。因此，該契約應為部分所有權移轉契約，被告應返還已付之買價。 ”
- Applicable only when the shortage/destruction **already** occurred at the time of the contract (unbeknownst to the parties).
- 94Da56098: Shortage occurred after the contract, due to the seller's decision to convey a portion of the property to a third party. Art. 574 inapplicable, but the seller must be held responsible for a breach of contract. The validity of a waiver clause “Where, due to the finalisation of the land register, the size of the jointly owned land turns out to be greater or smaller than the agreed size, neither parties shall demand price adjustment. 買賣契約係以土地之界址為標的，而非以約定之數量為標的，故該契約應為土地之全部所有權移轉契約，而非部分所有權移轉契約。 ”? Held to be inapplicable where the seller was negligent (at fault).
- Buyer's remedy: reduction of price (divisible contract), termination (indivisible contract), seller may not terminate. Seller's no fault not a defence. Available for 1 year from the moment buyer is made aware of the shortage.
- If buyer knew of the shortage at the time of the

contract, no remedy available for the buyer.

- 99Da47396: Buyer may not seek reduction or compensation alleging unjust enrichment or Art. 535 (culpa in contrahendo). Art. 574 is the exhaustive remedy for shortage/destruction which already occurred at the time of the contract. 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