

Breach of warranty, Breach of contract, rescission

Different goals

- Remedies in respect of breach of warranty: principally aim to 'adjust the terms of the contract (price)'
- Remedies in respect of breach of contract aim to 'ensure compliance with the agreed terms of the contract'

What do the parties agree in a sale of 'specific' property?

- specific property v. defectless property
 - Transfer of that 'specific' property? regardless of the quality or quantity?
 - Transfer of 'defectless' property? Regardless of the fact that a 'specific' and 'unique' item was the object of sale?
- Even for a sale of 'specific' property, buyer probably wants and expects to buy defectless property unless explicitly waived otherwise. And seller knows that this is what buyer would expect (and the price is negotiated on these assumptions). So it matters little whether the parties 'actually agreed' upon the defectlessness of the thing sold. Regardless of the agreement, the remedy is invariably given.
- Art 374: Seller's duty of care. \square $\square\square\square$ $\square\square\square\square\square$ $\square\square\square$ $\square\square\square\square$ $\square\square$
 - As long as the seller took proper care to avoid 'new defect' from supervening, the seller's

contractual obligations were discharged?

- Does the seller have the contractual duty to 'remove' the defect which already existed at the time of the sale?

- Art 462: Seller's obligation to deliver. $\square\square\square\square$ $\square\square\square\square$ \square $\square\square\square$ $\square\square\square\square$ $\square\square$.

Breach of warranty: exclusive or sole remedies?

- Remedies in respect of a breach of warranty are available for a short period: 6 months or 1 year from the date of knowing the defect. After the lapse of this period, it is debatable whether the seller can have a remedy under breach of contract (in which case, the seller may have a defence of no fault).
 - If the same remedy (price reduction, performance measure of damage) can be brought under the guise of breach of contract, the short limitation period for warranty liabilities would be pointless?
 - However, Art 374 and Art 462 may provide the seller with a ground for successful defence of "no fault" (which, in other cases, is in reality hardly ever successful).
- Different remedy (extended loss), which cannot be brought under the heading of warranty liability, must be brought as a breach of contract claim. This claim (as it is not grounded on seller's warranty liability) is not subject to the short limitation period of warranty liability.
- If, however, there is an 'express' warranty, then extended loss may also be brought under the warranty clause (express clause). But this would be a breach of

contract claim (violation of a contractual provision).
92Da38980 (“□ □□□ □□ □□□ □□□ □□□□ □□” → This contractual clause can support damage claim in respect of an extended loss from a defect.)

▪ 2001Da70337:

- faulty workmanship leading to a defect in the completed storage tank for fish sauce ==> covered by warranty liability
- damage to the fish sauce which has been stored in the storage tank ==> (as it is extended loss) covered by breach of contract claim
- 99Da40302: In accordance with a statute allowing disposal of certain properties of the State or of local governments, a property was sold to a temple. The registration, however, was done in the name of the head monk of the temple because the sale contract erroneously drafted by the seller (the State) had designated him as the buyer. The property was subsequently sold to a number of buyers. The temple reclaimed the property successfully. Purchasers need not exhaust remedy under breach of warranty clause before suing the State in respect of the officials' negligent drafting of the sale contract. Breach of warranty and tort claim may independently be pursued.

Rescission available as a separate, alternative remedy

- 2015Da78703: Rescission for mistake and termination for a material defect are separate, alternative remedies which are all available for the purchaser to choose from.
- 76Da268: Rescission for deception and termination under Articles 569, 570 are also separate, alternative remedies.