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Overview of Legal Systems in the Asia-Pacific Region: South Korea

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After World War II, a republic was set up in the southern half of the Korean Peninsula while a Communist-style government was installed in the north. During the Korean War (1950-1953), US and other UN forces intervened to defend South Korea from North Korean attacks supported by the Chinese. An armistice was signed in 1953, splitting the Peninsula along a demilitarized zone at about the 38th parallel. Thereafter, South Korea achieved rapid economic growth with per capita income rising to roughly 20 times the level of North Korea. South Korea has maintained its commitment to democratize its political processes. In June 2000, a historic first North-South summit took place between the South's President KIM Dae-jung and the North's leader KIM Chong-il.
• GEOGRAPHIC DATA – total: 98,480 sq km; land: 98,190 sq km; water: 290 sq km; slightly larger than Indiana
• RACE – Homogeneous (except for about 20,000 Chinese)
• LANGUAGE AND LITERACY – Korean, English widely taught in junior high and high school; age 15 and over can read and write
• GOVERNMENT TYPE – Republic
• ADMINISTRATIVE DIVISIONS – 9 provinces (do, singular and plural) and 7 metropolitan cities
• LEGAL SYSTEM – Combines elements of continental European civil law systems, Anglo American law, and Chinese classical thought

ECONOMY – As one of the Four Tigers of East Asia, South Korea has achieved an incredible record of growth and integration into the high-tech modern world economy. Five decades ago GDP per capita was comparable with levels in the poorer countries of Africa and Asia. Today its GDP per capita is 18 times North Korea's and equal to the lesser economies of the European Union. Korea developed rapidly from the 1960s, fueled by high savings and investment rates, and a strong emphasis on education. The nation became the 29th member country of the Organization for Economic Cooperation and Development (OECD) in 1996.

[Information adapted from the World Fact Book 2003 published by the Central Intelligence Agency of the US Government.]
The Legal System and the Law of Contract of the Republic of Korea

1. General information

Korea has about 48 million of population. Korea has its own language and letters. In 1948, Korea was divided into Republic of Korea (South Korea) and North Korea. In 1950, North Korea invaded South Korea, and this war (the Korean War) lasted 3 years.

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2. legal system

Korean legal system is similar to that of Germany. In fact, many graduate students who want to become law professors go to Germany to study. However, there are also many similarities between Korean and American legal system. For instance, Constitution of Korea which was established in 1948 was, in some part, influenced by the American legal system. Korean Constitution was amended several times through political upheavals. This is one of the reason why more and more students and lawyers nowadays are coming to US to study.

Korean political system is based on balance and checks among President, Parliament and Judiciary. President and members of Parliament are selected by direct voting of constituents. The Judges of Supreme Court is appointed by the President and Parliament.

Korean legal system does not have jury. Court composed of 1 or 3 judges hears cases. It is now very controversial in Korea how to enhance the participation of people into the judicial system.

3. legal education

There are about 160 law schools in Korea. Law Schools are very popular among high school graduates. Therefore, entering law schools, especially top law schools are highly competitive. Once they enter a law school, students study as undergraduates for 4 years. They study basic subjects such as Constitution, Contracts, Torts, Corporations, Criminal law, Civil Procedure and Criminal Procedure. Many other subjects are available too. Graduation of law school does not necessarily guarantee that they become a lawyer.

Law school graduates have to pass Korean Bar Examination. It is competitive. About 1,000 people pass among 25,000 every year.

4. legal practice

When a student pass a bar examination, he is trained at Judicial Research & Training Institute of Supreme Court for 2 years. After that training, some are appointed as judges
and some as prosecutors. Others practice as lawyers. Although it has been uncommon for lawyers to work for Executive or Legislative Branch, the situation is changing. Today, more lawyers are working at Executive Branch.

One of problems of court systems in Korea is many competent judges and prosecutors quit their jobs to practice in private area, primarily for economic reason. To solve this problem, the Supreme Court is attempting to select judges among practicing lawyers.

5. Korea’s Contract Law

Korea has its own civil code. Primarily, civil disputes are regulated by this code. However, in some areas such as employment or lease, special statutory code is applied, preventing the application of civil code. Especially, the transaction between merchants is regulated by Commercial Code. This Code is similar to UCC.

In Korea, the leading theory of contract law is “contract should be performed in good faith.” Contract, like in US, is concluded by mutual assent (offer and acceptance). However, there is no concept of consideration. Instead, we have 14 types of contract in civil code. Thus, we have principles applicable to certain types of contract as well as applicable to general contract. For example, we have gift contract in civil code.

The concept of illegality and frustration of the purpose of contract are defenses available in Korean Contract Law. We do not have Statute of Frauds. However, in reality, written contract is more welcomed in courts. Assignment and delegation of contract are generally recognized.

If a seller expresses warranty, he is liable for that expression. The Civil Code has special warranty statutes. A seller’s liability depends on whether he knows the defects. In some cases, a seller could be liable even with latent defects.

As for the recovery, generally, only expectancy damage is allowed, not reliance damage. The expectancy damage is limited to “ordinary damages” – damages that a reasonable person could have anticipated in the circumstance. However, one can recover “special damages” if he or she can prove that the other party knew or could have known the special circumstances. If obligee fails to mitigate the damage, the damages are reduced to the extent reasonably expected. Ordinarily, obligee can recover pecuniary damage for breached contract. Specific performance is more broadly available than in US.

One of the distinguishing characteristics of Korea’s Contract Law is “deposit clause”. Deposited money is presumed to be liquidated damages. Therefore, a party can breach the contract if he gives up the deposit before neither party takes a step to perform it. The other party could breach the contract by returning the twice amount of the deposit.
