D. Korean Rules of Jurisdiction

*Bases of Jurisdiction

1)Defendant's Domicile

The defendant's domicile rule is a generally recognized basic rule of international jurisdiction in Korea. It is a fundamental principle that a suit should be brought before the court sitting in the district of defendant's domicile.

2)Place of Business

The general forum of a juridical person or any other association or foundation shall be determined by its principal place of business, or if there is no office, nor place of business, then by the domicile of the principal person in charge of affairs.

3)Place of Performance

Article 6 of the Korean Civil Procedure Code provides for a special forum at the place of residence or at the place where the liability is to be performed: an action with regard to property right may be brought in the court of the place where liability is to be performed.

4)Place of Tort

Korean courts have often expressed their belief that the place of tort rule is a generally recognized basic rule of jurisdiction in the international sense. As is commonly pointed put, the place where the tortious act took place will normally be the same as the place where the consequence of injury occurred and if a tortious act was totally committed in Korea there would be no room for a serious controversy over the Korean jurisdiction. However, where the tortious act occurred in one place and the consequence of the injury occurred in another each of them may give a basis of jurisdiction over the same tort case. Finally, it is apparent that the place of the injury is limited occasionally for the purpose of private international law.

5)Place of Immovable Property

It is generally recognized postulate that international jurisdiction can be based on the location within the state of real property or immovable belonging to the defendant. Article 18 of the Korean Civil Procedure Code provides: "An action relating to registration of immovable property may be brought in the court of place where such immovable property is located."

6)Consent

Consent is a well-established basis for jurisdiction in Korea. A Korean court will assume jurisdiction if the parties have agreed in writing to submit to the court a dispute which is either existing or will arise from a specified transaction.

7)Appearance

Even though a person is not subject to the international jurisdiction of a Korean court, if he appears before the court and answers to the merits, the court may exercise jurisdiction over him, since he can be deemed to have consented to the Korean jurisdiction.

Four Affidavits on the International Judicial Cooperation with Respect to Establishing Jurisdiction and Taking Evidence Abroad (p.469~478)

A. Sang-Hyun Song's Affidavit No.1

Supreme Court of the State of New York County of New York

Tahari, Ltd., (Plaintiff) vs. Daewoo Corp. And Daewoo International (America) Corp. (Defendants)

1. [omitted]

2. I have been asked by counsel for the plaintiff in this action to provide my opinion on Korean law.

3. It appears that New York law will govern. … under Korea's Conflict of Laws Act, if the sales orders were placed from New York, then the law of New York will govern absent agreement by the parties to the contrary.

4. … I believe that no alternative jurisdiction exists in Korea.

5. … the Korean court system generally is an advanced and efficient system. However, matters are not necessarily resolved expeditiously.

… without any right to a jury trial by one's peers.

6. … Korea is a signatory to the Wien Treaty of 1963 concerning consular business and accordingly, in recognition of international juridical comity, Korean courts have provided judicial assistance in response to requests from foreign courts.

… Article 11 of the Rule for Judicial Assistance provides that when a foreign court requests judicial assistance, Korean courts may provide the necessary assistance.

… It is therefore my opinion that a request for assistance from the Supreme Court of the State of New York, in the context of this litigation, will in principle be honoured by a Korean court.

B. Young Moo Shin's Affidavit

[Omitted.]

5. (self-introduction)

6. I have been asked by the counsel for the relevant issues and questions of Korean law in connection with defendant's motion to dismiss on the ground of *forum non conveniens*.

7. I must respectfully disagree with Mr. Song with respect to his conclusions concerning the ability of litigants in United States courts to compel the testimony of non-party witnesses in Korea. (*Vienna Convention on Consular Relations of 1963; Hague Convention on the Taking of Evidence Abroad)*

8. … While the recommendations of the Korean Ministry of Court Administration … are not in any way

binding on Korean courts or non-party witnesses and which, because of their non-binding nature, cannot be accurately described as “rules”.

9. … should any court choose to observe these recommendations [issued by the Ministry of Court Administration], the ability of litigants in the United States to obtain evidence from witnesses in Korea would, nevertheless, be far from certain.

10. … realistically the assistance can not be relied on especially since there are no enforcement procedures available.

11. On the other hand, if the action was litigated in the Korean courts, non-party witnesses could be compelled to provide evidence and testimony. *(The Korean Code of Civil Procedure)*

12. I believe that the Korean courts would provide a viable alternative forum which would aid in the expeditious handling of this matter. *(Article 6 of the Korean Code of Civil Procedure)*

… Korea clearly is an alternative jurisdiction available to the parties.

13. In Mr. Song;s affidavit, he opines that matters are not necessarily reviewed expeditiouly in the Korean courts. However, I believe this is not the case. … It is also true that the courts in Korea are very experienced in handling actions of this nature.

14. In addition, it appears from the facts presented to me by defendant’s counsel that Korean law would govern this litigation. *(Article 9 of the Conflict of Laws Act of Korea; Article 11 of the said act)*

… it would be in the best interest of justice to have the Korean courts adjudicate this matter.

15. Furthermore, in the event that a judgment in favor of the plaintiff were rendered, it would have to be executed in Korea.

16. … a number of extremely difficult procedural issues at both the pre-trial and trial stages, arising from difficulties encountered by the parties in obtaining needed testimony and evidence from witnesses in the Republic of Korea.

17. … it would be in the best interests of both parties and the just resolution of this matter for the proceedings to take place in Korea.

C. Sung Chul Chung’s Affidavit

[Omitted…]

Fairness and Efficiency of Korean Courts and procedures

2. … the judicial systems of the United States and Korea each have their advantages and disadvantages.

3. The aspects of Korean judicial procedure … are not unique to Korea and they exist in virtually every civil law jurisdiction. *(John H. Langbein)*

4. For example, … in Korean proceedings, rather than first having a pre-trial deposition of each witness in the case and then having the witness attempt to repeat his prior testimony to the court at trial, the court is present in the first instance.

5. … I cannot agree … that the plaintiff will be hampered in any way in obtaining all the information

necessary to establish the merits of its case, if such evidence exists. Moreover, the court will surely take into account any concerns the parties or witnesses may express about the scheduling of hearings.

6. … I do not think that plaintiff can be prejudiced in any way by the existence of this right [appellate review].

.*7*. As to the absence of jury trials in civil cases in Korea, … I do not think that this is a disadvantage of the Korean system, particularly in commercial disputes of the kind at issue here.

Existence of Jurisdiction In Korea for Daewoo International (America)

8. With respect to Mr. Song's assertion, in paragraph 4 of his affidavit, that no alternative jurisdiction exists in Korea with respect to Daewoo International (America) Corp., I must again, respectfully disagree.

Applicable Law

9. … I am not certain of the relevance of Mr. Song's discussion of Korea's Conflict of Laws Act to the court's decision on this issue.

10. … I believe that, in these circumstances … Korean law would be applied.

D. Sang Hyun Song's Affidavit No 2.

1. … in reply to the affidavits of Mr. Shin and Mr. Chung … I must respectfully disagree with several conclusions in those affidavits.

2. Mr. Shin suggests, without explicitly saying so, that Korean courts will not honor discovery requests made by U.S. courts. That is incorrect.

… In summary, the Korean practice is to assists U.S. courts.

3. … The court could not compel witnesses in the United States or elsewhere to appear.

4. As respects the process in Korea, …. The courts often ignore those recommendations [the Code of Civil Procedure], especially for complex cases such as this. Mr. Shin also mischaracterizes the applicable interest rate.

5. As respects the governing law, as a Professor of Civil Procedure I can state that there is no accepted principle whereby the court will infer that the parties intended the law of the seller's country to govern.

6. … The tendency appears to the recognizing U.S. court judgments, not denying recognition, and the 1971 decision Mr. Shin cites may be regarded as out of date.

7. Mr. Chung's Affidavit offers very little, except to note that where pre-trial discovery is not permitted, the "inefficiency" is avoided of witnesses having to tell their stories twice. Such an "efficient" system means that the plaintiff learns for the first time at trial the testimony of the witnesses.

Ⅱ. Commercial Arbitration and Other Alternatives Youngjae Park 99150232

(p.479~p.488)

A. Introduction

1. Arbitration Law in Korea

Commercial arbitration in Korea from the Arbitration Law of 1966(the "Law"). However any private disputes are regulated by the Commercial Arbitration Rules of the Korean Commercial Arbitration Board(the "Rules").

2. Alternative Dispute Resolution in Korea

All types of dispute resolution were solely carried out in and enforces by the judicial and administrative spheres. However in 1990 Supreme Court of Korea issued the Civil Conciliation Rules, the purpose of which is to facilitate the resolution of civil claims by combining all the provisions on conciliation in order natural laws into one set of rules. indeed, alternative dispute resolution has achieved great prominence in legal culture of Korea.

The Korean Commercial Arbitration Board also conducts alternative dispute resolution for parties to commercial disputes. KCAB offers two other disputes resolution methods : counseling or consulting (sangdam)and mediation (alson).

3. International Arbitration

Korea's first modern international commercial arbitration appeared in 1957 as the Treaty of Friendship, Commerce and Navigation between the United States. Now Korea has also signed several international conventions on dispute settlement. On a more general level, Korea has recently taken steps to become more fully integrated with international trade law.

B. The Arbitration Agreement

1. Form and Content of the Agreement

The parties may resort to arbitration when they have concluded an arbitral agreement including both an arbitral clause and a submission(acte de compromis). To be effective an arbitration agreement must be made in writing and must be signed and sealed.

2. Model Arbitration Clause

All disputes, controversies, or differences which may arise between the parties, out of or in relation to or in connection with this contract, or for the breach therefor, shall be finally settled by the Arbitration Rules of the Korean Commercial Arbitration Board under the Laws of Korea. The Award rendered by the arbitrator(s) shall be final and binding upon both parties concerned.

3. Parties to an Agreement

1) Competence

A party may enter into an arbitration agreement if he or she is competent under Articles 5-17 of the Civil Code, and has reached the age of maturity.

2)Foreign Parties

In order to be eligible for a commercial arbitration, a party must have legal capacity as defined by the Private International Law. The Constitution of the Republic of Korea also grants aliens the right to file claims and to seek to redress grievances through Korean courts of law and other tribunals at

any level.

3) Juridical Persons and State Agencies

When a legal person under public law, i.e., the state or a state agency, becomes a party to commercial arbitration, problems of definition arise.

4) Third Party or Multi-Party Disputes

There is no provision in either the Law or the Rules that legally affects third persons. It is presumed, therefore, that a valid arbitration agreement is required before the third party or parties are entitles to join the arbitration, thereby creating a multi-party dispute.

4. Domain of Arbitration

1) Private v. Commercial Arbitration

The Law is applicable to all arbitrations arising from "dispute(s) in private law," except for those disputes deemed commercial arbitration(s)." Non-commercial private law arbitrations shall be governed by the Law itself. For commercial arbitrations, the Law provides that, in the absence of an applicable stipulation in the arbitration agreement itself, the appointment of arbitrators and the procedures to be followed will be determined by the KCAB Rules.

2) Effect of the Agreement

The effect of an arbitration agreement is reflected in Article 3 of the Law, which prohibits any direct recourse to a court of law by either party to an effective arbitration agreement.

C. Arbitrators

1. Qualification and Disqualification

1) In General

Any person who is deemed able to render "virtuous judgement" in an arbitration, including a foreigner, is , in principle, eligible to be an arbitrator, except those who are specially ineligible by law.

2) Disqualification

Disclosure of Grounds for Disqualification

In a commercial arbitration governed by the KCAB Rules, no person shall serve as an arbitrator unless the parties are considered to have waived their right to object to the arbitrator.

Challenge of Arbitrators

A party may challenge an arbitrator before a court of law on the same grounds applicable to judges of the civil court.

2. Appointment of Arbitrators

1) Under the Law

The Law provides that if the parties fail to agree otherwise, the Tribunal shall consist of two

arbitrators, and that, unless they agree otherwise, each party shall appoint one of the two.

2) Under the Rules

Number of Arbitrators

Like the Law, the Rules stipulate in Article 24 that "the parties may specify the number of arbitrators in their agreement."

Direct Appointment

Like the Law, the Rules provide that if the parties so agree, they may appoint the arbitrators directly, within a period of time specified in their agreement.

Appointment by the KCAB

If the parties have not appointed the arbitrators and have not provided a method of appointment in their arbitration agreement, the Secretariat will mail the list of potential arbitrators to both parties. Each party must then specify the candidates it prefers, in order of preference.

3. Foreign Arbitrators

Article 19(2) of the Rules states that "no person not actually residing in Korea at the time of appointment (of arbitrators) shall be an Arbitrator except otherwise agreed between the parties."

4. Liability of Arbitrators : An award can be set aside in the event of incompetent or illegal behavior on the part of an arbitrator.

p.507~ Alternative Dispute Resolution Procedures in Korea 2000130371 Munhee Jung

3. Evaluation of conciliation system

·problems→recent rate for successful conciliation does not exceed 30%

criticism of the quality of probation officers

difficulty to obtain qualified judges equipped with psychological insight regarding Family Court

Despite the barriers suggested above, conciliation/mediation might be effective in Korea in view of the national character of trying to avoid confrontation

·Advantages→non-adversarial, stressing common points of mutual interest

Korean situation which does not make the negotiation models flourish- Legal training centered around the role of the judge(Korean judge sometimes does not rely upon the arguments presented by the parties) Complaints about delays and the cost , court cases is not so serious(compared to American court).thus, the pressure to look for alternatives to litigation is much lower

D. dispute resolution by Mediation

1.Mediation-a process directed to enabling he parties to resolve their dispute by agreement. A neutral third party may be engaged.-assist the parties to find and settle their own agreement

2. Various mediation mechanisms

1)negotiation-Two principle parties are the decision makers, and settlement is one to which both parties agree. An independent 3rd person is not present.

2)Independent Expert Appraisal-A third party is engaged by the disputants to be informed of the details of the dispute and to give an independent expert opinion as to how the dispute should be resolved

3)Moderation or Facilitation-similar to mediation but usually applies to multi-party disputes

3. Advantages associated with Mediation

inexpensive/ results are accomplished in a relatively short time/ informal/ less pressure,

practical business becomes a factor/ preparation required for an arbitration or court proceeding becomes unnecessary.....

4. Disadvantages associated with Mediation

Mediation requires an astute, capable mediators/ rigid time constraint/ care must be exercise in not allowing influence from other team members/mediators can break down when advocates and/or clients exaggerate the merits of their claim/ must be careful not to prejudice rights of third parties

E. Alternative Possibilities within Formal Procedures

1. Summary Procedure under the code of civil procedure

Payment order is issued upon the motion of a creditor without examining the debtor

state the names of parties, and legal representatives, purport and ground of the claim

Objection should be raised within 2 weeks

If no objection is made or an objection is withdrawn, the said payment order shall be final

2. Summary Procedure under the Special Act Concerning Summary Proceedings for Civil Cases

purpose: Preventing delay of trial

3. Compromise(Court settlement)

1)Court Settlement under the Code of Civil procedure

The party to a civil dispute file a motion-

If a settlement is achieved: the court clerk shall enter the names of parties, their legal representatives, the grounds of the claim, the terms of the settlement, the date- The judge and the court clerk put their signatures and seals thereon

-If not(&when the other party fails to appear): A party apply for the institution of a suit. When a lawful motion for an institution of a suit has been made, the court clerk shall forward the record of the case to the court

2)Court Settlement during Lawsuit

"attempt of compromise"-allow the court during the course of a civil action to attempt to effect a compromise at any stage of the suit

negotiations may initiated either by the parties or the court

the compromise has the same effect as a conclusive/final judgement

pp. 513~520

Recognition and Enforcement of Foreign Judgment under the Korean Law 9711166 Youjung Kim

A. The Statutory Standards for Recognition

Korean policy on the recognition and enforcement of foreign judgments is said to be based upon the spirit of international cooperation. The prerequisites consist mainly of procedural regularity and thus the merits are excluded, and foreign judgments may be enforced whether they would otherwise be considered right or wrong under analogous Korean legal principles. The Korean Code of Civil Procedure expressly provides the requirements for the recognition of foreign judgments in Article 203 and for the enforcement in Articles 476 and 477. When the requirements are met, the foreign judgement is treated as having binding effect on the Korean courts. Thus a second suit on the same claim should be dismissed without examination on its merits due to the res judicata effect of the prior foreign judgment. And in a second suit on a claim different from but depending on the foreign judgment, the court has to decide the case in accordance to the foreign judgment.

B. The Requirements of Finality and Conclusiveness

A foreign judgment will be considered final only if there exists no possibility of a future appeal. The party invoking the benefit of the foreign judgment thus has the burden of proving that under the applicable law, an appeal or further appeal of the particular judgment is not possible or that the period for appeal has passed. Secondly, the judgment must be rendered by a court as those concepts are defined by foreign law. This requirement is meant to exclude both extra judicial arbitration or administrative decisions which are not adjudicatory in nature.

A foreign judgment which is in form a court order, and as such would be directly enforceable in the rendering country, could be recognized as a judgment under Article 203. Recognition of such a court order would extend only to the rights determined, and would not result in direct enforcement which may only be granted under Article 477. Injunctions would similarly be recognizable if they are no longer amenable to appeal and are by their nature determinative of the legal rights of the parties. Foreign temporary dispositions are not recognizable because of their nature as provisional remedies.

C. The Jurisdiction of Foreign Courts

Foreign courts will not be denied an adequate jurisdictional basis under Korean concepts of private international law. Such as inquiry into the foreign court's assumption of jurisdiction would generally be precluded by either a prior agreement to submit to the foreign court's jurisdiction or by the

defendant's general appearance in court to litigate the suit. Even if jurisdictional defects were thus waived by the defendant, legal scholars would deny recognition the subsequent judgment if the dispute were subject to the exclusive jurisdiction of Korea or a third court[11]. For example, in an action concerning rights in Korean real estate, Korean courts have exclusive jurisdiction.

In the formulation of rules on international jurisdiction, it is necessary to determine a reasonable level of contact or relation between the foreign countries where a judgment has been rendered on the one hand and the party, the case, the claim asserted on the other with due consideration of fairness between the parties, meaningful opportunity of defending the case, and at times public policy. The existence of foreign jurisdiction should be judged from the viewpoint of the Korean Civil Procedure Code rather than the foreign law involved. The major consequence of applying the Code standard for court jurisdiction would be generally to exclude acceptance of a foreign court's jurisdiction if it were based solely on service of process, since under that code a foreign defendant must either reside in or have some measurable contact with the judicial district in which he is ordered to appear.

D. Judgments Contrary to Public Policy or Good Morals in Korea

This requirement represents the only substantive limitation to the recognition of a foreign judgment. Foreign judgments are as a rule recognized without reviewing their merits. However, recognition has to give way to the basic demand of public policy and good morals. Public policy or good morals in this section are judged by Korean standards rather than foreign ones. It has a broad meaning, which may range from substantive content to procedural fundamentals. The reasons leading to the conclusion as well as the conclusion of the foreign judgment should be examined, and the commitment of a criminal offense does not necessarily result in violation of public policy or good morals.

E. The Requirement of Reciprocity

The conditions of recognitions do not have to be identical in Korea and the foreign country. A substantial similarity in important points of the respective requirements should be considered sufficient. The term "reciprocity" as found in Article 203 means that the particular foreign courty does not inquire into the merits of a Korean judgment by reason of a treaty or its domestic law, and that such foreign country would recognize the validity of a Korean judgment under a standard similar to or more lenient than that of Article 203.

The focus of attention will be on whether the rendering country would in practice consider Korean judgments conclusive on the merits, with somewhat less concern given to discrepancies in the two recognition standards. Completely identical recognition practice would in any case not be required since a Korean court would allow its foreign counterpart to apply its own rules of finality, international jurisdiction, and public policy and good morals, however, should these local rules operate to exclude a

significant portion of Korean judgments form conclusive treatment, the Korean court would be obliged to deny recognition.

Chapter 6. (pp. 521-pp.524) LAW, 9711038 Yoon-hee Lee (이윤희)

The principle of Reciprocity in the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958

The Principle of Reciprocity in Practice

The attitudes of States toward the application of reciprocity are varied. The following will survey the arbitration laws and judicial practices of the United States, France, the Federal Republic of Germany, the Netherlands and the Republic of Korea with regard to the New York Convention.

The Republic of Korea

The Republic of Korea acceded to the New York Convention on February 8, 1973, having invoked both the reciprocity reservation and the commercial reservation. The New York Convention was incorporated into the law of Korea as treaty law no.471. Hence, the Convention applies preferentially to an award made in a contracting State of the New York Convention, and the Korean Arbitration Act can be applied to supplement the Convention.

A foreign arbitral award not made in a contracting State of the New York Convention or outside the scope of other conventions may also be recognized and enforced pursuant to domestic laws, in particular the Korean Code of Civil Procedure (Korean CCP) and the Korean Arbitration Act.

When the foreign judgments or awards valid under art.203 are to be enforced in Korea, they must be adjudged to be legal by a judgment for enforcement from a competent Korean court, pursuant to art.476, paragraph 1 of the Korean CCP. In this proceeding, if the judgment or award rendered by a foreign court or tribunal is not certified to be final, the court shall dismiss the request for enforcement. Otherwise the court must grant the request without reviewing the case on the merits.

On the other hand, When a foreign arbitral award made in State that is a party to the New York Convention is sought to be enforced in Korea, art.XIV of the Convention may be invoked as a challenge against the enforcement of the award. Although there has been no case in which art.XIV was invoked and disputed, the position of the Korean courts toward the reciprocity rule

can be inferred though their application of art.203, paragraph 4 of the Korean CCP in enforcing foreign judgment.

In line with the aforementioned judgment of 1985, the Seoul High Court also granted enforcement of German judgment on the ground that the conditions for enforcing foreign judgments listed in art.328 of German CCP are analogous to those listed in art.203 of Korean CCP and that Germany does not demand reciprocity with regard to foreign judgments other than property rights.

On the other hand, the Supreme Court has ruled that “there exists no reciprocity between Korea and Australia since, under the common law of the latter, its courts are deemed to review the merits of the case.

As Considered above, the Korean courts tend to examine the guarantee of reciprocity with foreign States not so much on the basis of specific precedents in those states as on the basis of provability that those states would enforce judgments given in Korean Courts, which is inferred from provisions in the treaties and laws of those states. Thus, in applying art.XIV of the New York Convention to a specific foreign arbitral award the Korean courts are likely to examine the provisions or general practices of a State of origin, even in the absence of direct precedent.

Conclusion

In international relations, each sovereign State strives to secure its own interests or prerogatives and those of its nationals overseas, at least to the same degree that the State accords protection to other States or their nationals. Accordingly, it is natural that, in view of the equality of sovereign states, a state should grant the enforcement of foreign judicial acts in its territory only on the condition that its judicial acts also are granted authority outside the State by other States. To achieve this goal, the principle of reciprocity may be the most effective and appropriate method by which inhospitable States are warned or coaxed to behave more amicably.

In sum, in order to ensure the significance and success of international commercial arbitration, national courts should interpret narrowly the principle of reciprocity in the New York Convention. For if each sovereign State applies the reciprocity rule more leniently, this principle will, by its own nature, become less important in international commercial arbitration.

Court Enforcement of International Arbitral Awards In South Korea

I. Arbitral Awards rendered in South Korea

1. Basic legislation and statutes underlying Korea's frameworks for enforcement

Section 12 of the Korean Arbitration Act (KAA) - an arbitral award rendered in South Korea has the same legal effect as a final and binding court judgement.

Section 14 of the KAA - in order to enforce a domestic arbitral award, one must additionally file for a separate enforcement judgement by the court upon finding that the arbitral award is valid.

Section 13 - parties may file suit to set aside the arbitral award on the several grounds as stipulated. For example, ③ the arbitral award compelled performance of acts which are prohibited under law.

2. Cases

(1) Case A

① Facts

Respondent (South Korean corporation) = **A** Claimant (Foreign corporation) = **B**

A agreed to sell sweaters at $29,90 per item (37.5% discount) because previously received ones were defective, but failed to perform.

B initiated arbitration proceedings for

- recovery of damages in the amount of $22,582.20
- $4,236 for subsequent loss of profit

A's defence was

- already paid through a set-off (discount)
- lacked capability to manufacture the sweater in South Korea that **B** demanded
- excess demand since there is no valid basis for amount of damages requested

② Arbitral Award Rendered by the Korean Commercial Arbitration Board

In favour of **B** for payment of $22,585.20 in compensatory damages but not for damages for subsequent loss of profits since it's not in the agreement.

③ Enforcement of the Award by the Seoul Civil District Court

i) The court summarized the findings of the arbitration hearings, acknowledging detailed facts. ii) The court also ruled that the arbitration award was valid and binding since A had shown no supportable grounds on which to set aside the arbitration award under section13.

④ Legal Significance of the District Court's Decision

-: issue of the scope of review a Korean enforcing court must engage in

i) The court did not limit its review solely on section 13 but appeared to engage in a full review of the merits of the arbitral judgement.
ii) redundant use of the court's time and resources
iii) potential effects of needlessly delaying the enforcement procedure, making arbitration on the whole a less attractive dispute resolution mechanis

(2) Case B

① Facts

B initiated arbitration proceedings in Korea referring the case to the Korean Commercial Arbitration Board and the Board rendered judgement in favour of **B** and directed **A** to pay for breach of contract.

② Enforcement of the Award by the Seoul High Court (Civil Decision)

i) **B** claims - **A** didn't deliver on date.
ii) **A** counter clams - there was omission in the arbitral judgement regarding an important issue in the arbitration proceedings which materially affects the arbitral award and that this constituted grounds for setting aside the judgement under section 13.
iii) **Seoul High Court** found - in favour of **B**(plaintiff-claimant) ruling that the Arbitration Board's judgement was valid and binding and subsequently issued an enforcement judgement.

③ Legal Significance of the High Court's Decision

Korean courts now appear to be moving away from substantive review of an award's merits and are limiting their enforcement review of arbitral awards to procedural issues.
-> ensures increased economy of judicial resources and therefore makes arbitration a more attractive dispute resolution alternative.

II. Arbitral Awards Rendered Abroad

1. Basic legislation and statutes underlying Korea's frameworks for enforcement

Although South Korea did not pass legislation expressly executing the provisions of the New York Convention, it has become established under Korean case law that the provisions of the Convention directly apply. In so doing, Korean courts have turned to the Korean Arbitration Act and the Korean Code of Civil Procedure (KCCP) §203 to supply the same enforcement framework for foreign arbitral awards that applied to domestically-rendered arbitral awards.

2. Cases

(1) Foreign Case A

① Facts

i) Demurrage (=damages) arising from the delay in **A**'s performance amounted to $198,454 but **A** did not pay.

ii) **B** initiated arbitration proceedings in Japan and the arbitral board rendered judgement in favour of **B.**

iii) **A** still refused to pay and **B** brought suit in the Seoul Civil District Court to enforce the arbitral award rendered in Japan.

② Enforcement of the Award by the Seoul Civil District Court

i) Both Japan and Korea are the signatories to New York Convention

ii) Since New York Convention have the same force under international law as an international treaty, its provisions preempts Korean local laws addressing the recognition and enforcement of foreign arbitral award. The KAA and KCCP would therefore function only as subordinate, supplementary law.

iii) **A** argued that since **B** was a Panamanian company and Panama was not a signatory to the NY Convention, NY Convention didn't apply. But the court rejected the argument, holding that the test for reciprocity under NY Convention considered. not the nationality of the other disputant in the arbitration proceedings, but the place where the arbitral award was rendered, i. e., the place of arbitration.

iv) So the court held that the arbitral award rendered in Japan was legally binding and enforceable in Korea and found in favour of **B**.

③ Legal Significance of the District Court's Decision

By expressly declaring that provisions of NY Convention preempt any Korean local laws regarding the recognition and enforcement of foreign-rendered arbitral awards, arbitration became a far more attractive forum for international dispute resolution especially for international businessman doing business in Korea or with Korean companies.

(2) Foreign Case B

Landmark case that unequivocally declared the commitment of the highest court in the Korean judiciary(Supreme Court) to recognize and enforce foreign rendered arbitral awards in Korea. The Supreme Court also strongly reaffirmed the direct applicability of the NY Convention to enforcement proceedings in South Korea.