

日本の民法の編別にしたがった英米契約法の実用的コース実施の試み

# 基礎英文契約書講座

第20回 債務不履行と損害賠償：  
契約違反の損害賠償について、日本  
法と英米法・英米契約法上の問題点  
を確認し、責任制限条項の意義を理  
解する

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# 第20回目の内容

- 第20回目のテーマは、債務不履行と損害賠償である。

契約違反の損害賠償について、

- 日本法と
- 英米法・英米契約法上の問題点を確認し、
- 責任制限条項の意義を理解する

# 契約違反と債務不履行

- 履行不能・履行遅滞・不完全履行（積極的債権侵害）
- Breach of Contract として一体的に理解
  - 差異はどこに出ているか
  - 契約責任の理解をめぐる問題点

# 契約違反と損害賠償 (1)

## 日本法

(債務不履行による損害賠償)

第四百十五条 債務者がその債務の本旨に従った履行をしないときは、債権者は、これによって生じた損害の賠償を請求することができる。債務者の責めに帰すべき事由によって履行をすることができなくなったときも、同様とする。

## 英米法

§ 2-610. Anticipatory Repudiation.

When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

- (a) for a commercially reasonable time await performance by the repudiating party; or
- (b) resort to any remedy for breach (Section 2-703 or Section 2-711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and
- (c) in either case suspend his own performance or proceed in accordance with the provisions of this Article on the seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods (Section 2-704).

## 契約違反と損害賠償 (2)

### 日本法

(損害賠償の範囲)

第四百十六條 債務の不履行に対する損害賠償の請求は、これによって通常生ずべき損害の賠償をさせることをその目的とする。

2 特別の事情によって生じた損害であっても、当事者がその事情を予見し、又は予見することができたときは、債権者は、その賠償を請求することができる。

### 英米法

Hadley v Baxendale [1854]  
EWHC J70

# 契約違反と損害賠償 (3)

## 日本法

## 英米法

§ 2-703. Seller's Remedies in General.

(1) A breach of contract by the buyer includes the buyer's wrongful rejection or wrongful attempt to revoke acceptance of goods, wrongful failure to perform a contractual obligation, failure to make a payment when due, and repudiation.

(2) If the buyer is in breach of contract the seller, to the extent provided for by this Act or other law, may:

- (a) withhold delivery of such goods;
- (b) stop delivery of the goods under Section 2-705;
- (c) proceed under Section 2-704 with respect to goods unidentified to the contract or unfinished;
- (d) reclaim the goods under Section 2-507(2) or 2-702(2);
- (e) require payment directly from the buyer under Section 2-325(c);
- (f) cancel;
- (g) resell and recover damages under Section 2-706;
- (h) recover damages for non-acceptance or repudiation under (Section 2-708(1) or in a proper case the price (Section 2-709);

## 契約違反と損害賠償 (4)

### 日本法

### 英米法

§ 2-705. Seller's Stoppage of Delivery in Transit or Otherwise.

(1) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2-702) or if the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(2) As against such buyer the seller may stop delivery until

(a) receipt of the goods by the buyer; or

(b) acknowledgment to the buyer by any bailee of the goods except a carrier that the bailee holds the goods for the buyer; or

(c) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(d) negotiation to the buyer of any negotiable document of title covering the goods.

# 契約違反と損害賠償 (5)

## 日本法

## 英米法

§ 2-711. Buyer's Remedies in General; Buyer's Security Interest in Rejected Goods.

(1) A breach of contract by the seller includes the seller's wrongful failure to deliver or to perform a contractual obligation, making of a nonconforming tender of delivery or performance, and repudiation.

(2) If the seller is in breach of contract under subsection (1), the buyer, to the extent provided for by this Act or other law, may:

(a) in the case of rightful cancellation, rightful rejection, or justifiable revocation of acceptance, recover so much of the price as has been paid;

(b) deduct damages from any part of the price still due under Section 2-717;

(c) cancel;

(d) cover and have damages under Section 2-712 as to all goods affected whether or not they have been identified to the contract;

(e) recover damages for nondelivery or repudiation under Section 2-713;



## 契約違反と損害賠償 (6)

### 日本法

### 英米法

§ 2-712. "Cover"; Buyer's Procurement of Substitute Goods.

(1) If the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance, the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(2) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2-715), but less expenses saved in consequence of the seller's breach.

(3) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

# 契約違反と損害賠償 (7)

## 日本法

## 英米法

§ 2-713. Buyer's Damages for Non-delivery or Repudiation.

(1) Subject to Section 2-723, if the seller wrongfully fails to deliver or repudiates or the buyer rightfully rejects or justifiably revokes acceptance:

(a) the measure of damages in the case of wrongful failure to deliver by the seller or rightful rejection or justifiable revocation of acceptance by the buyer is the difference between the market price at the time for tender under the contract and the contract price together with any incidental or consequential damages under Section 2-715, but less expenses saved in consequence of the seller's breach; and

(b) the measure of damages for repudiation by the seller is the difference between the market price at the expiration of a commercially reasonable time after the buyer learned of the repudiation, but no later than the time stated in paragraph (a), and the contract price together with any incidental or consequential damages provided in this Article (Section 2--715), less expenses saved in consequence of the seller's breach.

(2) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

## 契約違反と損害賠償 (8)

### 日本法

### 英米法

§ 2-714. Buyer's Damages for Breach in Regard to Accepted Goods.

(1) Where the buyer has accepted goods and given notification (subsection (3) of Section 2-607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in any manner which is reasonable.

(2) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(3) In a proper case any incidental and consequential damages under the next section may also be recovered.

## 契約違反と損害賠償 (9)

### 日本法

### 英米法

§ 2-715. Buyer's Incidental and Consequential Damages.

(1) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(2) Consequential damages resulting from the seller's breach include

(a) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(b) injury to person or property proximately resulting from any breach of warranty.

# 契約違反と損害賠償 (10)

## 日本法

## 英米法

§ 2-716. Buyer's Right to Specific Performance or Replevin.

(1) Specific performance may be decreed if the goods are unique or in other proper circumstances. In a contract other than a consumer contract, specific performance may be decreed if the parties have agreed to that remedy. However, even if the parties agree to specific performance, specific performance may not be decreed if the breaching party's sole remaining contractual obligation is the payment of money.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(3) The buyer has a right of replevin or similar remedy for goods identified to the contract if after reasonable effort the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered.

(4) The buyer's right under subsection (3) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

# 契約違反と損害賠償 (11)

## 日本法

## 英米法

§ 2-717. Deduction of Damages From the Price.

The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.