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Tort Liability of Person Who Caused Pollution to One's Own Soil: Judgement on May 19, 2016, 2009Da66549, Supreme Court of Korea

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I. Introduction

Since late 20th Century environmental issues have been actively discussed in the domain of law and policy. Especially the compensation for one's loss due to environmental hazard has been an issue. Normally the civil and public redemption was discussed resulting into legislation of laws such as Framework Act on Environmental Policy, the Soil Environment Conservation Act.

One of the representative methods for civil redemption was compensation for unlawful act generally regulated in article 750 of Korean Civil Act (the "KCA"). Especially the unlawfulness of contaminating one's own soil was an issue. Some claimed that contaminating one's own land is similar to harming oneself and hence is not an "unlawful act." The Supreme Court's judgment seemed to support this claim (Judgment of October 22, 2002, 2002Da46331).

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The Judgment that would be reviewed in this article (Judgement of May 19, 2016, 2009Da66549 Supreme Court of Korea) judged an act of polluting one's own land and later selling the land unlawful and acknowledged its liability to compensate the loss. It was innovative in changing previously held views about polluting one's own land, and has raised many questions about the establishment of liability for unlawful act, especially in environment litigation.

Hence this article will review the content of this judgment and many issues it raises. Especially it will review the problem of "unlawfulness" of polluting one's own land and selling it. Also, the recognition of causal relation would be reviewed. These issues will be reviewed in the context of problems relating to environmental issues and the scope of property rights.

II. Overview of the Judgement

1. Matter of Facts of the Judgment

1) Position and Status of Each Party

The plaintiff of the case was a company which engages in general construction industry. It was responsible for the construction and sale of a building on the 35,011 m^2 land in Seoul (the "land"). The defendant of the case was Kia Motors, a vehicle manufacturing company and Seahbesteel, a company manufacturing steel, special steel, and cast iron.

Plaintiff bought the land to construct and parcel out an Electronic Distribution Complex. Half of the land's portion was bought from Kia Motors, and the other half portion was bought from LG Investment and Securities. The ownership of the land was registered in 2002. 2. 15. But in 2005 Agricultural Infrastructure Corporation reported that the land was contaminated by oil, zinc, nickel, fluorine, and lead. They also found construction waste such as waste concrete underneath the land.

Daewoo Construction, which contracted the construction of Electronic Distribution Complex with the plaintiff had to dispose of the polluted soil and waste. Daewoo Construction subcontracted some of disposal work to Jaemin C&C, which again subcontracted it to Dong-Myung Enterprise Co., Ltd and Dream Bios Co., Ltd. In the contract between the plaintiff and

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Daewoo Construction, they agreed that expense spent in disposal of waste asphalt concrete, waste concrete, normal waste, and polluted soil would be paid by the plaintiff. Hence the plaintiff had to afford for the spending caused by the pollution of the land.

2) History of ownership shift and contamination of the land

Daehan Heavy Industries & Construction operated cast iron manufacturing factory on the land since 1973. Daehan Heavy Industries & Construction owned 32,244 m^2 of the land since 1982, the other part of the land was state-owned or city-owned and was loan-used by Daehan Heavy Industries & Construction. In 1990. 3. 20. Daehan Heavy Industries & Construction changed its company name to Kia Special Steel Co., Ltd[1].

Kia Special Steel sold half portion of the land to Kia Motors and the other half portion to Kisan Co., Ltd. Each registration of ownership was finished in 1993. 12. 30. Kisan engaged in demolition and reclamation work of cast iron manufacturing factory since 1993. 8. 27. By the end of 1993 covering, concrete cladding of the land and construction of automobile shipping site was started by Kisan. While demolishing the cast iron manufacturing factory Kisan left the underground facility undamaged and landfilled its construction waste during construction of automobile shipping site.

The portion owned by Kia Motors was transferred to plaintiff as mentioned above. And the other portion owned by Kisan was transferred consecutively to Korea Land Trust, LG Investment & Securities and finally to plaintiff.

3) Plaintiff's and defendant's claim

In this case plaintiff claimed that the defendants should compensate for the plaintiff's loss because the damages were caused by their unlawful acts.[2] It was claimed that not demolishing the underground facility of the land and landfilling the land with wastes constituted unlawful act which

1) In 1998.6. the company reorganization procedure was initiated, and the company name of Kia Special Steel was changed to Seahbesteel, one of the defendants.

2) Minbeob [Civil Act], Act No. 741, Feb. 22, 1958, *amended by* Act. No. 14965, Oct. 31, 2017, art 750 (S. Kor.).

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resulted in plaintiff's loss.

Plaintiff also claimed compensation liability of Kia Motors on the basis of non-performance of obligations. In this part plaintiff claimed Kia Motors liability for warranty against defect[3] and it's general liability for non-performance of obligation.[4] The liability for warranty against defect, prescribed by article 580 and 575 of KCA impose the seller of a product certain liabilities if the product sold has certain defects. In this case according to the KCA the buyer may rescind the contract[5] and the seller has to compensate for the buyer's loss. Plaintiff claimed that pollution made to the land sold by Kia Motors was a defect. Plaintiff also claimed that Kia Motors, as seller of half portion of the land had obligation to deliver land without pollution and it neglected to perform that obligation. Hence aside from liability for warranty in Article 580 of Korean Civil law plaintiff also claimed general liability by non-performance of obligation in Article 390 of Korean law.

2. *The Court's Judgment*

1) Judgment of the first trial

In the judgement of the first trial (Judgment of September 3, 2008, 2006GaHab7988, the Seoul Central District Court), the Seoul Central District Court dismissed the plaintiff's claim that the defendant's activity constituted an unlawful act. The Seoul Central District Court interpreted the "unlawful act" in article 750 of KCA to mean harming other person's property or legal interest. Hence harming one's own territory cannot constitute an unlawful act. In this regard the Seoul Central District Court judged that since the land was owned by the defendants, even if defendants polluted the land as plaintiff claimed, the defendant's activity was not an unlawful act.

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3) Minbeob [Civil Act], Act No. 741, Feb. 22, 1958, *amended by* Act. No. 14965, Oct. 31, 2017, art 580 (S. Kor.).

4) Minbeob [Civil Act], Act No. 741, Feb. 22, 1958, *amended by* Act. No. 14965, Oct. 31, 2017, art 390 (S. Kor.).

5) provided that the purpose of the contract is unattainable by the defect and the buyer was unaware of the defects and had no negligence about it

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Kia Motor's liability for warranty against defect to plaintiff was also rejected since it was claimed after the proper period had passed. Article 582 of KCA states that the buyer has to exercise one's right resulting from seller's liability for warranty mentioned in Article 580, 581 of KCA within six months from the time it was aware of such fact. The Seoul Central District Court judged that plaintiff's claim was made after such period and hence it cannot accept plaintiff's claim.

But it accepted Kia Motors had general liability by non-performance of obligation since aside from seller's liability for warranty, Kia Motors still held the responsibility to deliver proper land. the Seoul Central District Court also judged that there was no evidence of consent between plaintiff and Kia Motors that plaintiff will bear the expenses from the land's pollution. Hence Kia Motors was ordered to compensate for half of plaintiff's spending caused by the pollution of the land as the seller of half portion of the land.

2) Judgment of the court of appeal

The judgment of appellate court (Judgement of July 16, 2009, 2008Na92864, the Seoul High Court) modified the first trial's judgement about the defendants' responsibility for their unlawful act. the Seoul High Court accepted that even if one polluted and landfilled one's own soil against administrative regulations, it would not constitute an unlawful act. But the Seoul High Court judged that the act of covering the land as if it was not polluted and selling the land in the market constitutes an unlawful act. In the Seoul High Court's opinion this act would result in similar result with the act of placing defective products in the hands of consumers.

The Seoul High Court also made judgment on the proximate causal relationship and the point when the loss due to the unlawful act is realized in such kinds of activity. It made clear that there is a proximate causal relationship between pollution of the land and the expenses of resolving such pollution paid by person who later acquired the land.

In this case the loss is realized when the acquirer finds out the pollution of the land and is obliged to remove the waste by its expense. Deciding this point is important since it is the Supreme Court's attitude that "The right to claim for damages resulting from an unlawful act shall lapse by prescription" if it is not exercised within ten years from the point when the loss from the

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unlawful act is realized (Judgement of November 16, 2007, 2005Da55312). Paragraph (2) of the article 766 of KCA states that "The right to claim for damages resulting from an unlawful act shall lapse by prescription" if "ten years have elapsed from the time when the unlawful act was committed." But it is consistent attitude of the Supreme Court to interpret "the time when the unlawful act was committed" to mean "the time when the loss from the unlawful act was realized" in the case where there is a distance between the time when the unlawful act was committed and the time when the loss was realized (Supreme Court Decision such as 2010Da54566, 88DaKa25168, 97Da36613, 2006Da17539 are of the same attitude.).[6]

Accordingly, Seahbesteel's responsibility due to the unlawful act to the plaintiff was accepted changing the first trial's judgement. Although it was recognized that Kia Motors would have noticed the existence of construction waste when it contracted with Kisan about the construction of automobile shipping site, the Seoul High Court did not accept that Kia Motors participated in the polluting of the land by Seahbesteel. Hence the Seoul High Court judged that Kia Motors unlike Seahbesteel did not have responsibility to plaintiff on the ground of committing unlawful act.

On Kia Motor's liability for warranty against defect and general liability for non-performance of obligation the Seoul High Court maintained the first trial's judgment. But the scope of specific compensation ordered to Kia Motors was adjusted in defendants' favor. The cost of removing asphalt concrete on the land was deducted and comparative negligence was accepted which made the scope of compensation to be 70% of loss, because of plaintiff's negligence of not insuring against the land's pollution.

3) Judgment of the Supreme Court of Korea

The Supreme Court of Korea's (the "Court") judgment (Judgement of May 19, 2016, 2009Da66549 Supreme Court of Korea, the "Judgment") on the case basically maintained the appellate court's judgment. The majority opinion of the judgment (the "Majority opinion") accepted that act of polluting a land and later selling it without purification can constitute an unlawful act. The judgment hence changed previous judgment of the court

6) DEOK-SU SONG, NEW LECTURE ON CIVIL LAW. (13th ed. 2020).

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(Judgment of October 22, 2002, 2002Da46331) which stated that contaminating one's own land does not constitute an unlawful act to person who later acquired the land.

The majority opinion's ground was that polluter of a land has obligation towards acquirer of the land to purify the land and to compensate for losses caused by pollution. This is derived from the interpretation of the Framework Act on Environmental Policy (the "FAEP"), the Soil Environment Conservation Act (the "SECA"). Article 44 of FAEP imposes absolute liability to the person who caused environmental pollution, and article 10-3 also impose absolute liability to person who has contaminated the soil and in this case the person is also obliged to purify the soil, etc. Also, paragraph (1) of article 34 of Constitution of the Republic of Korea states that "All citizens shall have the right to a healthy and pleasant environment" justifying such responsibility. It also states that "The State and all citizens shall endeavor to protect the environment." which makes the majority's opinion's interpretation of FAEP and SECA more plausible.

According to majority opinion, person who landfilled a land with waste also has responsibility to remove the waste on the ground of land owner's "claim for removal and prevention of disturbance against article owned" stated in article 214 of KCA. The majority opinion claimed that the waste landfilled in the land was not affixed to the land. According to the article 256 of KCA "the owner of an immovable acquires the ownership of anything affixed thereto" but since in majority opinion's view the waste is not affixed to the land it would still be owned by the person who landfilled the waste. Hence the waste disturbing the ownership of the land becomes the polluter's property. This makes the polluter obliged to remove that waste from the land.

These obligations for the polluter of the land makes the act in question unlawful. The dissenting opinion of the court (the "Dissenting opinion") attached by 4 supreme court justice however denies the majority opinion's recognition of unlawfulness of such act. Dissenting opinion rejects the majority opinion's interpretation of FAEP and SECA, and it also rejects majority opinion's judgment on whether or not the landfilled waste is affixed to the land. Overall, dissenting opinion considers majority opinion's interpretation to be seceded from the "principle of self-responsibility" imposing overly strict responsibility to the former seller of the land.

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III. Review of the Judgment

1. Issue of this case and the scope of discussion

The main issue of this case is whether the act of polluting and landfilling waste in one's own land and selling the land without purification process constitutes an unlawful act regulated by article 750 of KCA. Under this question there are many specific issues to be resolved. Of these many issues, following issues will be discussed in this article. About the ground for the "unlawfulness" of the polluter's act ① whether the owner of the land has the right to claim removal and prevention to the disruption of the ownership would be reviewed. Also, ② the responsibility pertaining from environmental law would also be reviewed as a source of ground for "unlawfulness" of the polluter's act. Finally, apart from the unlawfulness ③ the question of the causal relation between the pollution and expenses spent by acquirer of the land will be reviewed.

2. Whether the waste landfilled to the land becomes affixed to the land and the applicability of claim for removal and prevention of disturbance against article owned

1) Background of the issue

(1) Claim for removal and prevention of disturbance against article owned

Article 214 of Korean Civil Law authorizes the owner a right to claim removal and prevention to the disruption of the ownership (the "Right of article 214"). It states "An owner may demand the cessation of disturbance from a person who disturbs ownership, and may demand either prevention of the disturbance or security for damages from the person who might disturb ownership."

For a person to be able to claim the right of article 214 ① one must currently have ownership of the property in the case, ② there must be a disruption to the claim of the ownership and ③ the counterparty must currently be responsible for the disruption. Specifically, the disruption should be current and unlawful although the counterparty's intention or negligence is not required. Also, the disruption in this case does not include

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invasion of occupancy since article 213 of KCA is applied in this case.[7][8] If the conditions above are satisfied owner can claim "removal and the prevention of the disruption."[9]

(2) Attachment of objects

Objects are "attached" to one another when they are combined to constitute a single object. KCA distinguishes attachment between movables and attachment of an object to an immovable. In the latter case the owner of the immovable acquires the ownership of the objects attached to it.[10]

Article 257 of KCA which regulates "attachment between movables" states that two or more movables are attached to each other if they are "united together that they can no longer be separated without severe damage, or cannot be separated without excessive expense." According to the court this definition also applies to attachment to immovable, and additionally the case where the act of dividing two objects sharply decreases the economic value of objects are included. Also, the fact that attachment occurred artificially does not disturb the recognizance of attachment (Judgment of January 13, 1962, 4294Minsnag445, the Supreme Court of Korea).[11]

2) Discussion of the issue in the case by the court and it's implication

In this case the main point of the discussion is whether there exists a "disruption to the claim of the ownership" of the land to make claim of right of article 214 feasible. This point is involved with the problem of whether waste landfilled to the land is attached to it.

Specifically the problem arises about whether ① the owner of the land may claim right of article 214 when the cause of the disruption is attached to the land ② the waste landfilled to the land becomes attached to the land, ③ the right of article 214 may be accepted even if the activity disrupting

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7) Yoon-jik Kwak & Jae-hyung Kim, Mulgwonbeop [Real Rights Law] 233-234 (8th ed. 2017).

8) Deok-su Song, *supra* note 6, at 526.

9) Si-young Oh, Mulgwonbeop [Real Rights Law] 378-380 (1st ed. 2009).

10) Minbeob [Civil Act], Act No. 741, Feb. 22, 1958, *amended by* Act. No. 14965, Oct. 31, 2017, art. 256 (S. Kor.)

11) Sung-kyu So, Mulgwonbeop [Real Rights Law] 323. (2nd Ed. 2008).

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one's ownership has terminated but the result remains to be in force.

The majority opinion and the dissenting opinion does not dispute about the first issue above. They both do not explicitly mention their attitude but it seems they are both supposing that the right of article 214 cannot be accepted if the cause of the disruption is attached to the immovable, hence becoming property of the owner of the immovable. This attitude limits the claim of right of article 214 to the case where the object disrupting the ownership is "not" attached to the land.[12] This is why they dispute whether the waste landfilled to the land becomes attached to the land. Otherwise the dissenting opinion could have simply disagreed with the assumption of the majority opinion. Instead the dissenting opinion only discussed about whether the waste was attached. Concurring opinion by justice Yong-deok Kim, dissenting opinion by justice Chang-suk Kim also dealt with the issue of attachment emphasizing the importance of this issue. These active discussions show that both sides are of the same opinion about the relationship between right of article 214 and attachment of the cause of disruption to the immovable.

The majority opinion's claim in the second issue seems to be that the waste becomes attached to the land only under certain conditions. It has to be combined to the soil making it impossible to physically separate it from the soil. It quotes previous judgment of the court (Judgment October 22, 2002, 2002Da46331, the Supreme Court of Korea) that accepted the owner of the land to claim right of article 214 to the owner of waste placed upon the owner's land on the assumption that the condition aforementioned was not met. Concurring opinion by justice Yong-deok Kim expressly tackles this issue stating that waste should not be concluded to be attached to it simply because it was landfilled to the land.

Dissenting opinion however claims that the majority opinion's attitude would cause serious confusion about the concept of "attachment." Especially, dissenting opinion points out that in the case quoted by the majority opinion, the waste in question was packed in 500kg bag and was

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12) Chul-hong Park, *Haengwireul Han Jae Daehayeo Soyugwone Gihan Banghaejegeocheongguro Pyegimurui Jegeoreul Guhal Su Inneunji [The grounds and scope of the owner's claim for removal of disturbance-whether a person who acquires a land with buried waste is entitled to demand another person who actually buried the waste to remove it]*, 40 Pri. L. 93, 115 (2018).

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placed upon the land. Hence there is much difference between the case it quoted and this case.

On the third issue majority opinion seems to accept that right of article 214 may be exercised if the result of the disruption is remaining even if the disrupting activity has terminated. It accepted the right even though the landfilling and pollution of the land was terminated long before the plaintiff made claims. Dissenting opinion also does not expressly disagree on this point. Its main ground of dissent was that majority opinion's view would cause trouble to the concept of "attachment" as mentioned above. Hence it would be fair to say that there is not much dissent between the supreme court justice about this issue.

Previously the court interpreted "removal of the disruption" in article 214 of KCA to mean removal of the cause of the disruption not the result of disruption (Judgment of 28, March, 2003, 2003Da5917, The Supreme Court of Korea).[13] The result of disruption was considered to be claimed based on damage compensation law.[14] Hence it could be said that the court's attitude in "the judgment" practically changed the previous judgment without explicitly stating it.[15]

3) Review of the issue

(1) Whether one can claim right of article 214 when the cause of the disruption is attached to the land

Two problems should be resolved in order to discuss this issue. First problem is the scope of "disruption" defined in article 214 of KCA. Some theory interprets this to mean disruption to the integrity of property rights, for example unduly claiming ownership (Usurpationstheorie), and excludes de facto disruption to the right of ownership from definition of "disruption."[16][17] However normally "disruption" can be defined as "a state in which the control of object guaranteed by the ownership of object (the

13) Si-Young Oh, *supra* note 9, at 378.

14) Chang-soo Yang & Young-jun Kwon, Gwolliui Byeondonggwa Guje [Changes and Remedies of Rights] 457 (3rd ed. 2017).

15) I Yong-Dam Kim, Minbeopjuseok-Mulgwon [Remark On Civil Law – Real Rights] 652-4 (5th ed. 2019)

16) *Id*. at 666.

17) Deok-su Song, *supra* note 6, at 526.

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right "to use, take the profits of, and dispose of, the article owned" as stated in article 211 of KCA) is not realized." According to this definition a real obstacle to exercising ownership of an object as well as legal obstacle to it may be included to "disruption."[18]

Judgments of the court also support this definition. The disruption of right to use a land by existence of a construction on that land is representative case of real obstacles. If the owner of construction on the land does not have the right to use the land, owner of the land can claim towards the owner of the construction to demolish the land and towards occupant of construction to leave from it (Judgment of August 19, 2010, 2010Da43801, the Supreme Court of Korea).[19]

In this view the fact that the waste is attached to the land does affect whether it is a disruption to the ownership of the land. For example, bad smell of the waste in the land would not disappear because of the fact that the waste is incorporated to the land and hence becomes land-owner's property.[20] But question still remains whether the person who landfilled the waste but is not owner of the waste can be counterparty of right of article 214.

The question of the counterparty of the right of article 214 is based on discussion about ground for the responsibility relating to article 214 of KCA. Opinions in this case are divided between one based on perspective of the owner and one based on perspective of the counterparty. In the former opinion's view the one objectively dominating the circumstances of disruption should be responsible regardless of the origin of disruption. In latter opinion's view one should be responsible because it caused the disruption or continuation of disruption.

The court is of opinion that the right of article 214 should be claimed against "one currently dominating the circumstances of disruption" (Judgment of September 5, 1997, 95Da51182, the Supreme Court of Korea;

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18) V Yoon-jik Kwak, Minbeopjuhae - Mulgwon 2 [Comment on Civil Law – Real Rights (2)]. 241-242 (1st ed. 1992).

19) Jun-ho Kim, Mulgwonbeop [Real Rights Law]. 203 (12th ed. 2019).

20) Yong-dam Kim, *supra* note 15, at 668.

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Judgment of March 28, 2003, 2003Da5917, the Supreme Court of Korea).[21)22)] In this regard the court seems to be of opinion that if the source of disruption is attached to an immovable (land), the owner of immovable cannot claim the right of article 214 (Judgment of May 14, 2009, 2008Da49202, the Supreme Court of Korea; Judgment of January 31, 1966, 65Da218, the Supreme Court of Korea).[23)24)]

Regarding the consistent opinion of the court, questions can be posed about whether the source of the responsibility of counterparty to right of article 214 is their domination over circumstances of disruption. This is because the court's view can excessively broaden the scope of responsibility of counterparty to one claiming right of article 214. It could make one responsible for disruption caused by one's property although one did not intend to make disruption. This may seriously infringe one's property rights. In similar context the Constitutional Court of Korea (the "CCK") decided that imposing responsibility because of ownership or occupancy of certain objects could be excessive restrictions of one's property rights (Decision of August 23, 2012, 2010Heonba28, the Constitutional Court of Korea). In this Decision CCK decided that imposing absolute responsibility for the contamination of land (without reason for disclaimer) based on the fact that one owned facilities subject to soil pollution management violated the minimum infringement principle.[25)]

Hence it could be said that concerning right of article 214 it would be more appropriate to impose responsibility based on one's participation in disruption. It would lead to conclusion that regardless of whether or not the waste is attached to the land, the owner of the land should be able to exercise right of article 214. This view would also be more appropriate

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21) Chul-Hong Park, *supra* note 12, at 121-7.

22) II Yong-deok Kim, Juseok Minbeop - Mulgwonbeop [Comment on Civil Law – Real Rights Law] 38 (5th ed. 2019).

23) Byung-jun Lee, *Injeopan Tojiui Gyeongsamyeone Geonchukan Seokchugui Buhapgwa Banghaebaejecheonggugwon - Daebeobwon 2009. 5. 14 Seongo 2008da49202 Pangyeore Daehan Pyeongseok [A right to claim and prevent obstruction according to attachment of stone axes to the slopes of adjacent lands – Review on Judgement of May 14, 2009, 2008Da49202, Supreme Court of Korea],* 54-1 Korean Civ. L. 85, 98-9 (2011).

24) Yoon-Jik Kwak, *supra* note 18, at 254-5.

25) Chul-Hong Park, *supra* note 12, at 126.

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because right of article 214 is essentially right claiming removal of disruption and should be claimed against one who caused the disruption or is responsible for existence of the disruption.[26] Considering this nature of the right it would be unreasonable to relieve one of it's responsibility because the object disrupting the ownership of land was attached to the land.

(2) Attachment of waste to the land

Although the question of attachment of waste does not have influence over the right of article 214 as mentioned above, it is worth discussing since it is a question sharply disputed by each side. Especially dissenting opinion noticed that the majority opinion's denial of attachment of waste caused "serious confusion" to legal principles of attachment.

In this point the question posed by concurring opinion of justice Yong-deok Kim is interesting. It questions whether a "waste" could become subject of attachment in the first place. It quotes prevision judgment of the court (judgment of September 24, 2009, 2009Da15602) stating that to accept that certain object[27] is attached to an immovable, its separate economic utility should also be verified apart from the cost of separating it. Therefore, since a waste could not be considered to have an "economic utility" it cannot be a subject of attachment.

This question is connected to the question about the purpose or origin of article 256 of KCA. Article 256 to 261 of KCA regulates the legal principle of "accession" in the Korean law system. Accession was source of taking ownership since the Roman law. Especially attachment to land (immovable) originates from principle that "object on the ground follows the land (*Super ficies solo credit*)" formed under Roman law. This principle is embodied in every legal system succeeding Roman law (France, Germany, Switzerland etc.). It is commonly alleged that the purpose of this principle is economic. Specifically, since separating two attached objects would induce serious cost even if it is possible, it would be more desirable to accept one's

26) Kye-Joung Lee, *soyumulbanghaejegeocheonggugwon haengsareul wihan banghaeui hyeonjon [The Presence of Disturbance for the Claim for Removal of the Disturbance]* 91 Korean J. Civ. L. 39, 61 (2020).

27) Movable in this case.

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ownership rather than separating it.[28)29)]

Regarding this purpose it would be appropriate to consider each object's separate value in deciding whether certain group of objects are attached to each other. Also wastes landfilled in the land should be removed for the economic value of the land. Hence deciding that it is attached to the land would directly contradict the purpose of article 256 of KCA.

The main objection to this attitude would be that deciding the question of attachment on the ground of each object's economic value would cause confusion about the ownership of objects. This is analyzed in the dissenting opinion of justice Chang-suk Kim which emphasizes that problem of ownership should be objectively decided since it influences third party's interests too. But in article 257 of KCA, and the court's interpretation of article 256 of KCA mentioned above already considers the economic cost of separating objects which may not be absolutely objective, and it is acceptable considering the purpose of these articles. Also, dissenting opinion's view contradicts conventional understanding of principle of accession in Korean legal system, since conventionally it is understood that such principle is non-mandatory provisions.[30)] Therefore, the waste cannot be object attached to immovable in the first place.

(3) Claim of right of article 214 after the disrupting activity has terminated

The concept of "disturbance (Schaden)" stated in article 214 of KCA differs from "injury (Beeinträchtigung)" which one has to compensate because of failing to perform an obligation or conducting unlawful activities. The latter should be compensated based on damages compensation law.[31)32)] Normally it is said that disturbance is infringement that is continuing in present, and injury is infringement concluded in the past.[33)] Hence if the disruption presented was terminated at the time it would not be an object

28) Yoon-Jik Kwak, *supra* note 18, at 491-2.

29) Yong-Dam Kim, *supra* note 15, at 986-9.

30) *Id*. at 987.

31) Tae-sung Kang, Mulgwonbeop [Real Rights Law] 624-625 (4th ed. 2014).

32) I Sang-young Lee. Minbeop [Civil Law] 476 (4th ed. 2005).

33) Yoon-Jik Kwak, *supra* note 18, at 243-244

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of removal based on article 214 of KCA.[34)]

Regarding this distinction, to become a disturbance which is the object of right of article 214 it should continue to exist in the present. The court rejected claim of removal of disturbance on the ground that there was no evidence that the disturbance was continuing (Judgment of January 26, 1971, 70Da2600, the Supreme Court of Korea; Judgement of March 10, 1981, 80Da2832, the Supreme Court of Korea), and the court also explicitly defined "disturbance" as ongoing infringement distinguished from "injury" in this respect (Judgment of March 28, 2003, 2003Da5917, the Supreme Court of Korea).[35)]

Hence it would be hard to consider infringement already concluded as an object of right of article 214. These infringements should be compensated based on principle of non-performance of obligation or unlawful acts, otherwise it would excessively extend one's responsibility. But the question remains whether to consider the infringement concluded when the act of disturbance has terminated. In fact, this seemed to be the attitude of the Supreme Court based on their judgment on the case which explicitly addressed this issue (Judgment of March 28, 2003, 2003Da5917, the Supreme Court of Korea).

However, this attitude would be inappropriate considering the usual situation in which the right of article 214 is invoked. The two prominent cases in which article 214 of KCA is applied is where a construction is disturbing the use of land, or where unlawful registration is registered upon one's property. In either case the construction of the building or the registration was accomplished beforehand, and at the time of the claim only the result of these activities remained. If we consider termination of the activity of disturbance to be the conclusion of the infringement one would not be able to exercise right of article 214 in these cases, which would seriously neglect the meaning of article 214 of KCA.

There seems to be no reason to accept exception in the case of waste landfilled to the land. Specifically, even if the act of polluting the land has terminated the disruption seems to remain since the waste is still buried

34) Bong-seok Kang, Mulgwonbeop [Real Rights Law] 200 (2nd ed. 2011).

35) Chang-soo Yang & Young-jun Kwon. *supra* note 14, at 457-460.

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under the land.[36] Hence the owner of the land should be able to exercise right of article 214 despite the fact that the burying of the waste was already concluded.

4) Conclusion of the issue

For the question posed in the case the question of attachment of waste to the land is not relevant to the question of whether one can exercise right of article 214. Even if it was relevant it would not be a bar to claim made by owner of the land since the waste is not an object that can be attached to the land. Also, the fact that landfilling was concluded in the past is not a bar to right of article 214. Therefore, one who is responsible for landfilling of waste[37] has the responsibility to remove the disturbance by article 214 of KCA. This would be legitimate ground for considering Seahbesteel's act unlawful.

3. Problem relating to breach of environmental law and it's unlawfulness

1) Background

(1) Responsibilities pertaining to pollution of a land

KCA, FAEP, SECA, Act on Liability for Environmental Damage and Relief Thereof (the "ALEDRT") regulates the act of polluting a land. The responsibilities of the polluter are divided into civil responsibilities and public responsibilities. On the public side the State has final responsibilities as stated in the paragraph (1) of article 34 of the Constitution of Republic of Korea, and there are certain "Purification Officers" who take care of investigating and purifying a land.[38]

In the civil side KCA is the basis for polluter's responsibility. But there are distinctiveness of environmental problems making KCA insufficient. Continuity, comprehensiveness, indirectness, incompatibility of the status, profitability of attackers are some of the special properties of environmental

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36) Kye-Joung Lee, *supra* note 26, at 59.

37) In the case Seahbesteel.

38) Hong-Sik Cho, Hwangyeongbeobwollon [Introduction to Environmental Law]. 568-570 (1st ed. 2019).

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infringement making the KCA difficult to govern such activities.[39] Especially since the pollution is made under the control of polluter proving the intention or negligence of the polluter becomes challenging.[40] Hence legislations like FAEP, SECA were legislated to solve such issues.

Especially in article 44 of FAEP the absolute liability of polluter is stated. This liability is specified in article 10-3 of SECA stating the absolute liability of polluter of soil. It states that "where any damage occurs due to the soil contamination, a person who has caused the contamination shall compensate for such damage and take measures, such as purifying the contaminated soil." Since there are no reference about a person's fault it can be interpreted as imposing absolute responsibility to the polluter of soil responsible. Hence one can claim compensation for loss by soil pollution to polluter without proving the intention or negligence of the polluter.[41]

In FAEP and SECA the characteristic of absolute responsibility imposed to the polluter is disputable. Especially for article 10-3 of SECA there is opinion that the responsibility imposed to the polluter is only civil responsibility. Moreover, some opinion contends that the sufferer of the pollution can claim for purification as well as monetary compensation on the grounds of polluter's civil responsibility. However, the other side is of the opinion that this article imposes both civil and public responsibilities of the polluter. Hence the polluter has to "compensate for" damages as civil responsibilities and has to "take measures" as public responsibility.

(2) "Unlawfulness" in article 750 of KCA

Even if one has an absolute responsibility to certain losses and have to compensate for it regardless of one's negligence or intention, problem of "unlawfulness" remains. The unlawfulness of one's act has to be proven in this case to impose responsibility to compensate for the losses. This is because "intention or negligence" and "unlawfulness" are two different requisites for establishment of liability for the losses in article 750 of KCA.[42]

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39) *Id*. at 555-6.

40) Kyun-sung Park & Tae-sung Han, Hwangyeongbeob [Environmental Law] 150-151 (7th ed. 2015).

41) Hong-kyun Kim, Hwangyeongbeob [Environmental Law] 694-695 (5th ed. 2019).

42) VIII Yong-dam Kim. Minbeopjuseok - Chaegwongakchik [Remakr on Civil Law – Each

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Article 750 of KCA imposes liability for losses to one who acted "unlawfully." The question is how to define unlawfulness in this article. This is connected with the question of how to define "legal order" which is the criterion for distinguishing unlawfulness. About this question one opinion takes the actual law as a criterion and the other opinion takes good morals and other social order as a criterion. Conventionally the latter opinion is preferred.[43] Also about the definition of the "breach" of legal order opinions are divided on one claiming that the act "resulting" in invasion on rights is unlawful and one claiming that the act of un-fulling one's responsibility under the legal order is unlawful.[44] Conventional view supports the former opinion.[45][46]

Considering this definition for "unlawfulness," the violation of civil responsibilities is without question unlawful. For example, the violation of responsibility to remove the disruption to one's ownership is unlawful since it is violation of responsibility originating from article 214 of KCA, hence clearly a civil responsibility. However, in the case of responsibility arising from FAEP and SECA, the question is raised concerning he character of the responsibility and whether breach of such responsibility is unlawful.

2) Discussion of the issue in the case by the court

In the case, whether there is polluter's civil responsibility to purify the pollution it committed originating from the FAEP and SECA is disputed. This is mainly about the interpretation of FAEP and SECA as discussed above. Also, whether a negligence of one's public obligation would be a ground to determine one's act to be unlawful can be questioned.

Majority opinion acknowledged the polluter's responsibility of purification on the ground of Constitution of the Republic of Korea, FAEP and SECA. It interprets article 10-3 of SECA as imposing civil responsibilities

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RULE ON CLAIMS] (4th ed. 2016). 185.

43) CHANG-SOO YANG & YOUNG-JUN KWON, *supra* note 14, at 614.

44) *Id*.

45) JONG-DU PARK, CHAEGWONBEOPGANGNON [EACH RULE ON CLAIMS] 443-444 (3rd ed. 2010).

46) JUNG-HO KIM, CHAEGWONGAKCHIK – IRON･SARYE･PALLYE – [EACH RULE ON CLAIMS – THEORY･CASES･JUDGMENTS] 392-393 (1st ed. 2007).

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to the polluter. Especially, concurring opinion by justice Yong-deok Kim states that the responsibility of purification in article 10-3 of SECA is both civil and public. According to this opinion polluters should be imposed broad responsibilities because of the purpose of SECA to prevent dangers to health of the citizens and to "prevent potential hazard to public health and environment to be caused by soil contamination, to conserve the soil ecosystem by properly maintaining and preserving soil including purifying contaminated soil."[47)]

Dissenting opinion's main point was that the majority opinion is wrongfully interpreting public obligation from the SECA as civil obligation. It stresses the fact that item 1 of article 2 of SECA defines "soil contamination" as "contamination of soil caused by business or other human activities, damaging the health and property of people or the environment." Considering this definition, damage from soil contamination would mean direct damages like damage to health. Also, the obligation to purify the contamination would not be imposed as civil responsibility of polluter to sufferer. Therefore, according to dissenting opinion, civil responsibility of polluter of soil to the owner of the land cannot be derived from SECA or other laws related to the environment.

About the second issue dissenting opinion expressly distinguishes civil and public responsibilities. Concurring opinion by justice Yong-deok Kim seems to agree in this point since it emphasize that the responsibility to purify the land from article 10-3 of SECA is a civil responsibility. Majority opinion is not explicit about this but it defines responsibility from article 10-3 of SECA as "responsibility to the current owner of the land" which shows that it is treating this responsibility and the case as having civil character.[48)] However, discussing the unlawfulness of the act of Seahbesteel it also mentions responsibility to landfill waste according to certain standards and methods. These responsibilities are clearly public and criminal as majority opinion recognizes. Hence it could be said that

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47) Toyanghwangyeongbojeonbeop [Soil Environment Conservation Act], Act No. 4906, Jan. 5, 1995, *amended by* Act No. 16613, November 26, 2019 art 1 (S. Kor.).

48) Bong-geun Sung. *Minsasageone Isseoseo Gongbeopjeok Yeonghyanggwa Pallyeui Baljeonbanghyang [Study on the Influence of the Public Law to Civil Cases and Direction of Improvement for Judicial Judgement]* 23-1 SoPAC. 309, 336-337 (2018).

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majority opinion is of the attitude that one could refer to public or other responsibilities in deciding the unlawfulness of a certain act.

3) Review of the issue

(1) Interpretation of obligation from article 10-3 of SECA

Article 10-3 of SECA explicitly imposes responsibility to compensate for the damage and take measures such as purifying the soil to the polluter. But as mentioned above opinions differ about the characteristics of such responsibility. Especially about to what extent the responsibility is civil.

In interpreting article 10-3 of SECA the context of this article in SECA should be considered. As to the context of the article the context of its legislation, and the relationship with other articles in SECA can be considered. When SECA was first legislated in 1995 (Act No.4906, 05. Jan, 1995., New Enactment) liability for compensation was the only responsibility imposed as "strict liability" to the polluter of soil. This was amended in March, 2001 (Act No.6452, 28. Mar, 2001., Partial Amendment) to include the responsibility to "purify the contamination of the soil." The fact that previous article of SECA on strict liability was only about civil responsibility may be a reason to consider the responsibility to purify the soil as public responsibility. But the context inside the SECA should also be considered.

In the context of SECA the responsibility to "purify the contaminated soil" seems to be basically the State's responsibility. Article 11 and 14 of SECA authorizes the City Mayor or Province Governor or the head of Si/Gun/Gu to order the person responsible to purify the contaminated soil. Also, "where it is impracticable to identify the person responsible for purification, or it is deemed impracticable for the person responsible for purification to purify the contaminated soil" Mayor/Do Governor or the head of Si/Gun/Gu may directly purify the contaminated soil.[49][50]

This contexts of the SECA shows that relationship about the purification of soil is mainly between the State and the polluter or the one responsible for purification. Also, the fact that article 15 of SECA lets the State to directly purify the contaminated soil shows that the purpose of "purification

49) Toyanghwangyeongbojeonbeop [Soil Environment Conservation Act], Act No. 4906, Jan. 5, 1995, *amended by* Act No. 16613, November 26, 2019 art 15 (S. Kor.).

50) Kyun-sung Park & Tae-sung Han, *supra* note 40, at 617-618.

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of soil" is mainly about public interest. Normally criterions mentioned to be used in distinguishing public law from civil law are "purpose of the law," "relationship between the parties that the law regulates" and "the parties that the law regulates."[51] As mentioned above the interpretation of the context inside SECA shows that the responsibility to purify the soil is public under the aforementioned criterion. Hence despite the context of legislation of article 10-3 of SECA the responsibility to purify the soil imposed in this article should be interpreted as public responsibility.

(2) Relationship between breach of public responsibility and unlawfulness of the act

Even if the responsibility imposed to the polluter of the soil is public in character, breach of such responsibility may still be an "unlawful act." According to the alleged criterions for distinguishing unlawful act breach of public responsibility can be established as unlawful act. It is breach of "the actual law" since it is against public law, in this case article 10-3 of SECA. Also, since the purpose of public law is generally the well-being of society[52] breach of it can be interpreted as opposed to "good morals and other social order as a criterion."

However, deciding unlawfulness of certain acts only on the basis of its breach of public law could blur the difference between public relationships and civil relationships. Legal system of Korea clearly distinguishes public and civil relationships. For example, Administration Litigation Act (the "ALA") is legislated apart from Civil Procedure Act (the "CPA") to regulate "disputes over the rights based on public law or the application of law."[53] The court also supports this distinction by clarifying that administrative litigations differ from civil litigations by their "purpose, object and function" (Judgment of March 20, 2008, 2007Du6342, the Supreme Court of Korea).[54] Similarly the court has judged that even though

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51) I Kyun-sung Park. Haengjeongbeomnon [Theory of Administrative Law]. 12-4 (14th ed. 2015).

52) In this case to conserve the ecosystem for the benefit of the society and future generation.

53) Haengjeongsosongbeop [Administration Litigation Act], Act No. 213, September 14, 1951, *amended by* Act No. 14839, July 26, 2017, art 1 (S. Kor.).

54) Ho-young Son, Hwangyeongbeobe Isseoseo Gongbeom Gyujewa Sabeom Gujeui

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noise from highway is not acceptable in the standard of FAEP, it may comply with "acceptance limit" which the neighbor of a land has to endure (Judgment of September 24, 2015, 2011Da91784, the Supreme Court of Korea).[55)56)]

The court's attitude seems to be subtly different from the attitudes above when it comes to the question of "unlawfulness." In determining whether a sunlight disturbance was unlawful it used obligation from public law as "minimum" for determining unlawfulness. It judged that "unless otherwise specified" if an act is against public law's standard for sunlight disturbance it would become unlawful and even if it complied with such standard the sunlight disturbance should separately be reviewed to determine unlawfulness (Judgment of February 27, 2014, 2009Da40462). This attitude practically includes breach of public law as subcategory to "unlawfulness" in civil law. However, considering the distinction between public law and civil law mentioned above, breach of public responsibility will at best be a supplementary ground for establishment of unlawful act. In some areas like environmental issues two categories may have strong interrelation but the unlawfulness of an act should be separately determined.

4) Conclusion of the issue

On determining the unlawfulness of the act of Seahbesteel in relation with FEPA, SECA the obligation to purify the soil in article 10-3 of SECA should be interpreted as public responsibility. And in order to properly distinguish between public law and civil law, the breach by Seahbesteel of public responsibility should not directly be the ground for determining the unlawfulness of its act, though this could be used as strong reference for determining unlawfulness.

Sanghogwangye - Daebeobwon 2009da66549 Jeonwonhabuiche Pangyeoreul *Jungsimeur [A Study on the Boundary between Public Law and Private Law in Environmental Law – Based on Judgment of May 19, 2016, 2009Da66549, Supreme Court of Korea],* 40(1) ELR. 1, 17 (2018).

55) Article 217 of Korean Civil Act states that if the owner of the land appropriately use one's land the neighbor should endure the owner's use of it. The "acceptance limit" is a standard to decide if the owner of the land is using one's own land appropriately.

56) Young-chang Lee, *Soeumgonghae, Iljobanghae, Jomangchimhaee gwanhan Pallyeui Donghyang [Study on the Influence of the Public Law to Civil Cases and Direction of Improvement for Judicial Judgement]* 39 Pri. L. 1017, 1037-1039 (2017).

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4. Problem of causal relation between the act of landfilling the land and the loss of current owner and the point where the loss was realized

1) Background

Even if unlawful act was committed by intention or negligence the causal relation between the unlawful act and the loss is needed to establish one's liability for unlawful act. Some opinions define the "causal relation" to mean "conditional causality." That is, causal relation is claimed to exist if it can be deduced that the loss would not have occurred if the unlawful act was not committed.[57] This opinion is applying the formula of "indispensable condition(condicio sine qua non)."[58] However conventional attitude to this problem is that causal relation means "proximate causal relation." Hence causal relation exists only if it is normally thought that the unlawful act would result in the loss it has caused. The court also follows this view and use proximate causal relation as criterion to determine the causal relation between the unlawful act and the loss (for example judgement of April 26, 2007, 2005Da24318, the Supreme Court of Korea).[59]

2) Discussion of the issue in the case by the court

The majority opinion judged that Seahbesteel, who sold the contaminated land, was liable for the cost spent by the plaintiff who later bought the land. Hence it recognized the causal relation between the cost spent by the plaintiff and Seahbesteel's act of landfilling the land with waste and later selling the land. Concurring opinion by justice Yong-deok Kim too acknowledged that unless otherwise specified one could expect that if a land is contaminated the loss spent to purify the land will occur.

The dissenting opinion pointed out that the majority opinion's attitude was excessively imposing liability to the polluter of the land. According to the dissenting opinion the cause of the plaintiff's loss was the fact that price of purifying the land was not reflected in the negotiation process between the plaintiff and Kia Motors or LG Investment and Securities. Therefore, the

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57) Deok-Su Song, *supra* note 6, 1382-4.

58) Si-young Oh, Chaegwongakchik [Each Rule on Claims] 794-795 (1st ed. 2010).

59) Chang-Soo Yang & Young-Jun Kwon, *supra* note 14, at 630-634.

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causal relation between plaintiff's loss and the Seahbesteel's landfilling of waste does not exist.

3) Review of the issue

Normally in environmental litigation the burden of proof is eased. For example, in proving causal relation one does not have to prove the exact causal relation. Instead one may just show the "considerable possibility" that there might be a causal relation. The court has followed this principle since the judgment in 1974 (Judgment of December, 10, 1974, 72Da1774, the Supreme Court of Korea).[60] This attitude is based on the fact that ① the mechanism of the loss's occurrence is ambiguous and ② normally the technical and economic resources of the victim in environmental litigation is insufficient to prove the causal relation of the loss.[61] Also in some cases so called "Epidemiological Causation" was adopted which uses statistical probability to recognize casual relation.[62][63]

Since this case is about the problem of contamination of soil it can be categorized as environmental lawsuit. The loss in this case is money spent on the purification which has the same characteristic with the loss in normal environmental litigation mentioned above. This is because one has to verify that the money spent was justly calculated and negotiated. For example, in the lower instance of this case evidences like treatment cost by U.S. Environmental Protection Agency (EPA) contaminated soil restoration treatment technology, domestic and foreign papers were presented to verify that the cost spent by the plaintiff was justly negotiated. Hence the criteria for determining causal relation in this case should be eased compared to the usual principle to strengthen the burden of the defendant.

The question to be considered is whether the loss spent to purify the land was anticipated at the time in which the waste was landfilled to the land. The owner of the land is responsible for purifying the land when it is

60) Si-yoon Lee et al. Pallyehaeseol Minsasosongbeop [Explanation of Judgments on Civil Litigation Act] 463 (3rd ed. 2018).

61) Hong-Sik Cho, *supra* note 38, at 766-8.

62) Hong-kyun Kim, *supra* note 41, at 650.

63) Byung-du Kim, *Yudongmuljillo Inhan Bulbeopaengwiui Ingwagwangyeui Injeonge Gwanhan Siron [Establishment of a causal connection betw een the exposure and the injury in toxic substance injury and illness litigation]* 20-4 Hongik L. 243, 252-253.

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found to be contaminated.[64] This responsibility is imposed regardless of whther the owner caused the contamination.[65] Hence one could anticipate that someone who acquired the land would have to pay the cost of purifying it when contaminating and then selling the land.

However, these kinds of risks may have been negotiated when the polluter sold the land. For example, buyer of the land may have agreed to bear the burden of purifying the land in return for lowering the price. If this kind of agreement is settled the buyer of the land, and not the polluter of the land should be responsible for the loss occurred in purifying the land. Also, the value of the land where the waste was landfilled may increase dramatically from the time of landfilling. Since the value of land tends to change dramatically because of reasons like development in areas near it, these kinds of situations could happen with high probability. In this case the polluter of the land would have to take the burden that could not have been anticipated in the time of pollution. These problems were posed by dissenting opinion of justice Chang-suk Kim.

Despite these problems considering the special burden given to the defendant in environmental litigation, the exceptional case mentioned above should be proved by the defendant, in this case the polluter of the land. Hence although some special circumstances where the polluter's responsibility could be eased has to be considered, the polluter would have to take the burden of proof about these special circumstances.

4) Conclusion of the issue

It seems that the majority opinion did not consider some exceptional cases where the casual relation between the pollution of land and the cost of purifying the land cannot be recognized. However, the exceptional cases mentioned by the dissenting opinion like the case where the buyer of the land accepted to bear the burden for purifying the land is possible enough to be considered. Hence the court would have to consider these exceptions in future cases.

But the special feature of environmental litigation should be considered

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64) Toyanghwangyeongbojeonbeop [Soil Environment Conservation Act], Act No. 4906, Jan. 5, 1995, *amended by* Act No. 16613, November 26, 2019 art 10-4, para 1, item 1 (S. Kor.)

65) Hong-kyun Kim, *supra* note 41, at 698-700.

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in these types of cases. Like other typical environmental cases causal relationship between the pollution of soil and cost spent to purify soil is hard to prove because of technical problems. Hence like other environmental litigation, burden of proof should be beared by defendant. Considering this, even though court would have to recognize exceptional cases where casual relation would not be recognized, defendant would have to prove existence of such cases, and scope of such cases should be limited.

IV. Final Conclusion

In recent times environmental issues are gaining importance and many civil and public responsibilities regarding these issues. In this context majority opinion in this case acknowledged tort responsibility of polluter of the soil to one who the latter acquired the soil. This article reviewed the court's specific logic in recognizing such responsibilities.

Conclusively majority opinion's judgment to acknowledge the liability of Seahbesteel for unlawful act is just. But some logic of majority opinion in specific issues needs to be reconsidered. Although one who landfilled a land with waste would have to remove the waste by right of article 214 given to owner of the land, this right would not depend upon whether the waste was attached to the land. Also, polluter of the land will only have public responsibility to purify the land and breach of this responsibility would not directly be "unlawful act." Hence breach of article 10-3 of SECA would not be a ground to defining Seahbesteel's act unlawful. It's act would only be unlawful in regard of its responsibility to remove waste from article 214 of KCA. Finally, in recognizing causal relation between landfilling and loss of money spent on purifying some exceptional cases where polluter's responsibility may be exempted should be considered. However, these exceptions should be restrictively recognized and polluter should bear burden of proof.

Scale of environmental pollution and harm caused by the pollution are increasing as industries develop. Considering these dangers responsibility about environment should be widely imposed. In this regard conclusion of majority opinion can be justified. However, majority opinion made some

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errors mentioned above that could excessively expand responsibility of polluter. Despite importance of environmental issues, one should always be cautious of imposing immoderate responsibility to polluter. Imposing too much burden on one side of civil litigation may be against principle of the equity which is one of main principles in civil relation. Hence though majority opinion's main points are just in this case, some criticism about excessive burden imposed to polluter should be considered in further judgment regarding similar cases.

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