Journal of Korean Law | Vol. 22, 179-210, February 2023

The Law of Real Rights*

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I. Introduction

The Law of Real Rights provides for the rules on real rights. Real rights are rights exigible against anyone in the world. This topic is prescribed in Book II of the Civil Code of the Republic of Korea (hereinafter "CivC").[1] CivC adopts the Pandekten System and is thus divided into five books: (1) Book I: General Principles of Civil Law; (2) Book II: Law of Real Rights (Property); (3) Book III: Law of Personal Rights (Obligations); (4) Book IV: Family Law; and (5) Book V: Succession. This structural configuration was imported from the German Bürgerliches Gesetzbuch. The main structural difference between the two codes is that the orders of Books II and III are switched.

CivC was promulgated in 1958 and took effect in 1960. There have been 29 amendments, but no major revision of Book II has been made over the past 60 years. Thus, the Law of Real Rights remains relatively intact, although some special statutes have been enforced to supplement it.[2] Most importantly, its judicial interpretation has burgeoned and filled the gap between the law and reality.

Broadly speaking, the Law of Real Rights is divided into two parts: (1)

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* With possible updates and revisions, this article is scheduled to be published as a chapter of UNDERSTANDING KOREAN LAW (SNU Press, forthcoming 2023).

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1) Minbeob [Civil Act] (S. Kor.).

2) For example, Gadeunggidambo deunge gwanhan beobyul [Provisional Registration Security Act] (S. Kor.) and Dongsan, chaegwon deungui damboe gwanhan beobyul [Act on Security over Movable Property, Claims, Etc.] (S. Kor.). These special acts deal with security interests and will be touched upon in this chapter.

the General Part (Articles 185 to 191) and (2) various types of real rights (Articles 192 to 372). In this chapter, the provisions contained in the General Part will not be explored separately as they are highly abstract. Instead, they will be explained alongside individual real rights for the sake of convenience and efficiency. Seven main real rights will be covered: ownership, superficies, easement, lump-sum lease, hypothec (plus mortgage), pledge (plus mortgage and charge), and lien. We will first explore some fundamental ideas forming the foundation of this area and then analyze the individual real rights enshrined in Book II of CivC.

II. Classification of Things, Real/Personal Rights, and the Numerus Clausus Rule

A. Classification of Things

Under Korean civil law, "things" include only physical things, electricity, and natural forces that can be controlled (CivC Article 98). In other words, objects existing only in a conceptual form (i.e., pure rights, such as debts or intellectual property rights) are outside the ambit of "things." Things can be classified into immovables and movables. Immovables pertain to land and things firmly affixed thereto (CivC Article 99(1)). Therefore, buildings are not part of land but are instead regarded as constituting separate immovables. In other words, land and buildings are two different types of immovable things. Trees are part of the land on which they stand, but if a cluster of trees are registered according to the Standing Timber Act[3] or are specifically and clearly indicated,[4] they are treated as distinct immovables. Movables are things other than immovables (CivC Article 99(2)). Chattels are archetypal movables.

3) Ibmoge gwanhan beobyul [Standing Timber Act] (S. Kor.).

4) Daebeobwon [S. Ct.], Oct. 28, 1998, 98Ma1817 (S. Kor.).

B. Real/Personal Rights

CivC provides for eight types of real rights: ownership; possession; superficies, easements, and lump-sum lease (usufruct rights); and hypothec, pledge, and lien (security rights). Therefore, the holders of these real rights can assert their rights against anyone in the world. On the other hand, personal rights, generally arising from contracts, unjust enrichment, negotiorum gestio, and torts, are exigible only against some specified persons. In other words, a real-right holder can exclude anyone who interferes with his/her real right while a personal-right holder cannot. Furthermore, a real right is protected in a bankruptcy procedure while a personal right is not. The different treatment in bankruptcy or the possibility of actions for recovery ahead of other creditors is the hallmark of all real rights. This is also where an important dichotomy rests.[5)]

The object of a real right is generally a physical thing. For example, both land and chattels can be objects of ownership. However, only land can qualify as the object of superficies, easements, lump-sum lease, and hypothec, while chattels are the typical objects of pledge and lien. That said, it must be noted that pure rights, although not recognized as things, can also be the objects of real rights. As discussed in this chapter, a pure right, such as a debt or intellectual property, can be the object of a pledge (i.e., pledge of rights). Furthermore, a real right itself, such as superficies and lump-sum lease, can be offered as the object of a hypothec. Therefore, land, chattels, and pure rights can all be made into objects according to the

5) It must be noted that both real- and personal-right holders can claim for damages on the basis of the tort law (Minbeob [Civil Act] art. 750 (S. Kor.)) against a person who interferes with their rights. Thus, for example, those who (1) interfere with another's land through illegal entry, (2) do not return their chattels, or (3) intentionally infringe upon another's personal right all have the obligation, by operation of law (i.e., tort law), to make good the loss incurred by the right (either real or personal) holder in monetary form. The rationale for this is quite obvious: both real and personal rights deserve protection by virtue of the fact that they are rights; otherwise, they can hardly be called rights. However, whether a right can be protected by tort law via monetary compensation and whether a right can be protected ahead of other creditors by way of an action for recovery must be demarcated. Only real rights have the latter feature; thus, such feature is the main difference between a real right and a personal right, -and the availability of tort claims does not help.

relevant type of real right.

The foregoing suggests a theoretical lesson. That is, we must distinguish between two questions: What are "things" in law? What can be the objects of real rights? The answer to the first question is, as we have seen, physical things, controllable electricity, and natural forces. However, the answer to the second question is that both physical things and pure rights can be objects of real rights. Obviously, the scope of the latter is wider than that of the former. This is where a caveat is required when studying the civil law of real rights.

C. The Numerus Clausus Rule

The numerus clausus rule states that real rights cannot be created at will, and only those provided for by statutes or customary law can be regarded as real rights (CivC Article 185). This means that both the types and content of any real rights must be pre-established by law. (As an aside, only a limited number of real rights with fixed content are available in the market.) Parties cannot privately invent new types of real rights or change the content of the existing real rights as they please. The rationale behind this rule is that the law should make the public know with certainty what kinds of real rights exist in the country so that they can check if any of such real rights are attached to a thing they intend to deal with. This protects third parties (i.e., potential buyers, etc.) from being prejudiced by any unexpected or unheard-of real rights. To sum up, the justification for the numerus clausus rule lies in the nature of a real right itself, its universal binding effect: If you want me to be bound by something, you should at least give me a chance to know of its existence in advance. As mentioned earlier, CivC recognizes eight real rights. Except for possession, they are the main focus of this chapter.

III. Ownership (*Soyugwon*) with Respect to Chattels

A. Acquisition

1. Real Agreement by Way of Transfer of Possession

The first real right to be explored is ownership. Ownership of chattels involves the right to use, profit, and dispose of chattels within the scope of the law (CivC Article 211). Ownership is the most free and comprehensive real right that a person can enjoy, although it cannot be exercised in a way that the law does not permit (i.e., in an illegal way, such as harming another's body or property). To acquire ownership of a chattel, the following requirement must be met: a real agreement (*dingliche Einigung*) accompanied by the transfer of the chattel's possession. Say A wants to purchase a chattel from B. A and B must reach a real agreement with respect to the transfer of ownership of the chattel itself. Here, the real agreement involves B's intention to transfer ownership of the chattel to A and A's intention to obtain it from B. This is different from the obligational agreement arising from a contract. A contract generates only mutual obligations. That is, it involves only the parties' intentions to owe an obligation to each other. A real agreement, on the other hand, is an agreement that finalizes the transfer of ownership of the chattel to A. But how is this real agreement made? In principle, it is considered to be made at the time the chattel is physically delivered by B to A and A assumes physical possession of it. Thus, the transfer of ownership of a chattel takes effect when the possession of the chattel is transferred by the chattel's owner to the chattel's purchaser (CivC Article 188(1)) because that is when the real agreement is accomplished. In the aforementioned scenario, A thus acquires ownership of the chattel when B transfers its possession to him/her, not at the moment the contract is concluded.

2. Prescriptive Acquisition

The second mode by which ownership can be obtained is through prescription. A person acquires ownership of a chattel belonging to another

by operation of law if he/she, with the intention of owning the chattel, possesses it peaceably and openly for 10 years (CivC Article 246(1)). However, if a person obtains possession of a chattel belonging to another in good faith, not knowing that the chattel belongs to another (without any negligence in not knowing such), he/she acquires ownership of the chattel after 5 years of peaceable and open possession of it (CivC Article 246(2)). For example, if A bought chattel X from B but the deal is void and the ownership of X is not transferred to him/her (A), A does not acquire ownership of X. However, if A possesses X for 10 years knowing that the purchase deal was void, or for 5 years not knowing that the purchase deal was void, he/she acquires ownership of X. As the possessor of a chattel automatically acquires ownership of it after the passage of certain prescriptive periods, the acquisition is effectuated by operation of law. This ultimately deprives the original holder of the chattel of his/her ownership of it. The rule of prescriptive acquisition aims to secure legal stability by maintaining the status quo and sacrificing the original owner.

3. Accessio, Confusio, and Specificatio

Ownership of a chattel can also be acquired through *accessio*, *confusio,* or *specificatio*. If two chattels belonging to different owners are so combined that they can no longer be separated without being damaged or incurring excessive expenses, the ownership of the composite chattel, according to the rule of *accessio*, belongs to the owner of the principal chattel. Therefore, the owner of the accessory chattel loses his/her ownership of it. If no distinction can be made between the principal and accessory chattels, the owners of such chattels lose their original ownership of these but shall have shares (i.e., ownership in common) of the composite chattel according to the values of their respective chattels at the time these were combined (CivC Article 257).

If mixed things have identical natures and are thus mutually indistinguishable (e.g., beans, apples, rice), the rule of *confusio* applies. According to this rule, the owners of the chattels lose their original ownership of these but shall have shares (i.e., ownership in common) in the mixture according to the values of their respective chattels at the time these were mixed (CivC Articles 258 and 257).

Finally, if a person has processed a chattel belonging to another, the rule of *specificatio* applies, and the ownership of the processed chattel shall belong to the owner of the raw material. However, if the value of the processed chattel significantly exceeds that of the raw material, the person who processed the chattel acquires ownership of the processed chattel (CivC Article 259(1)).

When ownership or co-ownership is acquired through the three aforementioned rules, the acquisition is not consensual but is effectuated by operation of law. Those who lost ownership are entitled to claim compensation according to the rules of unjust enrichment (CivC Article 261).

4. Immediate Acquisition

Ownership of a chattel can also be acquired via the rule of immediate (or bona fide) acquisition. This is a rule that enables a transferee to obtain valid ownership of a chattel even if the transferor has no good title to it. The legal rule *nemo dat quod non habet* (i.e., no one can transfer what he/she does not have) cannot defeat a bona fide purchaser's interest. Therefore, even if the transferor has no good title to the chattel disposed of or sold, the transferee can still acquire ownership of the chattel provided he/she (1) has started to possess the chattel peaceably and openly and (2) believed that the transferor was the genuine owner of the chattel at the time of the transaction, and was not negligent in believing so (CivC Article 249). This is another case in which ownership is procured by operation of law. The main purpose of this rule is to protect the security of commerce. Chattels are generally not earmarked, and potential buyers do not know for sure who really owns a chattel under negotiation. The law therefore presumes that whoever is in possession of a chattel is its legal owner (CivC Article 200). Thus, potential buyers can proceed with their purchase deals, relying on the other party's possession of the chattel being bought as proof of such party's ownership of it. As long as the transferee is not negligent in believing that the transferor has a good title to the chattel, he/she acquires ownership of the chattel by virtue of the rule of immediate (bona fide) acquisition. That said, this may seem unfair to the true owner of the chattel, especially if the relevant chattel is a stolen or lost chattel. Thus, the law

attempts to strike a balance by prescribing that the true owner can recover the chattel within two years after it was stolen or lost (CivC Article 250).

5. Discovery

Last but not least, whoever discovers an ownerless chattel acquires its ownership, provided he/she takes possession of it with an intention to own it (CivC Article 252). In other words, finders are keepers, and new ownership of the discovered chattel arises by operation of law. However, the rule of discovery does not apply to treasure troves or cultural heritage, whose ownership is vested in the state (CivC Articles 254 and 255).

B. Rights

Ownership bestows upon its holder the right to use, profit from, and dispose of the chattel owned (CivC Article 211). Therefore, ownership involves a bundle of rights and is the most inclusive real right. The other real rights are carved out of ownership. If a person's ownership of a chattel is infringed upon or the chattel is taken by another, the owner has the right to demand the chattel's return (CivC Article 213). This is the so-called *rei vindicatio* claim rooted in Roman law. The owner can also eliminate another's interference in the chattel's ownership and in the exercise of the accompanying rights, or prevent another's imminent infringement on such (CivC Article 214). These three remedies are directly given by the Law of Real Rights itself, and the interferer's fault is irrelevant; the existence of infringement or imminent interference suffices for the owner to exercise such remedies. They are therefore demarcated from actions premised on tort law, which requires tortfeasor fault (CivC Article 750). A chattel owner can rely on the remedies awarded by both laws, although double compensation is not allowed concerning the chattel infringed upon. The two laws differ in requirements, but the remedies prescribed in the Law of Real Rights are preferable because they do not require the claimant to prove the interferer's fault.

C. Extinction

Ownership of a chattel is extinguished once the chattel is completely destroyed, sold to another, or given up by the owner.

IV. Ownership (*Soyugwon*) with Respect to Immovables

A. Acquisition

1. Real Agreement and Registration

Ownership with respect to immovables can be acquired through a real agreement and registration. The owner of an immovable has the right to use, take profits from, and dispose of the immovable owned (CivC Article 211). As with chattels, however, to acquire ownership of an immovable, two requirements must be met: a real agreement (*dingliche Einigung*) and registration. Article 186 of CivC provides that the acquisition of a real right in immovables takes effect only when such immovables are registered. Ownership, being a real right, must also be registered if its object is an immovable: no registration, no title acquisition. Even though we can assume that a real agreement (i.e., the mutual agreement on the transfer of ownership)[6] is reached once the seller of an immovable (e.g., a piece of land) hands over all the relevant title documents to the buyer (because this is the moment when the seller intends to finalize the disposition), that is not sufficient. The real agreement must be supported by registration. Registration is a condition for a real agreement to take effect. That said, some exceptions may apply. Ownership with respect to immovables can be acquired shorn of a real agreement and registration, provided the immovables are acquired via inheritance, expropriation, a judgment, an auction, or other stipulated grounds (CivC Article 187). In these cases, ownership arises by operation of law. However, if a person who acquires

6) This real agreement is different from a contractual agreement, which only creates the parties' personal obligations.

ownership of an immovable through any of the aforementioned exceptional ways wants to dispose of the immovable or sell it to another, he/she has to register the relevant ownership under his/her name (CivC Article 187, proviso). Before a person can dispose of an immovable in the market, it must be ascertained that he/she is its owner. To sum up, the acquisition of ownership in immovables requires a real agreement and registration, subject to the exceptions prescribed in Article 187 of CivC.

2. Prescriptive Acquisition

Ownership of an immovable can be obtained by satisfying the requirements of prescriptive acquisition. A person acquires a right to register ownership of an immovable belonging to another if he/she, with an intention to acquire ownership of the immovable, has been in peaceable and open possession of it for 20 years (CivC Article 246(1)). If a person has registered ownership of an immovable belonging to another but has done so in good faith and without any negligence in not knowing that the immovable belonged to another, he/she acquires ownership of it after 10 years of peaceable and open possession of it (CivC Article 246(2)). It must be noted that in the former scenario, the possessor is only entitled to request that the current registered holder of the immovable transfer its ownership to him/her. The nature of this claim is considered a personal right.[7] Therefore, technically, it is not a mechanism that generates ownership. In the latter scenario, however, ownership is acquired. Unlike with chattels, Korean law does not allow immediate acquisition of immovables. Hence, if a person purchases a piece of land from someone who is not its true owner, or if the purchase deal is void and thus no title transfer happens, such person cannot obtain a good title to the land despite his/her being a bona fide purchaser of it. However, relying on the rule of prescription enshrined in Article 246(2) of CivC, he/she can argue that he/she has now become the owner of the land. Again, the law endeavors to maintain legal stability because many interested parties may become involved in the matter after a certain period.

7) Daebeobwon [S. Ct.], Mar. 8, 1996, 95Da34866, 34873 (S. Kor.).

3. *Accessio*

Under the rule of *accessio,* the owner of an immovable acquires ownership of anything affixed thereto (CivC Article 256). For example, if wallpaper is attached to a building or a postbox is affixed to a piece of land, it becomes part of the building or land. Therefore, the owner of a piece of land or a building will acquire ownership of the wallpaper or postbox affixed by someone else to the building or land. The person who lost ownership of the affixed thing is entitled to claim compensation for it according to the rules of unjust enrichment (KTA Article 261). However, if the owner of the thing attached to an immovable retains the title to it, the rule of *accessio* does not apply (CivC Article 256, proviso). Thus, if a person grows some plants or crops on another's land, the land owner does not obtain ownership of the plants or crops because these belong to those who have taken care of them.[8] Furthermore, if a lessee has installed a new door lock, he/she retains ownership of it and can thus uninstall it when the lease ends. The landlord does not acquire ownership of the new door lock.

B. Rights

If one's ownership of an immovable is infringed upon by another, the owner is entitled to demand the return of the immovable (i.e., the right of *rei vindicatio*) if it is illegally occupied by the infringer (CivC Article 213). The owner can also eliminate another's interference or prevent another's imminent infringement (CivC Article 214). That said, the right of *rei vindicatio* and that of elimination are identical remedies because they can be exercised only in the form of ejectment. (Unlike in the case of chattels, it is literally impossible to ask someone to return a piece of land.) The three aforementioned remedies are directly provided by the Law of Real Rights itself, and an interferer's fault is irrelevant. The existence of infringement or imminent interference suffices for the owner of the immovable to exercise any of such remedies. The three remedies are thus demarcated from those

8) Daebeobwon [S. Ct], Aug. 28, 1978, 79Da784 (S. Kor.).

actions premised on tort law, which requires tortfeasor fault (CivC Article 750). The owner of the immovable can rely on the remedies awarded by both laws, although double compensation is not allowed with regard to the immovable interfered with. The two laws differ in requirements, but the remedies prescribed in the Law of Real Rights are preferable because they do not require the claimant to prove the interferer's fault.

C. Extinction

Ownership of an immovable is extinguished once the immovable is completely destroyed, sold, registered under another's name, or given up by the owner.

V. Co-ownership

A. Ownership in Common

There are three types of co-ownership. The first and most common type is ownership in common, by which two or more persons can own a thing in proportion to their respective shares of it (CivC Article 262(1)). Here, five matters merit mentioning. First, there is still only one ownership, but it is proportionally divided among the co-owners in the form of shares.[9] Second, the co-owners are not allowed to dispose of the thing co-owned (CivC Article 263) but are allowed to dispose of their respective shares of it (CivC Article 264). Third, each co-owner's share can be inherited by his/her heirs. Fourth, each co-owner can demand division of the thing co-owned (CivC Article 268(1)). The commonly adopted methods for this are physical division and monetary compensation. If the thing is indivisible or if the co-owners fail to reach an agreement regarding how to divide it, any co-owner can ask the court to decide how the division should be done (CivC Article 269(1). Fifth, the questions of management and whether to dispose of the thing co-owned are resolved by a majority of the co-owners'

9) Daebeobwon [S. Ct], Nov. 12, 1991, 91Da27228 (S. Kor.).

shares (CivC Article 265) rather than by a majority of the co-owners. For the expenses (repair costs or tax) incurred in relation to the thing co-owned, all the co-owners are liable for these in proportion to their respective shares of the thing co-owned (CivC Article 266(1)).

B. Joint Ownership

The second type of co-ownership to be explored herein is joint ownership. This is a form of co-ownership that applies to the partners in a partnership or to the members of other relationships prescribed by law[10] (CivC Article 271(1)). The thing jointly owned is generally related to the common purposes pursued by the joint owners. Therefore, despite the fact that joint ownership and ownership in common are similar in that the owners have fixed shares of the thing co-owned or jointly owned, they are significantly different in the following respects. First, joint owners are not permitted to dispose of their shares of the thing jointly owned unless all the other joint owners agree to such (CivC Article 273(1)). In the case of the death of a joint owner, his/her heirs cannot succeed to the deceased shares of the thing jointly owned because they are irrelevant to the business purpose being pursued by the other joint owners. The rule of survivorship applies, and the other joint owners succeed to the share of the deceased. Second, joint owners cannot request the division of the thing jointly owned (CivC Article 273(2)) as such division may harm the execution of the business purpose being pursued by the joint owners. Third, the management or disposition of the thing jointly owned is determined by the unanimous consent of all the joint owners (CivC Article 272) unless otherwise provided for in the covenants made by the members' association.

C. Collective Ownership

The last type of ownership is collective ownership. It applies to the members of unincorporated associations (CivC Article 275(1)). Unlike ownership in common and joint ownership, the members of

10) For example, trustees are joint owners of trust property (Shintakbeob [Trust Act] art. 50 para.1 (S. Kor.)).

unincorporated associations do not enjoy any share of the thing collectively owned by them. Thus, there are no shares of the thing collectively owned by them that can be transferred to another and that other persons can succeed to. As to the management or disposition of the thing collectively owned, this is determined in the general meetings of the members (CivC Article 276(1)), unless otherwise provided for in the articles of association or in the covenants made by the members of the association (CivC Article 275(2)). Even the use and enjoyment of the thing collectively owned must be done in accordance with the articles of association or with the covenants made by the members of the association (CivC Article 276(2)).

VI. Superficies (*Jisanggwon*)

A. Acquisition

1. Real Agreement and Registration

Superficies is a real right that entitles its holder to use another's land for the purpose of establishing a building or structure or planting trees thereon and owning these (CivC Article 279). Furthermore, the space on or under the ground may be demarcated into upper or lower parts and may become the subject matter of superficies for owning a building or structure (CivC Article 289-2). The Supreme Court[11] goes further and states that even graves can be the subject matter of superficies. As with ownership in land, to acquire superficies with respect to land, two requirements must be met: a real agreement (an agreement on the grant of superficies itself) and registration (CivC Article 186).

2. Prescriptive Acquisition

Superficies can be acquired by prescription. There is no need to explain this in detail here because what was mentioned earlier regarding the

11) Daebeobwon [S. Ct], Feb. 23, 1988, 86Daka2919 (S. Kor.).

prescriptive acquisition of ownership also applies to superficies. Thus, Article 245 of CivC applies *mutatis mutandis* to the acquisition of superficies (CivC Article 248).

3. Acquisition by Operation of Law

If a piece of land and a building thereon belong to one and the same person but either the land or the building is later vested in another, the owner or the real-right holder of the building acquires superficies with respect to the land by operation of law. Say A owns land X and building Y thereon and B has a lump-sum lease over Y. B has a real right to use Y and the relevant part of X on which Y stands. However, A subsequently disposes of X to C. In this case, a superficies will arise by operation of law (CivC Article 305(1)) over the part of X on which Y stands. C thus cannot exclude B. The rationale behind the creation of superficies by operation of law is to protect B's reliance on the continuous use of the relevant part of X and to preserve the economic value of Y by preventing C, the new owner of X, from requesting B to tear down Y. Fundamentally, this problem results from the fact that land and the buildings thereon are considered two separate immovables.

B. Rights

First, people use superficies to own buildings, structures, or trees. These are immovables and thus cannot be moved easily, and it will take a relatively long time for their owners to benefit from them. Thus, the law prescribes that the duration of superficies shall not be less than (1) 30 years if the superficies is for owning buildings made of stone, lime, brick, or other similarly strong materials, or for owning trees; (2) 15 years if the superficies is for owning buildings other than the aforementioned ones; and (3) 5 years if the superficies is for owning structures other than buildings (CivC Article 280(1)). Therefore, holders of superficies have a right to enjoy their immovables on another's land for a rather long period.

Second, if a building, other structure, or trees remain on another's land upon the termination of the superficies, the superficiary may request the renewal of the superficies (CivC Article 283(1)). If the superficies grantor

refuses to renew the superficies, the superficiary can request the grantor to purchase the immovable on the land at a reasonable price (CivC Article 283(2)).[12] The holder of the superficies can demand the return of the immovable (i.e., the right of *rei vindicatio*) if it is illegally occupied by another (CivC Articles 290 and 213),[13] and can also eliminate another's interference with, or prevent another's imminent infringement upon, his/her use of the land (CivC Articles 290 and 214). Third, a superficiary, being a real-right holder, may transfer the superficies to another or lease out the land within the duration of the superficies. The transfer is allowed even if the superficies grantor does not give permission for such.[14]

C. Extinction

The right of superficies is extinguished when the land on which the building, structure, or trees thereon that are the subject matter of the superficies are destroyed. It also ends when its duration expires. In such a circumstance, if the grantor of the superficies makes a request to purchase the relevant building, structure, or trees at a reasonable price, the superficiary may not refuse such request without justifiable reason (CivC Article 285(2)). The right of superficies is also terminated if the grantor claims termination when the superficiary defaults in paying the rent for two years (CivC Article 287). Last but not least, if the superficiary fails to exercise his/her right for 20 years, the rule of extinctive prescription applies (CivC Article 162(2)). The superficies therefore becomes extinct.

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12) However, the superficiary loses his/her right to request the superficies grantor to purchase the immovable on the land if the reason for the termination of the superficies is the superficiary's default in paying rent to the grantor (Daebeobwon [S. Ct], Jun. 29, 1993, 93Da39925 (S. Kor.)).

13) This is done by ejecting the person occupying the land because it is impossible to return immovables.

14) Daebeobwon [S. Ct], Nov. 8, 1991, 90Da15716 (S. Kor.).

VII. Easement (*Jiyeoggwon*)

A. Acquisition

1. Real Agreement and Registration

Easement is a real right that entitles its holder (i.e., the dominant tenement) to use the land of another (i.e., the servient tenement) for the convenience and benefit of his/her own land for a certain purpose (CivC Article 291). To acquire superficies with respect to land, two requirements must be met: a real agreement (an agreement on the grant of easement itself)[15] and registration (CivC Article 186).

2. Prescriptive Acquisition

Easement can be acquired by prescription. There is no need to explain this in detail here because what was mentioned earlier regarding the prescriptive acquisition of ownership is also applicable, *mutatis mutandis*, to easement. Thus, Article 245 of CivC applies *mutatis mutandis* to the acquisition of easement (CivC Article 248).

3. Acquisition by Operation of law

If a piece of land has no access to a public road (which is necessary for the use of the land) without passing over the surrounding land, and the owner of the land thus cannot reach the public road without passing over the surrounding land, or if the cost of reaching the public road would be excessive, the owner of the land may pass over the surrounding land to reach the public road. This is the so-called right of way. However, the method and place of passing over must be so chosen as to cause the least possible damage to the surrounding land (CivC Article 219). No real agreement (i.e., the intention to grant an easement) is required between the

15) This real agreement is different from a contractual agreement, which only creates the parties' personal obligations.

servient tenement and the dominant tenement. The easement arises by operation of law simply because the latter's land is closed off and has no exit to a public road.

B. Rights

The dominant tenement has the right to use the servient tenement's land. He/she can also eliminate another's interference with, or prevent another's imminent infringement upon, his/her use of the land for the purpose of passing over it to reach a public road (CivC Articles 301 and 214). It must be noted that the right to request the return of land has no application in easement because the dominant tenement is not in continuous possession of the servient tenement's land. Such right is left for the owner of the land (i.e., the servient tenement) to exercise. The aforementioned right to eliminate interference and to prevent imminent infringement shall suffice for the dominant tenement. The right of a dominant tenement has two characteristics worth mentioning. First, the dominant tenement's right under an easement is ancillary to his/her land. Therefore, if the dominant tenement disposes of his/her land or sells it to another, the easement follows. Second, the dominant tenement is forbidden from selling only his/her easement right to another (CivC Article 292).

C. Extinction

Easement relationships come to an end when the land involved is destroyed. If the dominant tenement sells his/her land to another, he/she will lose his/her right of easement, but the new landowner will succeed to it as the easement follows the land it attaches to. Finally, if the dominant tenement fails to exercise his/her right under easement for 20 years, the rule of extinctive prescription applies (CivC Article 162(2)). The easement therefore becomes extinct.

VIII. Lump-Sum Lease (*Jeonsegwon*)

A. Acquisition

1. Real Agreement and Registration

Lump-sum lease is a real right that (1) entitles its holder (i.e., the lessee) to possess and use the immovable of another (i.e., the lessor) by paying a lump-sum deposit[16] to the latter, and that (2) empowers the lessee to recoup his/her deposit on the immovable ahead of the lessor's other personal creditors should the lessor fail to return the deposit (CivC Article 303(1)). In this case, as the amount of the deposit is generally extremely high, the lessee does not have to pay any rent to the lessor, but the lessor takes the interest arising from the deposit. As the lessee can recoup his/her deposit from the leased immovable ahead of the lessor's other personal creditors if the lessor defaults in returning the deposit, lump-sum lease also has the nature of a security right. To acquire lump-sum lease of an immovable, two requirements must be met: a real agreement (an agreement on the grant of lump-sum lease itself)[17] and registration (CivC Article 186). This is the only way by which lump-sum lease can be created. It must be stressed that the subject matter of lump-sum leases in the market is generally a house or an apartment.

B. Rights

The lessee, as a real-right holder, is entitled not only to possess, use, or take profits from the immovable leased, but also to exclude and prevent anyone from infringing upon these rights (CivC Articles 219, 213, and 214). However, some complications merit elaboration. First, if the lessor does not own the land on which the leased building stands and has a superficies on

16) In practice, the amount generally reaches 70% of the whole value of the immovable leased.

17) This real agreement is different from a contractual agreement, which only creates the parties' personal obligations.

such land, then the lessee's lump-sum lease also enjoys the superficies attached to the lessor's building (CivC Article 304(1)). Second, if the lessor owns both the land and the building thereon and a lump-sum lease is created on the building, then a superficies will be created by operation of law if the lessor sells the land to another (CivC Article 305(1)). Third, if the lessee has attached a thing (e.g., a new door lock or new curtains) to the immovable with the lessor's permission, the lessee has the right to request the lessor to purchase the thing attached (CivC Article 316(2)). Fourth, unless otherwise prohibited when the lump-sum lease is granted, the lessee has the power to transfer his/her lump-sum lease to another or to offer the lump-sum lease as security to his/her creditor (CivC Article 306). Finally, the lessee can recoup his/her deposit on the immovable to which the lump-sum lease is attached ahead of the lessor's other personal creditors should the lessor default in returning the deposit to the lessee (CivC Article 318).

C. Extinction

The lump-sum lease relationship ends when the agreed-upon period for it expires. Moreover, the lessor can terminate the lump-sum lease if the lessee fails to use or take profits from the immovable according to the terms of the lease (CivC Article 311). Finally, the lump-sum lease is also extinguished when the relevant immovable is destroyed.

D. Housing Lease Protection Act

In lump-sum lease, the lessee's right is a real right. It is attached to the immovable and is thus binding on third-party transferees. Lump-sum lease is widely used in South Korea, but some landlords are reluctant to use it as it accords a real right to the lessee. Such landlords alternatively choose to use a similar mechanism provided for in the law of contract: contractual lease. In contractual lease, the lessee generally provides the landlord (i.e., the lessor) with a smaller deposit (compared to that in lump-sum lease) and pays monthly rent. As the contractual lease, however, gives the lessee only a contractual right, it cannot bind the subsequent transferees. This allows the lessor to easily dispose of his/her immovable. Furthermore, in contractual lease, the lessee does not have a right to recoup his/her deposit

ahead of the lessor's other personal creditors. This causes serious problems especially for those who need to rent a house or an apartment to live in but cannot afford lump-sum lease, which requires the payment of a large amount of money to the landlord up front. In other words, in contractual lease, the lessees are in a relatively weak position and at a higher risk of being ejected from the house or apartment they are leasing and living in.

In response to the aforementioned problem, a special statute was enacted in 1981: the Housing Lease Protection Act (hereinafter "HLPA").[18] Four points regarding this law merit mentioning. First, the minimum period for contractual lease is two years (HLPA Article 4(1)). This rule binds the lessor but not the lessee; the lessee can request a contract for less than two years. This rule was established to ensure the lessee's stability of residence and to prevent the lessor from increasing the rent every year. Second, once the lessee moves in, begins to possess the house or apartment, and completes the resident registration, his/her rights are binding on the subsequent third-party transferees of the rental property (HLPA Article 3(1)). Third, the lessee is entitled to recoup his/her deposit from the house or apartment ahead of the landlord's other personal creditors should the landlord fail to return the deposit (HLPA Article 3-2(2)). Finally, the lessor cannot refuse to renew the contract without justifiable grounds (HLPA Articles 6 and 6-3). To sum up, functionally, contractual lease has become akin to lump-sum lease despite the fact that the former is contractual and the latter is proprietary. It seems that the possibility of publicizing the lease (i.e., resident registration and possession) has made it possible for contractual lease to straddle two areas of private law.

IX. Hypothec (*Jeodanggwon*)

A. Acquisition

1. Real Agreement and Registration

Under a hypothec, the lender is entitled to recoup the money he/she

18) Jutaek imdaecha bohobeob [Housing Lease Protection Act] (S. Kor.).

has lent out, ahead of other creditors, from the immovable that the debtor or a third person furnished as security, without transferring its possession (CivC Article 356). The amount of the debt does not have to be fixed from the beginning as the line-of-credit hypothec is also valid (CivC Article 357). However, debt crystalizes when it comes due. The line-of-credit hypothec then turns into a general hypothec[19] with ascertained debt. There are two requirements: a real agreement (an agreement on the grant of hypothec itself) and registration (CivC Article 186). The owner of the immovable furnished as a security can not only retain ownership of it but also continue to possess it. If the subject matter of the hypothec is provided by a third person, a real agreement is made not between the debtor and the creditor but between the third person and the creditor. Furthermore, the aforementioned superficies and lump-sum lease can also be the subject matter of a hypothec (CivC Article 370). In these cases, what is offered is a right to possess and use the relevant immovable (plus the lump-sum money in the case of lump-sum lease), creating a legal structure of right against right.

2. Acquisition by Operation of Law

A hypothec may be imposed by operation of law if the following two requirements are met: (1) if the contractual lessee who has a building on the leased land delays payment of rent for two years and (2) if the lessor seizes the building furnished as security to recoup the rent in default. In such a case, the law deems the seizure as having the same effect as a hypothec (CivC Article 649).

B. Rights

The creditor's hypothec secures the principal and its interest, penalties, liquidation damages, and expenses for the enforcement of the hypothec. However, for the interest arising from a default, the hypothec can be exercised only as regards payments due within one year after their

19) Daebeobwon [S. Ct], Dec. 9, 1992, 97Da25521 (S. Kor.).

respective deadlines (CivC Article 360). When the value of the hypothec's subject matter has significantly decreased due to the debtor's fault, the creditor can require the debtor to recover it or to offer another reasonable security (CivC Article 362). The creditor can also exclude or prevent anyone from infringing upon the immovable offered as security (CivC Articles 370 and 214). However, the creditor does not have the right to ask for the return of the possession of the relevant immovable (i.e., *rei vindicatio*) because he/she does not have any power to possess and use it.

If the debtor defaults in paying his/her debt, the creditor is entitled to recoup it from the immovable ahead of the debtor's other personal creditors (CivC Article 356). However, some exceptions apply here, such as certain taxes (e.g., inheritance tax: National Tax Act Article 35(1)(iii)) and deposits of small amounts (e.g., HLPA Article 8). Furthermore, the rule of real subrogation applies (CivC Articles 370 and 342). Thus, if the subject matter of the hypothec is substituted for another thing (e.g., if the government expropriates the land under a hypothec and another piece of land is given as compensation) or right (e.g., a claim to payment against the insurance company when the land is damaged), the hypothec will become attached to that thing or right. Last but not least, if the debtor in a hypothec has constructed a building on the land after a hypothec was created over such land, and if the debtor defaults on the payment of his/her debt, the creditor may sell such building by auction, together with the land. However, the creditor has no right to recoup the money he/she has lent out from the proceeds of the building ahead of the debtor's other personal creditors (CivC Article 365). The purpose of this is to facilitate the sale of the land offered as security. The existence of a building may hamper its sale at an auction. However, the creditor is not prioritized in recouping the money he/she has lent out from the proceeds of the sale of the building because the building was not the subject matter of the debt *ab initio*. He/she is only a personal creditor with regard to the proceeds of the sale of the building.

C. Extinction

As a hypothec is ancillary to the debt it secures, it is extinguished once the debt it secures becomes defunct due to extinctive prescription[20] or

satisfaction (CivC Article 369). It is also terminated if the immovable offered as security is destroyed.

D. Ownership-based Security Interests over Immovables

Hypothec is a security interest imposed upon an immovable (i.e., land or a building) belonging to the debtor (or a third person). Thus, the security interest granted to the creditor is a hypothec, and the debtor's ownership of the relevant immovable remains unchanged. However, the realization of a hypothec must be carried out through an auction and is thus time-consuming and incurs further expenses. This may not be favored by creditors or debtors.

To bypass the aforementioned cumbersome process, debts are sometimes secured by the following two ownership-based mechanisms: (1) provisional registration of the right to require the debtor to transfer ownership of the immovable offered as security to the creditor and (2) mortgage (*Budongsan-Yangdodambo*). Under the former, the creditor and debtor agree to the transfer of ownership of the immovable to the creditor for the purpose of securing the loan, followed by a provisional registration of the creditor's right to demand the transfer of ownership of the immovable to him/her. The creditor is then entitled to have the immovable's ownership registered under his/her name if the debtor falls into default. In the case of mortgage, the debtor simply transfers the ownership of an immovable to the creditor to secure the loan,[21] and the creditor gives the debtor an option to repurchase the immovable or to conclude a resale contract between them. In both cases, the creditor obtains ownership of the immovable if the debtor fails to repay the loan. The use of these ownership-based security mechanisms is obviously convenient and efficient for the creditor, but it may be seriously disadvantageous to the debtor if he/she loses ownership of the immovable immediately after the

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20) The extinctive prescription of a claim shall become complete if not exercised for a period of ten years. (*see* Minbeob [Civil Act] art. 162 para. 1 (S. Kor.)).

21) This can be done through a loan or sale. In the case of a sale, the purchase money that the seller (i.e., the debtor) receives from the buyer (i.e., the creditor) is de facto a loan in nature.

debt falls due and he/she is unable to pay it, especially if the value of the immovable exceeds his/her debt. Thus, the Provisional Registration Security Act (hereinafter "PRSA") states that the creditor can obtain ownership of the immovable offered as security only after paying the difference in value between the debt and the immovable. However, this can be processed only two months after the creditor informs the debtor of the amount of the difference in value between the debt and the immovable (PRSA Articles 3(1) and 4). These provisions aim to give the debtor another chance to redeem the immovable and to protect his/her interest by preventing the creditor from obtaining extra value or a value exceeding his/her debt to the creditor.

X. Pledge (*Jilgwon*)

A. Acquisition

1. Real Agreement and Registration

A pledgee of movables is entitled to hold possession of the movable that he/she received from the debtor or a third person as security for the debt, and to recoup the money he/she has lent out from the movable ahead of the debtor's other creditors (CivC Article 329). Two requirements are required here: a real agreement (an agreement on the grant of pledge itself) and transfer of possession (CivC Articles 188 and 330). The creditor takes possession of the subject matter of the pledge.[22] Immovables, although capable of being possessed, cannot be the subject matter of a pledge; instead, hypothec is used for immovables. Objects not physical in form, such as intangible personal rights (e.g., debts), can also be the subject matter of a pledge (CivC Article 345). However, debts cannot be possessed as they are not corporeal. Instead, a notice must be given to the original debtor about the creation of a pledge over the debt (CivC Articles 345 and 450(1)). When the debtor has become aware of the existence of the pledge, he/she

22) Thus, a pledge is a powerful security interest for creditors.

cannot defeat the new creditor's claim by arguing that his/her debt has already been paid.

2. Acquisition by Operation of Law

A pledge is sometimes created by operation of law. For example, if the lessor of a building seizes any movable owned by the lessee to secure a personal right arising from the lease relationship (e.g., rent or damages), it is deemed effective as a pledge (CivC Article 650).

B. Rights

The creditor's security interest under a pledge secures the principal and its interest, penalties, liquidation damages, and expenses for the enforcement of the pledge. As to the interest arising from default, as mentioned earlier, a hypothec can be exercised only as regards debt payments due one year after their respective deadlines (CivC Article 360). There is no such qualification for a pledge. This is because a hypothec may have another creditor with a second hypothec; thus, there is a need to limit the scope of the interest arising from the default. Otherwise, the second hypothec's holder might not be able to recoup the money he/she has lent out. However, such damage rarely arises in practice with regard to pledges because there are few cases in which multiple creditors hold a pledge over a single chattel.

The scope of the secured debt is thus wider than that of the pledge. The creditor under a pledge has the power to possess the relevant chattel (CivC Article 335) and can thus exclude or prevent anyone from infringing upon the movable offered as security (CivC Articles 204 to 206). Once the debtor defaults in paying the debt, the creditor is entitled to recoup the money he/she has lent out from the movable, ahead of the debtor's other personal creditors (CivC Article 329). To do this, the creditor may sell the pledged chattel at an auction (CivC Article 338(1)) or may apply to the court to have the pledged chattel appropriated to the extent of its value to recoup the money lent out, with appraisal by an expert (CivC Article 338(2)). If the subject matter of the pledge is a debtor's debt to another debtor, the pledgee/creditor may request the debtor's debtor to pay the debt he/she

owes the debtor directly to the creditor, but only the portion of it corresponding to the amount of the debtor's debt to the creditor (CivC Article 353(1)(2)). It must be noted that the pledgor and pledgee are not allowed to agree that the pledgee obtains ownership of the chattel before the debt comes due because the pledgee can obtain ownership of the pledged chattel as an alternative method of paying the debt (CivC Article 339). This rule protects the debtor, who is generally in a relatively disadvantageous position. The rule of real subrogation also applies (CivC Article 342). Thus, if the subject matter of a pledge is substituted for another thing or right (e.g., a claim to payment against an insurance company when the chattel is damaged), the pledge becomes attached to that thing or right.

C. Extinction

Possession is the core element through which a pledge takes effect; thus, a pledge is extinguished if the creditor no longer possesses the relevant chattel. Also, as a pledge is ancillary to the debt it secures, it may expire through extinctive prescription[23] or debt payment/ satisfaction. It is also terminated if the movable offered as security is destroyed.

D. Mortgage and Charge Over Chattels

1. Mortgage Over Chattels (Dongsan-Yangdodambo)

Although a pledge is a powerful tool for securing the payment of a loan, the subject matter of a pledge may lose its use value because both the pledgor (i.e., the debtor) and the pledgee (i.e., the creditor) are not permitted to use the chattel offered as security. Therefore, mortgage with respect to chattels is sometimes adopted by the parties to a loan contract. Under this scheme, the debtor transfers the ownership of a chattel to the creditor to secure the debt, but unlike in a pledge, the debtor is allowed to continue to possess and use the chattel.

It is important to note that the doctrine of *Trëuhand* applies to the

23) The extinctive prescription of a claim shall become complete if not exercised for a period of ten years. (*see* Minbeob [Civil Act] art. 162 para. 1 (S. Kor.)).

mortgage of chattels. Under this doctrine, as far as the creditor and debtor are concerned, the ownership of the chattel remains with the transferor (i.e., the debtor), but as far as the creditor and the third parties in the market are concerned, the chattel is fully owned by the creditor. The creditor is obliged to return the chattel to the debtor once the debt is paid, but the creditor can acquire full ownership of the chattel (i.e., even *vis-à-vis* the transferor/debtor) if the debtor fails to repay the debt. Therefore, the creditor can exercise the right of *rei vindicatio* against the debtor and request a transfer of the chattel's possession to him/her. However, there is a danger that the debtor, as a possessor of the mortgaged chattel, will dispose of the chattel by selling it to a bona fide purchaser or by setting up another mortgage or pledge conflicting with the existing mortgage. This can cause problems in the commercial world. Third parties in the market will have no reason to think that the creditor is the real owner of the chattel because the debtor has possession of it. There is thus a need for a system that informs people in the market that a security interest exists with respect to the chattel possessed by the debtor. The system of charge over chattels fulfills this function.

2. Charge Over Chattels

Under the charge system, the debtor does not have to transfer possession of the chattel offered for security to the creditor.[24] Neither does the debtor need to transfer the ownership of the chattel to the creditor.[25] The creditor can simply have a security interest over the chattel, which continues to be in the possession of the debtor (the owner of the chattel). The creditor's security interest (i.e., charge) can be imposed upon the chattel, and registered. Also, unlike the land registration system, which is based on information about the property (e.g., address, size, type), the chattel registration system is based on information about the debtor.[26] The charge system also benefits both debtors and creditors as debtors can keep using the chattel and creditors can assert charges against anyone in the

24) Hence, charges are different from pledges.

25) Hence, charges are different from mortgages.

26) Dongsan chaegwon deungui damboe gwanhan beobryul [Act On Security Over Movable Property And Claims] art. 47 (S. Kor.).

market. The danger of a debtor disposing of the chattel to a third party is significantly decreased as no one would purchase a chattel with a publicized security interest. If the debtor fails to repay his/her debt, the creditor can appropriate the chattel for him/herself if there are justifiable grounds for him/her to do so, or sell the chattel at an auction and take the proceeds therefrom (Act on Security over Movable Property, Claims, Etc. (hereinafter "SMPC") SMPC] Article 21(1)-2)). Last but not least, the charge system can at present be used only by commercial legal persons (SMPC Article 3(1)).

XI. Lien (*Yuchigwon*)

A. Acquisition

1. Acquisition by Operation of Law

A lien arises when an obligee possessing a thing belonging to another person has a claim (i.e., a personal right) arising with respect to that thing, and the obligation owed by the obligor comes due. The obligee may then retain possession of the thing until the claim is satisfied (CivC Article 320). The lienee's right to retain the thing arises automatically under such circumstances. Thus, a lien arises only by operation of law. For example, if A has left his/her car in a garage for repairs, the garage can take possession of the car if A fails to pay the cost of the repairs done. The lien relationship is generated by law, and as such, no real agreement is involved in the creation of a lien. As the lienee can take possession of the thing with respect to which a claim arises until the claim is satisfied, a lien has the effect of compelling the lienor (i.e., the obligor) to fulfill his/her obligation.

Three issues merit stressing. First, the subject matter of a lien must be something that belongs to another. A lien could thus not arise for X in relation to a house if X builds the house at Y's request but Y fails to pay for the work completed, because the new house belongs to X (i.e., the construction company) before it is registered under Y's name. In other words, a lien does not arise for X with respect to the house as the house belongs to it. One cannot have a security interest over one's own

property.[27] Second, the possession must be legal (CivC Article 320(2)). Thus, if X has stolen Y's bike, a lien would not arise for X even if X has in the meantime incurred some expenses in repairing the bike. A lien is not triggered by operation of law for the benefit of a tortfeasor. The tortfeasor cannot assert a lien and must return the bike to the owner. Third, the obligation that a lien aims to secure must be connected to the subject matter of the lien. Therefore, in the aforementioned car repair case, the garage cannot retain possession of the car if A's obligation to the garage is a debt that arose from another contract irrelevant with the repair of the car.

B. Rights

Unlike other security rights, the creditor/lienee under a lien, although having the power to sell the subject matter of the lien by auction (CivC Article 322(1)), cannot take the proceeds from such sale ahead of the lienor's other personal creditors. However, he/she does have the power to retain all the proceeds until the obligation is completely fulfilled (CivC Article 321). Therefore, a lien is sometimes even stronger than other security interests in that a lienee can assert his/her security interest even against a third party who is the real owner of the subject matter of the lien.[28] For example, in the aforementioned car repair case, the creation of a lien is not influenced by the fact that the car is not A's but belongs to A's friend, B. The garage can assert the lien against B. Furthermore, the lienee may apply to the court to have the subject matter of the lien appropriated for the satisfaction of the lienee's claim, to the extent of the chattel's value as appraised by an expert (CivC Article 338(2)). The lienee is also entitled to collect the fruits of the retained thing, and may apply these to the satisfaction of its claim ahead of the lienor's other creditors (CivC Article 323).

It is also important to remember that the lienee can use the retained thing insofar as necessary for its preservation (CivC Article 324(2) proviso). For instance, the lienee may drive a car kept under a lien to prevent its batteries from failing.[29] Last but not least, if some necessary expenses have

27) Daebeobwon [S. Ct], Mar. 26, 1993, 91Da14116 (S. Kor.).

28) Daebeobwon [S. Ct], Feb. 10, 1975, 73Da746, (S. Kor.).

29) Daebeobwon [S. Ct], Sep. 24, 2009, 2009Da40684 (S. Kor.).

been incurred with respect to the retained thing, the lienee can request reimbursement from the lienor (CivC Article 325). Therefore, if a veterinarian has retained a cured dog and must feed it until the owner pays the treatment expenses, the vet (i.e., the lienee) can require the lienor to reimburse him/her for the cost of the dog food.

C. Extinction

Possession is the core element through which a lien takes effect. Thus, liens are extinguished if the lienee loses possession of the thing retained (CivC Article 328). Also, as the lien is ancillary to the obligation it secures, it is extinguished if the obligation expires through extinctive prescription[30] or through fulfillment/satisfaction of the obligation. It is also terminated if the thing under a lien is destroyed.

XII. Conclusion

This chapter explores the real rights recognized under CivC: ownership, usufruct rights (superficies, easement, and lump-sum lease), security rights (hypothec plus mortgage, pledge plus mortgage, and charge), and lien. These are the most fundamental and important real rights under CivC. Due to space constraints, the real rights stipulated in other special statutes shall be dealt with elsewhere. The list of real rights is nearly complete due to the numerus clausus rule. However, in the present era, which some define as the Fourth Industrial Revolution, we have seen new types of valuable objects emerge. The most important examples in terms of the economy are cryptocurrency and data. Under the current regime, these cannot be the subject matter of ownership, but there is no denying that they can be owned. Furthermore, anything that is valuable may qualify as the subject matter of security rights. This issue, however, remains a theoretical conundrum[31] because the nature of the aforementioned non-material

30) The extinctive prescription of a claim shall become complete if not exercised for a period of ten years. (*see* Minbeob [Civil Act] art. 162 para. 1 (S. Kor.)).

31) For more details, *see* Kelvin F.K. Low and Ying-Chieh Wu, *The Characterisation of*

objects is still ambiguous under the law, other than the recognition that they possess value. This matter is one of the most important problems faced by the present generation of academics and practitioners, who confront and respond to it from both practical and doctrinal perspectives.

Cryptocurrencies in East Asia, in Cryptocurrencies in Public and Private Law (2019).