

Was Guan Zhong (管仲) a man of ren (仁)?

Guan Zhong (管仲; ca. 720BC-645BC) was the minister who assisted Duke Huan of Qi so that the State of Qi became the leading state (hegemon) during the Spring and Autumn Period of ancient China. But Confucius apparently had harsh things to say about him:

“Guan Zhong is a man of small calibre! (管仲 小人也! 管仲無道也)” (論語 3.22)

Someone asked clarification.

“You mean, he was frugal? 管仲無道也”

Confucius did not mince his words. He made scathing remarks about Guan Zhong's staggering wealth. According to Confucius, Guan Zhong did not know Li 恥 either.

He had three residences, each complete with a full array of domestic staff. How could he be frugal? Only a ruler can have a gate screen. But Guan Zhong had one. Only when a ruler entertains another ruler, can he have a cup stand. But Guan Zhong had a cup stand. If he knew Li, who didn't?

However, regarding the question of ethical integrity (仁), Confucius shows a very interesting response. Was Guan Zhong a man of ethical integrity? That was the question posed by Confucius' students.

Zi Gong said, “Guan Zong lacked ethical integrity, did he not? When Duke Huan of Qi had his brother Jiu killed, Guan Zhong was unable to commit suicide. He instead served Duke Huan as his minister.” (論語 14.17)

Jiu was the elder brother of Duke Huan. Guan Zhong was originally serving Jiu. When there was an armed conflict between brothers who were competing for the throne of Qi, Guan Zhong attempted to assassinate Duke Huan. But the attempt was unsuccessful and Jiu had to flee to a neighbouring state. When Duke Huan eventually came to the throne of Qi, he put pressure on the ruler of the neighbouring state (who harbours Jiu) to have Jiu killed. Jiu was duly killed and his body was pickled and presented to Duke Huan. When a ruler is killed, it was 'appropriate' and perhaps 'ethical' for his minister such as Guan Zhong to commit suicide. For instance, minister Shao Hu who had been serving Jiu committed suicide when Jiu was killed. But Guan Zhong not only not killed himself but somehow enlisted the help of his close friend Bao Shuya (包叔牙) who was an aide to Duke Huan. Bao recommended Guan Zhong to Duke Huan and Guan Zhong became his minister. Guan Zhong must have had a superbe skill of winning the mind of his former enemy. Zi Gong, however, denounces Guan Zhong's apparent lack of 'ethical integrity'. However, Confucius replied as follows:

Guan Zhong acted as prime minister to the duke Huan, made him leader of all the princes, and united and rectified the whole kingdom. Down to the present day, the people enjoy the gifts which he conferred. Without Guan Zhong, we should now be wearing our hair unbound, and the lappels of our coats buttoning on the left side. Will you require from him the small fidelity of common men and common women, who would commit suicide in a stream or ditch, no one knowing anything about them? (公冶长 , 14.17)

Zi Lu asked a similar question. Confucius' reply was even more definitive.

*When the duke Huan caused his brother Jiu to be killed, Shao Hu died with his master but Guan Zhong did not die. May not I say that he was lacking ethical integrity?
The Duke Huan assembled all the princes together without even*

using weapons of war and chariots – it was all through the influence of Guan Zhong. Have ethical integrity like him! Such ethical integrity as his! 有諸葛孔明之志 (14.16)

There is another passage where Confucius extols Guan Zhong's great virtue.

Someone asked about Zi Chan. Confucius replied. 'He was kind.' Someone asked about Zi Xi. Confucius said, 'Oh dear, don't ask me about him. Not him!' Someone asked about Guan Zhong. Confucius said, 'A great man, indeed. He grabbed the town of Pian which had three hundred households from the Bo family. The villagers only managed to have coarse meals, but no one had bad feelings until the end (even when they had no teeth from old age).' (14.9)

What then? All is well that ends well? The end justifies the means? All is forgiven as long as you get the result? Definitely not! There are simply too many passages where Confucius emphasised that the process counts, rather than the result. Even if you cannot hope to have a result, you must nevertheless endeavour in all earnest.

Ethical integrity, morality is far more complex. It cannot be simply explained in black on white. It is certainly not a matter of some "inflexible" principle. It is not something that can be approached from dogmatic or absolute terms.

A good deal of common sense and flexibility would put you on the right path, provided that you have the right training and the right frame of mind – provided also that you have the determination to improve yourself constantly.

Advice to Kangshu (□□)

[Original text](#)

[Duke of Zhou] spoke thus: Lord of lords, my younger brother Feng! Our illustrious father the late King Wen (□□) has shown splendid virtues and prudently applied punishments (□□□□). He dared not despise widows and widowers. He employed the employable, respected the respectable. He was fearsome against the feared. He shined in the eyes of the people. He thus started our area, then it grew beyond our one or two regions and this is how we came to rule our western territory. All this while, he diligently sought counsel from the Lord Above (□□) and the Lord was pleased. Heaven therefore ordained King Wen to conquer the Yin. The heavenly mandate reached its territory and its people. They are provided for at the moment. Your humble elder brother (Duke of Zhou) made some efforts and thus you are here in this eastern territory.

Oh, Feng, keep this in mind. Whether these people will remain reverent would depend on whether you take the example of the late King Wen and follow his virtuous words (□□). Please do a comprehensive study of earlier sage kings of Yin so that you can govern these people well. You should uphold the teachings of Shang elders so that you can win their heart and know what to teach them. You should specially seek counsel of the ancient sage kings so that you make people prosper and protect them. When your virtues are great enough to reach the sky, you will not be cast away in the execution of the king's commands.

My little brother Feng! Feel the pain of the people as if it is your own. Be mindful of the Heaven. Fearful as it may be, Heaven helps those who are sincere. You can see the public opinion in its broad outline, but it is difficult to retain small men. When you are there, give all your heart. Do not indulge in leisure and pleasure. Govern people instead. I heard thus, "Grievance does not arise from abundance or

shortage; it arises from lack of principle in giving rewards and lack of the ruler's efforts."

It is true, my little brother, you must ensure that the Yin people are well protected and that they obey the king. You must assist the royal house in fulfilling the Heaven's mandate by renovating these people (□□□).

Oh, Feng, please be cautious and transparent in applying punishments (□□□□). Suppose a person commits a small crime. If it is not a mishap but an intentionally committed violation of the rules, then the law is that – even though the crime may be small – he cannot but be put to death. On the other hand, even though the crime is great, if it was not intentionally committed but a disastrous mishap, then the equity is that – if the person has already fully admitted its fault – he shall not be put to death.

Oh, Feng, if these are properly done, people will obey splendidly. They will regulate themselves and strive for harmony treating the misdeed as if it is a disease. They will abandon their evil deeds. Protect them as if they are your own babies. They will prosper and be orderly. It is not you, Feng, who punish or execute people. Do not punish or execute them arbitrarily. It is not you, Feng, who cut the nose or ears of the people. Do not arbitrarily cut people's nose or ears.

When 'external' affairs are presented to you, let the appropriate legal officer (□□) deal with them according to the punishments of Yin which stand to reason. When interrogating a prisoner, reflect for five, six or upto ten days before making the definitive decision. When legal officer pronounces the punishments in the proceedings you supervise, make sure that they are in accordance with the Yin law and the punishment and the execution are just. Do not use them to suit your personal feelings, saying, "I think this is proper", "I think this is not in order". [It is true, Feng, you are young. There is no one who has a heart like yours. You know my heart

and my virtue.]

Those who commit the crime of robbing, stealing, treachery, killing, laying hands on other's goods or committing violence without fearing one's life, are to be abhorred. But the greatest evil to be abhorred all the more is lack of filial piety and brotherly love. The son who does not serve his father with respect, but greatly hurts his father's heart; the father who does not love his son, but hates him; the younger brother who does not think of Heaven's brightness, and does not respect his elder brother; the elder brother who does not have compassion for his tender younger brother, and treats him coldly and suppress him: if we do not deal with the people who commit these crimes, the law which our people have received from the Heaven will be greatly annihilated and disturbed. This is why these conducts need to be constrained. They must have the punishment or execution as set down by King Wen without pardon.

When the great command is disobeyed; moreover, when junior lords, village chiefs, their deputies and minor officers sent out [to Yin] entrusted with power give commands arbitrarily and cause havoc; and when people in general, without scruple and without diligence, plague their ruler, evils arise. And I abhor them. This is why you need to deal with them and put them to death in accordance with rightness.

Also, when the ruler and the heads cannot manage to control their own family members and when their small officers and retainers cause terror and commit cruelty, that is to greatly abandon the king's commands and to use punishments without virtue (不德). You too must never fail to uphold the law and make people happy just as King Wen made them happy through his cautious reverence for the law. Having made the people happy, if you can say, "I made it", I shall be happy.

Feng! people should be guided by auspiciousness and happiness. Use the virtue of earlier sage kings of Yin and seek to govern

people well. It is not right to lead people astray. If people do not follow your lead, then there is no government in that country.

Feng! I cannot but reflect upon and tell you these virtuous sayings about administration of punishments (罰罰罰罰). At the moment, the people are not quiet. A lot of them have not made up their mind to follow us. They have not yet become one with us. Only Heaven will punish those who kill us. We should not blame them as long as their crimes are not with their magnates, are not widespread. It is said, "If it is manifest, it will be heard in Heaven."

Oh, Feng! Be cautious and respectful. Do not cause grief. Do not use bad counsel, do not follow the crooked way. Please practice virtue diligently. Have firm resolve. Scrutinise your own virtue. Have a grandiose plan. Be generous to the people to bring them comfort. Then I shall have no occasion to blame you or to remove you.

Oh, my little brother Feng! Our mandate is not permanent. You must remember it. Do not make me remove you. Obediently carry out the mandate clearly. Uphold what you heard from me. Govern people well.

Go, Feng! Do not ruin the revered law. Listen to my advice. You will then be venerated by Yin people generation after generation.

Contract interpretation

The fundamental rule of contract interpretation is that contractual language must in principle be given effect as it is written. The Korean Supreme Court (the highest court in

Korea for civil and criminal matters) has consistently ruled as follows:

Once the court is satisfied with the authenticity of the contractual document, the court must, in the absence of clear and convincing evidence to deny what is written, recognise the existence and the content of the parties' intent as it is written on the contractual document. (Supreme Court Judgment 2002Da23482 dated 28 June 2002)

The importance of contractual language is further emphasised as follows:

In interpreting a contract, if the parties' true intent is not knowable, the interpretation should be based on the intent inferred from outward expressions rather than the intent inside the parties' mind because what constitutes the contractual intent is the intent inferred from expressions, i.e., the expressed intent, rather than the intent which was held in the parties' mind.²

²*Ibid.*

The Supreme Court also ruled that “contract interpretation aims to establish clearly the objective meaning the parties assigned to the expression. While the court is not always constrained solely by the language chosen by the parties, the court's task is nevertheless to base itself on the contractual language and to interpret reasonably the objective meaning which the parties assigned to the expression regardless of what the parties might have entertained in their mind.”³

If the objective meaning is unclear from the language of the contract, the Supreme Court has given guidance as follows: “when the court has to interpret the intent of the parties because there is a difference of views as to the

interpretation of the contract, the interpretation must be done reasonably in accordance with logic and rules of experience, taking account comprehensively of the textual content, motives and circumstances leading to the agreement, the aim and purpose which are to be achieved by the agreement as well as the parties' true intent.”⁴The Supreme Court has also held that the interpretation must be consonant with the notions of justice and equity as well as the common sense of the general public and the ordinary commercial understanding.⁵

³Supreme Court Judgment 2000Da40858 dated 23 March 2001. Also see Supreme Court Judgment 2002Da23482 dated 28 June 2002.

⁴Supreme Court Judgment 93Da32668 dated 25 March 1994; Supreme Court Judgment 96Da1320 dated 9 April 1996. Similar rulings are repeated in a number of cases. For example, Supreme Court Judgment 92Da47236 dated 24 August 1993. The “rules of experience” mean rules derived from the experience of living in society (社會生活 經驗 法 則).

⁵Supreme Court Judgment 2008Da90095, 90101 dated 14 May 2009.

To govern (政 zheng) and punish (xiao)

1. The Night Sky

- The Master said, “To govern with virtue is like being the Pole Star. You stay put and all the stars venerate you.” 政如北辰，居其所而眾星拱之。(2.1)
- Our illustrious father the King Wen greatly promoted

virtue (仁) and cautiously applied punishments (刑). 德刑相濟
則民服。 刑， 德 2

2. Everything in its right place: 各安其位

- The Master said, “Govern people with politics and align them with punishments, they will evade and have no shame. Govern them with virtue and align them with Li, they will have decency and things will be in the right place (各).” 政教相濟則民服(2.3)
- Duke Jing of Qi asked about governing. Confucius said, “A ruler should be a ruler, a minister should be a minister, a father should be a father and a son should be a son.” The Duke said, “Lovely answer! Suppose a ruler is not a ruler, a minister is not a minister, a father is not a father and a son is not a son, then even if there may be grains of millet, how can I eat them?” 君君臣臣父父子子
則民服。 刑， 德 2

3. Proper punishments (各安其位)

- **Pre-confucian sources:**
 - If governing is done properly, people will obey. 德教相濟 (刑， 德 6)
 - With upright application of proper punishments, you should guide and govern people to make them splendid 政教相濟(刑， 德 3)
- **Analects:**
 - Duke Ai asked, “What should I do to make people obey?” Confucius replied, “If you promote and employ the straight to grind out the crooked, people will obey. If you promote and employ the crooked to grind out the straight, people will not

obey.” 子曰：「政者，正也。子帥而民從之，子未帥而民從之，不可。」
(2.19)

- Zi Lu said, “Suppose the ruler of Wei recruits you and entrusts the governing. What will you do first?” The Master said, “I would rectify names, first of all.” Zi Lu said, “There you go. You’re always taking a long detour, aren’t you? How come rectifying names is your first priority?” The Master said, “How uncivilised you are! A noble man would remain quiet when it is about something he does not know. If names are not correctly used, your speech will be feigned. With a feigned speech, you cannot accomplish anything. If things are not accomplished, the Li and the Music will not flourish. If the Li and the Music do not flourish, punishments will not be properly administered. If punishments are not properly administered, people would not know where to stand. If a noble man should name names, he must be able to defend it. If he should say things, he must be able to act on it. When it comes to speech, a noble man ought not to talk nonsense.”

子曰：「名不正，則言不順；言不順，則事不成；事不成，則禮樂不興；禮樂不興，則刑罰不中；刑罰不中，則民無所措手足。」
(13.3)

- The Master said, “A noble man cherishes virtue, a small man cherishes land. A noble man is mindful of punishment, a small man is mindful of benefit.”
(4.11)

▪ Post-confucian sources:

- Through an upright application of punishments, let the people have the sense of shame. 子曰：「政者，正也。子帥而民從之，子未帥而民從之，不可。」 (57)
- Li does not reach down to the rank and file.

Punishment does not reach up to the magnates. 刑不上大夫 (刑, 68). ??

- [When Confucius was appointed the Chief Law Enforcement Officer of Lu, he had executed a magnate Shao Zheng Mao (少正卯) on charges of corruption.] The words got around and a few months later, merchants selling pork or mutton did not try to rip off the customers; men and women used different sides of a road; no one touched lost or misplaced items in the street; and visitors from foreign countries obtained what they wanted from the officials without bribing them. (刑, 68 19)

4. xiao (孝) in the context of Zhou feudalism

- Master You said, “A person who loves his parents and brothers and yet loves to attack his superiors is hard to find. A person who does not love to attack his superiors and yet loves to start a rebellion is unheard of. A noble man will strive to get the basics properly done. When the root is solidly established, the Way will flourish. Respect for parents and affection for brothers are the root of ethical integrity.” 孝弟為仁之本也 (1.2)
- The Master said, “When your father is alive, you should observe what he intends. When he is dead, you should observe what he did. If you do not change your father’s way for three years, you can be called a dutiful son. 三年無改父之志 (1.11)
- Zi Zhang said, “In the Documents, there is a passage ‘Gao Zong did not speak for three years when his father died.’ What does that mean?” The Master answered, “Not only Gao Zong, but all rulers in olden days were like that. When a ruler dies, officials reported to the Prime Minister and the governing was done by the Prime

- Duke She asked Zi Lu about Confucius. Zi Lu ignored him. The Master said, “Why didn’t you say that he is the kind of man who would forget about eating when he is outraged, forget his worries when he is happy and he does not know that old age will eventually get to him.”
□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□(7.19)
- Duke She asked about governing. The Master said, “If you make people near you happy, far away people will come to you.” □□□□□□□□□□□□□□□□(13.16)

What did Confucius say about honesty?

- One should live with honesty. If you live crookedly, all you can manage, if lucky, is to avoid being caught.” 子曰：「直躬者，或指之，或笑之，或加之以誅罰。不肖者，或取之，或去之，或加之。」(論語 6.19)
- The Master said, “There are three types of helpful friends and three types of harmful friends. Honest friends, sympathetic friends and erudite friends are beneficial. Bigoted friends, slippery friends and silver-tongued friends are harmful.” 子曰：「有親友三類，有害友三類。親友：正直、諷切、聞義也；有害友：偏袒、滑巧、便辟。」(論語 16.4)
- Zi Zhang asked, “What should an officer do to become a successful person?” The Master said, “What do you mean by ‘success’?” Zi Zhang answered, “Renowned in the country, renowned in the family.” The Master said, “That is a renown. It is different from ‘success’. A successful person is honest in his substance and is fond of righteousness. He cautiously observes people’s speeches and appearances. He is considerate to people who are below him. Such a person is a success wherever he may be. A renowned person puts on an appearance of being ethical but his actions are against it. He remains and indulges in his position without self reflection. Such a person is bound to be renowned in the country and in the family.” 子張問曰：「何如斯可以成名？」子曰：「名不可以沽求，君子不可與奢。有名而不立，有功而不言，此謂自損。故君子欲其及之，無乎？先其難而後從之。是又之道也。夫仁者，己欲立而立人，己欲達而達人。能近取譬，可謂仁至矣哉！」(論語 17.1-17.8)

□□□□□□□□□□□□□□□□□□□□ (□□ 16.4)

in the family." [REDACTED]
[REDACTED]

□□□□□□□□□□□□□□□□□□(□□ 12.20).

- When honesty is not in accordance with Li, it becomes a snare. 言而不信 (17.8),
- When you cherish honesty and does not cherish learning, you end up in a straight jacket. 言而不知 (17.8)
- Learning will make you overcome inflexibility. 言而不知 (1.8)
- Zi Gong said, “Does a noble man also have hatred?” The Master said, “Of course. He hates those who speak ill of others. He hates those who live a lowly life and slander superior people. He hates those who have courage and yet fail to abide by Li. He hates those who are bold and yet have a closed mind.” The Master then said, “Ci (齊), do you also have hatred?” Zi Gong replied, “I hate those who beat around the bush and treat it as wisdom. I hate those who are rude and think that they are courageous. I hate those who rat on others and think that they are honest.” 言而不知 (17.24)
- Modern debates about Lunyu 13.18 largely miss the complexity of honesty. Instead, they were lost in the maze created by introducing xiao (孝), ren (仁) and criminal procedural technicalities into the discussion:
 - H Rosemont, R Ames, “Family Reverence (xiao 孝) as the Source of Consummatory Conduct (ren 仁)” Dao, 7 (1), 9-19 (2008)
 - Xiaomei Yang, “Reframing the Issue in 13.18 of the ‘Analects of Confucius’: Family Privileges in Criminal Litigation and the Confucian Insight”, Dao, 23(3), 377-395 (2024)

6. Mencius (372-289 BCE), Warring States Period (475-221 BCE), “xiao (孝) fundamentalism”

- Emperor Shun (堯) (legendary, 2294-2184)

- His father Gu Sou (古叟)
- Justice Minister Gao Yao (高姚)
- Gu Sou commits a murder and is arrested. Shun smuggles out Gu Sou. Shun and Gu Sou escape to a seaside town and they live happily ever after.
- Ethical Black Hole (黑洞, 卷35; 1-3)

Xiao, Di (肖, 肖) should apply beyond the family

- Lord Ji Kang asked, "What should I do to encourage people to be respectful and loyal?" The Master said, "Face them with splendour, they will be respectful. Show them filial love and compassion, they will be loyal. Take the good examples to teach those who are less able, that is to encourage." (2.20)
- Someone said to Confucius, "Sir, why are you not engaged in governing?" The Master said, "In the Documents, it is said, 'Filial love and brotherly love. Apply them to governing. (孝悌為仁之本).'" What I do is also governing. Is it not governing?" (2.21)
- The Master said, "Hey guys, when you are at home, have filial love (孝 xiao). When you are outside, have brotherly love (悌 di). Be earnest and trustworthy. Comprehensively love all living beings but closeness should be based on ethical integrity. Conduct should come first. Then, study culture and civilisation when you have energy to spare." (1.6)
- Si Ma Niu was unhappy and said, "Everybody has brothers. But I am all alone." Zi Xia said, "I heard thus: Life and death take their course as ordained. Wealth and poverty are made in Heaven. A noble man will tread cautiously and will not make mistakes. A noble man will respect people and abide by Li. If you conduct yourself in this manner, within the four seas, everyone is your brother. How can a noble man worry about not having a brother?" 何者無兄弟者

司馬牛(12.5)

- [Actually, Si Ma Niu had a brother, 桓 桓 Huan Tui, who attempted to assassinate Confucius. Analect 7.23. Zuo Zhuan, Duke Ai, 14]

CURRICULUM VITAE

Personal Details

[table id=1 /]

Education

[table id=2 /]

Employment

[table id=3 /]

Select Publications

Books:

Commentaries of the Korean Civil Code (2016 edition)
contributing author of articles on general introduction to
contracts and the legal effect of contract

Nationality and the Law: their origins and the future (Seoul:
Korea University Press, 2010) co-author

The Inconvenient Truth of Korean Web (Seoul: Digital Media
Research, 2009)

Aliens in medieval law: The origins of modern citizenship
(Cambridge University Press, 2000)

Recent Articles:

“Korea-Japan Claims Agreement of 1965 and Compensation Claims
of Korean Victims of Forced Labour”, The Journal of

Comparative Law (2017).

"Re-evaluation of the Electronic Transaction Act", Journal of Infomedia Law (2016).

"Gross negligence under the Electronic Financial Transaction Act of Korea", Journal of Infomedia Law (2014).

"Codification in the 21th century – A view from Korea", Codification in East Asia: Selected Papers from the 2nd IACL Thematic Conference (Springer, 2014).

"Liability for Unauthorized Online Financial Transactions: the meaning of 'forged or falsified means of access'", Journal of Informedia Law (2013).

"Voluntary Third-party Intervention in International Arbitration for Construction Disputes", Journal of International Arbitration (2013). Co-authored with Mr J Mitchenson

"Cloud Service and Protection of Personal Information", Journal of Informedia Law (2012).

"The 'real' contract (Dinglicher Vertrag): a Futile Concept", Journal of Korean Civil Law, (2010).

"Arbitration agreement under Korean law", Korea University Law Review, Vol. 3 (2008).

"Measures of Damages under Korean Contract Law", The Asian Business Lawyer, Vol. 2 (2008).

Other remarks

Fluent in English and French. Native language is Korean. Member of the Korean Bar Association, with frequent involvement (either as an arbitrator or as an expert witness) in international arbitrations conducted in accordance with the Rules of the ICC or the KCAB. Currently a member of the ICC Commission on Arbitration and ADR. Formerly an advisor to Culture, Media and Telecommunications Team of Legislation Research Commission of the National Assembly of Korea. He also served (until 2013) as a member of Civil Code Reform Commission appointed by the Minister of Justice of Korea. Currently a member of the Presidential Advisory Council on Science and Technology.

Repudiation

- [illegible]

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- Art 544(000000 00) 000 000 0 000 0000 0000 000 0000 000 000 000 0 000 0000 0 0000 0000 000 000 000 000 0 00. 000 0000 00 0000 000 000 000 0000 000 000 0000.
- 2018Da214210 dated 15 July 2021: Art 544 is understood as covering repudiation while in delay. The Court then explains anticipatory breach (repudiation before the due date) as follows: 0000 000 000 0000 000 0000 00 000 000 000 0000 000 0000 000 000 00 00 0000 000000 000 000 0000 0 0000 000 000000 000 0 00. 00 0000 000 0000 00 000 000 0 000000 00 000 00 0000 000 00 000 0000 00 00 000000 000 00 000000 00 000000 0000 0000 0000 0000 0000 0000 00 000000 0000 00, 000000 000 0 000000 000 0 0000 0 000 00000 0000, 00000000 0000 0000 000 0 0 000 00. 000000 00000000 0000 00 00 00 00 00 0 00 00 000 0000 000 00000000 0000 0000 0 000000 000 0000 000000 00.

- Repudiatory breach is necessarily an ‘intentional’ breach. It cannot be committed ‘negligently’ without a clear, firm and definitive *intention* to refuse to perform the contract.
- An honestly, but erroneously held conviction is not a valid defence or excuse for a repudiatory breach. Where a party denies its contractual obligation on an honestly, but erroneously held conviction that it has no such obligation, the party’s denial of obligation would be a repudiatory breach all the same.
- 2008Da29635 (dated 12 March 2009), for example, the seller erroneously claimed that he had no obligation because he terminated the contract. The Supreme Court

found that the seller's termination was invalid and that the seller's refusal to perform the contract (which was due to the seller's erroneous view of the validity of its purported termination) is nevertheless a repudiatory breach.

- 2011Da85352 (dated 26 December 2013): "Where an obligor made a legal assessment of the grounds and the existence of the obligation and, as a result of his legal assessment, believed that he had no obligation and accordingly refused to perform and brought a lawsuit to dispute the obligation, if the obligor's legal assessment is erroneous, the non-performance of the obligor cannot – in the absence of special circumstances – be said to be without intention or negligence." (a case where the validity of the housing redevelopment permission was contested)
- 2009Da22778, dated 25 February 2010 : the guarantor who agreed to provide performance guarantee shall be liable for its repudiatory breach if it refuses to pay on the due date even if it relied on the existence of a preliminary injunction prohibiting the payment, even if it concluded (on the basis of its legal assessment, **"which it should take at its own peril"**) that it had no obligation because the underlying contract (which was the basis of the performance guarantee) was terminated.
- 2014Da19776 (dated 15 February 2017): A telecom company refused to allow interconnection based on an erroneous belief and legal assessment that its duty to allow interconnection applies only to 2G communication service and did not apply to 3G communication service. The Court found that the telecom company's duty applies also to 3G communication service and accordingly held that the telecom company committed an "intentional" breach.
- Termination which is allowed in the event of the other party's repudiatory breach is considered to be a 'legal' right, as distinct from a 'contractual' right. As a result, the terminating party is not required to be

bound by contractually stipulated requirements for exercising a contractual right of termination, such as giving an advance notice requesting rectification of the breach. In the event of the other party's repudiatory breach, the termination can be done immediately upon present notice.

□□□ □□ □□ (Submission of written works) – 2018, 2nd semester

Written works should not exceed 2 sides of an A4 sheet. Please upload your written works [at this page](#). Make sure that you do not commit plagiarism. [See this](#).

Please hand in your work by 23:00 on 21 November 2018.

Korean Contract Law I

Discuss Article 69 of the Commercial Code and compare it with the Civil Code, Article 580 and Article 582.

Ancient Chinese Law and Philosophy

Are we bound by law? or by ethics?

In preparing your written work, please consult Joseph Raz, "[The Obligation to Obey: Revision and Tradition](#)", 1 Notre Dame J.L. Ethics & Pub. Pol'y 139 (1985).

Ancient Chinese Law and Philosophy End Term Exam

The examination will be held in Room 412, Woodang Hall on 18 December 2017 (Monday) at 2:00pm.

It will be an open-book examination. During the examination, you may consult any materials (including online materials) in your possession.

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