Repudiation

- 2004Da53173 dated 18 August 2005: If a definitively and unequivocally expresses its intent not to perform its contractual obligation and it is thus unlikely that the contract will ever be performed voluntarily, it would constitute a repudiatory breach. In that case, on the basis of good faith principle, the other party is entitled to terminate the contract $\Box\Box\Box$ 1993. 6. 25. $\Box\Box$ 93 \Box 11821 $\Box\Box$, 1997. 11. 28. $\Box\Box$ 97

- 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.