

Termination of contract

1. On the basis of a contractual provision

- Right to terminate as stipulated in the contractual term (in addition to the statutory right of termination)
- Contract interpretation (regarding 'materiality' of a breach). Parties may agree to terminate the contract even on the ground of an immaterial breach?

2. On the basis of a breach

- Material breach (CJEU 1997. 4. 7 C-97/575, 2004Da67011; 2005Da53705 painting booth case; 2003Da15518)
- Late performance + expiration of a reasonable extension granted by the creditor; Late performance + expression of an intent not to perform (Art. 544)
- Late performance when time is of the essence (Art 545)
- Impossibility of performance (Art 546)
- Repudiatory breach: 2004Da53173 (repudiatory breach recognised on the ground of "good faith"); 2008Da29635 (repudiatory breach recognised on Art 390 of the KCC); 2018Da214210
- Question of fault? Relevant only when the other breaching party proves that the performance was rendered impossible by causes attributable to the other party or to none of the parties. (Art 546, 537, 538)

3. Method

- Notice
- Irrevocable, unconditional
- indivisible (Art. 547) unless agreed otherwise

4. Preclusion of the right to terminate

- When asked to reply whether to terminate (Art. 552): Expiry of the reasonable time for termination shall destroy the right of termination (if any). Nothing but a clear, unequivocal notice of termination within the reasonable period can save the termination right (if any).
- When the object is altered or damaged (Art. 553)
- When the claim is foreclosed upon expiry of limitation period
- Lapse of 10 years (2000Da26425)
- Waiver of termination right by express agreement. 2006.11.9 法, 2004年22971 号. “当事人可以约定排除终止合同的权利; 但此种约定必须明确且无歧义。(The contract stipulated, “After the balance has been paid, the contract may not be terminated, however, in the event the seller terminates, double the amount of the balance payment shall be paid in compensation.” The court interpreted that the statutory right of termination in the event of the other party’s breach is not excluded by the language.)

5. Restitution (Art. 548)

- Title reverts automatically, immediately.
- Monies received must be returned with interest calculated from the date they were received. Disgorgement of unjust enrichment. The interest is not of the nature of “delay damage”.
 - Interest must be paid notwithstanding the defence of simultaneous performance (return). 2000Da9123.

- However,
 - Upon termination by mutual consent (including implicit consent), no obligation to pay interest. (95Da16011, 97Da6193)
 - When the contract has expired, is void, or voided, Art 548(2) does not apply. 92Da45025 (Where contract is voided, a good faith possessor is entitled to keep the fruit, not obligated to pay interest on the money received.) 96Da54997 (Where the contract is void, Art 548(2) does not apply.)

- Benefit/profit of using the thing must also be disgorged. But the portion of the profit attributable to the possessor's skill or investment must be deducted from the amount to be disgorged. □□□ 2006.9.8, □□, 2006 □26328 □□
- Whether the possession was in good/bad faith is irrelevant. □□□ 1997.12.9, □□, 96□47586 □□

6. Third party's interest (Art 548(1), proviso)

- While the title reverts automatically upon termination,
- a third party who has acquired a right opposable to others shall be protected
 - 95Da32037 (when the property was let by the purchaser with the seller's approval, the tenant will **not** be protected)
 - 96Da17653 (when the purchaser let the property once the property was under his name, the tenant is protected)
 - 99Da40937 (the creditor who attached the property while it was under the purchaser's name will be protected)
 - 99Da51685 (the creditor who attached the right to demand conveyance will **not** be protected)
 - 2005Da6341 (a third party who relied in good faith

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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焚書坑儒 (fen shu keng ru; 213 BC)

- the burning of books and burying of Confucian scholars

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[11.12]

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5. Self-interest

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What is the purpose of this text?

What is the purpose of this text, and what is the main idea? ...

What is the purpose of this text (part 2)?

What is the purpose of this text?

What is the purpose of this text and what is the main idea? ... (part 1)

What is the purpose of this text?

What is the purpose of this text? ... What is the main idea? ...

What is the purpose of this text (part 5)?

What is the purpose of this text...?

What is the purpose of this text and what is the main idea? ... (part 6)

What is the purpose of this text?

What is the purpose of this text. "These days, scholars and rulers have produced so many books. Their arguments are inexhaustible. Grand dukes have their theories, small scholars

in point ...'

Those who insist on non-existence of ghosts say, 'This is no more than many people's account of what they saw or heard. Is it enough to settle the doubt? How can a man who aspires to be a noble man of this world can be so gullible as to believe many people's account of what they saw or heard?' Mo Zi says, 'If many people's account of what they heard or saw is not enough to believe, not enough to settle the doubt, we won't know what the ancient sage kings Yao, Xun, Yu, Tang, Wen, Wu were like. Then, how can you say that they are to be emulated? Those who are above average all agree that the sage kings of the previous three dynasties are good enough to be emulated. [In numerous books which record their deeds, however, we may see that] they all believed in the existence of ghosts and spirits. They all served them well. Those who insist on the non-existence of ghosts go against the practice of the sage kings. Going against the practice of the sage kings is not the way of a noble man.'

Those who insist on non-existence of ghosts say, 'If the intention is not genuine, [offering sacrifice to the ghosts] is merely harming the interest of family members. Would such a practice make a respectful son?' Mo Zi says, '[In most cases, the sacrifice will be for the ghosts of one's deceased parents or relatives.] If these ghosts should be there, it is to offer food and drinks to one's parents and relatives. Is it not a great benefit? Even if these ghosts should not be there, the expenses of offering sacrifices are not wasted because family members and village people can all eat and drink. Through these occasions, people can get together and rejoice resulting in good bonding of the village people.'

Those who insist on non-existence of ghosts say, 'Ghosts and spirits simply do not exist. That is why you should not offer food, drinks and sacrificial animals. It is not that I cherish the food, drinks and sacrificial animals. I simply do not see what can be gained.' This is against the books of the

sage kings, against the deeds of respectful sons.

[cf. *Lun Yu*,

11.12 命由天定，不由人謀。君子居則見之，行則思之。居則見之，行則思之。

7.21 命由天定，不由人謀。

2.24 命由天定，不由人謀。

7.35 命由天定，不由人謀。君子居則見之，行則思之。居則見之，行則思之。

8. 命 [No Fate]

[Some say that there is the fate; some say that there is no fate.] If many people saw or heard it, we may know that there is the fate. If not, we may know that there is no fate. As none of the people have ever seen or heard the fate, we may conclude that there is no fate. If the base people are not to be trusted, why not observe the feudal lords' account or sayings? Again, none of the feudal lords have ever heard the sound of the fate, seen the shape of the fate. Let us then observe the affairs of the sage kings.

[Whether there was a good government or a bad government depended on the ability of the ruler. So there was no fate. Only the tyrants had claimed the fate. But the sage kings have all vanquished them. In their good reign, all said that it was due to their effort.]

[Why do people work hard? If they don't, they will lose the benefit of good government, peace, wealth, honour, prosperity, warmth, and a full belly. If they should believe in the fate, who would work hard?]

Noble men of the world who wish to promote the interest of the world and remove the harm of the world should condemn the theory of fate.

Sivaka-sutta: One day ... Moliya-Sivaka asked Buddha, Oh! Venerable Gautama, there are the religious and the bramans who hold this view, "All feelings joyful, sorrowful and

neutral of an individual are the result of the actions which the person committed in the past.” What say you, Venerable Gautama?’ Buddha said, Oh! Sivaka, there are also feelings which arise because of the physical condition (three kinds of humour – pitta semha, vata – and their combination). The existence of these feelings is generally recognised by people as truthful. The religious and the bramans who say “All feelings joyful, sorrowful and neutral of an individual are the result of the actions which the person committed in the past” go too far from the facts recognisable by personal experience and from the facts generally admitted by people. There are also feelings which arise because of the seasonal changes. ... There are also feelings which arise because of irregular events. ... There are also feelings which arise because of sudden accidents. ... There are also feelings which arise because of maturation of actions.’

9. 𑀓𑀓 [Against Confucians]

Throughout summer, they beg barley and rice. When five grains have all been harvested, they go after big funerals. They bring along their children and relatives to the funeral and bloat out. A few funerals will be enough to get them going. At the expense of other’s family, they fatten themselves. Relying on other’s field, they promote themselves. If a rich man has a funeral, they go crazy with joy and say, ‘This is the beginning of good food and good clothes!’

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