

Supreme Court Decisions

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Republic of Korea

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- [1] This is a case in which Gap requested termination of trust relationship with Eul Association (to whom Gap entrusted copyrights of his musical work) because Byung et al. partially changed Gap's musical work, and produced and released CDs and music videos containing the changed musical work without Gap's consent, which caused Gap to request Eul to disallow the use of the musical work, and also take legal measures (such as prohibiting broadcast) and yet Eul neglected to take legal measures, allowing the use of the musical work; the judgment below – which perceived that the grounds for canceling a trust agreement between Gap and Eul existed – is held just by the Court
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16 Supreme Court Order 2009Ma461 Dated July 16, 2012
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[4] In a case where journalist Eul et al employed by Gap corporation (which published the weekly news magazine “Sisa Journal”) actively participated in a strike, and established a competing rival business and published a competing magazine “SisaIN” while subject to indefinite suspension and daegi-balryeong, which was followed by Gap’s dismissal of Eul et al; an instance where the judgment below – which determined that Eul et al may not demand wages for the duration of the strike and the duration of Eul’s violation of its non-competition obligation – was held to be erroneous for misapprehending relevant legal principles




18 Supreme Court Order 2010Ma122 Dated October 11, 2012 【Reappeal against Order for Motion for Cargo Auction Approval】 146

[1] Where the custodian does not cancel or terminate the bilateral contract where neither party fully performs the duty until the meeting of persons

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- [2] Where seller and buyer form a F.O.B. (Free on Board) export/import sales contract; seller, not buyer, is supposed to secure shipping at the export place and forms a transportation contract where seller receives B/L with freight collect; and buyer shall pay freight to carrier when receiving cargo as consignee or holder of the B/L, which parties are the parties to the transportation contract (=the carrier by sea and the buyer)

19 Supreme Court en banc Decision 2010Da103000 Decided October 18, 2012 【Damages and Prohibition against Infringement on Trademark】 151

- [1] Where the registration of a trademark or service mark is clearly expected to be invalidated by a judgment of a trademark invalidation trial but before the court finalizes the invalidation of registration of the trademark or service mark, whether claims for infringement prohibition or for damages based on the trademark right constitute an abuse of rights (affirmative in principle), and whether the court hearing the trademark or service mark infringement lawsuit may examine and determine the invalidity of registration of the trademark or service mark (affirmative)
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- [3] In the case where Gap corporation holding trademarks or service marks such as “ HIWOOD,” “ HIWOOD ” and “ 하이우드 ” filed a claim against Eul corporation, seeking prohibition against trademark infringement and damages, whether the court erred when it held that the trademarks and service marks constituted technical marks under Article 6(1)(3) of the Trademark Act or quality-misleading marks under Article 7(1)(11) of the Trademark Act and each registration would definitely be invalidated, and thus Gap corporation's claims for prohibition against trademark infringement, disposal of infringing goods, and damages are not allowed as an abuse of rights

20 Supreme Court Decision 2009Da77754 Decided October 25, 2012 **【Damages】** 159

- [1] Where the party does not designate a specific state law in the federal country with different state laws applied to contract and merely agrees to the law of the federal country, validity of such agreement and its interpretation
- [2] Where legal relation between tortfeasor and victim is infringed by a tortious act, applicable law to a tort (=applicable law to injured legal relation)
- [3] Where obligee claims foreign currency claim which is exchanged to our currency, time point of fixing the exchange rate (=the time of closing of hearing at the court of fact-finding instance)
- [4] Where applicable law to the original obligor/obligee relation is foreign law, whether interest rate on damages for delay provided by Article 3(1) of the Act on Special Cases Concerning Expedition, etc. of Legal Proceedings is applicable (negative)

21 Supreme Court Decision 2011Da48452 Decided November 15, 2012 **【Damages】** 168

- [1] Where a court orders performance of a certain measure based on the relevant Acts and subordinate statutes including the Criminal Procedure Act, and no other interpretation of law is possible but such orders of the court as a matter of statutory interpretation and where the prosecutor acted against the court order, arguing that no Supreme Court precedent exists on the interpretation of the pertinent statute, whether the prosecutor in question was negligent in violating his/her official duties (affirmative in principle)
- [2] Where Gap et al filed a motion to the court seeking permission to view and duplicate prosecution's investigation documents under Article 266-4(1) of the Criminal Procedure Act after the application for reading/copying to prosecutor Eul of the District Prosecutor's Office was rejected; and the court granted the motion; but the prosecutor again rejected to produce part of the documents, this case held that the prosecutor was negligent in failing to comply with the court order under Article 2(1) of the State Compensation Act

22 Supreme Court Decision 2011Da86782 Decided November 15, 2012 **【Press Report Correction, etc.】** 173

- [1] The standard for determining whether a journalistic report was a factual

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- [2] In a case where a press report expressed a certain opinion while disclosing certain facts as its basis, whether the allegation of basic facts constitutes defamation (affirmative); and the standard for determining whether an alleged fact is false, in order to determine if it constitutes a requirement for defamation by alleging false facts
- [3] The requirements for unlawfulness to be negated in a case where a person's honor is offended
- [4] Elements that should be considered when establishing the limitations between freedom of press and protection of honor; and whether restrictions on the freedom of press are relaxed in a case where the expression in question is directed against another media company (affirmative)

23 Supreme Court Decision 2011Da59834, 59858, 59841 Decided December 26, 2012 **【Damages · Damages · Damages】** 181

- [1] In a case where a personal information handler leaks the gathered information without consent of the data subjects, the standard to determine whether the data subjects suffered emotional distress which qualifies as compensable damages
- [2] In a case where Gap corporation (hereinafter Gap) built and managed a database of its gas credit card members, which was used for its customer service, Byung, a management team employee of corporation Eul (hereinafter Eul) which managed Gap's customer service, etc. commissioned by Gap, conspired with Jeong et al. to leak the aforementioned data of credit card members including Mu et al. and deliver or copy the data stored on DVDs and other data storage devices, then report the data leakage to the media; and thereby provided journalists with such data storage devices in preparation for a class action: we determined that it was difficult to perceive that Mu et al. suffered emotional distress which qualifies as compensable damages

24 Supreme Court Decision 2011Da96932 Decided December 27, 2012 **【Reimbursement】** 186

- [1] Priority between a spousal duty of mutual support and a parental duty of child support as to a child over the age of majority; and whether

the person having a secondary support obligation may claim reimbursement against a person having a primary support obligation (affirmative)

- [2] Factors to be considered in determining the existence and scope of a support obligation where a family member claims reimbursement of past spousal support obligations against a spouse who has failed to fulfill such spousal support obligations
- [3] Whether a reimbursement claim filed by a family member against a spouse who has failed to fulfill such spousal support obligations constitutes a civil case (affirmative)

Criminal Law

1 Supreme Court Decision 2011Do14676 Decided January 27, 2012 **【Injury from Compulsive Indecent Act】** 193

- [1] Test to determine whether a case constitutes any other extraordinary circumstances barring personal information disclosure as an exception to information disclosure or notification order under Articles 38(1) and 38-2(1) of the Act on the Protection of Children and Juveniles from Sexual Abuse
- [2] Where Defendant committed a sex offense of sexual assault and harassment against a juvenile victim (female, 16 years old), the judgment of the court below holding that, in light of all the circumstances, any other extraordinary circumstances barring personal information disclosure existed was affirmed

2 Supreme Court en banc Order 2009Mo1044 Dated February 16, 2012 **【Re-appeal against Order of Dismissal of Appeal】** 197

- [1] The meaning of the right to assistance of counsel guaranteed by the Constitution and the appellate court's appropriate measure in a case where a public defender was assigned to the Defendant; the Defendant and the assigned counsel have failed to submit an appellate brief within the appeal time period; and any cause attributable to the Defendant for such failure was not found

[2] In a counsel-required appellate case in which the court below appointed a public defender to the Defendant after expiration of the appeal time period of the Defendant, notified the counsel of the receipt of the trial records, and the counsel had failed to submit the appellate brief, the case holding that the court below’s dismissal of the appeal is erroneous in the misapprehension of legal principles; the court below, instead of dismissing the appeal, should have reassigned another counsel to the Defendant since a cause of a counsel’s failure in submitting the appellate brief attributable to the Defendant was not found

3 Supreme Court Decision 2010Do1422 Decided February 23, 2012 **【Violation of the Computer Program Protection Act · Obstruction of Business】** 207

[1] The meaning of “technical protection measures” under the former Computer Program Protection Act and whether technical measures merely controlling access to computer program works constitute technical protection measures (negative)

[2] In case where Defendants were charged with violation of the former Computer Program Protection Act by incapacitating technical protection measures of the replacement driving service program developed and registered by Gap corporation, this case affirmed the judgment of the court below which acquitted Defendants on the ground that all of Gap corporation’s technical measures merely constitute access control measures which cannot be seen as “technical protection measures” under Article 30 of the same Act

4 Supreme Court Decision 2011Do8124, 2011Jeondo141 Decided February 23, 2012 **【Violation of the Special Act on the Punishment of Sexual Crimes (Rape of Minors less than 13 Years of Age, etc.) · Violation of the Act on the Protection of Juveniles and Children from Sexual Abuse (Rape, etc.) · Larceny · Electronic Monitoring Device Attachment Order】** 210

[1] In construing Articles 56 and 64(1) of the Act on Probation, etc., which are special provisions for persons subject to military law, including soldiers on active duty, whether probation, community service, and compulsory attendance of classes can be ordered against persons subject to military law (negative)

[2] Under “the Act on the Electronic Monitoring, etc. of Specific Criminal

Offenders,” if the court suspends the execution of a sentence against specific crime offenders, whether the court may order electronic monitoring only when it orders probation (affirmative)

- [3] This case held that the court below’s order of electronic monitoring against Defendant was erroneous, since probation cannot be ordered against a person subject to military law under the special provision of Article of 56 of the Act on Probation, etc., and an electronic device attachment order which presumes probation cannot permitted where the court suspends the execution of a sentence on sexual crimes committed by Defendant who is a soldier on active duty

5 Supreme Court en banc Decision 2011Do15057, 2011Jeondo249 Decided March 22, 2012 【Rape Injury · Robbery Injury · Injury · Electronic Monitoring Device Attachment Order】 215

- [1] Whether a “commission of sexual crimes two or more times (including finalized conviction)” as an element for an electronic monitoring device attachment order under Article 5(1)3 of “the Act on the Electronic Monitoring, Etc. of Specific Criminal Offenders” includes “a previous record of protective disposition on a juvenile” (negative)
- [2] Where a Defendant with a record of receiving protective disposition on a juvenile due to sexual crimes committed a crime of rape and battery and an electronic monitoring device attachment order is applied against him based on Article 5(1)3 of “the Act on the Electronic Monitoring, Etc. of Specific Criminal Offenders,” this case affirmed the judgment of the court below dismissing a request for an electronic monitoring device attachment order on the ground that “committing sexual crimes two or more times” was not established

6 Supreme Court en banc Decision 2010Do6388 Decided April 19, 2012 【Violation of the State Public Officials Act and the Assembly and Demonstration Act】 229

- [1] A case where public education officials’ expression of their collective opinion constitutes a “collective act beyond official duties” prohibited by Article 66(1) of the State Public Officials Act (“the SPO Act”) and its test
- [2] In case where Defendants (teachers) were indicted for violation of the former SPO Act with “a collective act beyond official duties” for active involvement in the First and Second Declarations in 2009 in conspiracy with the Korean Teachers and Educational Workers Union (“KTU”)

executives and the “rally against suppression of teacher/public officials” Declaration, the court affirming the judgment below convicting them as the act constitutes “a collective act beyond official duties” of Article 66(1)

[3] Whether dispersion may be ordered and disobedience may be punished merely because outdoor assembly or demonstration was not reported in accordance with the Assembly and Demonstration Act (negative)

7 Supreme Court Decision 2012Do1225 Decided April 26, 2012 **【Violation of the Act on the Aggravated Punishment, etc. of Specific Crimes (Larceny) · Violation of the Act on the Aggravated Punishment, etc. of Specific Crimes (Robbery) · Special Official Duties Execution Obstruction · Injury · Violation of the Punishment of Violence, etc. Act (Assembly-Deadly Weapon, Threat) · Special Official Duties Execution Obstruction · Assault and Battery】** 251

[1] Where a case proceeds in ordinary procedure without confirming whether Defendant who is eligible for a citizen participatory trial (“participatory trial”) desires such a trial, the lawfulness of such procedure (affirmative) and validity of its procedural acts (=invalid)

[2] Where the first instance court ignored that a case was eligible for a citizen participatory trial and proceeded in ordinary procedure without confirming Defendant’s intention, elements for cure of such procedural defect at the appellate trial

[3] In case where the first instance court did not confirm Defendant’s desire for a participatory trial; it proceeded in ordinary procedure in the case eligible for participatory trial and as Defendant and counsel stated no objection to thereto at the first hearing, the court below closed the hearing on the same day and dismissed Defendant’s appeal at the second hearing, the case holding that the court below erred in misapprehending legal principle in dismissal of Defendant’s appeal under the premise that it lawfully cured the first instance court’s procedural defect

8 Supreme Court Decision 2012Do635 Decided May 9, 2012 **【Fraud · Violation of the Act on the Registration of Real Estate under Actual Titleholder’s Name · Violation of the National Security Act (Praise, Incitement, etc.) · Violation of the Inter-Korea Exchange and Cooperation Act · Evasion of Execution】** 257

- [1] Meaning of any person who obtains approval to visit North Korea by deceit or other unjustifiable means as provided by Article 27(1)-2 of the Inter-Korea Exchange and Cooperation Act, and any person who obtained authorization to visit North Korea through other unlawful means as provided by former Article 27(1)-4 of the Inter-Korea Exchange and Cooperation Act
- [2] In a case where Defendant instructed individuals who wished to visit Kaesong to falsely state their occupation on the application for North Korea visitation approval as employees of a company located inside Kaesong Industrial Region, and successfully obtained approval or certificate to visit North Korea; the judgment below was affirmed in finding Defendant guilty of acquiring approval or certificate to visit North Korea through unlawful means
- [3] The meaning and standard of determining acting in concert under Article 7(1) of the National Security Act, which stipulates the crime of acting in concert with an antigovernment organization
- [4] In a case where Defendant arranged for South Korean visitors to worship the Kim Il-sung statue or participated in the worshipping of the statue himself while guiding the visitors in Kaesong, and thereby was charged with acting in concert with an anti-government organization and thus violating the National Security Act; the judgment below was erroneous and misapprehended the legal principle because, in consideration of the circumstances, Defendant's actions do not qualify as actively and openly expressing an intention to agree and join an anti-government organization

9 Supreme Court en banc Decision 2009Do6788 Decided May 17, 2012 **【Violation of the Framework Act on the Construction Industry · Bribery · Violation of the Act on the Aggravated Punishment, etc. of Specific Crimes (Bribery) (Partially Acknowledged Crime: Bribery)】** 264

- [1] Whether the case of a witness refusing to testify as a legitimate exercise of such witness' right to refuse to testify as provided by the Criminal Procedure Act qualifies as "being unable to make a statement in a preparatory hearing due to death, illness, foreign residency, unknown whereabouts, or any other similar cause" provided by Article 314 of the aforementioned Act (negative)
- [2] In a case where Gap corporation and its employees (Defendants) provided money to a specialized rearrangement project management

staff while soliciting a redevelopment contract, and were subsequently prosecuted for violating the Framework Act on the Construction Industry: Defendants declined to present as evidence a “legal opinion” written and sent to Gap corporation by an attorney, and the attorney refused to testify on the legal opinion; the court below was justified in denying the probative value of the legal opinion and acknowledging acquittal

10 Supreme Court Decision 2012Do1284 Decided May 24, 2012 **【Violation of the Punishment of Violence, etc. Act (Formation of Organization, etc., and Activities) · Violation of the Enforcement Decree of the Act on Special Cases concerning the Regulation and Punishment of Speculative Acts, etc., and Punishment of Violence, etc. (Criminal Organization, Use of Deadly Weapon, Extortion) · Violation of the Punishment of Violence Act, etc. (Criminal Organization, Use of Deadly Weapon, Infliction of Bodily Injury) · Violation of the Punishment of Violence, etc. Act (Criminal Organization, Use of Deadly Weapon, Property Damage) · Infliction of Bodily Injury · Bribery】** 281

- [1] The purpose of allowing an attorney access to documents requested by the court to a public office in accordance with Article 272(1) of the Criminal Procedure Act; and how to interpret “reasonable grounds” for refusing access to documents the attorney is allowed access to
- [2] Whether the non-prosecution decision – which was part of the non-prosecution record and was kept in the Prosecutor’s Office – is subject to the attorney’s access (affirmative in principle)
- [3] The measures a court should take when a public office – without legitimate reason – refuses to deliver to the court, or allow Defendant to view documents considered important evidence that may support Defendant’s acquittal, or affect the judge’s decisions

11 Supreme Court Decision 2010Do9067 Decided June 14, 2012 **【Violation of the Road Traffic Act (Driving without Permit)】** 289

Where Defendant who had entered the Republic of Korea as an industrial trainee was charged with violation of the former Road Traffic Act due to driving of a motor vehicle without a permit, the case holding that the court below erred in the misapprehension of legal principle as to an

international driving permit as it acquitted Defendant by recognizing that the an international driving permit was validly issued without reviewing the circumstance where the international driving permit issued to Defendant in Pakistan before Defendant entered Korea was issued in a form different from the form under “the Convention on Road Traffic” of Vienna, 1968

12 Supreme Court Decision 2011Do5313 Decided June 14, 2012 **【Violation of Act on the Control of Narcotics, etc. (Psychotropic)】** 293

- [1] Whether an appellate court may reverse the first instance judgment regarding credibility of a witness statement (negative in principle)
- [2] In a case where Defendant was indicted of violating the Act on the Control of Narcotics, Etc. by delivering or selling the psychotropic drug methamphetamine (a.k.a. “philopon”) to Gap or administering it together with Gap, the case holding that the judgment below which reversed the first instance court’s determination on the credibility of witness Gap’s statements has violated the trial priority principle and the principle of direct questioning

13 Supreme Court Decision 2011Do15484 Decided June 14, 2012 **【Injury by Indecent Act by Compulsion · Extortion · Intentional Injury · Confinement】** 299

- [1] Where the first instance court failed to notice a case’s eligibility for citizen participation trial, and conducted a trial in the ordinary procedure without asking Defendant’s intention, the elements to cure such procedural defect in the court below
- [2] The case holding that where Defendant was not asked as to whether Defendant desired a citizen participation trial and the first instance court convicted Defendant in ordinary trial proceedings; the court below asked Defendant whether a citizen participation trial was desired and delivered the information and delayed the sentencing day; and Defendant submitted the reply and confirmation letter expressing the intention not to have a citizen participation trial, the first instance court’s defect in the trial procedure was cured

14 Supreme Court Decision 2012Do1283 Decided June 14, 2012 **【Violation of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes (Embezzlement) [Defendant 1’s Alternative Crime: Violation of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes (Breach of**

Trust)] · Violation of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes (Fraud) · Violation of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes (Breach of Trust) [Defendant 1’s Partly Acknowledged Crime: Occupational (Breach of Trust)] · Violation of the Securities Exchange Act. · Violation of the Act on External Audit of Stock Companies · Fraud · Occupational Breach of Trust · Occupational Embezzlement · Violation of the Trade Union and Labor Relations Adjustment Act · Violation of the Labor Standards Act】 304

In a case where a company is acquired under the so-called LBO (Leveraged Buyout) method and the acquired company’s assets are provided as security without giving any value therefor, whether a crime of occupational breach of trust is established (affirmative), and whether the identical legal principle applies to the acquired company undergoing rehabilitation procedure (affirmative)

15 Supreme Court Decision 2010Do14789 Decided June 28, 2012 【Violation of the Unfair Competition Prevention and Trade Secret Protection Act】 317

What is the meaning of “the act of making goods with a mark leading the public to misunderstand their quality, contents, manufacturing process, use, or quantity, or selling the goods with such mark” under Article 2 subparagraph. 1(f) of the Unfair Competition Prevention and Trade Secret Protection Act, and whether a case in which the manufacturer of goods is falsely indicated and such goods are sold constitutes such an act

16 Supreme Court Decision 2011Do8462 Decided July 26, 2012 【Violation of the Stowaways Control Act】 320

[1] The meaning of staying abroad for “purpose of escaping criminal punishment” as a ground for suspension of the criminal statute of limitations under Article 253(3) of the Criminal Procedure Act, its test, and the bearer of the burden of proof

[2] The case affirming the first instance court judgment dismissing prosecution on the ground that the criminal statute of limitations has not been tolled since all circumstances were not sufficient to acknowledge that Defendant stayed in Japan to escape criminal punishment, in a case where Defendant stowed away to Japan without valid proof for departure and was indicted for violation of the

Stowaways Control Act

17 Supreme Court Decision 2012Do5862 Decided August 17, 2012 【Violation of the Act on the Electronic Monitoring, Etc. of Specific Criminal Offenders】 324

- [1] Whether an action that “impedes the use” of an electronic monitoring device as provided by Article 38 of the Act on the Electronic Monitoring, Etc. of Specific Criminal Offenders includes the act of preventing the device from functioning normally (affirmative) aside from directly damaging the function of the device, and whether if the act of preventing normal function is punishable when done in omission, as long as it was done knowingly and willfully (affirmative)
- [2] The case affirmed that the judgment below which found the Defendant guilty on grounds that his act of neglecting the loss of the tracking device for a considerable amount of time constitutes impediment of the use of the electronic monitoring device, in a case where the Defendant (who was subject to the attachment of an electronic tracking device) lost a component of the device (the portable tracking device) but moved about without reporting the loss until 3 days had passed, and was consequently indicted for violating the Act on the Electronic Monitoring, Etc. of Specific Criminal Offenders

18 Supreme Court Decision 2012Do7377 Decided August 30, 2012 【Violation of the Act on the Punishment of Sexual Crimes and Protection of Victims Thereof (Rape of a Minor under 13 Years of Age, etc.)】 328

- [1] Whether the prosecutor must prove that the Defendant raped the victim while being aware that the victim was under 13 years old, for the crime provided by Article 8-2(1) of the former Act on the Punishment of Sexual Crimes and Protection of Victims Thereof to be constituted (affirmative); and whether the objective fact of the victim’s being under 13 years of age is in itself basis for assuming that the Defendant was aware of her age (negative)
- [2] In a case where the Defendant was accused of violating the former Act on the Punishment of Sexual Crimes and Protection of Victims Thereof by raping the victim who was a minor under 13 (female, 12 years old), the case holding that the judgment of the court below had errors in the misapprehension of the principle of the burden of proof at a criminal trial, since, considering surrounding circumstances, the fact of whether the Defendant was at least aware that the victim may

be under 13 cannot be easily concluded

19 Supreme Court Decision 2010Do1763 Decided September 13, 2012 **【Violation of the Medical Service Act】** 333

- [1] Whether an act of medical advertising constitutes patient “solicitation” prohibited under Article 27(3) of the former Medical Service Act (negative in principle); and whether an act of medical advertising constitutes an act of patient “introduction or referral” or “instigation” to do so when the act was performed by a medical personnel’s employee or a third party upon the medical personnel’s request (negative)
- [2] In a case where a Defendant, Gap (a doctor), and a Defendant, Byung (the CEO of a Defendant corporation, Eul Corporation) sent in conspiracy emails advertising an ophthalmic surgery event to the members of the website operated by Eul Corporation, and were indicted of violating the former Medical Service Act, the case holding that Defendant Gap’s act of sending emails was medical advertising and does not constitute “solicitation” of patients, unless under unique circumstances; even if the advertising was performed by a corporation such as Defendant Eul, the act does not constitute “referral or soliciting” of patients, or the incitement thereof; and the judgment of the court below which found the Defendants guilty was erroneous in the misapprehension of legal principle

20 Supreme Court Decision 2010Do6203 Decided September 13, 2012 **【Injury · Obstruction of Performance of Official Duties · Insult】** 340

- [1] The elements of a lawful random questioning by a police and its scope
- [2] Where (1) police officers who were performing random questioning (i) saw Defendant who was riding a bicycle and had features and clothes similar to a criminal suspect of purse-snatching who had used a bicycle, (ii) demanded Defendant to stop, (iii) blocked Defendant’s passage when he did not stop, and (iv) followed Defendant as Defendant proceeded, and repeated the request for cooperation; (2) Defendant violently resisted by grabbing the police officers by the collar; and consequently (3) Defendant was charged with obstruction of the performance of official duties, the case holding that the court below’s judgment finding Defendant not guilty was erroneous in the misapprehension of legal principle on the ground that the police officers’ act at issue was a lawful random police questioning

21 Supreme Court Decision 2012Do6079 Decided September 27, 2012 【Violation of the Act on the Aggravated Punishment, etc. of Specific Crimes (Bribe) (Alternative Crimes of Defendants 5, 6, 7: False Official Document Composition · Exercise of False Official Document · Delinquency of Duties) · Bribery · Violation of the Game Industry Promotion Act · Solicitation of Escape of Offender · Violation of the Act on Regulation of Punishment of Criminal Proceeds Concealment · Perjury】 345

[1] Whether an act of depositing proceeds of crimes, etc. into another person's account constitutes "an act disguising the fact about acquisition or disposition of the proceeds of crime" under Article 3(1)I of the Act on the Regulation and Punishment of Concealment of Gains from Crimes (affirmative) and whether a violation of Article 3(1)I of the same Act and a violation (bribe) of the Act on the Aggravated Punishment, etc. of Specific Crimes constitute concurrent crimes (= substantial concurrent crimes)

[2] In the case where Defendant Gap, who had been working in the vice division of the 00 police station, was prosecuted for disguising the acquisition of criminal proceeds based on the facts that for taking bribes from Defendant Eul, Defendant Gap received a cash card for Defendant Eul's son's bank account and withdrew cash from the bank account using the cash card after Defendant Eul deposited money to the above account, the case affirming the judgment of the court below holding that that Defendant Gap violated the Act on the Regulation and Punishment of Concealment of Gains from Crimes and the Act on the Aggravated Punishment, etc. of Specific Crimes (bribe) and the two crimes stand in relation of substantial concurrent crimes

22 Supreme Court Decision 2011Do15258 Decided November 15, 2012 【Violation of the Road Traffic Act (Driving under the Influence)】 350

[1] Whether evidence of the result of appraisal of a blood-alcohol level using blood samples collected without a warrant or appraisal permission issued by a judge is admissible (negative in principle), and whether the evidence may become admissible if the Defendant et al has consented (affirmative)

[2] The legal nature of compulsory collection of blood (= necessary measures for the appraisal of a blood-alcohol level or necessary

measures for execution of a seizure warrant)

- [3] In a case where a driver caused a traffic accident while driving under the influence, became unconscious, and was transported to a hospital, whether the investigative agency may collect blood samples from the unconscious driver in the hospital without a warrant (affirmative with restriction), and whether it is necessary for the investigative agency to acquire an ex post facto seizure warrant (affirmative)

23 Supreme Court Decision 2012Do6676 Decided November 15, 2012 **【Breach of Trust in the Conduct of Business · Violation of the Unfair Competition Prevention and Trade Secret Protection Act · Embezzlement in the Conduct of Business】** 358

- [1] Validity of the contract or employment rules providing for the transfer of any invention including the employee invention or the grant of an exclusive license to the employer, and whether the employee is entitled to reasonable compensation in respect of the employee invention where the contract or employment rules do not have an explicit compensation clause thereto (affirmative)
- [2] Where the employee invention is made jointly with the third party, whether the employer acquires the employee's share in the right without the third party's consent if the employer merely succeeds to the employee's right (affirmative)
- [3] If the employee subject to the contract or employment rules providing for employer's succession to the employee invention causes the invention published by not reporting its completion to the employer and letting the third party register the patent right through the transfer of a patentable right to invention to the third party in a double transaction, whether it constitutes a crime of breach of trust (affirmative)
- [4] Where the employee - to the contract or employment rules providing for the transfer of employee invention to the employer, whether the employee's act leading to publication against the duty of keeping secrecy and cooperation in the transfer procedure directly constitutes a trade secret disclosure under Article 18(2) of the Unfair Competition Prevention and Trade Secret Protection Act (negative in principle)

24 Supreme Court Decision 2010Do10576 Decided December 13, 2012 **【Violation of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. (Divulgence of Personal Information, etc.)】** 372

- [1] The meaning of "divulgence of others' secrets processed, stored, or

transmitted by the information and communication network” under Article 49 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.

- [2] Where Defendant was prosecuted on the charge that he had uploaded, on a cyber-café he operated, a file of “the names of the followers of a particular religion” and containing personal information, making it available for other café members to download, and thereby infringed on, misappropriated, or divulged other’s secrets, which had been processed, stored, or transmitted by the information and communication network, the case affirming the judgment of the court below which acquitted Defendant on the ground that his act did not constitute divulgence of others’ secrets under Article 49 of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.

Administrative Law

1

Supreme Court en banc Decision 2010Du10907 Decided February 16, 2012 【Confirmation of Invalidity of Disposition Including Attachment, etc.】 379

- [1] Whether the disposition on default on tax payment made in order to enforce tax claim is void ab initio, in case where a provision that supported tax imposition was deemed unconstitutional after the taxation disposition (affirmative)
- [2] The case affirming the judgment of the court below holding that the attachment disposition is void ab initio, in case where Eul was imposed with tax by the tax authorities under Article 39(1)2(c) of the former Framework Act on National Taxes in relation with Gap corporation’s default on tax payment; and afterwards, the relevant provision which provided basis for the tax imposition on Eul was held by the Constitutional Court as unconstitutional; however the tax authorities still issued an order for attachment on Eul’s bank deposit in order to enforce tax claims

2

Supreme Court Decision 2010Du18703 Decided April 26, 2012 【Revocation of Correctional Order, etc.】 387

- [1] The method of defining the relevant market as the premise for determining whether an unfair collusive act under Article 19(1)1 of