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# TABLE of CONTENTS

## PRIVATE LAW

- 1** Supreme Court en banc Decision 2015Da73067 Decided January 22, 2020 **[Wage]** ..... 1  
In a case where fixed allowances, paid at either a monthly or daily rate as remuneration for work performed during agreed work hours in excess of the standard work hours prescribed under the Labor Standards Act, are translated into an hourly ordinary wage, the method of calculating the agreed number of hours included in the total work hours based on which the hourly ordinary wage is calculated, and in such cases, whether a “premium rate” required in the calculation of premium pay must be taken into account (negative in principle) Whether the foregoing legal doctrine applies likewise to a case in which the premium rate for paid holiday allowance is set through collective bargaining or employment regulations (affirmative)
- 2** Supreme Court Decision 2015Da233579, 233586 Decided February 6, 2020 **[Wage; Unjust Enrichment]** ..... 29
- [1] Elements of validity of a wage payment agreement or a collective agreement based on the inclusive wage system and standard for determining whether there was an agreement reached as to the inclusive wage system
- [2] In a case where Party B, employed by Company A as a bus driver, sought payment for additional statutory allowances against Company A following recalculation of ordinary wages, the case holding that: (a) the wage agreement concluded by the trade union to which Party B, etc. is affiliated and Company A states that overtime allowances and night work allowances ought to be identified and paid separately from the base pay; (b) the wage system under the wage agreement cannot be deemed to include an agreement on the inclusive wage system; (c) although it is stipulated in the wage agreement contract that the payment of wages shall be based on the inclusive system, such provision is inconsistent with the practices of wage payment in Company A; (d) nonetheless, the lower court determined that an inclusive wage agreement was explicitly established and dismissed the claim filed by Party B, etc.; and (e) in so determining, the lower court erred by misapprehending the legal doctrine

**3**

**Supreme Court Decision 2016Da223494 Decided February 27, 2020  
[Damages (Etc.)] ..... 34**

- [1] The content of the duty to protect investors borne by an asset management company under the former Indirect Investment Asset Management Business Act and whether this duty applies likewise to the case where a third party practically took the lead in the creation of investment trusts (affirmative)
- [2] In a case where there exist extraordinary circumstances to conclude that an asset management company under the former Indirect Investment Asset Management Business Act practically took the lead in the creation of investment funds that are not directly created or managed by the said asset management company, whether the said asset management company bears the duty to protect investors by conducting a reasonable investigation of the profit structure and risk factors when soliciting investors for the said investment trust product and providing accurate information to investors (affirmative)

**4**

**Supreme Court Order 2019Ma6525 Dated March 26, 2020 [Objection  
to Provisional Disposition] ..... 41**

- [1] Standard for determining whether certain acts constitute an act of unfair competition stipulated in Article 2 Subparag. 1 Item (k) of the Unfair Competition Prevention and Trade Secret Protection Act
- [2] In a case where: (a) Company A, a limited company that publishes and sells magazines featuring celebrity news and photos and articles, sought to create a photo book of the members of a famous boy band under the management of Company B, a limited company that runs an entertainment business, including artist management, music production, and live performance planning, and sell it as a special supplement to the said magazine's special edition; (b) Company B filed for provisional disposition prohibiting the creation and distribution of the said special supplement on the grounds that Company A's act constitutes an act of unfair competition stipulated in Article 2 Subparag. 1 Item (k) of the Unfair Competition Prevention and Trade Secret Protection Act, the case holding that Company A's creation and selling of the said special supplement is an act of using the outcome, etc. of Company B without permission for Company A's own business operation against fair business transaction practice or competition order and therefore constitutes an act of unfair competition as stipulated in Item (k) of the said provision

Supreme Court Decision 2016Da239024, 239031, 239048, 239055, 239062 Decided May 14, 2020 **【Confirmation of Employee Status, etc.; Confirmation of Employment Status, etc.; Confirmation of Employee Status, etc.; Confirmation of Employment Status, etc.; Confirmation of Employment Status, etc.】** .....48

- [1] In a case where an original employer makes a worker perform tasks for a third party, standards for determining whether such case constitutes “temporary placement of workers” subject to the application of the Act on the Protection, etc. of Temporary Agency Workers
- [2] In a case where Party A, etc., employed as a highway patroller by an outsource company that concluded a service agreement with the Korea Expressway Corporation (KEC) regarding highway safety patrol duty, brought an action against the KEC for confirmation of employee status, the case upholding the lower judgment that affirmed the existence of a labor dispatch relationship between Party A, etc. and the KEC on the grounds that Party A, etc., upon employment with an outsource company, engaged in work for the KEC at a workplace occupied by the KEC under supervision and instruction of the KEC while maintaining an employment relationship
- [3] In a case where a user company does not perform its duty to directly employ workers as stipulated in Article 6-2(1)1 or Article 6-2(1)5 of the Act on the Protection, etc. of Temporary Agency Workers, whether a temporary agency worker has a legal right to seek a judgment that acts in lieu of a declaration of intention to employ against the user company (affirmative), and whether a direct employment relationship is established between the user company and the temporary agency worker upon finalization of the judgment (affirmative)
- [4] In a case where a temporary agency worker either resigns or is dismissed from his or her relationship with a temporary work agency after a user company’s duty to directly employ takes effect, whether the resignation or dismissal affects the legal relationship between the user company and the temporary agency worker concerning the duty to directly employ (negative in principle), and whether it is possible to readily conclude the circumstances under which the temporary agency worker declared an intention to resign with the intention to terminate the employment relationship with the temporary work agency as constituting “where the relevant temporary agency worker clearly expresses his or her dissenting opinion,” as stipulated in Article 6-2(2) of the Act on the Protection, etc. of Temporary Agency Workers (negative)
- [5] In a case where a user company either knew or could have known that a temporary agency worker and a worker compared with the said temporary agency worker performed similar, if not identical, tasks, but it nonetheless made the temporary agency worker receive

lesser wages compared to the worker in the comparison group by participating in or wielding influence over the determination of the temporary agency worker's wage, thereby discriminating against the temporary agency worker without reasonable grounds, whether the user company bears compensation liability for wage discrimination (affirmative)

In such instance, meaning of "cases where there exist no reasonable grounds" and method of determining whether there are reasonable grounds.

Whether this legal principle unconditionally applies to a labor dispatch relationship forged in violation of the Act on the Protection, etc. of Temporary Agency Workers (affirmative)

- [6] Whether a temporary agency worker may file a claim against a user company for damages equivalent to wages that he or she could have received commencing from the date on which the duty to directly employ took effect until the establishment of a direct employment relationship had the said temporary agency worker been directly employed by the user company (affirmative)
- [7] In a case where: (a) after a user company's duty to directly employ took effect, a temporary agency worker ceased providing labor, for example, through resignation; and (b) it can be assessed that even if the user company performed the duty to directly employ, the temporary agency worker would have not provided labor, whether the temporary agency worker may claim damages for the user company's non-performance of the duty to directly employ (negative)

**6** Supreme Court Decision 2018Meu15534 Decided May 14, 2020 [Divorce] .....63

- [1] Matters to be considered when determining the custody of a minor child in cases of divorce
- [2] In cases of judicial divorce, circumstances where both parents can be appointed as joint custodial parents of a child
- [3] In the case where Party A and Party B dissolve their marriage by judicial divorce and the issue of determining the custody of their child, Party C, is contended, the case holding that the lower court erred in its judgment, where it appointed Party A and Party B as joint custodial parents of Party C and accordingly determined the manner of joint custody, by misapprehending the legal doctrine on the appointment of a custodial parent

**7** Supreme Court en banc Decision 2017Da220744 Decided May 21, 2020 [Delivery of Building, etc.] .....69

In a case where some sectional owners exclusively occupy and use the portions used in common including corridors, stairs, etc. of condominium buildings without having a legal right to do so, whether they shall be liable to return the profits gained by occupying and using the corresponding section for common use as unjust enrichment (affirmative in principle) and whether this is likewise applicable even to the case

where the corresponding section for common use is not a subject that may be used for a separate purpose or leased for other purposes, in respect of its structure (affirmative)

Whether such legal doctrine is likewise applicable even to a case where a third party, who is not a sectional owner, exclusively occupies and uses the section for common use of a condominium building without any justifiable reason (affirmative)

**8** Supreme Court en banc Decision 2018Da879 Decided May 21, 2020  
**[Partition of Jointly Owned Property]** ..... 94

- [1] Whether the right to request partition of jointly owned property can be the subject of an obligee's right of subrogation (affirmative)
- [2] Standards for determining whether there is a "need for preservation," which is a prerequisite for the exercise of an obligee's right of subrogation
- [3] Whether an obligee having a monetary claim may exercise the right of subrogation to request partition of jointly owned property in relation to an obligor's real estate property in order to preserve obligee's claim (negative in principle), and whether this likewise applies to the case where: (a) an obligor's co-ownership interest jointly secures a floating sum mortgage together with co-ownership interests of other co-owners; (b) the claim secured by the said floating sum mortgage exceeds the value of the obligor's co-ownership interest, meaning that there will be nothing left in the event where only the obligor's co-ownership interest is put up for sale by auction, and, accordingly, the auction is likely to be cancelled pursuant to Article 102 of the Civil Procedure Act; (c) conversely, if the entirety of the jointly owned real estate property is sold through an auction sale in the manner of partition of joint property, the proceeds of the auction sale of the obligor's co-ownership interest is likely to remain after deducting his or her share of the amount of the claim secured by the floating sum mortgage therefrom, as the claim jointly secured by the floating sum mortgage will be divided in proportion to the proceeds of the auction of each of the co-ownership interest pursuant to Article 368(1) of the Civil Act (affirmative)

**9** Supreme Court en banc Decision 2018Da287522 Decided May 21, 2020  
**[Unjust Enrichment]** ..... 123

In a case where a person holding a minority interest in a joint property exclusively occupies and uses the whole or a portion of a joint property without consulting with other co-owners, whether another person holding a minority interest may request conveyance of the joint property as an act of preserving the co-owned property (negative), and whether the said person holding a minority interest may request removal of disturbance to the joint property or prohibition of acts of infringement of joint occupancy of the property based on his or her ownership interest (affirmative)

**10** Supreme Court Decision 2020Seu575 Decided June 8, 2020  
**[Confirmation for Birth Registration of Natural Parent's Child]**  
..... 163

- [1] Whether a child born as a national of the Republic of Korea has “the right to birth registration” immediately after birth (affirmative)
- [2] Whether Article 57(2) of the Act on Registration of Family Relations may apply to the case where a mother, who is a foreigner, cannot have the documents necessary for birth registration by any cause for which she cannot be responsible even if her personal information is known, her whereabouts is unknown, or she does not cooperate with the issuance of the documents necessary for birth registration without any justifiable reason (affirmative)

**11** Supreme Court en banc Decision 2015Meu8351 Decided June 18, 2020  
**[Confirmation of Existence of Biological Parental Relation]**  
..... 170

- [1] Whether a person eligible to bring an action demanding confirmation of the existence of a biological parental relation is limited to a person eligible to bring an action prescribed in Article 865(1) of the Civil Act (affirmative) and whether a person may naturally bring an action demanding confirmation of the existence of a biological parental relation on the sole basis of the fact that the said person corresponds to relatives stipulated in Article 777 of the Civil Act (negative)
- [2] In the case where Party E, a grandson of Party D, the eldest son of Party A, demanded confirmation of the fact that no biological parental relation exists between Party A and Party B against the prosecutor when it was admitted that Party C, a child of Party B, the eldest daughter of Party A, who is deemed a person of distinguished services to national independence, is included in the bereaved families of persons of distinguished services to national independence, the case holding that it is unreasonable in that having standing to sue prescribed in Article 865(1) of the Civil Act cannot be seen to be admitted on the sole basis of the fact that Party E is related to Party A, and even if a ruling confirming nonexistence of a biological parental relation becomes final and conclusive, Party E cannot be deemed to have legal interests thereon, and thus the above action demanding confirmation was brought by a person lacking standing to sue

**12** Supreme Court Decision 2019Da292026, 292033, 292040 Decided June 25, 2020  
**[Confirmation of Nonexistence of Obligation; Damages; Damages]** ..... 199

- [1] In a case where any suffering is caused by environmental pollution or environmental damage, whether the person who has caused the environmental pollution or environmental damage shall compensate for the suffering even if the said person has no cause for which

the said person is responsible pursuant to Article 44(1) of the Framework Act on Environmental Policy (affirmative) and the distribution of the burden of proof regarding causation in relation to the action for damages caused by environmental pollution

- [2] Whether the probative power of the result of appraisal by an appraiser and the factfinding, or the determination on ratio, regarding the cause to mitigate responsibility in cases seeking compensation for damages arising from torts are included in the matters on full authority of factfinding proceedings (affirmative in principle)
- [3] In a case where a litigation representative separately obtains a particular authority for the matters related to the filing of an appeal, whether the litigation representative may correct defects such as not attaching a stamp on a written appeal (affirmative in principle), and in such a case, the presiding judge of the original instance may order the litigation representative to correct the defects related to the stamp (affirmative in principle)
- [4] In the case where Party A and others who run flower gardens near the Seoul Racecourse Park demanded compensation against the Korean Horse Affairs Association, arguing that the potted plants, flowers, etc. cultivated by Party A and others withered to death as the salt sprayed by the Korean Horse Affairs Association to prevent the sand of the racetrack from being frozen into ice flew into the flower gardens through the underground water while the Korean Horse Affairs Association was running the Seoul Racecourse Park, the case holding that the liability for damages caused by the Korean Horse Affairs Association is recognized in accordance with Article 44(1) of the Framework Act on Environmental Policy

**13** Supreme Court Decision 2017Da56455 Decided July 9, 2020  
[Damages (Etc.)] ..... 208

- [1] In a case where the victim owes a debt to a third party because of the offender's illegal act, requirements for filing a claim for damages corresponding to the amount of debt and method of determining whether damage has realistically occurred
- [2] In a case where an administrative disposition was imposed on the victim and became final and conclusive because of the offender's illegal act, and costs occurred for the discharge of the said administrative disposition, whether it can be considered that damage corresponding to the said costs realistically occurred at the time of the said administrative disposition (affirmative in principle)  
In a case where: (a) an administrative disposition was issued but was not implemented for a long period of time; (b) there were exceptional grounds making it difficult to discharge the administrative disposition, and the administrative authority left the situation as it was without adopting any measures to compel the discharge of the disposition by taking into account such difficulty, whether the viability of implementation and the need for implementation

ought to be recognized, along with the existence of the administrative disposition, to conclude that damage corresponding to the costs arising from the enforcement of the administrative disposition has realistically occurred and become final and conclusive (affirmative) Where the burden of proving the facts relating to the occurrence of the aforesaid damage lies (held: victim on whom the administrative disposition was imposed)

**14** Supreme Court en banc Decision 2016Da248998 Decided August 27, 2020 **[Damages (Etc.)]** ..... 214

[1] Matters to be considered when determining whether a collective agreement shall be null and void pursuant to Article 103 of the Civil Act

Standard for determining whether a collective agreement including the content that the bereaved family, etc. of a union member may be recruited in a case where a particular reason such as death, etc. resulting from an occupational accident occurs is contrary to good morals and other social order

[2] In the case where whether the so-called “preferential employment clause for families of workers deceased due to industrial accidents” regulating that a person among the bereaved family members of a union member may be specially employed in a case where the union member is deceased due to an occupational accident in each collective agreement which Stock Company A and others concluded with trade unions is null and void in accordance with Article 103 of the Civil Act is called into question, the case holding that it is difficult to recognize special circumstances to see that the preferential employment clause for families of workers deceased due to industrial accidents reaches the extent of excessively constraining Stock Company A and others’ freedom of employment or results in disrupting the equity of employment opportunities, and thus the said clause cannot be seen to be null and void in violation of good morals and other social order

**15** Supreme Court Decision 2017Da269442 Decided September 3, 2020 **[Claim for Reinstatement, etc.]** ..... 247

Whether the truster, beneficiary, or other trustees where a number of trustees exist may request the relevant trustee to reinstate the trust property pursuant to Article 43(1) of the Trust Act where a trustee causes any loss to the trust property in violation of his/her duty for due fiduciary care (affirmative), and in such a case, the meaning of “reinstatement of the trust property”

Whether to order the payment of loss incurred by delay based on interest rates prescribed in the Civil Act and Article 3(1) of the Act on Special Cases Concerning Expedition, etc. of Legal Proceedings where an order to perform all or any monetary obligations is adjudicated by the result of the restoration of trust property in accordance with Article 43(1) of the Trust Act (negative in principle)

**16** Supreme Court Decision 2018Da283773 Decided September 3, 2020  
**[Lawsuit for Return of Unjust Enrichment]** ..... 253

[1] Meaning of “a person who virtually owns property,” and thus is liable to pay property tax under Article 107(1) of the Local Tax Act

In a real estate registration title trust involving a third party, where a title trustor signed a property purchase agreement and paid the purchase amount in full, whether the said title trustor is liable for the payment of property taxes as the actual owner of the real property even though the registration of ownership transfer has not yet been completed as of the property tax base date (affirmative in principle)

[2] In a case where: (a) the tax authority issued a property tax disposition to a title trustee who became the possessor of the relevant real property in the public register in accordance with a real estate registration title trust involving a third party; and (b) the said title trustee paid the property tax accordingly, whether the title trustee has the right to file a request for return of unjust enrichment corresponding to the amount of the property tax paid against the title trustor or the inheritor of the title trustor (negative)

**17** Supreme Court en banc Decision 2019Da232918 Decided November 19, 2020 **[Lawsuit of Demurrer]** ..... 259

[1] Whether the inheritor who had full knowledge of both the commencement of inheritance and the fact of inherited debt in excess of inherited assets prior to May 27, 1998, is eligible for special qualified acceptance of inheritance (negative)

[2] In a case involving an inheritor who was a minor at the time of the commencement of inheritance, whether the inheritor “did not know the fact that the inherited debts exceeded the inherited assets within the period under Article 1019(1) without any gross negligence” and the “date on which the inheritor knew the fact that inherited debt exceeded assets,” as prescribed in Article 1019(3) of the Civil Act or Articles 3 and 4 of the Addenda of the Civil Act (Jan. 14, 2002) concerning the retroactive application of Article 1019(3), ought to be determined based on the perception held by the said inheritor’s legal representative (affirmative)

[3] In a case where either Article 1019(3) of the Civil Act concerning the provision on special cases concerning qualified acceptance of inheritance is inapplicable or the limitation period thereof has elapsed as of the time of the perception held by the minor inheritor’s legal representative based on the perception held by the minor inheritor’s legal representative, whether the said inheritor, after having reached the age of majority, is eligible for special qualified acceptance of inheritance based on his or her newly acquired perception (negative)

- [1] In a case where an employer seeks to hire an employee who will perform the same task as was done by a dismissed employee at the time of dismissal within the period of three years from the day on which the employer fired the dismissed worker pursuant to Article 24 of the Labor Standard Act, whether the employer has a duty to offer preferential reemployment to the dismissed employee (affirmative in principle), and in such a case, where the employer hired a third person without confirming the dismissed employee's intention to enter into an employment contract, whether the employer in such a case violated the duty of preferential reemployment prescribed in Article 25(1) of the Labor Standard Act (affirmative in principle)
- [2] In the case where: (a) Party A worked as a rehabilitation teacher at the welfare facility for people with disabilities run by Foundation B and was laid off for managerial reasons; (b) Foundation B hired rehabilitation teachers several times within the period of three years from Party A's dismissal, but it neither notified Party A of the recruitment nor confirmed Party A's intention to re-enter into an employment contract; and (c) the point of time at which Foundation B violated the duty of preferential reemployment stipulated in Article 25(1) of the Labor Standard Act was disputed, the case holding that Foundation B's duty to offer preferential reemployment came into effect, at the latest, around the time when it hired the second person for the role of rehabilitation teacher providing life support service, which had been performed by Party A at the time of his dismissal
- [3] In a case where the employer does not perform the duty to offer preferential reemployment prescribed in Article 25(1) of the Labor Standard Act, whether the dismissed employee is legally entitled to seek a judgment against the employer in substitution for the declaration of intention to offer employment (affirmative), and whether the employment relationship is established between the employee and the dismissed worker when such a judgment becomes final and conclusive (affirmative)  
In such an instance, whether the dismissed employee is entitled to file a claim for damages for the employer's noncompliance with the duty of preferential reemployment for lost wages arising from the time at which the employer's duty of preferential reemployment came into effect until the establishment of the employment relationship (affirmative)
- [4] In a case where: (a) a dismissed employee files a claim for damages, on account of the employer's noncompliance with the duty of employment, the amount of which commensurate with the amount of wages that the employee could have received had the employer

performed its duty of employment; and (b) if a considerable causal relationship between the benefits accrued by the employee by performing work for other workplaces and the employer's noncompliance with the duty of employment is recognized, whether the said benefits ought to be deducted when calculating the amount of damages (affirmative)

In such an instance, whether the provision on shutdown allowances stipulated in Article 46 of the Labor Standards Act is applicable (negative)

**19** Supreme Court Decision 2019Da279962 Decided December 10, 2020  
**[Payment of Motor Vehicle Insurance Medical Fees]** ..... 304

- [1] Whether the provision of the notice by the Health Insurance Review and Assessment Service, which stipulates that “in the case of the referral of a hospitalized patient to another medical facility, the referring facility shall make a claim for motor vehicle insurance medical fees, and the medical facility that provides medical care shall not make a claim,” is binding upon medical facilities that provide medical care or insurance companies, etc. (negative)
- [2] In a case where the Health Insurance Review and Assessment Service, which unilaterally created an internal rule for the expediency and convenience of the administration of business, refuses to conduct a substantive review of claims filed by medical facilities that provided medical care for motor vehicle insurance medical fees on the grounds of the said internal rule, yet insurance companies, etc. do not take measures, such as urging the Health Insurance Review and Assessment Service to perform the entrust agreement, whether the medical facility that provided medical care may directly file a claim for the payment of motor vehicle insurance medical fees against the insurance company, etc. (affirmative)

**20** Supreme Court Decision 2017Da51603 Decided December 24, 2020  
**[Damages (Etc.)]** ..... 314

- [1] Whether intangible damages, which may not be quantifiably estimated but are capable of monetary assessment under generally accepted social ideas, are included in non-economic damages prescribed in Article 751(1) of the Civil Act (affirmative), and whether such claims for non-economic damages constitute an independently unique subject matter and should thus be treated as a single unity in a lawsuit (affirmative)
- [2] In a case where an employer's domination and interference with the formation and administration of a trade union are considered as unfair labor practices to the point that it is intolerable in light of sound and healthy social norms and generally accepted social ideas, whether the employer is obligated to pay a solatium award for non-economic damages incurred by the trade union (affirmative)
- [3] Whether the calculation of the amount of a solatium payment for non-economic damages arising from a tort falls within a trial court's

discretionary authority (affirmative)

21

**Supreme Court Decision 2019Da293098 Decided December 24, 2020  
[Confirmation of Invalidation of Dismissal] ..... 319**

- [1] Standard for determining whether an additional clause in a juristic act is a condition precedent or an indefinite term, and where a certain fact is attached as an additional clause with respect to the performance of the obligations that have been already borne, whether the time arrives when the fact occurs, or it is confirmed that the fact does not occur (affirmative in principle)
- [2] Method of interpreting a juristic act in a case where there is some dissent between the parties on the interpretation of a juristic act, and thus the interpretation of the parties' intentions becomes an issue
- [3] In a case where an additional clause imposed on a wage payment agreement is contrary to Article 43 of the Labor Standards Act, the effect of the additional clause (held: invalid), and in such a case, whether the remaining wage payment agreement is still effective (affirmative)
- [4] In the case where Corporation A, established in accordance with the Promotion of Local Cultural Institutes Act, explained to the effect that "a monthly salary of KRW 3.5 million would be paid, but for the meantime, KRW 1 million a month would be given, and if subsidies are provided later again, salaries payable or the remaining monthly salary of KRW 2.5 million would be paid," employing Party B as a general secretary after subsidies received from the competent local government were discontinued, and afterward, KRW 1 million was paid to Party B as a monthly salary, the case holding that viewing the reason such as "Corporation A's receipt of subsidies" not as a condition but as an indefinite term is reasonable, and thus is null and void in violation of Article 43 of the Labor Standards Act, but the wage payment agreement on the remaining monthly salary of KRW 2.5 million is valid

## CRIMINAL LAW

1

**Supreme Court en banc Decision 2018Do2236 Decided January 30, 2020 [Abuse of power and Obstructing Another from Exercising One's Right; Coercion; Violation of the Act on Testimony, Appraisal, Etc. Before the National Assembly] ..... 326**

- [1] In the case where: (a) the Defendant, the chief of staff to the president, was indicted on the charge of abuse of power and obstruction of the exercise of rights by ordering the office of the senior presidential secretary, including the office of the senior presidential secretary for political affairs and the office of the senior

presidential secretary for education and culture, and the Ministry of Culture, Sports and Tourism, at the behest of the president, to exclude left-leaning groups from a number of projects executed by the Arts Council Korea, the Korean Film Council, and the Publication Industry Promotion Agency of Korea, on the grounds of ideological orientation or political stance of the individuals or organizations applying for the government's support fund, i.e., the Korea Culture and Arts Promotion Fund, etc.; (b) the gist of the case pertained to the admissibility of so-called "Cheong Wa Dae documents" that were provided to the special prosecutor via the Prosecutor's Office or directly from Cheong Wa Dae and submitted by the special prosecutor to the lower court, the case affirming the lower judgment holding that the aforesaid "Cheong Wa Dae documents" do not constitute illegally obtained evidence and thus are admissible as evidence

- [2] Meaning of "abuse of power" in the crime of abuse of power and obstruction of the exercise of rights, and the standards for determining what constitutes abuse

Whether the crime of abuse of power and obstruction of the exercise of rights is established in cases where a public official, apart from having abused his or her official capacity, practically instigated another person to do something for which the said individual is not legally responsible, or where there is an outcome under which someone else's exercise of a specific right has been infringed (affirmative), and the standards for determining when a public official is considered to have "instigated other parties to do what they are not obligated to do"

In cases where: (a) a public official misused his or her official position to instigate the other party, either a public official or an executive and/or staff of relevant organizations, to do a particular act; and (b) the particular act done by the said other party falls within the ambit of the said other party's duties in terms of form and content and is not in breach of the principle, criteria, and procedure that must be complied with in the process of performing one's duties pursuant to law or any other relevant regulations, whether the said public official may be legally deemed to have instigated other parties to do what the said other party is not obligated to do (negative in principle)

- [3] In the case where the Defendants, including the chief of staff to the president, were indicted on charges of abuse of power and obstruction of the exercise of rights by instigating the employees of the Arts Council Korea, the Korean Film Council, and the Publication Industry Promotion Agency of Korea (hereinafter "Institutions") to do what they were not obligated to do, through a public official at the Ministry of Culture, Sports and Tourism (MCST), by commanding them to exclude left-leaning groups from a number of projects executed by the Institutions on the grounds of ideological orientation or political stance of the individuals or

organizations applying for the government's support fund, i.e., the Korea Culture and Arts Promotion Fund, etc., the case holding as follows: (a) the foregoing order by the Defendants constitutes "abuse of power"; (b) the MCST official's instigation of the employees of the Institutions to suspend the implementation of the project until its order to exclude the designated applicants from support is fully complied with, highlight circumstances that are unfavorable to the applicants to be excluded from support, and communicate such circumstances to the examining panel constitute "a public official's instigation of other parties to do what they are not obligated to do"; (c) however, it is difficult to view that the part concerning the instigation of a MCST official to send various lists and to frequently keep the Defendants up to date the progress of deliberation during the public offering process is considered an act for which one is not obligated to do

- [4] Meaning and content of "intimidation" in the crime of coercion  
In a case where a perpetrator put forward a demand to the other party based on the said perpetrator's vocation or status, the standards for determining whether the said demand constitutes a threat of harm and injury as a means of the crime of coercion
- [5] In the case where the Defendants were indicted on the coercion charge involving the following acts: (a) the Defendants, including the presidential chief of staff, orchestrated the exclusion of so-called left leaning groups from various projects organized by the Institutions, through officials at the MCST, on the basis of ideological orientation or political stance of the individuals or organizations applying for the government's support (e.g., Korea Culture and Arts Promotion Fund); (b) the Defendants demanded Party A, a public official, and Party B, a Grade 1 MCST official who was hesitant to follow the order of the Defendants to exclude the designated applicants, submit a letter of resignation; and (c) the Defendants ordered the employees of the Institutions to intervene with the deliberation process by inducing fear and terror of being disadvantaged both in occupational and status respects, thereby instigating the said employees to do what they were not obligated to do, the case affirming the lower judgment which held that there is insufficient substantiation for the alleged notification involving threats of harm and injury that induced fear to the extent that the said other parties were restricted to exercise the right to freedom of decision making and were obstructed from exercising the freedom of executing the intentions

**2** Supreme Court Decision 2019Do11489 Decided January 30, 2020  
[Violation of the Act on the Aggravated Punishment, Etc. of Specific Crimes (Customs); Violation of the Customs Act; Violation of the Punishment of Tax Offenses Act; Violation of the Act on the Aggravated Punishment, Etc. of Specific Crimes (Taxes); Escape of Criminal Offender; Solicitation of Escape of Criminal Offender]

- [1] The purpose of Article 241(1) of the Customs Act, stipulating that each person, who intends to export, import or “return” goods, shall declare to the head of a customs office / The main purpose of punishing a person who exports, imports or “returns” any goods without filing a declaration as referred to in Article 269 of the Customs Act / Whether it may be subject to the return declaration in a case where foreign goods which have arrived in Korea from any foreign country are shipped back to any foreign country without undergoing import clearance (affirmative in principle) and whether the act of returning the relevant goods without such declaration corresponds to Article 269(3)1 of the Customs Act (affirmative)
- [2] Whether foreign goods which have arrived in Korea for the purpose of changing the departure place to Korea constitute transshipment goods exempted from customs clearance such as the declaration of the return in accordance with the “Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures” (Revised Kyoto Convention) (negative)

**3** Supreme Court Decision 2019Do5186 Decided February 13, 2020  
**[Abuse of Authority and Obstruction of Exercise of Rights; Violation of State Public Officials Act; Violation of the Public Official Election Act; Coercion; Perjury; Violation of the Act on the Aggravated Punishment, etc. of Specific Crimes (Bribery); Violation of the Act on the Aggravated Punishment, Etc. of Specific Crimes (Loss of National Treasury)]** ..... 398

- [1] Meaning of “abuse of power” stated in the crime of abuse of power and obstruction of the exercise of rights, and the standard of determining whether a certain act constitutes abuse of power  
 Requirements for a certain duty to be deemed to fall within the purview of a public official’s general official duty
- [2] That a public official’s act constitutes the abuse of power means an aggrieved party’s performance of the act constitutes a “non-obligatory act” (negative), and the standard of determining whether or not a certain act constitutes a “non-obligatory act”  
 In a case where a party subject to the abuse of power is a private person, whether compelling the said party to perform a certain act can constitute “a public official’s instigation of other parties to perform a non-obligatory act” (affirmative in principle)
- [3] Whether the crime of abuse of power and obstruction of the exercise of rights constitute an offense premised on the public official’s possession of power (affirmative)  
 In a case where a public official conspired to commit a crime before retirement and is now retired from office, whether the said public official is liable as an accomplice to a crime committed after the said official’s retirement (negative in principle)
- [4] Meaning and content of “intimidation” as referred to in the crime of coercion  
 In a case where a perpetrator demanded that a victim provide certain

benefits based on his or her position or status, the standard of determining whether the said demand constitutes a threat of harm and injury employed as a means of the crime of coercion

In a case where the perpetrator, a public official, demanded that the victim provide certain benefits, but where the said demand cannot be deemed to fall within the abovementioned definition of “a threat of harm and injury,” whether the crime of coercion is established (negative)

- [5] In a case where the Defendants, comprised of the presidential chief of staff and public officials working for the office of the senior secretary for political affairs, were charged with abuse of power and obstruction of the exercise of rights and coercion for imposing demands on the Federation of Korean Industries (FKI) to provide annual funding support to civil society actors linked to a specific political orientation over the course of three years from 2014 to 2016 and in so doing cause Party A, the vice president of the FKI, to provide funding support to certain civil society organizations, the case affirming the lower judgment that recognized the establishment of the crime of abuse of authority and obstructing another’s exercise of rights on the grounds that the Defendants’ demands for funding support fell under the general duties and authority of the chief of staff and the office of the senior secretary for political affairs and therefore constituted the abuse of power, and that the abovementioned abuse of power caused Party A to make a decision to provide funding support, a non-obligatory act, but holding that the lower court erred by misapprehending the legal doctrine regarding intimidation in the crime of coercion on the grounds that the Defendants’ demands for funding support cannot be readily considered to be intimidation, i.e., a threat of harm and injury

4 Supreme Court Decision 2019Do14341, 2019Jeondo130 Decided February 13, 2020 [Violation of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes (Rape of Minors less than 13 Years of Age); Statutory Rape of Minors and Abduction for Purpose of Adultery (Partly Acknowledged Name of Crime: Attempted Abduction for Purpose of Adultery); Violation of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes (Obscenity Using Communication Media); Order to Attach an Electronic Device] .....412

- [1] In a case where separate evidence irrelevant to the facts of the suspected crime, based on which a warrant was issued, is seized, whether this may be used as evidence for an admission of guilt (negative in principle) and in the case of crimes that are objects of search and seizure or those involved therein, whether the results of the search and seizure may be used as evidence of guilt (affirmative)

Meaning of “crime related to the facts of the suspected crime of a search and seizure warrant” and, on this occasion, the scope within which “objective relevancy” in relation to the facts of suspicion is admitted and the standard for its judgment

- [2] In a case where, in relation to the attempted abduction for the purpose of adultery and the violation of the Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes (obscenity using communication media), which a criminal defendant committed against Victim A (10-year-old girl) on May 6, 2018, investigative authorities seized a mobile phone owned by the criminal defendant and obtained additional information about criminal acts including abduction for the purpose of adultery and attempted abduction for the purpose of adultery, statutory rape of minors, violation of the Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes (rape of minors less than 13 years of age), violation of the Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes (obscenity using communication media), etc., which the criminal defendant committed against Victims B (12-year-old girl), C (10-year-old girl), and D (9-year-old girl) from around December 2017 to around April 2018 as a result of digital forensic regarding the above mobile phone, and thus whether they may be admissible as evidence ought to be considered, the case holding that the criminal defendant’s criminal acts against Victims A, B, and C clarified by the additional information satisfy all the objective and human relevance as they have a specific and an individual relationship therewith, not to mention those simply identical or similar to the criminal facts stated in the search and seizure warrant

**5** Supreme Court en banc Decision 2019Do9756 Decided February 20, 2020 [Fraud; Breach of Trust] ..... 418

- [1] Meaning of “a person, administering another’s business,” who is the subject of breach of trust

In a case where an obligor shall be liable for the maintenance and preservation of the collateral value of secured property to a person who holds the right to the said property transferred for security, an obligee, by placing the said obligor’s own movable asset as a security by means of transfer to secure a monetary debt or have the duties to avoid the acts which may disrupt the exercise of a security interest by disposing of, losing or damaging the security, whether the obligor constitutes “a person, administering another’s business,” who is the subject of breach of trust (negative) and, on this occasion, in a case where an obligor endangers the exercise of a security interest or the resultant realization of claims, of an obligee as a result of a decrease or loss in value of the security by disposing of the security to a third person, whether a breach of trust may be established (negative)

Whether the foregoing legal doctrine may apply even to a case where an obligor disposes of assets to a third person even though

the said obligor is under an obligation to conclude a contract for the establishment of a security by means of transfer with respect to movable assets and then transfer them to an obligee (affirmative) and whether this legal doctrine is likewise applicable in a case where an obligor who had concluded a contract for the establishment of a security by means of transfer in relation to stocks disposed of the said stocks to a third person (affirmative)

- [2] In a case where a criminal defendant was indicted on charges of breach of trust on the grounds that the Defendant engendered damages equivalent to a loan to Bank B by selling a movable asset, the object of security, to Party C and others although the criminal defendant, who manages Stock Company A, had concluded a contract, providing the movable asset owned by Stock Company A in the manner stipulated in the agreement on possession as security by means of transfer until Stock Company A pays the loan off, when obtaining the loan from Bank B, the case holding that there exists the illegality of misunderstanding of legal principles in the judgment of the lower court that handed down a guilty verdict as to the facts charged on the grounds that the typical and fundamental content of the relationship between Stock Company A and Bank B of the said transfer security contract refers to the repayment of the loan debt and the security therefor, and the criminal defendant who manages Stock Company A cannot be deemed to correspond to “a person who administers another’s business,” in the relationship with Bank B unless Stock Company A can be seen as administering Bank B’s business on the basis of a fiduciary relationship with Bank B beyond a relation involving conflicts of interest in an ordinary contract

**6** Supreme Court Decision 2019Do11381 Decided March 12, 2020 [Violation of the Adjustment of International Taxes Act] …450 Whether standards for determining a domestic corporation (referred to as a wholly owning parent company), which owns, directly or indirectly, 100/100 of the voting stocks of a foreign corporation (referred to as a wholly owned subsidiary), as an actual holder may be included in the “standards for determining persons required to report,” which will be specified in the enforcement decree in accordance with the delegation of Article 34(6) of the former Adjustment of International Taxes Act (affirmative)

Whether the parenthesis part in Article 50(4) main text of the former Enforcement Decree of the Adjustment of International Taxes Act, stipulating a domestic corporation, a wholly owning parent company, as an actual holder of an overseas financial account, whose nominal holder is a foreign corporation, a wholly owned subsidiary, is considered null and void by exceeding the bounds of delegation prescribed in Article 34(6) of the former Adjustment of International Taxes Act (negative)

**7** Supreme Court Order 2015Mo2357 Dated March 17, 2020  
[Re-appeal of Decision of Acceptance of Quasi-Appeal] ..... 459

[1] When the prosecutor interrogates the suspect in an interrogation room, whether protective equipment should be used on an exceptional basis only in cases where the risks described in each subparagraph of Article 97(1) of the Administration and Treatment of Correctional Institution Inmates Act, for example, where a prisoner is highly likely to abscond, commit suicide, injure himself/herself or injure other persons, are clearly and concretely manifested (affirmative)

When a prosecutor or senior judicial police officer interrogates a confined suspect in an interrogation room, whether the prosecutor is obliged to request a correctional officer to remove protective equipment unless special circumstances exist, and whether the correctional officer ought to abide by the request (affirmative)

[2] When a prosecutor or senior judicial police officer interrogates an incarcerated suspect, whether his/her refusal of a request of a suspect or a defense counsel to remove protective equipment constitutes a “disposition concerning confinement” prescribed in Article 417 of the Criminal Procedure Act (affirmative)

[3] Meaning of “good cause” prescribed in Article 243-2(1) of the Criminal Procedure Act

Whether a prosecutor or senior judicial police officer who forced a defense counsel to withdraw from an interrogation room on the sole ground that the said defense counsel raised an objection to unfair interrogation techniques employed during a suspect interrogation is deemed to have placed a restriction on the defense counsel’s right to participate in a suspect interrogation without reasonable grounds (affirmative), and whether to allow such a practice (negative)

**8** Supreme Court Decision 2019Do9601 Decided April 29, 2020  
[Violation of the Copyright Act] ..... 466

[1] The meaning of “creativity” of the requirements for a “work” stipulated in Article 2 Subparag. 1 of the Copyright Act

A case where the creativity of architectural works including buildings can be recognized

[2] The requirements to recognize copyright infringement

Standard of determining whether there is a substantive similarity between two architectural works so as to determine whether copyright is infringed

[3] In a case where the Defendant, a qualified architect, was commissioned to construct a café by Party A, and designed and constructed Party A’s café building by imitating the design of a café building that Party B had designed and constructed, and, as a consequence, was accused of infringing Party B’s copyright, the case holding that the lower court viewed that the creativity

of Party B's café building is recognized, and the substantive similarity between the building designed and constructed by the Defendant and Party B's café building is also recognized in the same regard on the grounds that it constitutes a work which is protected by the Copyright Act in that the café building of Party B reflects creative individuality on the part of the creator as well as the functions or practical ideas in accordance with common expressive methods, and, such judgment of the lower court is acceptable

**9** Supreme Court Decision 2014Do9607 Decided May 14, 2020  
**[Violation of Medical Services Act]** .....470  
 In Article 17(1) of the former Medical Services Act stating, "No one shall prepare a prescription and shall issue or send such prescription to a patient unless he/she is a physician in medical services who has directly diagnosed the patient," the meaning of "direct" and "diagnosis" Whether a medical diagnosis is considered to have been made only when there is an act to the degree required to give a certain diagnosis or prescription based on a patient's condition that is sufficiently credible from the perspective of modern medicine, and in a case where such an act is performed solely through telephone interviews, whether the circumstance under which a doctor has met a patient face-to-face and given a diagnosis to the patient before and is already familiar with the patient's medical condition and status is a minimal prerequisite for such telemedicine services (affirmative)

**10** Supreme Court Decision 2020Do2433 Decided May 14, 2020  
**[Violation of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes (Indecent Act by Compulsion through Abuse of Consanguineous or Marital Relationship); Violation of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes (Indecent Act by Compulsion on Minors under the Age of 13); Violation of the Act on the Protection of Children and Youth against Sex Offenses (Pseudo-sexual Intercourse); Violation of the Child Welfare Act (Child Abuse)]** .....473  
 A case where the credibility of testimony should not be recklessly rejected when a victim, who is a minor, made a statement that a relative who was obliged to protect or supervise him/her committed a sex crime against him/her  
 In a case where a victim, who is a minor, asserting that he/she was sexually assaulted through the abuse of a consanguineous or marital relationship, modifies his/her testimony, which was made at an investigative agency, in court, the standard for determining which testimony has credibility

**11** Supreme Court Decision 2019Do12750 Decided May 28, 2020  
[Violation of the Child Welfare Act; Violation of the Act on  
Promotion of Information and Communications Network Utilization  
and Information Protection, Etc. (Defamation)] ..... 478

[1] Method of determining whether an act constitutes “defamation by disclosing a fact that specifies a victim” to satisfy the requirements to establish a crime under Article 70(1) of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc.

[2] In the case where: (a) the Defendant reported school violence committed against her daughter, Party A, an elementary school student, and the school principal issued an order against the perpetrating student, Party B, in accordance with the resolution passed by the Committee for Countermeasures against School Violence, which prohibited Party B from approaching or contacting, or taking revenge on, the victim student; (b) the Defendant wrote on her KakaoTalk status message, “Do Not Approach School Violence Perpetrator!!!” with three fist emojis thereafter; and (c) the Defendant was indicted on a charge of violation of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., the case holding that: (a) in light of the relevant circumstances, the Defendant is not considered to have disclosed facts sufficiently specific to disparage Party B’s social worth or reputation through the said status message; but (b) nevertheless, the lower court determined otherwise and, in so determining, it erred by misapprehending the relevant legal doctrine

**12** Supreme Court Decision 2018Do13696 Decided June 25, 2020  
[Fraud] ..... 483

[1] In a case where more than two people are involved in the production of copyrighted works, standards for determining who the copyright holder is

In a case where a number of individuals are involved in the process of creating works of art, standards for a judicial review of the process and degree of engagement required to be recognized as an author, a person who contributed to the form of creative expression

[2] Meaning of “defrauding by nonfeasance” as a constituent element of the crime of fraud and the scope in which the statutory duty to notify arises in such a case

Where the burden of assertion and proof lies with regard to facts relating to the actuality of transactions, such as the details of a transaction on which the statutory duty to notify is based and the transaction practices (held: prosecutor)

[3] In the case where: (a) the Defendant paid Painter A to paint his past collage work or instructed Painter A to express abstract ideas proffered by the Defendant in painting at discretion, and later added

a finishing touch to the painting conveyed to him and inserted a signature; and (b) the Defendant was indicted on a charge of selling the paintings (works of art) to the victims and swindled money corresponding to the payment of the said paintings by exhibiting them as though he created the paintings himself, when in fact the said paintings were actually created by Painter A, etc., without notifying the victims of the way the paintings were created as above, the case affirming the lower judgment that acquitted the Defendant based on the conclusion that it was difficult to readily conclude that the victims purchased the aforesaid paintings under the erroneous impression that the paintings were personally created by the Defendant

**13**

**Supreme Court Decision 2019Do17322 Decided July 9, 2020**

**[Violation of the Military Service Act] ..... 491**

- [1] Meaning of a so-called conscientious objection to military service  
Whether an objection to military service in accordance with genuine conscience constitutes “justifiable grounds” as referred to in Article 88(1) of the Military Service Act (affirmative), and in such a case, the meaning and proof method of genuine conscience
- [2] In the case where the criminal defendant, who did not receive baptism by immersion as a member of the Jehovah’s Witnesses, was under indictment in violation of the Military Service Act by failing to enlist in the military and rejecting military service even after three days have been elapsed from the date of enlistment on the grounds of religious conscience even though he received a notice of enlistment for active duty service issued in the name of the Regional Military Manpower Office, asserting that he is a believer thereof, the case holding that even though there is still some doubt about whether “conscience” asserted as a cause for the criminal defendant’s objection to military service constitutes justifiable grounds as referred to in Article 88(1) of the Military Service Act as “genuine conscience,” the lower court found the criminal defendant not guilty, and in so determining, it erred by failing to exhaust all necessary deliberations, etc.

**14**

**Supreme Court en banc Decision 2019Do13328 Decided July 16,**

**2020 [Abuse of Authority and Obstruction of Exercise of Rights; Violation of the Public Official Election Act] ..... 498**

- [1] Purport of Article 250(1) of the Public Official Election Act that punishes publication of false facts  
Standards for determining whether candidates for public office, etc., are punishable under the crime of publication of false facts prescribed in Article 250(1) of the Public Official Election Act based on their remarks during candidate debates, and matters to be considered in such instances
- [2] In the case where the Defendant, a candidate for the head of a local government, was accused of violating the Public Official

Election Act on the charge of alleging false facts to the effect that, although the Defendant had directed the head of the public health center under his jurisdiction, on several occasions, to initiate the procedure for the compulsory hospitalization of his brother, Party A, pursuant to the Act on the Improvement of Mental Health and the Support for Welfare Services for Mental Patients during his time as mayor, the Defendant denied and replied to the effect that he had never attempted the forced hospitalization of his brother to the question posed by his opponent, Party B, who was asking whether the Defendant was involved in the procedure for the forced hospitalization, the case holding that the Defendant's remark does not constitute publication of false facts as prescribed in Article 250(1) of the Public Official Election Act

**15** Supreme Court Decision 2017Do2478 Decided July 29, 2020 [Violation of the Punishment of Violence, Etc. Act (Intrusion upon Collective Habitation)] ..... 537

Requirements for a trade union's union activities to attain justifiability and constitute a justifiable act under Article 20 of the Criminal Act Matters to be particularly considered when determining whether a union activity in question satisfies the aforesaid requirements concerning time, means, and method

**16** Supreme Court Decision 2020Do6965, 2020Jeondo74 Decided August 20, 2020 [Violation of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes (Rape Through Abuse of Consanguineous or Marital Relationship); Quasi-Rape; Violation of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes (Indecent Act Through Abuse of Consanguineous or Marital Relationship); Violation of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes (Aggravated Rape); Violation of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes (Taking Photographs or Videos by Using Cameras); Electronic Device Monitoring Order] ..... 540

[1] Method of determining the admissibility of testimony produced by the victim of sexual assault, etc.

Whether the credibility of the victim's testimony can be promptly dismissed on the sole basis that the victim, who was the Defendant's biological daughter and had a family relationship with the Defendant, fails to demonstrate the characteristics of a "typical victim" (negative)

Matters to be particularly taken into consideration when determining the credibility of the victim's testimony that the said victim was sexually abused by a person in a consanguineous relationship

[2] Meaning of "objection to punishment," a special mitigating factor in the sentencing guidelines promulgated by the Supreme Court Sentencing Commission

17

Supreme Court en banc Decision 2015Do9436 Decided August 27, 2020 [Violation of the Act on the Protection of Children and Youth Against Sex Offenses (Sex by Deceptive Scheme, etc.)] ..... 545

- [1] In a case where a child or juvenile used words or committed deeds that appear, on the surface, to be a sexual decision or consent because of the other person's deception or exploitation in a manipulative relationship built on trust, whether the utterance of the words or the commission of the actions can be evaluated as having been resulted from the unfettered exercise of the said child or juvenile's right of sexual self-determination (negative)
- [2] In a case where an offender placed a victim in a state of misconception, delusion, and ignorance and took advantage of the psychological state of the victim to achieve his purpose of having sexual intercourse with the victim, whether the crime of having sexual intercourse by a deceptive scheme is established (affirmative)  
In a case where the victim is deceived into having sex by misconception, delusion, and ignorance, whether what the victim misconceived of, was delusive about, and was ignorant of can be other than the sexual intercourse itself, for example, the motivation behind the sexual intercourse or a monetary or non-monetary incentive associated with the sexual intercourse (affirmative)  
Substance of the causal relationship between deception and sexual intercourse, and the circumstances to be considered when assessing the causal relationship  
In assessing the causal relationship between sexual intercourse and deception, whether the causality between sexual intercourse and deception should not be readily denied from the perspective of adults with common sense or the victim's peers who received sufficient care and education (affirmative)
- [3] In the case where: (a) the Defendant misrepresented himself as a Grade 11 high school student under an assumed name "A" to the 14-year-old victim, whom he became acquainted with through a smartphone chat application, and started dating on the app; (b) the Defendant told the victim that he was being stalked by a woman, and insisted to the effect that the victim had to have sex with his senior to keep the stalker away; (c) the Defendant disguised himself as his imagined senior and had sex with the victim who consented to the Defendant's demand in fear of breaking up with the Defendant, the case holding that the Defendant placed the victim in a state of misconception, delusion, and ignorance and took advantage of the psychological state of the victim to have sex with the victim, and therefore, the Defendant's sex act can be assessed as sex by deception

18

Supreme Court en banc Decision 2019Do11294 Decided August 27, 2020 [Fraud; Violation of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes (Embezzlement); Occupational

**Embezzlement; Occupational Breach of Trust; Falsification of Private Electromagnetic Records, etc.; Exercise of Falsified Private Electromagnetic Records, etc.; Violation of the Act on Regulation and Punishment of Criminal Proceeds Concealment; Misrepresentation in Original Authentic Deed; Exercise of Misrepresented Original Authentic Deed; Violation of the Commercial Act] .....556**

- [1] Meaning of inputting “false” information into an electromagnetic records system
  - [2] Meaning of “the intention of disrupting conduct of affairs” as referred to in the falsification of private electromagnetic records, etc.
  - [3] In a case where a juristic person constructs, installs, and operates a computer network system with the intention of generating, processing, saving, and outputting data electronically, using any data processor such as a computer, special media records, such as electromagnetic records, that are provided for the above system and in which data are generated, processed, saved, and outputted according thereto, correspond to special media records, such as electromagnetic records, etc. of “another person” in relationship to the executives and staff members of a juristic person (affirmative)
  - [4] A case where a person authorized to input individual unit data within the scope of each duty from the principal system installation and operation entity creates electromagnetic records that are contrary to the intention of the said entity through the input of false information by abusing the authority invested in said person as well as a case where a person not authorized to be involved in the generation of electromagnetic records creates electromagnetic records or inputs unit data necessary for the generation of electromagnetic records in relationship to the principal system installation and operation entity constructed, installed, and operated with the intention of generating, processing, saving, and outputting data electronically is also included in the “falsification” of electromagnetic records as referred to in the falsification of public electromagnetic records, etc. (affirmative)
- Whether the above legal doctrine is likewise applicable to “falsification” stipulated as the form of conduct in the falsification of private electromagnetic records (affirmative)

**19** Supreme Court en banc Decision 2019Do14770 Decided August 27, 2020 [Violation of the Act on the Aggravated Punishment, Etc. of Specific Economic Crimes (Embezzlement) [Partly Acknowledged Name of 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); Breach of Trust] ..... 585

Meaning of “a person, administering another’s business,” who is the subject of a breach of trust

In a case where an obligor shall be liable for the maintenance and

preservation of the collateral value of secured property to a person who holds a security interest in movable property, an obligee, by placing the said obligor's own movable asset as security on the movable property in accordance with the Act on Security over Movable Property, Claims, etc. to secure a monetary debt or have the duty to avoid acts that may disrupt the exercise of the security interest by disposing of, losing, or damaging the security, whether the obligor constitutes "a person, administering another's business," who is the subject of a breach of trust (negative), and, on this occasion, in a case where said obligor endangers the exercise of the security interest or the resultant realization of claims of the obligee as a result of a decrease or loss in value of the security by disposing of the security to a third person, whether breach of trust may be established (negative)

**20** Supreme Court Decision 2015Do1927 Decided September 3, 2020  
**[Interference with Business; Refusal to Leave]** .....604

[1] In a case where industrial actions of the workers affiliated with the contractor took place at the owner's business site and consequentially infringed on the owner's legal interest protected under the Criminal Act, whether the unlawfulness of infringement of the legal interest is canceled out and deemed as a legally justifiable act in a relationship with the owner that is not the employer on the grounds that the pertinent industrial actions satisfied the lawfulness requirements in a relationship with the contractor, the employer (negative)

In a case where a lawfully organized industrial action against an employer, the contractor, took place at the owner's business site and thus violated the owner's legal interest protected under the Criminal Act, the circumstance where the illegality therein is cancelled out as an "action which does not violate the social rules" in Article 20 of the Criminal Act, and the standards for determining whether any case falls within such circumstance

[2] In a case where an employer hires or substitutes a person unrelated to the business concerned during the period of industrial actions to facilitate the performance of work that is interrupted because of the industrial actions, and if the employees who participated in the industrial actions used considerable force to stop the illegal substitution of labor, whether such use of force is a justifiable act that cancels out the unlawfulness therein (affirmative), and the method of determining whether the use of force to stop the illegal substitution of labor is an act acceptable in light of the generally accepted social ideas and can thus be considered a justifiable act

**21** Supreme Court Decision 2017Do12389 September 24, 2020  
**[Bribery; Acceptance of Bribe]** .....612

[1] Method of identifying a bribe offeror in the crime of bribery, and whether money and valuables or pecuniary profits ought to be directly provided by the offeror and accepted by the offeree (negative)

[2] In the case where: (a) Defendant A, a civil servant, consented to Defendant B's proposition ("If you need to give a gift to someone, I will send salted shrimp to that person,") and sent a list of names to whom he wanted to send salted shrimp to Defendant B; (b) Defendant A was indicted on the charge of having instigated Defendant B to send out salted shrimp in delivery packages to the designated people, by writing Defendant A's name on the sender line, as if Defendant A himself was the one who sent out the gifts, and not paying the price thereof, thereby having received a bribe; and (c) Defendant B was indicted on the charge of offering a bribe to Defendant A, the case holding that Defendant A's intention of taking possession was fulfilled by Defendant B's offering of the salted shrimp, thus establishing the crime of offering and accepting a bribe under Article 129(1) of the Criminal Act, and that the establishment of the crime is not influenced by the sole circumstance that the offeror and offeree did not directly provide and accept the money and valuables in question

**22** Supreme Court Decision 2017Do19283 Decided September 24, 2020  
**[Interference with Business]** ..... 616

- [1] Whether the constitution of the crime of interference with business requires the results of business obstruction to actually occur (negative)
- [2] A case where an act that an applicant submitted with false materials for explanation corresponding thereto, making a false assertion to a person in charge of deciding to accept or not based on the examination of the qualifications, etc. at the request of the applicant, constitutes the crime of interference of business by fraudulent means
- [3] In the case where the Defendants were indicted on charges that, conspiring with Defendant B, Defendant A was issued a certificate of voluntary service, containing false information that Student D, a student of High School C, had completed a total of 84 hours of volunteer work over the course of about 10 months, and transferred the said certificate to Defendant B, and Defendant B interfered with the execution of duties of the school head including the examination and selection of the Services Award by fraudulent means in the manner of having Student D receive the Services Award 2010 in the name of the school head by submitting the said certificate to High School C through Student D's class teacher, the case holding that the lower court found the Defendants not guilty, and thus there were errors of misapprehension of the legal principles regarding the constitution of the crime of interference with business

**23** Supreme Court en banc Decision 2020Do4140 Decided October 22, 2020 [Murder; Abandonment of a Corpse; Violation of the Child Welfare Act (Child Abandonment; Child Negligence)] .....622

[1] In a case where the criminal defendant, classified as a juvenile at the time the judgment of the first instance was rendered, was sentenced to an indefinite term of imprisonment, and the appellate court, in which the criminal defendant alone appealed, ought to change an indefinite term of imprisonment of the first instance court into a definite term of imprisonment as the criminal defendant attains his/her majority, the standard for determining whether the principle of prohibition on disadvantageous alteration is violated (held: the medium term, corresponding to the median between the short term and long term of an indefinite term of imprisonment)

[2] In the case where the first instance court, convicting the criminal defendant, classified as a juvenile at that time, of murder and abandonment of a corpse, sentenced the criminal defendant to an indefinite term of imprisonment, the maximum term of which shall not exceed 15 years, and the minimum term of which shall not exceed seven years, which were the upper limit of the minimum and maximum terms, stipulated in Article 4(2) of the Act on Special Cases Concerning the Punishment of Specific Violent Crimes, corresponding to special rules of the proviso of Article 60(1) of the Juvenile Act; the criminal defendant alone appealed in response thereto; the lower court, reversing the first instant judgment ex officio and sentencing the criminal defendant to a definite term of imprisonment as majority was attained by the criminal defendant prior to the rendition of the lower judgment, sentenced the criminal defendant to seven years in prison on the grounds that imprisonment for more than seven years, the minimum term of an indefinite term of imprisonment of the first instance court under the principle of prohibition on disadvantageous alteration, could not be sentenced, the case holding that the lower court determined that the standard for determining whether the principle of prohibition on disadvantageous alteration is violated ought to be 11 years in prison, corresponding to the medium term between the short term and the long term of an indefinite term of imprisonment when sentencing the criminal defendant to a definite term of imprisonment instead of the indefinite term of imprisonment imposed by the first instance court, and, in so determining, the lower court erred by misapprehending the legal doctrine

**24** Supreme Court en banc Decision 2020Do6258 Decided October 22, 2020 [Violation of the Act on the Aggravated Punishment, Etc. of Specific Economic Crimes (Fraud); Fraud; Counterfeit of Private Document; Uttering of Falsified Private Document; Violation of the Road Traffic Act; Embezzlement; Occupational Embezzlement; Breach of Trust; Violation of the Labor Standards Act; Violation

**of the Act on the Guarantee of Employees' Retirement Benefits: Obstruction of the Exercise of Right; Violation of the Punishment of Tax Offenses Act] ..... 664**

[1] Whether an obligor constitutes a "person who administers another person's business" against an obligee in a relationship involving monetary claims and obligations (negative)

In a case where an obligor either promised to create or created a right of mortgage on the movable property in his or her possession according to the Act on Mortgage on Motor Vehicles and Other Specific Movables to secure a monetary debt, whether the obligor constitutes a "person who administers another person's business," the principal of the crime of breach of duty, in the said obligor's relationship with the obligee (negative), and, in such an instance, if the obligor disposes of the collateral to a third party, etc. and thereby reduces or diminishes its collateral value, thus jeopardizing the obligee's enforcement of a right of mortgage or satisfaction of a claim by way thereof, whether the crime of breach of duty is established (negative)

Whether the abovementioned legal doctrine likewise applies to the cases where the obligor arbitrarily disposed of the movable property, on which a right of mortgage had been created, to a third party pursuant to the Factory and Mining Assets Mortgage Act to secure a monetary debt (affirmative)

[2] In a movable property sales contract, whether a seller is in a position of administering a buyer's business (negative), and, in such an instance, if a seller disposed of the subject property to another person, whether the crime of breach of duty under the Criminal Act is established (negative)

In a movable property sales contract that requires registration and filing to transfer a right over the said movable property, whether a seller of a car, etc. is in a position of administrating a buyer's business (negative), and, in such an instance, if the seller disposed of the subject property to another person without filing a transfer of ownership, whether the crime of breach of duty is established (negative)

**[25] Supreme Court Decision 2017Do18164 Decided October 29, 2020 [Violation of the Financial Investment and Capital Markets Act] ..... 672**

Meaning of "an act of allowing another person to use any material nonpublic information in trading or any other transaction involving specific securities, etc." of the prohibited acts pursuant to Article 174(1) of the Financial Investment and Capital Markets Act, and in such a case, whether "another person" ought to be limited to a person who receives information directly from an insider and the primary information recipient (addressee) of a listed corporation (negative)

In the case of allowing a person who is provided with information transmitted through a direct information recipient to use the above

information in a transaction, whether the casual relationship between the addressee's act of providing information and the information recipient's act of using information ought to exist (affirmative), and the addressee ought to provide information even though recognizing that the information recipient uses the corresponding information in trading or any other transaction involving specific securities, etc. (affirmative)

Standard for determining the degree of the recognition of the addressee as above and whether the addressee recognized it

**26** Supreme Court Decision 2015Do13830 Decided November 5, 2020 [Violation of the Medical Service Act] ..... 680

Whether a medical practitioner's provision of medical services on a patient in a remote area via telephone, etc. is a violation of Article 33(1) of the Medical Service Act (affirmative in principle), and whether this likewise applies to "when medical treatment is given upon a request from a patient or his/her guardian" prescribed in Article 33(1)2 of the Medical Service Act (affirmative)

**27** Supreme Court en banc Decision 2020Do5813 Decided November 19, 2020 [Bodily Injury; Defamation; Assault] ..... 683

[1] Meaning of and standard for determining "publicity," which is a constituent element of criminal defamation

Whether the so-called "theory of propagation possibility," the legal doctrine which has been established under the precedents, may be maintained with respect to publicity of criminal defamation (affirmative)

[2] In the case where the criminal defendant was charged with defaming Party A by publicly alleging facts, exclaiming aloud, "that person is an ex-convict who has served out his/her sentence," to Party A, while Party B, the husband of the criminal defendant, and Party C, a relative of Party A, were listening on a back street of Party A's house, the case holding that the possibility of propagation cannot be seen to be denied solely on the ground that Party C is a relative of Party A, but seeing that many and unspecified persons were in a state to be able to recognize the speaker is rather reasonable as the criminal defendant declared loudly enough for other villagers to overhear the facts alleged in a public place with the intention of merely insulting or defaming Party A in the process of doing battle with Party A, and thus the publicity of the criminal defendant's above remark is recognized

**28** Supreme Court Decision 2020Do10729 Decided November 26, 2020 [Violation of the Act on Special Cases Concerning the Punishment, Etc. of Sexual Crimes (Taking Pictures by Using Camera, etc.)] ..... 721

[1] Whether an opportunity that makes it possible for the arrested or his/her defense counsel to participate in such a process ought

to be guaranteed, and appropriate measures to prevent arbitrary duplication, etc. of electronic information irrelevant to the facts of suspicion ought to be taken where the copies of storage media, hard copies, imaging, etc. including electronic information are moved to an office, etc. of the investigative institution, duplicated, searched, and printed out in the process of seizure and search for storage media (affirmative), and whether the seizure and search are legitimate where such measures are not taken (affirmative in principle)

Whether this is likewise applicable even in a case where the investigative institution merely duplicates and prints out electronic information relevant to the facts of suspicion from storage media or copies thereof (affirmative)

- [2] Whether the right of the defense counsel to participate stipulated in Articles 219 and 121 of the Criminal Procedure Act corresponds to inherent powers given to the defense counsel to protect the arrested (affirmative)

Whether an opportunity to participate in the execution of a warrant of seizure and search ought to be separately ensured by notifying the defense counsel of the date, time, and place of the execution in a case where the arrested specifies his/her intention that he/she will not be present when the investigative institution executes a warrant of seizure and search (affirmative in principle)

- [3] The purpose of Article 308-2 of the Criminal Procedure Act, which specifies the principle of exclusion of illegally obtained evidence Whether the evidence collected without following the due process and the secondary evidence obtained based thereon may be admitted as evidence (affirmative in principle)

The cases where the illegally obtained evidence and the secondary evidence obtained based thereon can be exceptionally admitted, and the standards for judgment thereon

**29** Supreme Court Decision 2015Do19296 Decided December 10, 2020  
**[Violation of the Act on the Management of Presidential Archives; Damage of Public Electronic Records, etc.]** ..... 730

- [1] Whether official documents (including official electronic documents) are regarded as valid with the approval by signature, etc. of a person with authority (affirmative) and, in such an instance, the meaning of “approval” and the standard for determining whether there has been approval of a person with authority

- [2] Whether it is mandated under the former Act on the Management of Presidential Archives for presidential records to be “created” by institutions responsible for creating presidential records (affirmative), and in a case where presidential records manifest the characteristic of official documents (including official electronic documents), whether they must be deemed to have been created as presidential records only after they have been regarded as official documents with the approval of a person with authority (affirmative)

- [3] Whether the “custody” of presidential records, as stipulated in Article 2 of the former Act on the Management of Presidential Archives, refers to “practical possession” (affirmative), and whether it is likewise true even if presidential records were not submitted for registration or transfer (affirmative)
- [4] Whether “documentary materials and other electronic records used in public offices” in the crime of destroying public electronic records, etc., include documentary materials that have yet to come into force as official documents; documents that have not been submitted for official registration and approval; and documents that have been rejected during the reporting procedure for approval (affirmative), and whether the said crime is established even if the relevant documents are incomplete (affirmative)

**30** Supreme Court Decision 2020Do11471 Decided December 10, 2020  
**[Violation of the Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc. (Defamation)]**  
 ..... 745

Whether the intent to disparage a person’s reputation exists and whether a fact disclosed by a criminal defendant is false, of the constituent elements of defamation stipulated in Article 70(2) of the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., correspond to a separate requirement (affirmative), and if the fact revealed is false, whether the intent to disparage a person’s reputation ought to be seen to be recognized (negative)

Where the burden of proof for all the constituent elements prescribed in the above provision lies (held: prosecutor)

The meaning of and standard for determining the “intent to disparage a person’s reputation” and the relationship between “intent to disparage a person’s reputation” and “public interest”

Standard for determining whether the fact revealed is about the “public interest”

**ADMINISTRATIVE LAW**

**1** Supreme Court Decision 2016Du35854, 35861, 35878, 35885, 35892, 35908 Decided January 16, 2020 **[Revocation of Disposition Imposing Corporate Tax; Revocation of Disposition Imposing Local Income Tax; Revocation of Disposition Imposing Local Income Tax; Revocation of Disposition Imposing Local Income Tax; Revocation of Disposition Imposing Local Income Tax; Revocation of Disposition Imposing Local Income Tax]** ..... 750

[1] Meaning of “residents of Luxembourg,” which is subject to the

“Convention between the Government of the Republic of Korea and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital” (held: any person who, under the laws of Luxembourg, is liable to pay tax therein), and in a case where tax is not imposed in accordance with the benefit of tax exemption, etc. for which legal requirements have been fulfilled, whether it may be considered that the tax liability does not exist (negative)

- [2] Standard for determining whether one qualifies as the “beneficial owner” as prescribed in Article 10(2) Item (b) or 11(2) of the “Convention between the Government of the Republic of Korea and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital”
- [3] Meaning of “holding companies within the meaning of any similar law enacted by Luxembourg after the signature of the Convention” as stated in Article 28 of the “Convention between the Government of the Republic of Korea and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital,” and whether a person who acquires securities such as stocks, etc. simply for the purpose of obtaining his/her investment returns constitutes such holding companies (negative in principle)
- [4] Apart from appealing against the disposition imposing a corporate tax, whether it is possible to seek the revocation of disposition imposing a corporate tax on the grounds that the determination on the pertinent corporate tax amount, which becomes the standard of assessment, is illegal (affirmative)
- [5] In a case where: (a) investing in listed domestic stocks or claims, Investment Company A and others, collective investment schemes that are included in the types of companies established in Luxembourg in accordance with the laws and regulations regarding Undertakings for Collective Investment in Transferable Securities (UCITS), appointed Bank B and others to storing agencies and received dividends and interest relevant to the above stocks and claims from Bank B and others; (b) paying the said dividends, etc. to Investment Company A and others for six years, Bank B and others have paid the withheld corporate tax by applying 15% limited tax rate stipulated in Article 10(2) Item (b), and 10% limited tax rate prescribed in Article 11(2), of the “Convention between the Government of the Republic of Korea and the Government of the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital” each; and (c) the competent taxation authorities and others imposed corporate tax, deducted at source in the year shown, which is taxed at 20% in accordance with Article 98(1)3 of the former Corporate Tax Act with respect to the dividends, etc.,

and local income tax, which is a special collection corporate tax, pursuant to Article 96 of the former Local Tax Act, each upon Bank B and others on the grounds that Investment Company A and others are not subject to the aforementioned Convention, the case holding that: in light of the overall circumstances, (a) Investment Company A and others correspond to residents of Luxembourg who are liable to tax in Luxembourg; and (b) the aforementioned dividends, etc. were paid to Investment Company A and others who are residents of Luxembourg as the beneficial owner, and thus the 15% limited tax rate prescribed in Article 10(2) Item (b), and the 10% limited tax rate stated in Article 11(2), of the above Convention ought to be applied

**2** Supreme Court en banc Decision 2019Du52386 Decided February 20, 2020 [Revocation of Readjudication on Relief Request for Unfair Dismissal] ..... 767

In the case where it becomes impossible for a worker to be reinstated in his/her former office due to such causes as reaching the retirement age or the expiration of a labor contract while he/she is contending for the effect of dismissal through a relief request for unfair dismissal, but he/she needs to be paid the amount of wages during the period of dismissal, whether there exist interests in litigation contending for the decision made by the reexamination of the Central Labor Relations Commission, which dismissed the relief request (affirmative)

Whether the aforementioned legal doctrine is likewise applicable in the case where a worker files an order for the payment of money or valuables in accordance with Article 30(3) of the Labor Standards Act (affirmative)

**3** Supreme Court Decision 2018Du35391 Decided March 26, 2020 [Revocation of Disposition Denying Bereavement Benefits and Funeral Grant] ..... 773

[1] Standard of determining whether this may constitute occupational accidents prescribed in the Industrial Accident Compensation Insurance Act in a case where a worker suffers from a disaster while attending an event or a meeting outside the office

In a case where a worker drank alcohol exceeding his/her drinking capacity in a get-together under an employer's control or management, and for this reason, he/she has suffered from a disaster, such as injury, disease, physical disability, death, etc., whether this may be deemed to correspond to occupational accidents (affirmative with restriction), and on this occasion, methods of determining whether there is a proximate causal relation

[2] In the case where Party B, who was team leader of a safety management team in relation to new apartment construction progressed by Construction Company A, was run over by a vehicle in a crosswalk on his/her way home using public transportation as usual, and thus died after attending a mock-up show held by

Construction Company A and further rounds of the company's get-together, the case holding that even though, in light of all circumstances, there is room to see that the foregoing accident is included in occupational accidents occurring under an employer's control or management, the lower court, which determined contrary to the above, erred by misapprehending the legal doctrine

**4** Supreme Court Decision 2018Da290436 Decided April 9, 2020  
**[Claim for Restitution of Unjust Enrichment]** ..... 778

[1] In a case where the articles of incorporation stipulates that the amount of remuneration to be received by directors shall be determined by a resolution of a general meeting of shareholders, whether the directors may exercise the right to demand remuneration without a resolution of a general meeting of shareholders (negative)

Whether, in such case, the consideration paid as compensation for the performance of the directors' duties may all be included under "remuneration of directors" (affirmative) and whether the monetary amount that a company compensates directors, contingent on their management performance as a performance-based bonus, special bonus, etc., or for the purpose of motivating directors to achieve results may also be included under "remuneration of directors" (affirmative)

[2] In the case where the articles of Stock Company A stipulate that the amount of remuneration to be received by directors shall be determined in accordance with a resolution of a general meeting of shareholders, and Representative Director B of Stock Company A received money as a "special bonus" from Stock Company A without a resolution of a general meeting of shareholders, the case holding that the lower court determined that the monetary amount Representative Director B received as a "special bonus" constitutes unjust enrichment obtained without any legal grounds as remuneration paid as compensation for the performance of the said Director's duties

**5** Supreme Court Decision 2019Du49953 Decided April 9, 2020  
**[Revocation of Disposition Making Changes to Ferry Business Permits]** ..... 782

[1] In a case where a dispositive authority ex officio revoked an administrative disposition subject to legal dispute during the pendency of a lawsuit seeking confirmation of nullity of the administrative disposition or a lawsuit seeking revocation of the administrative disposition, whether an appellate lawsuit against the said disposition is lawful (negative in principle)

Cases where a benefit of lawsuit seeking revocation of a disposition is recognized on an exceptional basis despite the dispositive authority's ex officio revocation

[2] In a case where there is a subsequent disposition amending the

content of a preceding disposition, whether the preceding disposition remains valid

- [3] In a case where a law that serves as the basis for beneficial administrative disposition, such as granting permits or giving approval and authorization, is intended to prevent business management from going awry due to excessive competition among relevant business entities, whether an existing business entity, which conducts a business operation upon obtaining a beneficial administrative disposition, such as a permit, approval, or authorization, has the benefit of lawsuit seeking confirmation of nullity or revocation of the beneficial administrative disposition (i.e., permit, approval and authorization) on competing business entities (affirmative)

In a case where an administrative disposition filed against a competing business entity is disadvantageous to the competing business entity, whether an existing business entity has the benefit of lawsuit seeking confirmation of nullity or revocation of the said administrative disposition (negative in principle)

- [4] In a case where a judgment revoking an administrative disposition becomes final and conclusive, the responsibility of an administrative authority in accordance with the *res judicata* of a revocation judgment

**6** Supreme Court Decision 2015Da224797 Decided April 29, 2020  
**[Damages (Etc.)]** ..... 789

- [1] Meaning of “violation of the statutes” in the state’s compensation liability, and whether the investigative agency’s violation of the limitation under the laws and legal principles while conducting criminal investigation constitutes a “violation of the statutes” (affirmative)

- [2] In a case where a criminal suspect belongs to a socially vulnerable group, such as juvenile suspects, whether the investigative agency has an official duty to take extra caution to prevent any unfair treatment of the criminal suspect in exercising his/her right of defense during criminal investigation proceedings (affirmative), and in a case where the investigative agency drafts a protocol of suspect interrogation in violation of the said duty either by intention or negligence, thereby resulting in a substantial infringement of the suspect’s rights, whether the state’s compensation liability is established (affirmative)

**7** Supreme Court Decision 2016Du41071 Decided April 29, 2020  
**[Revocation of Disposition Rejecting Application for Medical Care Benefits]** ..... 793

- [1] Whether the “health damage of a fetus” caused to a pregnant female employee by her occupational reason is included in “occupational accidents” of an employee stipulated in Article 5 Subparag. 1 of the Industrial Accident Compensation Insurance Act (affirmative)

[2] In a case where a fetus, which has formed a monolithic body with the mother body, is separated from it by childbirth after a relation between the supply and demand of medical care benefits in accordance with the Industrial Accident Compensation Insurance Act was established because of occupational accidents such as the health damage of a fetus, which is a part of the pregnant mother, caused to a pregnant female employee by her occupational reason, whether the relation between the supply and demand of medical care benefits that was already established is terminated (negative)

**8** Supreme Court Decision 2019Du62604 Decided May 28, 2020  
**[Revocation of Decision on Nonpayment of Survivors' Benefits and Funeral Expenses]** ..... 802

[1] Method of determining whether there is a causal relationship between a job and a disease that caused death to recognize "death caused by an occupational reason" under Article 5 Subparag. 1 of the Industrial Accident Compensation Insurance Act, and the degree of proof for the causal relationship  
 Person based on whom the determination of whether there is a causal relationship between the job and the disease and/or death is made (held: relevant worker)

[2] In a case where the first accident inflicted on a worker constitutes an occupational accident that has a considerable causal connection with the job, whether the second accident occurred thereafter is considered as an occupational accident, and the method of determining whether the second accident constitutes an occupational accident

[3] In the case where: (a) Party A, who engaged in a shift work schedule performing loading and unloading of PVC pipes, showed symptoms of severe respiratory distress resulting from cardiovascular chest pain, while resting at a shelter after finishing a day shift, and was sent to the hospital (first accident), where he was diagnosed with possible angina; (b) having recuperated at home for 11 days, Party A returned to work and was discovered unconscious on the floor of the toilet of the dormitory immediately before starting a night shift, after which he was moved to the hospital but died (second accident), the case holding that there is an error in the lower judgment, which determined that it was difficult to recognize the existence of a considerable causal relationship between the decedent's job and the disease that caused the death

**9** Supreme Court Decision 2018Du32330 Decided May 28, 2020  
**[Revocation of Disposition Denying Claim for Correction of Corporate Tax]** ..... 807

In a case where a non-profit corporation uses income accruing from a profit-making business for proper purpose business, etc., whether the corresponding disbursement may be included in deductible expenses by viewing it as expenses equivalent to earnings accruing from a profit-making business according to the choice of the non-profit

corporation separately from being included in deductible expenses within the scope of the ceiling on inclusion of reserve funds for proper purpose business in deductible expenses (negative)

**10** Supreme Court Decision 2018Du67251 Decided June 25, 2020  
[Damages (Etc.)] ..... 815

- [1] In a case involving a residents' request for inspection pursuant to Article 16(1) of the Local Autonomy Act, whether the term "it shall be found that the relevant affairs have been handled in violation of statutes or their performance substantially undermines the public interest" constitutes a requirement for the lawfulness of the residents' request for inspection or residents' lawsuit (negative)
- [2] In a case where, although a residents' request for inspection satisfies all of the requirements for lawfulness required by the Local Autonomy Act, the inspection authority misconstrued the relevant request as unlawful and issued a decision dismissing the said request without further proceeding to conduct a specific investigation or make a determination in this regard, whether the residents who have filed a request for inspection may bring a lawsuit, which is the relief procedure provided as a next step in the Local Autonomy Act, instead of contesting the said unlawful decision in a separate appeal procedure (affirmative)

**11** Supreme Court Decision 2017Du72935 Decided June 25, 2020  
[Revocation of Disposition Imposing Corporate Tax, etc.] ... 822

- [1] In a case where a Philippine corporation carries on business in the Republic of Korea through a permanent establishment situated therein, the scope of profits that may be taxed in the Republic of Korea by being attributed to a permanent establishment and where the burden of proof thereon lies (held: tax authorities)
- [2] In a case where a fair amount of tax to be legitimately imposed cannot be calculated as a party does not submit averments and materials to support the objective tax base and amount of tax until the pleading of fact-finding proceedings is closed, whether the entire taxation shall be canceled (affirmative) and, in such a case, whether the court is obliged to calculate a fair amount of tax ex officio (negative)
- [3] In the case where Philippine Corporation A hired employees working in an office in Stock Company B's business establishment and had them do business providing chips for junkets while performing activities recruiting junkets throughout the Asian region except Korea after concluding a junket agreement, receiving a commission in return for collecting and arranging casino customers (junket), with Stock Company B that manages a casino exclusively for foreigners in the Republic of Korea; and where the tax office imposed the corporate tax, etc. for each business year on Philippine Corporation A by viewing the above office as the permanent

establishment of Philippine Corporation A located in the Republic of Korea, the case holding that the lower court is justified to have determined that the disposition imposing the corporate tax, etc., under the premise that the entire remaining amount, excluding value-added tax from the total amount of the aforementioned commission, is deemed the amount of income vested in the permanent establishment of Philippine Corporation A, was unlawful

**12** Supreme Court Decision 2017Du39785 Decided July 9, 2020  
**[Revocation of Disposition Disapproving Development Activities]** .....

833

[1] Whether any act falling under the matters on which the head of the relevant administrative agency may ask for consultation with the Minister of National Defense or the commander of the jurisdictional unit under the former Protection of Military Bases and Installations Act interferes with military operations or is feared to interfere with military operations is included in matters regarding a high level of professional and military determination (affirmative), and whether discretion may be given to the Minister of National Defense, the commander of the jurisdictional unit, etc. with respect to such determination (affirmative)

[2] Whether the results of the specialized qualitative evaluation performed by the administrative agency ought to be respected if possible unless there are special circumstances (affirmative), and where the burden of the proof on whether there are extenuating circumstances where discretion is abused or misused lies (held: a person who insists thereon)

Whether this legal doctrine is likewise applicable in the case where the Minister of National Defense, the commander of the jurisdictional unit, etc. professionally and militarily undertook qualitative evaluation as provided by the relevant law, such as the former Protection of Military Bases and Installations Act (affirmative)

**13** Supreme Court Decision 2017Du63467 Decided July 29, 2020  
**[Residents' Lawsuit]** .....

841

[1] Standard for determining whether to correspond to "matters concerning the acquisition, management, and disposal of property," "matters concerning the conclusion and performance of a contract, to which the competent local government is a party," etc. which are stipulated as those subject to residents' lawsuit pursuant to Article 17(1) of the Local Autonomy Act

[2] Whether the subject of residents' lawsuit pursuant to Article 17(1) of the Local Autonomy Act must be the same as matters concerning a request for inspection filed by residents (negative), and standard for determining whether the subject of residents' lawsuit is related to matters concerning the request for inspection filed by residents

[3] Whether a person filing a residents' lawsuit pursuant to Article

17(2)4 of the Local Autonomy Act ought to specify the other party, details of financial accounting, relevance to the request for inspection, damages or unjust enrichment claimed against the other party, etc. (affirmative)

- [4] Whether liability for damages may be established only when the head and the employees of the competent local government, who are the other parties related to unlawful financial accounting, have intention or gross negligence of the unlawful acts in the case of a claim for compensation for damages in accordance with a residents' lawsuit pursuant to Article 17(2)4 of the Local Autonomy Act (affirmative)

14

**Supreme Court en banc Decision 2016Du32992 Decided September 3, 2020 [Revocation of Disposition Notifying Decertification of Trade Union] ..... 859**

- [1] In the principle of parliamentary reservation subsumed in the principle of statutory reservation, which comprises a key component of the principle of the rule of law under the Constitution, the method of determining whether a certain matter constitutes an essential matter that falls within the prerogative of the discretionary determination by the National Assembly  
When restricting fundamental and essential matters relating to individual rights and obligations, as well as individual freedom or rights guaranteed under the Constitution, whether the essential matters comprising such restriction ought to be voluntarily regulated by the National Assembly by statutes (affirmative)
- [2] Whether an enforcement decree of a statute can revise or complement without legislative delegation, matters pertaining to an individual's rights and obligations stipulated by law and stipulate new matters that are not statutorily prescribed (negative)
- [3] Whether Article 9(2) of the Enforcement Decree of the Trade Union and Labor Relations Adjustment Act, which stipulates matters regarding the notification of decertification of a trade union that are left unstipulated in the Act without legislative delegation, is a provision that fundamentally restricts the three labor rights enshrined in the Constitution and is thus null and void in and of itself (affirmative)
- [4] In the case where: (a) the Minister of Employment and Labor accepted a report on the establishment of a trade union submitted by Trade Union A, which consists of teachers and education workers of public and private schools nationwide as members, and issued a certificate of the filing of report of establishment; (b) the Minister demanded that Trade Union A take correction measures, such as revision of the relevant provision of the bylaws allowing non-workers to join the union, on the grounds that "although the Minister demanded, on two separate occasions, that Trade Union A revise the relevant provision of the bylaws, Trade Union A

nonetheless did not heed the demand, and to the Ministry's knowledge, dismissed workers who are currently joined in the trade union as members and participating in union activities," but Trade Union A did not revise the bylaws; and (c) the Minister of Employment and Labor notified Trade Union A that it "shall not be regarded as a trade union under the Act on the Establishment, Operation, etc. of Teachers' Unions" in accordance with Article 14(1) of the Act on the Establishment, Operation, etc. of Teachers' Unions, Article 12(3)1 and Article 2 Subparag. 4 Item (d) of the Trade Union and Labor Relations Adjustment Act, Article 9(1) of the Act on the Establishment, Operation, etc. of Teachers' Unions, and Article 9(2) of the Enforcement Decree of the Trade Union and Labor Relations Adjustment Act, the case holding that Article 9(2) of the Enforcement Decree of the Trade Union and Labor Relations Adjustment Act regarding the notification of decertification of a trade union contravenes the constitutional principle of statutory reservation and thus is invalid in and of itself and, therefore, that the foregoing notification of decertification of a trade union based on the said Article is devoid of legal grounds and is therefore unlawful

**15** Supreme Court Decision 2020Du36052 Decided October 15, 2020  
**[Revocation of Disposition of Recovering Health Care Benefits, etc.]**  
 .....937

- [1] In a case where a health care institution established under the National Health Insurance Act provided health care benefits in violation of other individual administrative laws including the Emergency Medical Service Act and was reimbursed with the costs of health care benefits, whether such a case falls within the case involving a "health care institution that has received insurance benefit costs by fraud or other improper means," stipulated in Article 57(1) of the former National Health Insurance Act, that is subject to the collection of unjust enrichment or unjust profit
- [2] In the case where: (a) Hospital A, designated as a local emergency medical institution, failed to satisfy the personnel requirements that there must be five or more nurses exclusively responsible for an emergency unit, as stipulated in [Addendum 8] entitled "Standards for Appointment of Local Emergency Medical Institution" of the Enforcement Regulation of Emergency Medical Service Act; (b) Hospital A nonetheless continued to provide emergency care to walk-in patients in the emergency unit and was reimbursed with emergency medical service fees; and (c) the National Health Insurance Service imposed a disposition of collecting emergency medical service fees on Hospital A for having received a reimbursement of emergency medical service fees by fraud or other improper means, the case holding that, insofar as Hospital A did provide emergency care to walk-in patients to the emergency unit,

the emergency medical service fees Hospital A was reimbursed with in relation to the aforementioned emergency care provided are difficult to be considered as falling within the “health insurance benefit costs received by fraud or other improper means,” stipulated in Article 57(1) of the former National Health Insurance Act, that are subject to the collection of unjust enrichment or unjust profit, based solely on the circumstance that Hospital A failed to satisfy the personnel standards for emergency unit nurses

**16** Supreme Court Decision 2018Du54705 Decided November 5, 2020  
**[Revocation of Readjudication on Relief Request for Unfair Dismissal and Unfair Labor Practice]** .....944

In a case where the entire business is transferred after an employee was fired before the date on which a business is transferred without justifiable cause, whether a transferee who acquired the whole business succeeds the labor relation with the employee fired by a transferor without justifiable cause (affirmative in principle)

On this occasion, where there is a special agreement between the parties of the transfer of the business that an employee fired without justifiable cause shall be excluded from the object of succession, whether the special agreement is valid only when there is a justifiable reason stipulated in Article 23(1) of the Labor Standards Act (affirmative) and whether the transfer of the business per se can be recognized as a justifiable reason to exclude an employee from succession (negative)

**17** Supreme Court Decision 2017Du36212 Decided November 12, 2020  
**[Revocation of Penalty Surcharge Payment Order]** .....947

Legal ground and legal nature of IV 3. B. (4) of the former Public Notice of Detailed Guidelines for Imposition of Penalty Surcharge, which stipulates that a penalty surcharge may be increased “where a violator or an executive officer or employee of the organization with which he/she is affiliated refuses to, interferes with, or evades an investigation into such violation” (= discretionary rules)

Whether the above provision of the Public Notice ought to be respected to the greatest extent possible (affirmative)

**18** Supreme Court Decision 2017Du70793 Decided November 26, 2020  
**[Revocation of Readjudication on Relief Request for Unfair Dismissal]**  
 .....951

- [1] Whether the disciplinary measure shall be null and void in a case where a procedure for a reexamination has not been carried out or the effect of the reexamination cannot be recognized as any gross defect exists in the procedure for a reexamination even if the original disciplinary measure fulfilled the required conditions (affirmative)
- [2] The effect of the disciplinary measure in a case where a disciplinary measure was made by the resolution of the disciplinary committee composed otherwise even though the composition of the disciplinary

committee is prescribed by collective agreements, rules of employment, or disciplinary regulations based thereon (negative in principle)

[3] The nature and interpretation method of the rules of employment

## TAXATION

### 1 Supreme Court Decision 2018Du61888 Decided January 9, 2020 [Revocation of Disposition Rejecting Rectification of Customs Duty] ..... 958

- [1] The purpose of Article 38-3(3) of the Customs Act that allows the retrospective filing of a request for the correction of tax notice, and the meaning of “where any transaction, act, etc. becomes final and conclusive as different by a ruling of the relevant lawsuit,” which is stipulated as one of the reasons for the retrospective filing of a request for the correction of tax assessment under Article 34(2)1 of the Enforcement Decree of the Customs Act
- [2] In a criminal trial procedure where a judgment became final and conclusive based on the determination of the existence or scope of tax liability, whether it constitutes a case “where any transaction or act, etc., which is the basis of calculating the duty base and the amount of duty in the first declaration or rectification, becomes final and conclusive as different by a ruling” under Article 38-3(3) of the Customs Act and Article 34(2)1 of the Enforcement Decree of the Customs Act (negative in principle)
- [3] In the case where: (a) Party A, who runs an online shopping mall and takes orders from domestic customers for British goods, filed an import declaration, making domestic customers liable for duties and identifying the goods delivered as small-sum goods subject to reduction or exemption of customs duties under Article 94 Subparag. 4 of the Customs Act; (b) the head of the relevant customs office levied customs duties and additional duties for underreporting on Party A for the confirmation of the violation of the Customs Act; (c) having been indicted for the violation of the Customs Act in relation to the foregoing facts and receiving a not guilty ruling that became final and conclusive, Party A filed a request for the correction of the relevant tax notice, which was dismissed by the head of the relevant customs office, the case holding that the lower court misapprehended the legal doctrine and erred in having determined that the transaction or act, which served as the basis for calculating the duty base and the amount of duty in the first tax notice, changed and became final and conclusive as different by the relevant criminal judgment, which acquitted Party A

**2** Supreme Court Decision 2016Du63408 Decided February 27, 2020  
**[Revocation of Disposition Imposing Customs Duty, etc.]** ... 964

In a case where: (a) Incorporated Company A, a domestic corporation, imported goods produced by Company B, a British corporation, through Company C, a Singaporean corporation; (b) upon Company A's filing of an import declaration with the application of a preferential tariff of 0% pursuant to the Free Trade Agreement Between the Republic of Korea, of the one part, and the European Union and its Member States, of the other part (hereinafter "Free Trade Agreement"), Company C, a selling company, submitted an origin declaration in which it erroneously recorded the customs authorization number of Company B, a producing company; (c) afterward, Company A submitted an origin declaration drafted in the name of Company B, in which the customs authorization number was recorded correctly; but (d) the head of the competent tax office did not apply the preferential tariff rate pursuant to the said Free Trade Agreement and instead applied a tariff rate of 8% to compute the customs duty, etc., which was determined and notified accordingly, the case holding that, given that the foregoing origin declaration was not drafted by Company B, an officially approved exporter, the instant goods may not enjoy the preferential tariff under the Free Trade Agreement

**3** Supreme Court Decision 2017Du41771 Decided March 2, 2020  
**[Confirmation of Existence of Tax Claim]** ..... 970

- [1] Whether a "demand," stipulated as one of the causes interrupting extinctive prescription in Article 168 Subparag. 1 of the Civil Act, may serve as the cause interrupting extinctive prescription of the right to collect national taxes (affirmative with restriction)
- [2] Cases where the benefit of lawsuit is recognized on an exceptional basis in a judicial claim filed for the interruption of extinctive prescription of a tax claim
- [3] Legal nature of a lawsuit for confirmation of the existence of a tax claim filed by the taxing authority, such as the State, against a liable taxpayer for the purpose of the interruption of extinctive prescription of the relevant tax claim that became final and conclusive (held: party litigation under public law)

**4** Supreme Court Decision 2017Du44084 Decided August 20, 2020  
**[Revocation of Disposition Notifying Income Amount Change]**  
..... 974

- [1] Meaning of the term "assets which do not yield any profit" in "purchasing assets which do not yield any profit" stipulated in Article 3-2 Subparag. 3 of the former Enforcement Decree of the Adjustment of International Taxes Act regulated as an international transaction to which Article 52 of the Corporate Tax Act regarding the repudiation of wrongful calculation may apply  
Method of dealing therewith in the case of rejecting wrongful

calculation regarding the purchase of such “assets which do not yield any profit”

- [2] In the case where: (a) Foreign Corporation A was guaranteed with a so-called “Put Back Option,” acquiring new stocks allocated to a third party issued by Stock Company B from Stock Company B, but, as the period for exercise of the Put Back Option expired without its exercise, retroactively drew up an additional agreement including the contents regarding the extension of the period with Stock Company B; (b) Stock Company B transferred the said stocks to Stock Company C, which is its largest shareholder, after Stock Company B purchased the said stocks at the value of exercise of the Put Back Option from Foreign Corporation A based thereon; and (c) the tax authority included the “amount exceeding market prices,” which is the value based on the supplementary assessment methods prescribed in the Inheritance Tax and Gift Tax Act at the time of the above purchase transaction subtracted from the purchase prices of the stocks, in the gross income of Stock Company B by applying the provision regarding the repudiation of wrongful calculation under the Corporate Tax Act, disposed of income as dividends of Foreign Corporation A, and notified Stock Company B of the changes in the amount of income, the case holding that Stock Company B’s above stock purchase corresponds to purchasing “assets which do not yield any profit,” which lack economic rationality subject to the repudiation of wrongful calculation in international transactions, and thus the tax authority ought to include an amount equivalent to the deemed interest of an amount equivalent to the purchase prices during the period, from the day on which Stock Company B acquired the said stocks until the day on which the company collects the purchase prices by disposing of the stocks, in the gross income and notify the resultant changes in the amount of income

- [3] Whether the whole disposition of taxation ought to be canceled in a case where a justifiable amount of tax of the disposition of taxation is not calculated (affirmative), and in such a case, whether the court is liable to calculate a justifiable amount of tax ex officio (negative)

Whether this is likewise applicable to the calculation of a justifiable amount of income in relation to the notification of the changes in the amount of income (affirmative)

**5** Supreme Court Decision 2016Du38112 Decided September 24, 2020  
[Revocation of Disposition Imposing Global Income Tax, etc.]

.....983

Whether the purpose of the secondary tax liability of a corporation and the requirements for application thereof stipulated in Article 40 of the Framework Act on National Taxes ought to be strictly construed (affirmative)

Where proceedings for the disposition on default including seizure,

etc. in accordance with the National Tax Collection Act are restricted for reasons other than the restriction of transfer pursuant to Acts, etc. with regard to owned stocks, etc. of investors, whether the case corresponds to “where the transfer of owned stocks, etc. of investors are restricted pursuant to Acts” stipulated in Article 40(1)2 of the Framework Act on National Taxes (negative)

**6** Supreme Court Decision 2017Du52979 Decided October 29, 2020  
**[Lawsuit for Claim for Revocation of Disposition Imposing Securities Transaction Tax Act]** ..... 988

In a case where: (a) a contract of gift of shares was cancelled upon rendition of a judgment of revocation of fraudulent acts; and (b) the shares that reverted to the original state under the name of the obligor were sold in a forced sale procedure, and the proceeds therefrom were entirely distributed as dividends to the obligees, the transferor of share certificates liable for payment of securities transaction tax pursuant to Article 3 Subparag. 3 of the Securities Transaction Tax Act (held: obligor)

**7** Supreme Court Decision 2014Du46485 Decided November 26, 2020  
**[Revocation of the Disposition Rejecting Claim for Correction]**  
..... 994

In a case where: (a) upon the demise of a beneficiary who received an endowment of property, the inheritance process commenced with the endowed property as an inheritance estate; and (b) a judgment of revocation of fraudulent acts was rendered, whereby the agreement of endowment was rescinded and the inheritance estate was restored to the donor’s executable property, whether the beneficiary’s inheritor may apply for a late claim for correction prescribed in Article 45-2(2) of the Framework Act on National Taxes and become eligible for an exemption from the liability for inheritance tax (negative)

**8** Supreme Court Decision 2019Du58896 Decided December 10, 2020  
**[Revocation of Disposition Imposing Capital Gains Tax]** .... 996

The meaning of a “fraud or other unlawful act” or an “unlawful act” stipulated in Articles 47-2(2), 47-3(2)1, etc. of the former Framework Act on National Taxes with respect to penalty taxes for unlawful non-filing and penalty taxes for unlawful underreporting, and in a case where a taxpayer earns income through the use of fake names, whether the taxpayer’s act can be seen to correspond to a “fraud or other unlawful act” or an “unlawful act” prescribed in the above provisions on the sole basis of the fact that the taxpayer used fake names (negative in principle)

## INTELLECTUAL PROPERTY

- 1 Supreme Court en banc Decision 2016Hu2522 Decided January 22, 2020 [Invalidation of Registration (Patent)] ..... 1002
- [1] Meaning of “when administrative dispositions on which the judgment was based have been altered by a different administrative disposition” determined as the grounds for retrial as prescribed in Article 451(1)8 of the Civil Procedure Act which applies *mutatis mutandis* to litigation for cancellation of a trial decision under Article 8 of the Administrative Litigation Act
- In a case where a trial decision determining that correction of a specification or drawings of a patented invention ought to be made after the closure of pleadings of fact-finding proceedings of the litigation in a trial court for cancellation of a trial decision against the invalidation trial of patent as a result of a patentee’s appeal for correction trial becomes final and conclusive, whether the grounds for retrial stipulated in Article 451(1)8 of the Civil Procedure Act exist in the lower judgment based on the specification, etc. prior to its correction (negative)
- [2] Method of determining the nonobviousness of an invention
- On this occasion, whether it may be determined *ex post facto* whether an invention may be easily created by a person with ordinary knowledge in the technical field of the invention, on the assumption that the technologies described in the statement of the invention subject to the judgment on nonobviousness are known (negative)
- 2 Supreme Court Decision 2017Hu2178 Decided February 13, 2020 [Revocation of Registration (Trademark)] ..... 1020
- [1] Legislative purport of Article 73(1)8 of the former Trademark Act
- [2] Method of determining whether a trademark that is actually used by an exclusive licensee or a non-exclusive licensee may be confused with that of another person, subject to confusion with the said trademark in accordance with Article 73(1)8 of the former Trademark Act
- In a case where a licensee who had obtained permission to use from a trademark right holder after a trademark right was transferred used a trademark identical or similar to a registered trademark, method of determining whether it may be sufficient to deem that the use of the registered trademark is unlawful by social norms
- [3] The requirements for the trademark of another person (subject trademark) subject to confusion as referred to in Article 73(1)8 of the former Trademark Act and whether the subject trademark may be considered as a trademark subject to confusion even if it either falls under the scope of a right of the pertinent registered trademark or does not correspond to the registered trademark under

the Trademark Act (affirmative)

In a case where trademark rights are transferred, whether the previous trademark right holder or a licensee who obtained permission to use the trademark from the said trademark right holder may also be included in “another person” (affirmative)

**3** Supreme Court Decision 2018Hu11360 Decided April 9, 2020  
**[Invalidation of Registration (Patent)]** ..... 1026

The reference point when the Korean Intellectual Property Trial and Appeal Board (IPTAB) determines whether a petition for a trial violates “the doctrine of res judicata” provided by Article 163 of the Patent Act as it is based on the facts and evidence identical to the prior final and conclusive trial ruling (held: at the time of a trial ruling)

Whether, even in litigation for the cancellation of a trial ruling that dismissed a petition for a trial seeking the invalidation of registration for violating the doctrine of res judicata, whether it corresponds to a breach of the doctrine of res judicata ought to be determined by hearing whether the same facts and evidence are submitted on the basis of the time of the trial ruling (affirmative), and in such a case, whether a petitioner for a trial is allowed to allege a new ground for the invalidation of registration, which he/she did not allege in the trial proceedings (negative)

**4** Supreme Court Decision 2016Hu2317 Decided April 29, 2020  
**[Invalidation of Registration (Patent)]** ..... 1031

In a case where a petition for trial is filed by the same party for a trial that is already pending before a patent court, the base period to determine whether a subsequent trial is in violation of the prohibition against the filing of repetitious petitions for trial

**5** Supreme Court Decision 2020Hu10087 Decided May 14, 2020  
**[Invalidation of Registration (Patent)]** ..... 1035

[1] In a case where the establishment of a patent has been registered through the patent application by a patent assignor who transferred entitlement to a patent under a contract before a patent application, whether the patent right constitutes the patent of “a person who is not a legitimate right-holder,” which corresponds to the causes of the invalidation of patents (affirmative)

[2] Meaning of “a third party” prescribed in Article 38(1) of the Patent Act and whether an assignee, who obtains a patent right, including the causes of the invalidation of patents as a patent of “a person who is not a legitimate right-holder,” constitutes the said third party (negative)

## PRIVATE LAW

1 Supreme Court en banc Decision 2015Da73067 Decided January 22, 2020 [Wage]

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**[Main Issues and Holdings]**

In a case where fixed allowances, paid at either a monthly or daily rate as remuneration for work performed during agreed work hours in excess of the standard work hours prescribed under the Labor Standards Act, are translated into an hourly ordinary wage, the method of calculating the agreed number of hours included in the total work hours based on which the hourly ordinary wage is calculated, and in such cases, whether a “premium rate” required in the calculation of premium pay must be taken into account (negative in principle)

Whether the foregoing legal doctrine applies likewise to a case in which the premium rate for paid holiday allowance is set through collective bargaining or employment regulations (affirmative)

**[Summary of Decision]**

**[Majority Opinion]** (A) In a case where a fixed allowance, paid in the form of either a monthly salary or daily rate as remuneration for agreed hours of work performed in excess of the standard working hours prescribed under the Labor Standards Act, is translated into an hourly ordinary wage, the calculation of the number of agreed working hours that are included in the total working hours, based on which the hourly ordinary wage is calculated, must total the actual number of hours the employee agreed to provide labor for, instead of totaling the number of overtime hours and night work hours that take into account the “premium rate” intended for the calculation of premium pay, barring extraordinary circumstances. The relevant part of the judgment in the previous court decision determining to the effect that the calculation of total working hours must take into account the “premium rate” in relation to the number of overtime hours and night work hours when translating an hourly fixed allowance paid in the form of monthly wage or daily wage as remuneration for agreed hours of work performed in excess of the standard working hours is unreasonable and thus difficult to uphold. The reasons are as follows.

① Barring extraordinary circumstances that specifically determine, with respect to a fixed allowance, in a collective bargaining agreement, employment regulations, or labor contract, the hourly rate for the contractual work performed within the standard working hours and the hourly rate for overtime and night work, the most equitable and reasonable view, which also conforms to the principle of wage calculation, is that remuneration for work performed during hours for which an employee agreed to provide labor is set at the same amount. Ascribing the same value to every hour for which “the same labor” has been provided is the rule. Considering it otherwise without any factual basis in statutes or agreements between the parties concerned constitutes arbitrary evaluation of the value of labor.