

**A Study of Set-Off and Deduction in Korean Civil Law
- Focusing on the Judgment of the Korean Supreme Court in 2016 concerning
"Completed Extinctive Prescription"**

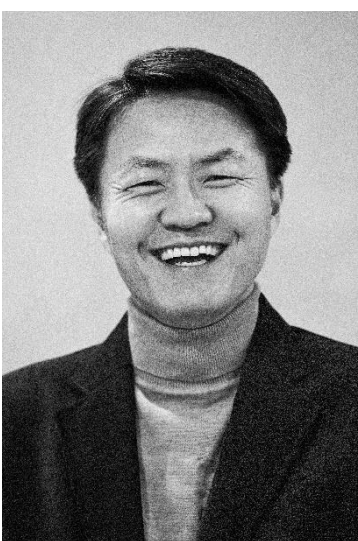
by Professor Bong-Kyung Choi, Seoul National University
Chaired by Associate Professor Gary F. Bell, Faculty of Law, NUS

29 January 2018, Monday, 12.00pm – 1.30pm
Lee Sheridan Conference Room, Level 1, Eu Tong Sen Building
NUS (Bukit Timah Campus)

ABSTRACT

Set-Off provides a basis for the extinction of claims under the Korean Civil Code (KCC). It is not only a convenient means of payment in a world where transactions in the form of monetary obligation are common, but it also offers a strong right for one party to extinguish the other party's credit by unilateral expression (a one-sided right). A creditor who has the right of set-off usually has a reasonable expectation as to its outcome. It is equally important that the legal status of the counterparty (the holder of the opposite credit) should not become uncertain. He must also have a reasonable expectation of the exercise of his rights. Korean practices particularly aim at addressing the interests of the parties to achieve equity between them. In practice, though, complications arise, and when they arise there are only eight articles related to offsetting in the KCC (Art.492-Art.499). The amendments to the civil law in Korea and Japan therefore aim to reflect the outcome of recent precedents in legislation. Until recently, Korea placed considerable emphasis on interpreting Art. 498 of the KCC, which prohibits the third obligor under garnishment against the obligee who requested such order from exercising the defence of set-off subsequently acquired by him. Recently, however, the Korean Supreme Court (KSC) reached an interesting decision in the case known as the 'Deduction' Case (DaeBeonWon) 2016.11.25, 2016 da211309. Notwithstanding the view that there is no need for agreements based on a 'deduction' analysis, since set-off can already accomplish all that is necessary in this respect, and in spite of the fact that Art. 495 had previously only been applied to cases involving set-off, the KSC applied Art. 495 KCC by analogy to a case involving a deduction contract, holding that in view of the legislative purpose of Art. 495 a deduction case must not be handled differently from one involving set-off, especially with respect to 'completed extinctive prescription' issues. The ruling was aimed at dealing with the so-called "Semi-Monthly-Rent (BanWolSae)", a Korean-style housing lease contract, which combines a relatively low annual deposit with a higher monthly rent. It is expected to draw attention in the future, because this type of housing lease is becoming increasingly common in Korea due to low bank rates. The ruling is also significant for the analogical reasoning which it applied to the Civil Code provisions concerning set-off to deal with the distinctions between set-off and deduction. The essence of the decision was that the legislative purpose of Article 495, which makes it possible to claim "completed extinctive prescription", is to be interpreted in the same way as a 'deduction' contract. This seminar will examine the way in which offsetting and deduction work in Korean contract law in general, and in housing lease contracts in particular.

ABOUT THE SPEAKER



Professor Bong-Kyung Choi was born in Gangneung near Pyeongchang, the host city of Winter Olympics in 2018. He studied at Yonsei University and obtained his Dr.Jur. at LMU in Germany with Summa Cum Laude in 2003. Since 2003 he has been a Professor at Seoul National University, College of Law & School of Law. His major interests include legal methodology, the rule of law, freedom of contract and responsibility, the protection of trusts in private law, the idea of prevention in civil law, and the law of neighbourly relationships. He spent his first sabbatical at UC Berkeley Law School (2007-2008) and has had several short-term research positions at the Max-Planck-Institute for Comparative and International Private Law (2005, 2013), and at the Université Paris 2 Pantheon-Assas Faculté de Droit (2015). He teaches Contract Law, Changes and Remedies of Rights and Security of Rights. In addition, he conducts seminars on a variety of civil law related topics for graduate students, and his additional interests include human science, social science and legal philosophy.

REGISTRATION

There is no registration fee for this seminar but seats are limited. The selected light lunch will be provided upon registration.

Closing Date: **24 January 2018, Wednesday**

For enquiries, please contact Chris Chan at asli@nus.edu.sg

To register, go to <https://goo.gl/LHq6nV>

Or scan the QR code

