sons as "cognizance of the Written Contract" to reinforce the right of optional desposal.

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5. Criminal Law and Procedure

1. A case holding that a defendant who kidnapped and killed four little girls during the period of approximately a year could not plead the insanity defense, and imposing the death sentence on him.

Decision by the Second Criminal Division of the Tokyo District Court on April 14, 1997. Case No. consolidated (wa) 155, 166, 170, 182 of 1989. A case of kidnapping, homicide, abandonment of a corpse, damage of a corpse, abduction for the purpose of performing an obscene act, indecent act by compulsion, 1609 Hanrei Jiho 3; 952 Hanrei Taimuzu 75.

[Reference: Criminal Code, Article 39.]

[Facts]

The defendant, X, kidnapped and killed four little girls, who were at that time from four to seven years old, between August, 1988 and June, 1989 , over the period of approximately one year. He damaged and abandoned three of the corpses. In the course of his criminal acts, he burned the ashes of the victims and delivered them to their families, sent letters stating his guilt, etc.. He was arrested based on indecent act by compulsion with a little girl who was six years old at that time. At trial, the major issues were his intent and the insanity defense. Psychiatric examinations were conducted on him a total of four times during the criminal investigation and trial.

[Opinion of the Court]

The accused is found guilty . (Later, this decision was appealed.)

According to all the evidence, except for the statement of the defendant to the investigators, ... we can adduce these facts .... and from them we can presume that this chain of criminal acts was committed calmly and ingeniously with the intent to perform indecent acts, and that they were pre-meditated. Adding the statement of the defendant to the investigators, whose credibility we can confirm (except for the portions that disagree with these facts and result from a presumption).... we can naturally conclude each fact of "the facts constituting the crimes", including the intent to kidnap and commit the homicides...., the fact of the abandonment of both hands and legs of one corpse.,.., and the intent to abduct for the purpose of performing an obscene act...., and we can hardly trust the testimony of the defendant contrary to these facts.

At the time that he committed each crime the defendant was not in a state of mental illness, including schizophrenia, aside from having an extremely one-sided character (personality disorder), so that he had the ability to discriminate between right and wrong and to act according to discrimination. Therefore, it should be determined that he has complete criminal responsibility.

In consideration of the character of the crimes, the number of crimes, motive and purpose, details, method, seriousness of the result, effect on society and feelings of the victims, the blameworthiness of the defendant is very grave.... we have no choice but to select the death penalty for him.

[Comment]

This case has an enormous impact because the defendant kidnapped and killed four little girls. He consecutively delivered the ashes of the victims and sent letters pleading guilt to their families. Every day the press broadly disseminated news about the case. The defendant and his attorney admitted the criminal facts, but the issues were chiefly the intent and the insanity defense.

First, with respect to the intent of the defendant, he admitted his

offenses during the criminal investigation, but testified at trial that the admission had been made according to the overbearing investigation of the police. He denied the intent not only to commit kidnapping and homicide, but also abduction for the purpose of performing an indecent act and indecent act by compulsion. He testified incomprehensibly that in all cases ten men whose faces were those of rats (Ratmen) were present. The court cited the facts that were admitted by objective evidence, examined the contents of the defendant's testimony and the circumstances of the investigation. It acknowledged that the defendant testified in his own behalf, even if we can hardly deny that the defendant had unwillingly testified as a result of the investigation. The court based its decision on the facts that from the statements of the defendant to the investigators, evidence, for instance, about the ashes of the victims has been found, that in the statements and testimony of the defendant there had been content that only the person who had actually committed the crimes would know, and that the details of his statements had been consistent.

Second, with respect to the insanity defense, Article 39 (1) of the Criminal Code provides that an act of an insane person is excused and is not punishable, and (2) that an act of a quasi-insane person is reduced, however, "insane" and "quasi-insane" are not psychiatric but legal concepts. Even if a scientific examination, for instance, a psychiatric examination of the defendant, is carried out, judges are not restricted by the result of the examination. In short, the judgment of the criminal responsibility of the defendant is entrusted to the free discretion of the judges in each case (Article 318 of the Code of Criminal Procedure). When medical opinions resulting from a psychiatric examination are divided, as in this case, not only a legal determination but also medical elements are necessarily inferred by the judges. In this case, psychiatric examinations of the defendant were carried out once during the criminal investigation and there times during trial, a total of four times. ① T's examination (simple examination during the criminal investigation) says that there is a possibility that the defendant is schizophrenic and that at the present time he has a personality disorder; ② H's examination says that the defendant had, when he acted, an extremely one-sided character (personality disorder), but that

he doesn't have a mental illness, therefore he has criminal responsibility; ③ U and S's examination says that the defendant was, when he acted, a reactive schizophrenic (multiple personality) and that his criminal responsibility was somewhat reduced (quasi-insane); ④ N's examination says that the defendant was, when he acted, a hebephrenic schizophrenic and that he didn't have enough ability to act with discrimination (quasi-insane).

Judicial precedents consider a defendant who has a mental illness as insane or quasi-insane, specifically, when the defendant is severely schizophrenic or when his offense is connected with pathological hallucination or delusion, judges have a tendency to hold him or her to be insane, and when the defendant is not so severely schizophrenic and when the offense was not connected with pathological hallucination or delusion, judges have a tendency to hold him or her to be quasi-insane, taking into consideration motive and mode of the offense and the circumstances of the offense. A personality disorder is a kind of psychopathic personality, between schizophrenia and normality, and generally it is not viewed as a mental illness. Judicial precedents don't consider a defendant who has a personality disorder as insane and, as far as other factors are related, view him or her as quasi-insane. According to ① T's examination and ② H's examination, the defendant was determined to have only a personality disorder, and to have complete criminal responsibility. According to ③ U and S's examination and ④ N's examination, the defendant was determined to have a mental illness or schizophrenia, and at most to have limited criminal responsibility. The attorney asserted that the defendant had simple schizophrenia, and was insane or quasi-insane. This court determined the defendant to have complete criminal responsibility based on ② H's examination (and ① T's examination).

In opinions about and criticisms of this decision, while it is inferred that the court considered the issues from all angles because the decision takes up a huge amount of space, there is criticism that people might not be eble to deny that the defendant had been, when he acted, already seriously mentally deranged, as all the experts didn't agree that he pretended to be diseased, and it might be because of the seriousness of this case that the death penalty was imposed based on

the premise that, to impose the death penalty, criminal responsibility of the defendant is beyond question. In judicial precedents in cases of homicide, however, even if defendants are determined to have psychopathic personalities, there have been decisions which impose the death penalty on defendants (see, for instance, the decision by the Kobe District Court Toyooka Branch, December 5, 1964. 6-11=12 Kakeishu 1345.). It might be said that this decision to impose the death penalty, although criticized, has supplanted former judicial precedents.

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6. Commercial Law

A case concerning validity of the issuance of new shares without notice of the matters concerning the issuance.

Decision by the Third Petty Bench of the Supreme Court on January 28, 1997. Case No, (*o*) 317 of 1993. 51 *Minshu* 71.

[Reference: Commercial Code, Article 280.3.2, 280. 15]

[Facts]

Corporation Y (defendant, appellee, final appellee) issued 2400 shares in 1988, and 900 of them was subscribed by A, a representative director of Corporation Y. As a result, the number of shares owned by A was increased to 1270, and, A become the largest shareholder of Corporation Y instead of X (Plaintiff, appellant, final appellant) who had 800 shares. X filed an action against Corporation Y, claiming the issuance was invalid. X asserted: (1) that corporation Y had issued the new shares without public notice and notice to each shareholders required by Article 280.3.2; and (2) that B, a director of Corporation Y, had not been received notice for the directors meeting to have approved the issuance; (3) that the purpose of the issuance had been to assure A the control of Corporation Y, (4) that because those who subscribed the new shares had not contribute really, the filling of capital