

Korean Contract Law II

29 October 2018

- The duration of the examination is 90 minutes (from 9:00 am to 10:30 am).
- During the course of the examination, you may freely consult materials of your own, including online resources.
- On each Answer Script, you must write your **student number only**. Please do **not** write your name.
- You must attempt the following **two (2)** Questions. The two questions have an equal weight in assessment.

[1] Question 1 (50 points)

On 1 May 2018, Peter sold a plot of farm land near Yang Yang on the East coast of Korea to David at the price of 100 million KRW, with 20 million KRW as the contract deposit. The neighbourhood has recently attracted a great deal of attention in the media as a perfect surfing location. David intended to build and operate a surf shop on the land.

On the day of contract, however, David had 10 million KRW only. The parties therefore agreed that the additional 10 million KRW was to be paid on the following day. For some unknown reasons, however, David did not send the additional 10 million KRW on the following day. Peter sent a reminder on 4 May, to which David did not reply.

Meanwhile, David made a preliminary inquiry as to the procedure for obtaining the necessary planning permission to change the farm land into a shop space. The local government employee explained that the planning permission would take a bit of time and the application for planning permission is sometimes refused when there are too many applications to convert farmland in a given area into commercial premises.

Fearing that he may not be able to obtain the planning permission for the land in question, David terminated the contract on 10 May 2018 and offered to send 20 million KRW to Peter. David explained that he is offering to pay 20 million KRW to Peter because that was “double the amount of contract deposit I paid to you”.

- Is David’s termination valid?
- Can Peter terminate the contract?
- Can Peter immediately sue David and demand compulsory performance (payment of the full contract price) in exchange for the possession and titles of the land?

[2] Question 2 (50 points)

A Co. sold the land and the shoe manufacturing factory (building) on the land to B Co. in October 2004 at the price of 3 billion KRW. Soon after acquiring the factory and its land, B Co. demolished the building and built a new, replacement factory building on the same spot. B Co. has been producing shoes from the new factory.

In March 2012, the local government of Gyeong Ki Province sued B Co. demanding that B

Co. must demolish the building, clear the ground and hand over the possession and the title of the land to Gyung Ki Province because the land as well as the previous building belonged to Gyung Ki province, which had exercised eminent domain to acquire them in 2000.

B Co. vigorously defended its case but lost the lawsuit to Gyung Ki Province in the District court. B Co. accepted the defeat and decided not to appeal. B Co. demolished the factory building and moved out of the land in September 2012.

The land in question is now worth 2.5 billion KRW. The replacement factory building cost 1 billion KRW to B Co. to build it in 2004 and 100 million KRW to demolish it in 2012. The old, original building was worth 200 million KRW at the time it was demolished by B. Co. Having recovered the title and clean possession of the land, Gyung Ki Province began proceedings against A Co. seeking compensation for the rent of the land and the building for the past 12 years. Gyung Ki Province's argument is that A Co. was in bad faith.

B Co. also sued A Co. seeking damages in the amount of 3.6 billion KRW. In response, A Co. terminates the contract of sale with B Co. and argues that A Co. will not pay damages to B Co. until B Co. pays the rent of the land and building during the period B Co. was in possession of the land (2004-2012).

Discuss how this dispute must be resolved. [Mid-Term exam question of 2012]

[End of questions. You must answer **both** questions.]