





“...?”... “... (3.22)

- ...: “... (5.18
- ... “... (2.20)
- ... (15.33)
- ... (13.4)
- ... (14.41)

(4) ...:



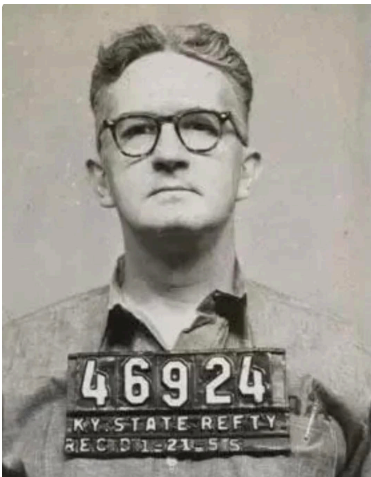
Kim Jae Kyu



Majid Kavousifar



柳寬順 (Yoo Gwan Soon)



Carl Braden



2010.3.25

“... .” (5.1)

“... , ... ? ... , ... ?”

(... , 17.11)

(... , ... , ... 4) ... , ...

“... , ... , ... .” (8.2)

“... .” (6.25, 12.15)

... (9.10)

“... !” (15.18)

[... ] ... (9.3 ...)

“... (12.1) (...=...)

...

\* \* \*

... ?

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... .., ... .., ... ..  
... ..

... (=black) ... (=...) ... (..., 10.6)

... .., ... .. . ... ..  
... .. . ... .. . ... ..  
... (10.6)

... .., ... .. . ... .., ... .., ... .., ... .. . ... ..  
... .., ... .. . ... .. . ... ..  
... (=over-cooked) ... (..., 10.8)

... .. . ... .. (10.9)

... .. . ... .. . ... .. . ... .. . ... ..  
... .. . ... .. (10.8)

... .. . ... .. . ... .. . ... .. . ... .. . ... .. .  
... .. . ... .. . “... .. , ... .. . ... .. . ... .. .  
... .. . ... .. . ... .. . ... .. . ... .. .  
... .. . ... .. .”

... .. . ... .. . ... .. . ... .. .  
... (..., 11.8)

... .. . ... .. . ... .. . ... .. . ... .. . ... .. .  
... .. . ... .. . : “... .. . ... .. ., ... .. . ... .. .  
... .. . ... .. . !” ... .. .  
... .. . (..., 11.11)

5. ... ..

... .. . ... .. . ... .. . “... .. .?” ... .. .  
... .. .

... .. (Lunyu, 10.12)

6. ... ..

... .. . “... .. . ... .. . ? ... .. . ... .. .  
... .. . ... .. . ? ... .. . ... .. . ... .. .

“... ”  
(, 9.24)

### 7. ?

... , ...  
(, 8)

34(213): ( )

... .

( ) ... . ( ) ...  
(, , 38 (34))

### 7.

... . ...  
(, 9.4)

( , , )

“... ” (15.27)

“... .. !”  
(14.33)

“... ..” (15.22)

“... ..” (5.9)

“... ..” (1.8 ... ..)

... .. “... ..?” ... .. “... ..” (14.34)

... .., ... .., ... ..? ... ..  
... .., ... ..  
... ..

... .. ( ... ..) ( ... .., 18.8)

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... .., ... .., ... ..  
... .. ... .. 5

... ..

[... ..](#)









UN Convention 2005 Art. 10(2)

designated address: when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee.

address: when it becomes capable of being retrieved by the addressee at that address and the addressee becomes aware that the electronic communication has been sent to that address.

An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address.)

## 5. Receipt of electronic communications

9.1: Receipt of an electronic communication is deemed to occur at the time when it reaches the addressee's electronic address.

9.2: Receipt of an electronic communication is deemed to occur at the time when it reaches the addressee's electronic address (unless the addressee has notified the originator of a different address for receipt of electronic communications).

UNCITRAL Model Law 1996 Art. 14(3)

Where the originator has stated that the data message is conditional on receipt of the acknowledgement, the data message is treated as though it has never been sent, until the acknowledgement is received.

UNCITRAL Model Law 1996 Art. 14(4)(b)

if the acknowledgement is not received within the time specified in subparagraph (a), [the originator] may, upon notice to the addressee, treat the data message as though it had never been sent, or exercise any other rights it may have.

## 6. Attribution

7.1: Attribution of an electronic communication to a person is determined by the law of the State of the originator.

1. Attribution of an electronic communication to a person is determined by the law of the State of the originator.
2. Attribution of an electronic communication to a person is determined by the law of the State of the originator.

□□□:

presumption □ □□□ □□□□ □□ irrefutable presumption □ □□□ □□  
("The purpose of article 13 is not to assign responsibility.  
It deals rather with attribution of data messages by  
establishing a presumption that under certain circumstances a  
data message would be considered as a message of the  
originator" p. 49)

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### UNCITRAL Model Law 1996 Art. 13

data message to be deemed to be that of the originator

1. if it was sent by the originator itself.
2. if it was sent by a person who has the authority to do so
3. if it was sent by an information system programmed by, or on behalf of, the originator to operate automatically.

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### UNCITRAL Model Law 1996 Art. 13(3)

(a) (if ) the addressee properly applied a procedure previously agreed to by the originator for that purpose (= to ascertain whether the data message was that of the originator)

(b) (if the received data message) resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify data messages as its own.

### UN Convention 2005 Art. 12

A contract formed by the interaction of an automated message

system and a natural person, or by the interaction of automated message systems, shall not be denied validity or enforceability on the sole ground that no natural person reviewed or intervened in each of the individual actions carried out by the automated message systems or the resulting contract.

## 7.

UN Convention 2005 Art. 14

,

Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party

the automated message system does not provide the person with an opportunity to correct the error

+ has not used or received any material benefit or value  
   .

## 8.

11            .

UNCITRAL Model Law 1996 Art. 7

Where the law requires a signature of a person, that requirement is met in relation to a data message if:

(a) a method is used to identify that person and to indicate that person's approval of the information contained in the data message; and

(b) that method is as reliable as was appropriate for the purpose for which the data message was generated or communicated, in the light of all the circumstances, including any relevant agreement.

“the risk of tying the legal framework provided by the Model Law to a given state of technical development.”  p. 38

appropriate    :

- (1) the sophistication of the equipment used by each of the parties;
- (2) the nature of their trade activity;
- (3) the frequency at which commercial transactions take place between the parties;
- (4) the kind and size of the transaction;
- (5) the function of signature requirements in a given statutory and regulatory environment;
- (6) the capability of communication systems;
- (7) compliance with authentication procedures set forth by intermediaries;
- (8) the range of authentication procedures made available by any intermediary;
- (9) compliance with trade customs and practice;
- (10) the existence of insurance coverage mechanisms against unauthorized messages;
- (11) the importance and the value of the information contained in the data message;
- (12) the availability of alternative methods of identification and the cost of implementation;
- (13) the degree of acceptance or non-acceptance of the method of identification in the relevant industry or field both at the time the method was agreed upon and the time when the data message was communicated; and
- (14) any other relevant factor.

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[UNCITRAL Model Law on Electronic Commerce 1996](#)

[UN Convention on the Use of Electronic Communications in International Contracts 2005](#)

□□□, “□□□□□□□□ □□□□”, □□□□□ 2001□3□□

□□□, “UN□□□□□□□□ □□ □□□□ □□”, □□□□□□ □□, □19□ □1□(2010)

□□□, “UNCITRAL □□□□□□□□ □□ □□□□ □□□ □□□□□□□□□□ □□”, □□□□□□□□, □13□  
4□(2006)

UNCITRAL 16 2 (2009)

UNCITRAL 28 3 (2011)

UNCITRAL 48 (2010)

UNCITRAL, UNCITRAL Model Law on Electronic Commerce (2001)

The Electronic Communications Act 2000

Law Commission, Electronic Commerce: Formal Requirements in Commercial Transactions (2001)

[http://www.lawcom.gov.uk/wp-content/uploads/2015/09/electronic\\_commerce\\_advice.pdf](http://www.lawcom.gov.uk/wp-content/uploads/2015/09/electronic_commerce_advice.pdf)

Ian Lloyd, Information Technology Law, 456-457 (Cryptography service provider; 5)

## UNCITRAL Model Law on Electronic Commerce

UNCITRAL, UNCITRAL Model Law on Electronic Commerce (1987)

UNCITRAL, UNCITRAL Model Law on Electronic Commerce (2010)

1. UNCITRAL

UNCITRAL v UNCITRAL

UNCITRAL

2. UNCITRAL

UNCITRAL: UNCITRAL Model Law on Electronic Commerce (1987)

UNCITRAL: UNCITRAL Model Law on Electronic Commerce (2010)

UNCITRAL: UNCITRAL Model Law on Electronic Commerce (2010)

UNCITRAL Model Law on Electronic Commerce (2010)

“UNCITRAL, UNCITRAL, UNCITRAL.” (UNCITRAL, UNCITRAL)

3. UNCITRAL

UNCITRAL v UNCITRAL

UNCITRAL, UNCITRAL









□ □□	□□(1250-1192), □ 60 □	□□ - □□ (1191-1102), □ 90□	□□ - □□ (1101 - 1046), □ 40□
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□□(Qiang Zu; □)

### 3. □□□□ □□□□

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商周时期，法律形式主要是习惯法，没有成文法。

《礼记·礼运》记载，孔子在鲁国看到《春秋》的记载，说：“我欲夏礼，故求夏礼。作《春秋》而乱周礼，作《春秋》而乱周礼。”（周 = King Zhou of Shang 纣王） 纣王(商纣)

# Incapacity

## 1. Minors

Upon reaching 19, a person has full capacity. Art. 4.

Upon marriage, however, minors (18 year olds) are released from parental supervision and enjoys full capacity. Art. 807, 826-2.

Unauthorised contracts concluded by unmarried minors are binding, but they may be rescinded (voided) (Art. 5(2), Art. 140)

- by the party under age, before or after coming of age
  - Can rescission be rescinded (for reasons of incapacity, duress, etc.)?
- by his parents or guardians while he is under age
- rescission can be done within three years (from coming of age, if the rescission is done by the party who was under age). Rescission is not allowed after 10 years from the contract. Art 146.

Rescission has retroactive effect

- *restitutio in integrum*

- 'innocent' third parties not protected
- the party under age needs only to return what remains as "unconsumed benefit". Art. 141. Money presumed to remain unconsumed. 2008Da58367

Rescission is not allowed if there was

- Prior approval by parents or guardians
- Ratification by parents, guardians or the party after coming of age
- Constructive ratification. Art. 145
- Deception by a minor: where a minor resorted to deceptive manœuvres causing the counterpart to believe that he is of age or that there was an approval by parents or guardians. Art. 17. Supreme Court 71Da2045
- Burden of proof lies with the party resisting the rescission (69Da1568; conf. 68Da2147)

Approval or ratification is not required for the following:

- a transaction which benefits the minor without imposing any burden. Art. 5(1)
- a transaction within the scope of an authorised line of business or authorised disposal of assets. Art. 6, Art. 8
- routine transactions related to necessities
- exercising the right to rescission. Art 140
- How about exercising the right of termination?

Protection for the counterpart

- Counterpart may allow one month or more within which ratification can be made (either by the party after coming of age or by the party's parents or guardian). Art. 15

- No answer within the period shall be deemed to be a ratification. If, however, an approval of the auditor of guardianship is required for ratification (see Art. 950), the contract shall be deemed to be rescinded if the duly approved ratification is not dispatched within the allowed time (Art 15(3)).
- Only if the counterpart did not know the incapacity of the party under age at the time of the contract, the counterpart may rescind the contract while it has not been ratified. Art. 16

## 2. Legal protection of adults

### Guardianship for an adult (□□□□)

- The family court may order commencement of guardianship for an adult who is continuously lacking the ability to deal with one's own affairs due to ailment, disability, old age, or any other reasons. The order must be upon application of the person in question, his/her spouse, a relative within 4th degree, the guardian of a minor, the auditor of guardianship for a minor, the limited guardian, the auditor of limited guardianship, an ad hoc guardian, the auditor of ad hoc guardianship, a public prosecutor or the head of local government. (Art. 9)
- Guardian for a minor must be a natural person and there cannot be more than one person. But, guardian for an adult can be more than one person if appointment of multiple persons as guardians is appropriate under the circumstances. A corporate person may be appointed as guardian for an adult. (Art. 930)
- The adult under guardianship must act through the guardian (Art. 949). Transactions concluded by an adult under guardianship can be rescinded. (Art. 10) But the family court may stipulate a range of transactions which can be validly concluded by the legally protected adult.

Guardian may, however, validly ratify a transaction concluded by the adult ward.

### **Limited Guardianship (□□□□)**

- Limited guardianship: the guardian with limited powers do not have the power of representation unless the family court confers it (Art. 959-4).
- Family court will stipulate the range of transactions which would require an approval of the the limited guardian.

“Respect” for the ward’s wishes, family court’s supervision for internment : Arts. 947, 947-2

### **Ad hoc guardianship (□□□□)**

- Ad hoc guardianship (Art. 14-2) can be declared for a person requiring short-term assistance or assistance for a defined matter due to ailment, disability, old age or other reasons.
- Family court may confer the power of representation on the ad hoc guardian for a defined range of transactions (Art. 959-11). Ad hoc guardian may not have the power to rescind the transaction concluded by the ward. The ward has full capacity.

### **Guardianship contract**

- Guardianship contract (Art. 959-14):The guardianship contract is a system where a a person who has or anticipates incapacity to manage affairs due to ailment, disability, old age or other reasons, can entrust all or part of one’s affairs to another person and grant the power of representation regarding the entrusted affairs.
- The guardianship contract must be in writing, must be

notarized (Art. 959-14(2)), and must be registered (Art. 959-15(1)).

- The guardianship contract shall have effect as from the moment when the family court appoints an auditor of contractual guardianship (Art. 959-14(3)).

### **3. Case by case assessment**

In the absence of statutory or judicial recognition of incapacity, an individual contract may be void only if it is shown that the party's mental condition was so severely affected at the time of the contract that the party was unable to form an intention.

92Da6433

*Although the party's mental condition at the time of the contract was such as to warrant a declaration of diminished capacity or absolute incapacity, as long as there was no such declaration effective at the time, the contract may not be rescinded even if the party was subsequently declared to be of diminished capacity.*

### **4. Liability in tort**

A minor or a person declared to be of diminished capacity (or of absolute incapacity) may be held liable in tort if he was intelligent enough to appreciate the responsibility and consequences of his conduct. Art. 753. 68Da2406 (18, 17, 16, 13 year old boys attacked the victim with an iron bar, killing him.)

cf. Criminal responsibility: 14 years or older (Penal Code, Art. 9)

Juvenile "protective detention": 10 years – 18 years (Juvenile Act, Art. 4)

Parents or guardian of a minor or a ward who does not have the



이 시험은 75분 동안 실시되며, 시험 시간은 오전 9시부터 오전 10시 15분까지입니다.  
시험 중 자유롭게 참고 자료를 사용할 수 있습니다.

이 시험은 75분 동안 실시되며, 시험 시간은 오전 9시부터 오전 10시 15분까지입니다.

2. 다음 문제를 읽고 답을 작성하십시오. (각 문제 25점)

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# Korean Contract Law I – End Term Exam 2015

- The duration of the examination is 75 minutes (from 9:00 am to 10:15 am).
- You may freely consult materials of your own, including online resources.
- On each Answer sheet, you must write your student number only. Please do not write your name.
- You must attempt the following two (2) Questions.

Question 1.

Explain the difference between general damage and special damage under Korean law.

Question 2.

Adam claimed that he is the procurement manager of Beta Bicycle Co. Adam contacted Charles (who is a bicycle frame manufacturer) and ordered 100 bicycle frames on behalf of Beta Bicycle at the price of USD200 per frame. When Charles delivered the frames to Beta Bicycle Co, the latter refused to take the delivery or pay the price, claiming that Adam was fired from the company long time ago.

What are the remedies available to Charles under the Korean law?