

Law of Obligations 1 – 17 June 2009

- The duration of the examination is 75 minutes.
- During the course of the examination, candidates may freely consult Statutes and dictionaries of their own.
- On each Answer sheet, candidates must write their **student number only**. Please do **not** write your name or major subject.
- **All** candidates must attempt Question 1.
- Candidates may attempt **only one** topic from the two topics presented in Question 2.

[1] Question 1

Mills Co. is a manufacturer of bicycles. The Company was experiencing serious financial difficulties. Its parent company, Buns & Co., decided to sell 51% of the shares of Mills Co. to a prospective investor. While there were several contenders for the take-over bid, the chairman of Buns & Co. decided to speak to an old friend of his, the Mayor of Seoul. After the meeting, the Mayor announced an ambitious bicycle route project for the metropolitan area, which would take 10 years to complete. The value of bicycle-related companies increased considerably as a result of this exciting project.

Buns & Co., however, stated to the prospective investors that Mills Co. was in the process of being designated as the official rental bike manufacturer of the city, which was not true. In fact, a competitor of Mills Co., was more likely to be chosen as the preferred bidder for the bike rental project. The managers of Buns & Co were aware of this.

Spikes, Inc. decided to purchase 51% of Mills Co.'s shares at the contract price of 51 billion KRW. The share purchase agreement was signed on 17 June 2008. Soon after the deal was completed, Spikes, Inc. discovered that the announcement regarding the possibility of official rental bike manufacturer of the City was fabricated. The value of Mills Co's shares, however, went up further because the news that Mills Co now has the equity participation of Spikes, Inc., a renowned name in bike industry, was well-received by consumers as well as industry specialists.

In October 2008, Mills Co., now under a new management, launched an ambitious new project for a tricycle, whose brand name was "Spike-Mills". The project was disastrous. The company suffered from a huge loss, and the 51% of the company's shares are now worth less than 40 billion KRW.

On 5 May 2009, Spikes, Inc. notified Buns & Co. that the share purchase agreement was rescinded because Buns & Co deliberately circulated false information which had directly impacted on the price calculation of the shares. Spikes, Inc. informed further that the share certificates are deposited with HSBC, Seoul branch office on the same day, ready for collection by Buns & Co upon the latter's return of the share purchase price plus interests to Spikes, Inc. Spikes, Inc. claims damages as well. Buns & Co denies all of Spikes, Inc.'s claims. Buns & Co. brings a counter-claim seeking damages from Spikes, Inc., alleging the latter's poor management of Mills Co.

Discuss the possible arguments which may be put forward by the parties in this dispute.

[Please turn to the next page]

[2] Question 2

Please choose and answer only **one** of the following topics:

If the debtor has paid to a third party who appears to be an authorised receiver of the creditor, would such a payment extinguish the debtor's obligation?

or

Discuss the similarities and differences between termination of a contract and rescission of a contract.

[End of questions]