Law of Obligations I

20 June 2012

- The duration of the examination is 75 minutes.
- During the course of the examination, candidates may freely consult materials in their possession, including Statutes (in Korean or in English), lecture notes, online resources.
- On each Answer sheet, candidates must write their **student number only**. Please do **<u>not</u>** write your name or major subject of study.
- **All** candidates **must** attempt **ALL** Questions.

[1] Question 1

Zenon Crypt, Co. ("**Zenon**") is a world-renowned encryption technology company which specialises in development and sale of cryptographic software which is used in satellite broadcast viewing control unit. Broadcast signals are encrypted and only those viewers who have the right to view can decrypt the signal and watch the program. The software is installed in the broadcasting station as well as in each viewer's set-top box.

Anam Broadcasting Co. ("**Anam**") entered into a contract with **Zenon** whereby **Zenon** supplied the encryption software needed to set up **Anam**'s satellite broadcasting system. The contract is worth 5 million USD. The contract also provides that **Anam** shall make quarterly payments for the viewer cards which contain the decryption key. These viewer cards are typically distributed to **Anam**'s customers. The parties agreed that

- the unit price for the card is 2 USD if **Anam** undertook to purchase minimum 100,000 viewer cards each year;
- the unit price for the card is 3 USD if **Anam** purchases less than 100,000 viewer cards each year.
- If the number of viewer cards purchased by **Anam** is less than 10,000 per quarter of a year, either party may terminate the contract.
- If any party is in default of any payment due under the contract for more than 30 days, the aggrieved party may terminate the contract.

After a few years of successful operation, **Anam** recently drew up a plan to integrate IPTV service to their existing satellite broadcasting service. In order to carry out the plan, a new encryption software system is needed. **Anam** advertised its plan to integrate the IPTV service and invited bidders who will undertake the migration process and implementation of the new encryption system which are expected to take 6 months to complete. Once the new system is in place, new customers will be offered a new set-top box with the new encryption system. Old customers will be upgraded to new set-top box upon application and payment of a higher subscription fee.

Through a competitive bidding, Nano Crypt, Co. won the contract. **Zenon** also participated in the bidding but was unsuccessful. While the upgrading is taking place, **Anam** stopped the purchase of **Zenon**'s viewing cards. **Anam** also delayed payment of the viewing cards for several months. The amount in default was 80,000 USD. When no viewing cards were purchased for 6 months, **Zenon** terminated the contract and demanded **Anam** to return the software and stop using **Zenon** provided encryption system completely and immediately.

Anam offered to pay 80,000USD with late payment interest, which was refused by **Zenon** who argued that the contract is already terminated. **Anam** argued that complete migration and upgrade to the new integrated service would take several years, during which time **Anam** expected to use two encryption systems side by side. **Zenon** responded that if **Anam** held such an expectation, that was **Anam**'s problem.

How should the dispute be resolved.

[2] Question 2

Mr X works as the head of the accounting department of Tiger, Inc. ("**Tiger**"). **Mr X** routinely executes promissory notes under the amount of 10 million KRW using the company's seal. Promissory notes whose face value exceeds 10 million KRW needed approval of Mr D, the representative director of Tiger.

Mr Y lent 50 million KRW to **Mr X** when **Mr X** bought his flat. **Mr X** also lost heavily in his stock investment. **Mr X** is in financial difficulty. **Mr X** used the company's seal and issued a promissory note in the amount of 60 million KRW in the name of **Tiger** without an approval of Mr D. **Mr X** handed it over to **Mr Y** who cashed it from **Mr Z**. **Mr Z** gave to **Mr Y** 45 million KRW in exchange for the promissory note which matures in 3 months.

When **Mr Z** presented the note upon maturity, **Tiger** refused to honour the promissory note alleging that it was a forged note.

How should the dispute between **Tiger** and **Mr Z** be resolved?

In answering the question:

- you need not discuss Commercial Code rules relating to promissory notes
- you should focus on questions of ostensible authority or other legal arguments relevant to Tiger's liabilities, if any
- you should discuss measure of damages (assuming, of course, Tiger's liability)

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