

## Law of Obligations II

3 December 2012

- The duration of the examination is 90 minutes (from 9:00 am to 10:30 am).
- During the course of the examination, candidates may freely consult materials of their own, including online resources.
- On each Answer sheet, candidates must write their **student number only**. Please do **not** write your name or major subject of study.
- ALL candidates must attempt the following **two (2)** Questions.

### [1] Question 1

Alice concluded a contract with Bob whereby Bob was to build a motel on Alice's land at the price of 1 billion KRW by 15 June 2011. David and Alice agreed that David shall lease the motel for 5 years starting from 15 June 2011 at the monthly rent of 10 million.

The motel was completed on time and it was handed over to David. But the plumbing job which was carried out by Charles, a sub-contractor of Bob, was defective. Hot water supply was generally inadequate and the draining pipes were partially blocked so that there was frequent flooding of bathroom of several guest rooms.

David complained to Alice and informed that he would not pay rent until the plumbing issues are resolved. Alice disagreed and told David that it was not a material defect. Alice told David that he could simply inform the guests to use hot water sparingly and not to empty the used bath water too abruptly or too fast. Alice further suggested that if David wanted a more luxurious motel facilities, David himself can invest and upgrade the plumbing.

Meanwhile, Alice asked Bob to repair the plumbing. Bob replied that he is willing to offer a discount of building contract price by 10 million KRW. Bob told that rehauling the entire plumbing job would be too expensive.

David had initially paid rent for three months. But, he refused to pay rent starting from 15 September 2011. On 20 December 2011, Alice terminated the lease contract when David's unpaid rent amounted to more than two months' worth of rent. David defends that he is not in breach of the lease contract. David refuses to move out.

When Alice sued Bob on 30 December 2011 and demanded that Bob must repair the plumbing, Bob refused to do so pointing out that Alice should have brought the claim within 6 months after the completion of the work.

How should this dispute be resolved?

### [2] Question 2

Alpha Co. ("Alpha") is a world-renowned welding rod manufacturer. Beta Co. ("Beta") is a Korean company which manufactures welding rods and supplies to Korean shipbuilders. Alpha and Beta concluded a joint venture agreement to set up a joint stock company C Co.

("JVC") which will do business principally in Korea. Alpha and Beta agreed in the joint venture agreement that they will make "reasonable commercial efforts to promote JVC's business in good faith". Alpha and Beta agreed to resolve all disputes through arbitration.

When Korean shipbuilders began to move their production facilities to China, Beta wanted that JVC must set up a subsidiary in China so that the demand of Korean shipbuilders in China can be better met. JVC has a good customer relationship with Korean shipbuilders. Beta believes that it is essential to the future business of JVC to 'follow' their major customers to China.

When the proposal to set up a subsidiary in China was presented to the Board of Directors of JVC, the directors appointed by Alpha voted against the proposal whereas directors nominated by Beta voted in favour of the proposal. The proposal was ultimately rejected because it could not secure the majority vote of the Board of Directors of JVC. A revised proposal where JVC's Chinese subsidiary's proposed business would be limited to 'Korean' shipbuilders, was also rejected because directors appointed by Alpha voted again against the proposal.

Beta accused Alpha for having instructed Alpha appointed directors to block these lucrative business opportunities of JVC because Alpha already has a business presence in China. Beta believes that Alpha is hoping to benefit from the increased demand for welding rods in Chinese market and that Alpha does not want JVC to come into the Chinese market.

Beta initiated arbitral proceedings against Alpha

Alpha defends that the directors of JVC has no contractual duty to Beta. The directors only have the duty of loyalty to the company (JVC) and that even if those directors' decision to block the proposal to set up a subsidiary in China is bad for JVC's business, it is JVC who suffered the loss, not Beta. According to Alpha, Beta has no contractual claim against those directors nor against Alpha who appointed them. JVC may sue – so goes Alpha's argument – those directors in court in accordance with the Commercial Code. Alpha asserts that Beta may not seek any contractual remedy against Alpha in the arbitral proceedings.

Discuss how this dispute must be resolved.

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