

Law of Obligations II

15 October 2014

- The duration of the examination is 75 minutes (from 9:00 am to 10:15 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.
- ALL candidates must attempt the following **two (2)** Questions.

[1] Question 1

X and Y have had several years of business dealings. When the amount of debt X owes to Y (and in arrears) reached 300 million KRW, they agreed that X transfers the title of his house to Y at the price of 300 million KRW which is set off by the amount of debt X owes to Y and in arrears. They further agreed that if X subsequently repays 300 million plus interest to Y within 3 years, X shall have the buyback option of the house and the buyback price shall be deemed to have been fully paid when X repays 300 million plus interest to Y.

Three and a half years later, X offered to repay 300 million plus interest and wanted his house back. Y refused. Y argued that X had the buyback option for 3 years only. Y maintains that, upon lapse of 3 years, Y is no longer subject to X's buyback option.

How should this dispute be resolved?

[2] Question 2

Alice owes 200 million KRW to Bob. Bob has a hypothec over Alice's land to secure the credit. When Alice could not repay the debt, Bob exercised his right of foreclosure and applied to have the land auctioned. The court gave permission on 6 July 2012 that the auction shall go ahead. However, just before the court gave permission for the auction, Charles (who is another creditor of Alice) applied for a preliminary injunction prohibiting Alice from transferring the land in question. The prohibitive injunction was registered in the land register on 5 July 2012.

The auction nevertheless took place in September 2012 and the land was sold to David at the price of 250 million KRW. David paid into the court 250 million KRW, which was distributed to Alice's creditors including Bob. The land was then registered under David's name. But Charles succeeded in having David's ownership registration cancelled arguing that the disposal is against the prohibitive injunction which was registered to protect Charles. David is evicted from the land and the land now belongs to Charles.

David sues Bob and demands the return of money which had been distributed to Bob. Bob denies and argues that David knew that the property was already subject to prohibitive injunction when David bought it through the auction in September 2012. Bob argues that it was a risk David should have taken into account when he participated in the auction.

Discuss how this dispute must be resolved. In your answer, please give a critical account of 86Na2563, 96Ge(□)64 and 2002Da11151

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