

Law of Obligations I

24 April 2013

- The duration of the examination is 75 minutes (from 2:00 pm to 3:15 pm).
- During the course of the examination, candidates may freely consult materials in their possession and 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

Anam Foundation (the “**Foundation**”) is a charitable foundation set up with the approval of the Minister of Education with the purpose of promoting life-long education of the disabled. The Foundation’s Charter of Incorporation stipulates that the managing director shall represent the Foundation but that any transaction whose amount exceeds 100 million KRW must be supported by a resolution of the Board of Directors. The Foundation’s registration record also shows that the managing director represents the Foundation and that a resolution of the Board of Directors is required for transactions whose amount exceeds 100 million KRW. Mr Ahn is the managing director of the Foundation.

Big Brothers, Co. (“**BB Co.**”) is an online education service provider who offers a wide ranging online education programmes for children. Mr Bean is the representative director of BB Co.

Mr Bean and Mr Ahn concluded a contract whereby BB Co. was to provide online education content and service for the Foundation for the next 5 years. The contract price was 300 million KRW payable over the 5 years. Mr Ahn explained to Mr Bean that since the payment is spread over 5 years, the annual payment is less than 100 million KRW. Mr Ahn told that there is no need to have the BOD approval for the contract. Soon after the conclusion of the contract, the Foundation made payment of the first instalment which was 60 million KRW. Mr Ahn authorized the payment.

When the new managing director of the Foundation, Mr Choi, took over, he discovered that the BB Co.’s education content and service are of very poor quality. Mr Choi also discovered that the contract was not accompanied by the BOD approval. Mr Choi notified Mr Bean that the Foundation will not honour the contract any more.

Mr Bean protested and claimed that the Foundation must pay BB Co. 100 million KRW, the amount of profit which BB Co. would have enjoyed if the contract were duly performed.

Discuss how this dispute should be resolved.

[2] Question 2

Mark, a 19 year old college student, bought a brand new Suzuki motor cycle from David, who runs a motorbike shop. The contract price was 3 million KRW. When David asked

Mark, “How old are you? I am not selling the bike to minors”, Mark replied, “I am old enough to ride a bike.” David just assumed that Mark was over 20 years old.

After riding the motor cycle for 6 months, Mark brought it back to David and informed that the contract is rescinded. Mark returned the used motor bike and demanded full refund.

David defended that Mark may not rescind that contract because Mark had used deceptive manoeuvres to cause David to believe that Mark was of full age.

David also argued that he was mistaken about the age of Mark, which must be deemed to have been incorporated as an element of the contract. Had he not been mistaken, David would not have sold the bike to Mark. David thus rescinds the contract and claims that Mark must ‘fully’ restore the motor bike to its original condition. David claims that since Mark cannot ‘fully’ restore the motor bike to its original condition, Mark must pay the difference between the brand new motor bike and the used one which is being returned by Mark.

Discuss how this dispute must be resolved.

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