

Law of Obligations I

28 April 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 in their possession as well as 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

Mr Kim is a director of Mana Foundation (the “**Foundation**”), which is a non-profit organization set up with the approval of the Minister of Justice with the purpose of promoting citizens’ basic right and rule of law. The Foundation’s Charter of Incorporation stipulates that a 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.

Mr Kim wanted to purchase a flat in the city center which can be used as an office space for the Foundation. But Mr Kim also reckoned that he can occasionally have secret meetings with his various girl friends in that flat. Mr Kim concluded the sale contract of a flat as a representative of the Foundation. The contract price is 300 million KRW. The seller of the flat, Mr Park, did not know that this transaction required a resolution of the BOD of the Foundation. Mr Kim paid the contract deposit, which is 30 million KRW, from his personal account. But he was confident that the BOD would approve of the purchase of the flat. Once the BOD approval is obtained, he planned to have the Foundation reimburse the contract deposit he paid from his personal account.

But during a BOD meeting, Ms Chun, another director of the Foundation, revealed and denounced Mr Kim’s questionable plans regarding the flat. The Board of Directors rejected Mr Kim’s proposal and refused to ratify the contract of sale concluded by Mr Kim on behalf of the Foundation. The seller of the flat, Mr Park, who is ready to convey the title of the flat to the Foundation, demanded that the Foundation must pay the balance of the purchase price as stipulated in the contract. The flat is now worth 250 million KRW.

Discuss how this dispute should be resolved.

[2] Question 2

A bought a plot of land (“plot B”) from B at the price of 500 million KRW. On one corner of plot B, there is a passage (taking up one sixth of plot B) which has been used by B for many decades. C, who is the next door neighbour of B, has also been using this passage to have access to the road.

At the time of the sale contract, B told A that C has been using the passage for at least 30 years and it would probably be very difficult to prevent C from using the passage. But A

thought that C will have to pay rent for using the passage and that the rent will put sufficient pressure on C so that C will i) either sell his land (plot C) to A; or ii) find an alternative passage which does not use plot B. If one of these two happens, there will be no need for A to maintain the passage. A would be able to use that portion of the land for building his house in the way A wishes to.

After the sale of land is concluded, A started negotiation with C regarding the possible sale of plot C to A. But C produced what appears to be a sale contract of the portion of plot B where the passage is located. The contract is dated April 1984 and according to the contract, C bought the passage from B. C firmly maintained that he has acquired full right to use the passage. C threatened A that A shall have to convey the ownership of that portion of plot B to C.

A realised that the negotiation with C is completely different from what A had assumed when he concluded the contract to buy plot B. A notified B that the sale contract is rescinded because it was concluded while A was mistaken about a very important element of the contract.

B refused and claimed that A has no ground to rescind the contract because A has fully performed the contract.

Discuss how this dispute must be resolved.

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