

## Korean Contract Law II

12 December 2017

- This is a take-home examination. Completed Answer Sheets must be handed in at room 333 **by 18:00 on 12 December 2017**.
- During the course of the examination, you may freely consult materials of your own, including online resources.
- On each Answer Sheet, you must write your **student number only**. Please do **not** write your name.
- You must attempt **the following two (2) Questions**. They have an equal weight in assessment.

### [1] Question 1 (50 points)

Alice leased a building to Bob, who is a chef and was looking for a space for restaurant. They agreed in 2012 that the lease was for 6 years, lease deposit is 100 million KRW, monthly rent is 1 million KRW and that Bob shall not seek any reimbursement in respect of the improvement of the building. Bob decorated the building tastefully with considerable investment. But the restaurant business was not going well lately. Bob had difficulty paying monthly rent. When the rent was in arrears for 3 months, Alice terminated the lease in May 2017. Alice paid the full amount of lease deposit into the court (so that Bob can collect it upon surrendering the possession of the building to Alice) and demanded Bob to move out.

Bob refused. Bob argued that since the amount of the lease deposit was sufficient to cover the unpaid monthly rent, Alice had no ground to terminate the lease. Because Alice nevertheless demands Bob to move out, Alice is – according to Bob – committing a repudiatory breach. Bob argues that he, not Alice, has the right to terminate the lease and that he does exercise the right. Bob claims that, since the lease is terminated due to Alice's repudiatory breach, Bob is not bound by the agreement not to claim reimbursement. Bob is now arguing that until and unless Alice reimburses the costs of improvement, Bob will not move out.

While Alice and Bob were having these issues, Alice sold the building to Charles. Charles now demands Bob to move out. Bob is now arguing that until and unless Charles pays for the costs of improvement, Bob will not move out. In response, Charles argues that Bob ought to disgorge the unjust benefit of using the building to Charles. Charles further claims that even if Bob is entitled to a reimbursement in respect of the improvement, Bob's reimbursement claim must be set off by Charles's unjust enrichment claim against Bob.

How should this dispute be resolved?

### [2] Question 2 (50 points)

Arid Co. ("Arid") concluded a contract with Bush Co. ("Bush"), which is a renowned landscape gardening firm, in order to transform Arid's newly acquired property into a garden. The parties agreed, in Section 9 of the landscape gardening contract, as follows:

1. The contract may be terminated if one of the following events occurs:
  - a. if either party commits a breach so that the purpose of the contract cannot be achieved
  - b. if Bush applies for debt rehabilitation or becomes bankrupt, insolvent or has its assets attached
  - c. if the work has been suspended for a period longer than 40/100 of the agreed duration of the work due to the design change implemented by the owner (Arid)
2. If a loss occurs as a result of the termination or cancellation of the contract pursuant to Paragraph 1 above, damage may be claimed from the other party.

When Bush has planted about one half of the trees, Arid demanded a design change which required Bush to suspend the work for a long time. Because of the waiting period, it has now become more difficult to plant the remaining trees due to the change of season and the frequent rain. Bush demanded 30% increase of the contract price reflecting the prolonged duration and the increased difficulty of work. Arid made a counter proposal for 10% increase of the contract price. While the parties could not reach an agreement and the work has been suspended for a period equal to one half of the initially agreed duration of the work, Arid terminated the contract relying on Section 9(1)(c) and demanded that Bush pays damage in respect of the delay of the project.

Bush argues that it did not commit any breach, and that it is Arid who has to pay damage to Bush under Article 673 of the Civil Code. Arid disagrees and argues that, as the owner of the project, Arid is entitled to propose design change at any time (subject to renegotiation of the contract price). According to Arid, as the parties agreed that either party may terminate if the work has been suspended for a period longer than 40/100 of the agreed duration of the work due to the design change, Arid is entitled to terminate the contract without having to pay damage to Bush. Arid is willing to pay to Bush an amount which corresponds to the work which has already been done. But, beyond this, Arid denies liability. Arid instead claims that Bush is responsible for the delay, which must be compensated for.

Discuss how the dispute must be resolved.

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