

Korean Contract Law I

30 April 2018

- The duration of the examination is 75 minutes (from 9:00 am to 10:15 am).
- During the course of the examination, you may freely consult materials in your possession and 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.

[1] Question 1

On 1 March 2018, Alpha Co. (“Alpha”) advertised that it would like to sell one of its buildings. The guide price, which would serve as a starting price for negotiation, was set at 20 billion KRW. On 5 March, Beta Co. (“Beta”) made a proposal to purchase the building at the price of 19 billion KRW. Alpha’s CEO, Mr Kim, thought that this was a great offer and he telephoned Beta’s CEO (Ms Park) on 8 March 2018 and said that Alpha is favourably considering Beta’s offer and that, upon final decision to sell the building to Beta, a proper letter of acceptance will be sent out to Beta. Mr Kim signed the letter of acceptance on 10 March 2018 and it was posted before closing of business on that day.

However, Gamma Co. (“Gamma”) contacted Alpha late afternoon on 10 March and proposed to purchase the building at 22 billion KRW. Mr Kim of Alpha thought that this is too good an offer to refuse. Mr Kim immediately telephoned Beta’s CEO, Ms Park, to explain that although a letter of acceptance was posted on 10 March 2018, it was all due to a mistake. Mr Kim asked Ms Park to ignore the letter of acceptance because Alpha really has no intention to sell the building to Beta. Mr Kim also said that he withdraw the acceptance which was sent out that day and has not yet reached Beta.

Ms Park soon discovered that the real reason for Alpha to refuse to sell the building to Beta was because Alpha wanted to sell the building to Gamma at a higher price (22 billion KRW). Beta sued Alpha claiming that the contract between Alpha and Beta is binding and enforceable. Alpha denied. Alpha argued that there was no valid acceptance as it was already withdrawn before it reached Beta. Alpha further argued that since Alpha’s board of directors never approved the sale of the building, the contract is null and void.

Discuss how the dispute must be resolved.

[Please go to page 2.]

[2] Question 2

WMC is a game developing company. It developed the hugely popular “Story of J”. KN Games wanted to launch a new game called “Story of K” which is a sequel to, and is based on, “Story of J”. KN Games (as the licensee) concluded a contract with WMC (as the licensor) to obtain the license needed to develop and launch “Story of K”. In the license contract, WMC warranted that it has all the necessary rights to grant the license to KN Games so that the licensee may use “Story of J” for the purpose of developing and marketing “Story of K”.

When KN Games finished development of “Story of K” and was about to launch the game in the Korean game market, Viva Games applied for an injunction seeking to stop KN Games from launching the game. Viva Games argued that (1) the “Story of J” was in fact jointly developed by WMC and Viva Games; (2) WMC may not grant license without consent of Viva Games; and (3) if KN Games launches the new game, Viva Games will suffer irreparable loss. The court accepted Viva Games’ argument and issued a temporary injunction banning the launch of “Story of K” until the dispute between WMC and Viva Games is resolved.

Faced with the injunction, KN Games rescinded the license agreement with WMC arguing that it was concluded by mistake. KN Games argued that it mistakenly thought that WMC is the right-holder who is entitled to grant the license. KN Games argued that since the license contract was concluded due to this mistake, KN Games now rescinds the contract. KN Games demands full refund of license fees so far paid to WMC.

WMC disputed the rescission. WMC argues that Viva Games’ claim is preposterous. Although the court issued an injunction, it was only a preliminary view of the court. WMC claims that it is confident that it will win in the main lawsuit against Viva Games. WMC further claims that there was no mistake whatsoever because WMC has all the rights needed to grant a license to KN Games and because WMC did grant the license.

Discuss how this dispute must be resolved.

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