

Korean Contract Law I

24 April 2021

- This is 24 hour take home examination (from 12:00 noon 24 April 2021 to 12:00 noon 25 April 2021).
- 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

Pagoda Charities, Inc. (“**Pagoda**”) is a non-profit corporation authorised by the Minister of Health and Welfare. Pagoda’s Memorandum of Incorporation states that its purpose is to promote the welfare of the elderly and to carry out all related activities. Mr Lee is the chief executive officer and director of Pagoda. Mr Lee wanted to build a membership-only gym with luxurious facilities where rich and famous elders can socialise and get physical training and exercise. Some directors felt that the gym is too exclusive and that the membership fee is too expensive. But Mr Lee’s proposal was approved by a majority of directors.

Pagoda accordingly concluded the building contract with All Build, Ltd. The contract price was 10 billion KRW with the contract deposit of 1 billion KRW, which must be paid in 1 month after the signing of the contract. The contract contains a liquidated damages clause which stipulates that if Pagoda fails to make any payment on time, the contract deposit shall be forfeited.

Soon after the contract, Mr Lee was removed from the office. The newly appointed CEO of Pagoda, Mr Kim, was determined to kill the project. Under Mr Kim’s leadership, Pagoda refused to pay the contract deposit to All Build. Mr Kim discovered that Mrs Lee, who is Mr Lee’s close friend, was a non-executive director of All Build and that it was Mrs Lee who signed, on behalf of All Build, the building contract with Pagoda. All Build’s BOD was not aware of this contract.

Pagoda notified All Build that the contract signed by Mrs Lee of All Build is a nullity because she is not the representative director of All Build. Pagoda also explained that Pagoda’s own Memorandum of Incorporation stipulates that any contract above 5 billion KRW requires the consent of two thirds of the BOD members. As the contract in question only had the votes of a simply majority of directors, the contract is not binding on Pagoda.

About a month later, All Build replied and insisted that Pagoda must pay 1 billion KRW as the agreed liquidated damage. All Build further argued that it was in good faith in every sense of the word and that its interest must be fully protected by the law. Pagoda replied that as the contract was already denied by Pagoda, All Build may not now rely on the contract.

Discuss how this dispute might be resolved.

[Please turn to page 2.]

[2] Question 2

Paros Co. (“**Paros**”), a Greek company, wanted to acquire Manna Foods, Inc. (the “**Company**”), which is a leading manufacturer of processed cheese in the Korean market. Paros entered into negotiations with Dawon Co. (“**Dawon**”), a Korean company who owns 100% shares of Manna Foods.

There is an urban planning about a road which affects the main factory site of the Company. If the planned road is built, the Company will have to relocate many of its key production facilities and the operation of the Company will be disrupted for an extended period of time while the relocation works are carried out.

During the period of due diligence which took place for two months leading to the signing of the Share Purchase Agreement (“**SPA**”), Dawon provided a real estate surveyor’s report which is prepared in Korean. The report did mention the urban road plan. The surveyor’s report also included a map image which would have shown the location of the planned road. For some reason, however, the image was too dark and unreadable. However, it is the same map image which is freely and easily available online at a website operated by the Ministry of Land, Infrastructure and Transport.

Near the end of the due diligence period and at the last stage of the negotiation, Paros and Dawon agreed upon the following clause in the SPA:

Seller’s disclosure must be done in English and that the Due Diligence Materials provided to the Purchaser’s representatives in Korean shall not, of themselves, constitute a disclosure.

Dawon did not provide an English translation of the surveyor’s report. The SPA was signed. Paros paid 50 billion KRW and acquired the Company.

After a while, the directors of Paros realised that there is an urban road plan. They made an inquiry to the local government as to whether there is any chance of cancelling or modifying the planned road. The local government replied that the road will be built as planned.

Paros sent a notice to Dawon informing that Paros hereby exercises its right to void the SPA. Paros demand the return of the purchase price plus interest. Dawon denied and argued that there is simply no ground to void the SPA. Dawon argued that the urban road plan is a matter of public knowledge. Dawon also argued that Paros or its Korean advisors or lawyers could have easily obtained the information anyway.

Discuss how this dispute should be resolved. [2019 mid-term exam]

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