

Korean Contract Law II

23 October 2019

- The duration of the examination is 75 minutes (from 12:00 am to 13:15 am).
- During the course of the examination, you may freely consult materials in your possession, including online resources.
- On each Answer Script, you must write your **student number only**. Please do **not** write your name.
- You must attempt the following **two (2)** Questions. The two questions have an equal weight in assessment.

[1] Question 1 (50 points)

On 1 May 2018, Steve sold a plot of farm land to Ben at the price of 100 million KRW, with 20 million KRW as the contract deposit. The neighbourhood has recently attracted a great deal of attention in the media as a perfect surfing location. Ben intends to build and operate a surf shop on the land.

On the day of contract, however, Ben had 10 million KRW only. The parties therefore agreed that the additional 10 million KRW was to be paid on the following day. However, Ben did not send the additional 10 million KRW on the following day. Steve sent a reminder on 4 May, to which Ben did not reply.

Meanwhile, Ben made a preliminary inquiry as to the procedure for obtaining the necessary planning permission to change the farm land into a shop space. The local government employee explained that the planning permission would take a bit of time and the application for planning permission is sometimes refused when there are too many applications to convert farmland in a given area into commercial premises.

Fearing that he may not be able to obtain the planning permission for the land in question, Ben terminated the contract on 10 May 2018 stating that Steve may keep the 10 million KRW. On 15 May 2018, Steve denied the validity of Ben's termination and stated that the contract is now terminated by Steve. Steve demanded that Ben must additionally pay 10 million KRW because that is what the parties agreed.

Ben replied on 20 May stating (1) that Steve's termination is invalid because the contract was already terminated properly by Ben; but (2) that, if Steve's termination is valid, then Steve must return 10 million KRW to Ben.

Discuss how the parties' dispute should be resolved.

[2] Question 2 (50 points)

Peter bought a small plot of land (100 square metres) near Insa-dong area in the old city center of Seoul at the price of 500 million KRW from Simon. There was an old, ugly building on the land. Peter demolished the old building and commissioned an architect to build a tasteful modern two-storey building with a cafe on the ground floor.

While the building work is underway, the neighbouring land is sold to John. Upon becoming

the new owner, John conducted the land survey. John discovers that a portion of Peter's new building (which is under construction) is situated on John's land. John demanded Peter that the building works should immediately stop and the portion of the building which is situated on John's land must be demolished. According to John's survey result, 15 square metres of Peter's land actually belongs to John.

Peter denied. Peter argued that John's claim of ownership of the portion of the land (15 square metres) is groundless. Peter also argued, alternatively, that John has the obligation to convey the title to the portion of the land to Peter because Peter bought it from the seller (Simon) who has long been occupying the land in good faith on the basis of legitimate transactions. After a year of lawsuit, Peter lost and had to demolish the portion of the building. Peter also had to recommission the architect to alter the design of the building. Peter's land is now 85 square metres only.

Peter sues Simon and claims the following items of damage:

- the portion of land from which Peter is evicted: 75 million KRW (15 square metres x 5 million KRW)
- the wasted costs and expenses for the design and construction of the building: 200 million KRW
- litigation costs including lawyer's fees which were spent in defending (unsuccessfully) against John's demand: 100 million KRW

Simon denies the entirety of Peter's claims. Simon argues that Peter was negligent in defending his own ownership of the land. According to Simon, if Peter had retained proper lawyers to defend against John's preposterous demands, Peter would have prevailed and there would have been no need to demolish the building. Simon further argued that, in any event, having to pay damage regarding a portion of buyer's own building (which the buyer freely chose to build) is totally unforeseeable for the seller.

Discuss how this dispute must be resolved.

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