

# Korean Contract Law I

19 June 2021

- The duration of the examination is 24 hours. Completed answers must be uploaded at <https://lawlec.korea.ac.kr/essay> by 12:00 noon 20 June 2021.
- Please upload your answer as the Assignment No. 3 of the Korean Contract Law I.
- During the course of the examination, you may freely consult any materials including on-line resources.
- Please do not write your name in the answers. Your answers should not reveal your identity.

## [1] Question 1

Sunta, Inc. (“Sunta”, “the seller”) agreed to sell 100% shares of X Group of companies to Pinto, Ltd. (“Pinto” “the purchaser”) at the price of 50 billion KRW. X Group of companies are composed of three companies, A, B and C (C being the smallest). The completion date on which the parties agreed to pay the purchase price in exchange for the shares was 1 March 2021. On 15 January 2021, the purchaser wrote to the seller that the purchaser shall not proceed with the sale because the seller made inaccurate representations about the financial situation of X Group of companies. The seller did not accept the purchaser’s allegation. The seller wrote back to the purchaser that the seller would deliver the shares and that the purchaser must pay the price on 1 March 2021 as agreed by the parties.

On 1 March 2021, the seller tendered the shares to the purchaser and demanded the payment. But the purchaser refused to take the delivery of the shares and refused to pay the price. The purchaser repeated its position that it shall not proceed with the sale. On 15 March 2021, the loans (10 billion KRW) of one of the X Group of companies (C) would have to be refinanced or repaid. On 14 March, Sunta agreed to sell C to the lender of the loans (Z Bank) at the price of 5 billion KRW. On 15 March, Sunta fully repaid C’s loans and delivered the shares of C to Z Bank in exchange for the latter’s payment of 5 billion KRW.

Sunta now sues Pinto and claims that Pinto must pay 45 billion KRW in exchange for the shares of A and B. Pinto replied that Sunta is in breach of the sale contract and that Pinto terminates the sale contract. Sunta denies that it committed any breach. Sunta argued that because Pinto was in *mora creditoris* as from 1 March 2021, Sunta shall not be responsible for the non-performance. Sunta further argued that it was Pinto who committed a repudiatory breach by refusing to proceed with the sale and therefore Pinto must be held liable for its repudiatory breach.

Discuss how the dispute must be resolved.

## [2] Question 2

Mr Kim agreed to sell a plot of land to Mr Lee at the price of 6 billion KRW. It was agreed that the sale must be completed on 1 June 2019. On 1 May 2019, Mr Lee told Mr Kim that he would not be able to buy the land because his financial situation substantially deteriorated. Mr Kim terminated the contract on 1 September 2019 and sued Mr Lee for damages. The district court ruled on 1 October 2020 that Mr Lee must pay 0.6 billion KRW for damages. Mr Lee appealed. While the appellate proceedings are pending, Mr Kim sold the land to a third party at the price of 6.1 billion KRW on 1 February 2021.

The market value of the land in question was 5.4 billion in May 2019 – June 2019. The market value of the land rose to 5.7 billion in September 2019. At the close of the appellate legal proceedings (on 30 May 2021), the land was worth 6.2 billion KRW.

What is the correct amount of damages (if any) which must be awarded by the appellate court?

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