

## Korean Contract Law II

13 December 2022

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

Alumni from KU Computer Science Department developed a mobile game called Dungeon Tiger (the “works”) in 2000. Mr Kim and Mr Lee played a leading role in the software development and artwork creation. Mr Kim set up Anam Co. (“Anam”), a joint stock company, and Mr Lee set up Beta Co. (“Beta”), also a joint stock company.

Anam and Beta executed an agreement in 2001 (Software Development and Sales Agreement) where the two companies agreed as follows:

- The copyright in the works shall be equally shared between Anam and Beta.
- Either company may grant license to a third party authorising the use of the entirety of the works. But the revenues, including royalty payments, must be distributed at the ratio of 70% for Anam and 30% for Beta.
- If, however, the license agreement is concluded by Beta with a licensee located or recruited by Beta, the revenue sharing ratio shall be 60% for Anam and 40% for Beta.

In accordance with this agreement, Anam and Beta, respectively, concluded several license agreements with a variety of licensees in China, Taiwan, Italy and the U.S.

In 2004, however, Beta and its licensee Victory Games (“Victory”) invited Anam to join as a co-Licenser in the existing license agreement between Beta and Victory. The reason was that Victory wished to have a direct contractual relationship with Anam, who has the software development expertise, in order to ensure smooth maintenance and support (including bug fix and timely upgrade) for the Dungeon Tiger games. Anam agreed to become a co-Licenser and to provide technical assistance necessary for the user support and software maintenance of the works. The parties have agreed as follows:

- Beta and Victory agree to accept Anam as the co-Licenser.
- Anam irrevocably entrust Beta with the exercise of Anam’s rights as co-Licenser for the duration of the license agreement.

In June 2017, Beta informed Anam that the license agreement with Victory would be renewed for 5 more years. Anam replied that the license agreement must not be renewed because Victory has been condoning serious violations of copyright which Anam considers to be a big problem. Beta wrote to Anam that the copyright infringement issues can be dealt

with by seeking money damages from Victory and that it is more advantageous to renew the license agreement with Victory who has a good standing in the game industry in China. Anam and Beta disagreed.

In December 2017, in spite of Anam's protest, Beta renewed the license agreement with Victory. Anam is no longer a party to the renewed license agreement.

Anam asserts that as long as the license agreement with Victory is concerned, Anam is in the position of a mandator and Beta is the mandatarius and that Beta must look after Anam's interest rather than his own interest. Anam further argued that since Beta acted against Anam's interests in renewing the license agreement with Victory (ignoring Anam's clear protest and opposition), the renewal of the license agreement with Victory is invalid.

Discuss how this dispute should be resolved.

## [2] Question 2 (50 points)

Mr Lee leased a gas station (petrol station) near Anam Junction from Grease Co., who owns and operates a number of gas stations all over the country. The contract stipulates that neither the lessee shall be required to restore the leased property to its original condition, nor the lessor shall be required to reimburse the lessee in respect of any improvement of the leased property.

Mr Lee's gas station was doing well and he needed additional storage capacity and more gas pumps (petrol pumps).

Mr Lee asked Grease Co. whether the company can install another underground storage tank and 5 more gas pumps. Grease Co refused but suggested that Mr Lee could, if he wishes, make those additions at his own costs. Mr Lee carried out the necessary work to bury an additional underground storage tank and installed 5 more gas pumps. The underground storage tank cost 200 million KRW and gas pumps cost 30 million KRW each.

When the lease period was over, Grease refused to renew the lease and demanded Mr Lee to leave. Mr Lee requested Grease to purchase 5 gas pumps. Grease refused on the ground that the lessor is not required to make any reimbursement. Mr Lee argued that the lessee's statutory put option under Article 646 of the Civil Code is not excluded by any of the parties' agreement.

Grease, on the other hand, discovered that the soil under the gas station is heavily contaminated due to leaked fuel. Grease demanded Mr Lee to pay for the de-contamination of the soil. Mr Lee refused by pointing out that the parties have expressly agreed that the lessee is not required to restore the leased property to its original condition.

Discuss how the dispute must be resolved. [modified from 2019 End-Term Examination question]

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