

Korean Contract Law I

9 June 2022

- The duration of the examination is 24 hours. Completed answers must be uploaded at <https://lawlec.korea.ac.kr/essay> by 17:00 on 10 June 2022.
- Please upload your answer as the Assignment No. 1 of the Korean Contract Law I.
- There is no length limit to your answers.
- 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

Alpha Co. (“**Alpha**”) has 100% shares of A Co, which in turn wholly owns B Co. Alpha is looking for an opportunity to sell A Co and B Co to a suitable buyer. Beta Co. (“**Beta**”) is a private equity fund who is interested in the investment opportunity. After having studied the growth potential and the financial status of A Co and B Co, Beta decided to acquire them from Alpha at the price of USD 300 million. Alpha and Beta executed the Share Purchase Agreement (“**SPA**”) on 1 September 2017, whereby Alpha agreed to sell and transfer all shares of A Co to Beta on the Closing Date, which shall take place 1 month after all conditions precedent to the Closing have been met or waived by the parties. Alpha also warranted that, as of the Closing Date, it shall not have caused A Co to sell its subsidiary to a third party.

On 10 December 2017, Alpha notified that all conditions precedent are met and that the Closing must take place on 10 January 2018. Beta disagreed. Beta argued that some of the conditions precedent have not been met and refused to make payment in exchange for the shares of A Co.

On 13 February 2018, Alpha caused A Co to sell B Co to a third party, arguing that the Closing Date has gone past and that Alpha is no longer prevented under the SPA from causing A Co to sell off its subsidiary. Alpha instead demanded Beta to pay the full purchase price plus delay interest calculated from 11 January 2018 in exchange for all shares of A Co, as allegedly agreed under the SPA.

Beta argues that since Alpha caused A Co to sell B Co to a third party, and because the purpose of the SPA cannot be achieved with the purchase of the remaining A Co only, Beta terminates the SPA. Beta argues that Alpha must pay damage to Beta in the amount corresponding to the costs of concluding the SPA (consisting of the expenses incurred in the negotiation and conclusion of the SPA).

Discuss how the dispute must be resolved. (2018 End term examination)

[2] Question 2

Gamma Co. (“**Gamma**”) and Delta Corporation (“**Delta**”) are joint venture partners. They set up a company called Purair Ltd. which manufactures air filters. Recently, air filters are in great demand in Korea and China due to poor air quality of these countries. The

Shareholders Agreement (“SHA”) between Gamma and Delta has the following provision:

If Gamma and Delta cannot agree on a strategically important issue in connection with the cooperation in the field of air filter manufacturing and marketing and if reasonable efforts to overcome such disagreement have failed to lead to a mutually satisfactory solution, either party may terminate this Agreement by a written notice to the other party.

The SHA further stipulates that the terminating party shall be entitled to purchase the shares of the other party at a substantially discounted price.

The parties have had some difficulties regarding Delta’s proposal to set up a new joint venture company in China, where Gamma already has a branch office. The parties have been carefully avoiding an all out confrontation on this issue. But directors appointed by Delta were still talking about the business opportunities in China.

On 15 May 2017, George, Gamma’s CEO, sent the following letter to David, who is Delta’s CEO:

Dear David,

I hope this letter finds you well. Although we have had a bit of issues regarding your proposal for the Chinese market, I believe that the matter has now been satisfactorily dealt with. I believe that we are currently enjoying an excellent relationship as joint venture partners, fully cooperating on all major issues.

However, in the event that there may exist a disagreement on a strategically important issue in connection with the cooperation in the field of air filter manufacturing and marketing, Gamma hereby explicitly exercises the right of termination and herewith send you the notice of termination.

I really hope you do not think that there is a disagreement between us.

Yours ever,

George

David replied as follows on 25 May 2017:

Dear George,

I am very puzzled to have your strange letter. My lawyers told me that you are not entitled to terminate the Shareholders Agreement.

I am absolutely convinced that there is a serious disagreement on a strategically important issue between us. Therefore, Delta hereby unconditionally and immediately terminates the Agreement. Please note that this is Delta’s written notice of termination.

All good wishes,

David

Discuss how this dispute must be resolved. (2017 End term examination)

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