

## Korean Contract Law II

12 December 2016

- The duration of the examination is 75 minutes (from 9:00 am to 10:15 am).
- During the course of the examination, you may freely consult materials of your own, including online resources.
- On each Answer sheet, you must write your **student number only**. Please do **not** write your name.
- You must answer the following **two (2)** questions.

### [1] Question 1

Alice leased a shop from Bob for five years. Alice intended to decorate it as a restaurant. Bob indicated that Alice could decorate the shop according to her taste. Bob insisted, however, that when the lease is over Bob must not be required to pay anything in respect of what Alice has introduced into the shop. Alice agreed to that.

While the restaurant is doing a good business and the lease is in its fourth year, Charles claimed that the shop building and the land are his. Charles sued Alice and Bob demanding that they both move out and that they return the possession of the land and the building to Charles. Charles also demanded that Alice and Bob be jointly held liable for unjust enrichment during the period when the shop was being leased to Alice because neither Bob nor Alice had any right to use the building and nevertheless they jointly used it. Charles also claimed that in respect of the period when Bob did not lease it to anyone, Bob shall be held liable for unjust enrichment.

Alice replied to Charles that if she has to return the shop to Charles, she would demand that Charles must reimburse the cost of refurbishment Alice has spent to tastefully decorate the shop into a restaurant. Although Alice conceded that Bob need not pay anything to Alice in respect of the refurbishment, Charles was not a party to the agreement and, therefore, Alice is entitled to a reimbursement for the cost of improvement. Charles replied that he need not pay anything in respect of Alice's refurbishment of the building and that Alice must restore the building to its original condition.

Discuss how the dispute among the three parties should be resolved (assuming that the building and the land belong to Charles).

### [2] Question 2

Messrs Yune and Park are doing business together as local builders. Mr Yune has the skill and qualification as a building contractor. Mr Park has a good experience of procuring building materials, recruiting and managing workers. They agreed to split the earning at the ratio of 7:3 so that Mr Yune gets the bigger share of their earnings. Mr Park, on the other hand, does not bear any loss.

Ms Kim signed a building contract worth 1 billion KRW with Yune & Park on 15 January 2016. Yune & Park agreed to complete the building by 30 June 2016. The parties agreed upon a liquidated damage of 500,000KRW per day payable by Yune & Park in respect of delay. They further agreed that contract price shall be paid in monthly installments on the last day of the month. The amount of the monthly payment shall be determined by a notice from Yune & Park who must take account of the rate of progress of the building work.

In mid-March, Ms Kim discovered that the foundation and the ground floor concrete structure show cracks. Ms Kim informed that she would not pay March installment if the defect is not repaired. Mr Yune notified that the amount of March installment is 300 million KRW. Mr Yune estimated that the repair cost for the cracks would be less than 10 million KRW. He demanded that on 31 March, Ms Kim must pay 290 million KRW. Ms Kim disagreed. She insisted that until the cracks are repaired, she will have to withhold the entirety of March installment.

Yune & Park informed Ms Kim that they will no longer continue the building contract under the circumstances. Mr Yune claimed that Ms Kim's unreasonable behaviour fundamentally destroyed their mutual trust. Mr Yune sent a termination notice to Ms Kim. Ms Kim, for her part, was indignant. She replied that she has every right to withhold payment in respect of the defect. She asserted that Mr Yune's termination notice is invalid and that she has the proper right to terminate the contract. Ms Kim sent a termination notice to Yune & Park.

Ms Kim claimed that the completion of the building is expected to be delayed by at least 40 days because of the breach of Yune & Park and therefore Mr Yune and Mr Park shall be jointly liable to pay 20,000,000KRW to Ms Kim. Yune & Park rejected the claim and instead demanded that Ms Kim shall have to pay them 100 million KRW, which was the profit they would have achieved upon completion of this building project.

Discuss how this dispute must be resolved.

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