Law of Obligations I End Term Exam Comments

Exam questions are here.

Question 1

The fruit producer/seller (Lucky) should be held liable for damages resulting from infected fruits – to the extent that such damages are foreseeable. The question, therefore, is whether wholesaler (Joy)'s liabilities to the retailers are foreseeable for the fruit producer/seller.

There is little doubt that if a tiny portion of fruits supplied are infected with lethal virus, the entirety of the delivered stock would be unfit for human consumption. Reasonable costs of treating the affected customers would also be within the range of foreseeable loss to the wholesaler.

It is irrelevant whether Lucky had 'actual knowledge' that the fruits they sell were already infected or likely to be infected. (If Lucky nevertheless sold the fruit with such a knowledge, then it would amount to a criminal offence!). Civil damages are claimable not only against deliberate wrongdoers but also against a party who had every good intention and who had no clue that his own fruits could ever be infected. If the fruits turn out to be infected, then the seller shall be deemed to be "negligent". Negligence, in this context, is a very technical and artificial concept.

Question 2

The seller of the building (Mr Y) gave an undertaking that he would obtain all regulatory permits necessary to run a cafe or a restaurant as from 1 May2009. It seems that the seller did carry out the undertaking. The seller should not be indefinitely responsible for subsequent revocation or

cancellation. Even if the seller should be viewed as having failed to fulfill this undertaking, this would simply be an issue of breach of contract under Korean contract law. It is not an issue of mistake.

Mistake is about a fact, not about a promise. In this case, we are dealing with the seller's promise to obtain the necessary permits. Broken promises give rise to a breach of contract. It has nothing to do with mistake.

If Lessee suffered loss due to Lessor's breach of contract, Lessee may "set off" the portion of the rent corresponding to the loss sustained by the Lessee. This has nothing to do with Defence of Simultaneous Performance. The Defence, as its name indicates, provides a ground to "refuse to perform". In the case of a Lessee who purports to "set off" the portion of the rent corresponding to his alleged loss, the Lessee is not at all "refusing to perform". Rather, the lessee's assertion is that the rent has indeed been paid (by setting off against the corresponding amount of loss to the lessee).

In this example, the plumbing issues may have caused "some" loss to Mr X. But it cannot be "1□□ every month"! It is equally unclear how much of 100 mil. KRW is actually the rent (rather than the purchase price). Until 1 Feb 2010, Mr X had no defence of simultaneous performance whether it was on the ground of lease or on the ground of sale.
After 1 Feb 2010, however, neither parties are in mora. But Mr X would have to pay the already accrued late performance damages (corresponding to the period until 1 Feb 2010).

As it is clear the Mr X is unwilling to perform the contract, there would be little point in requiring Mr Y to "tender" the performance as a prerequisite for terminating the contract. The termination, therefore, is duly made. The contract is terminated by Mr Y and Mr X must pay the agreed amount of late payment interests (plus statutory rate of interest on that amount from the date of termination until he actually pays).

Mr X's purported "rescission" of the sale contract is groundless. Mr X made no mistake.

Question 3

There is no doubt that C Co believed that it was entering into a contract with Mr Lee. C Co merely thought that that very person was called "Mr Kim". C Co also believed that that person owned the property in question. Mr Lee also knew that this was how C Co understood this contract. So both parties all agreed about the parties to the contract.

Therefore the "true" Mr Kim was never a party to this contract.

You should always go by the real and substantive entity, rather than the names or the government-held records. In short, ignore what is written on the ID Card. Focus, instead, on the real person. Whether "that person" is called Mr Lee, Mr Chun, Mr Kim, Mr Ma, etc. is of little significance.

Moreover, Mr Lee never invoked the institution of agency. He never indicated that he was "acting as Mr Kim's agent". Therefore, there is no room for applying Arts. 125, 126 or 129.

The only exception, recognised by Supreme Court rulings, is where the impersonator DID actually have some power to represent the person he impersonates. But in the case of Question 3, Mr Lee did not have any authority to represent Mr Kim.