

Korean Contract Law II

24 October 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

Mr Kim concluded a contract to purchase a building together with the land from Miss Lee at the price of 3 billion KRW on 1 March 2016. They agreed that 300 million KRW shall be paid by Mr Kim as the contract deposit by 4 March 2016 and that the rest of the contract price shall be paid on 1 May 2016 when Miss Lee shall deliver the land and building together with all necessary documents for transferring their title to Mr Kim.

Mr Kim paid 100 million KRW on 4 March and sent an I.O.U for the rest of the contract deposit together with an apology as follows:

Dear Miss Lee,

I am terribly sorry that I have not been able to send you the full amount of the contract deposit. But this was due to circumstances beyond my control. I expected to receive a cargo which was to be handed over to my clients for their immediate payment. But the cargo was lost in the sea due to a storm. Who would have expected such a natural disaster to strike me! But please rest assured that I shall make every effort to obtain a loan so that I can pay you the remaining balance of the contract deposit as soon as possible. Meanwhile, please hang on to the I.O.U which is signed by me personally.

Yours ever,

Mr Kim

Miss Lee notified Mr Kim that the contract is terminated. She also told Mr Kim that she will keep 100 million KRW. Mr Kim replied that Miss Lee has no right to terminate the contract. He warned Miss Lee that her attempt to terminate the contract and keep 100 million KRW may amount to a breach of contract. Mr Kim further stated that he would pay the remainder of the deposit by 20 March 2016 plus double the amount of the market rate of interest on that amount so that Miss Lee does not suffer any loss because of the late payment of deposit.

Miss Lee refused this proposal and told Mr Kim that unless the deposit is fully paid by 10 March, she would go ahead with the termination. On 10 March, Mr Kim sued Miss Lee and sought the court's judgment ordering Miss Lee to deliver the possession and the title of the land and building on 1 May 2016 in exchange for the payment of 2.9 billion KRW.

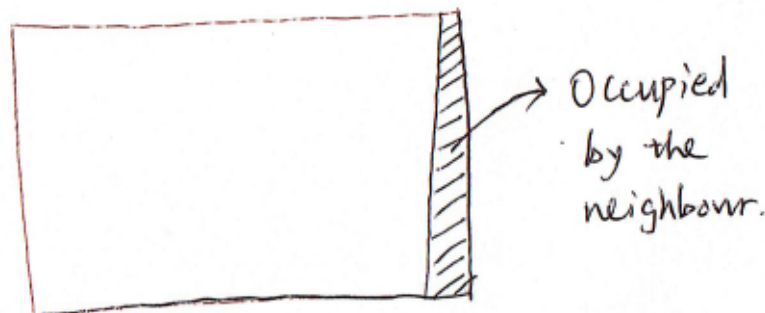
Discuss how this dispute must be resolved.

[2] Question 2

Alice bought a house together with the land from Bob in the old neighbourhood of Seoul at the price of 360 million KRW. The existing house on the plot of land was of little value and Alice was going to demolish it anyway as she has a plan to build a new house. The land is

described to be 100 square metres. The parties negotiated the total price (for the house and land) on the basis of the size of the land. The parties finally agreed upon 3.6 million KRW per square metre of the land and that is how the contract price was arrived at.

About 8 months after the purchase was completed and the possession and title of the land were transferred, Alice demolished the existing house and discovered that the land is actually 10% smaller than she thought because her neighbour has been occupying about 10% of the land for many years.



Upon discovering this, Alice demanded reduction of price from Bob. Bob refused and replied that he had never done an accurate survey of the land and therefore he thought that the size of the land within the current boundary was 100 square metres. Bob claimed that he never imagined that the neighbour was occupying a portion of the land he sold. Bob further maintains that since the neighbour has no right to occupy this portion of land, Alice can simply reclaim the portion by evicting the neighbour.

Alice is not sure whether she can successfully evict the neighbour considering that the neighbour (and probably his predecessors too) has been occupying the area for a very long time. Alice decided to terminate the contract as she does not wish to embark on a lawsuit with the neighbour. Alice argued that the land delivered by Bob is smaller than the agreed size by 10% because the affected portion belongs to the neighbour. She argued that with the remaining portion of the land, she does not wish to build a house as it would be too small. Alternatively, Alice argued that having a portion of the land illegally occupied by a neighbour amounts to a 'defect'.

Bob defended vigorously, arguing that the portion is illegally occupied by the neighbour and that he has no obligation nor power to evict the neighbour from the land which is no longer his. Bob also argued that Alice should have more carefully examined the land before she bought it. Bob did not prevent Alice from having the land professionally surveyed. If Alice had done that, she would have immediately discovered the situation. Bob had no reason to spend money to have a precise survey of the land which he was selling. It was Alice who took the risk.

Discuss how this dispute must be resolved.

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