

# Korean Contract Law I

15 June 2023

- The duration of the examination is 75 minutes (10:30-11:45).
- 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

Mr Kim sold his old house with a garden to Ms Lee at the contract price of KRW 2 billion. The completion date (when the property must be transferred in exchange for payment of the balance) was agreed to be 1 June 2018. Ms Lee paid KRW 0.2 billion as the contract deposit on 1 March 2018 when the contract was signed. Ms Lee further paid 0.3 billion on 1 May 2018 as the agreed partial payment. For the remaining balance, instead of paying cash, Ms Lee undertook to take care of Mr Kim's outstanding loan in the amount of KRW 1.5 billion from M Bank on 1 June 2018.

In late May 2018, however, Ms Lee discovered that there is an urban road planning which would affect a portion of the garden. Ms Lee sent a letter entitled, "Notice of Termination" to Mr Kim on 25 May 2018 and stated that "The contract is cancelled due to your fraudulent behaviour. You must immediately return all the monies I paid you so far. You must also pay damage to me."

Mr Kim replied,

Dear Ms Lee,

It is unfortunate that you are making unreasonable and groundless allegations in an effort to renege from a deal which you willingly agreed to. I stand ready and willing to transfer the property as we agreed on 1 June 2018 and you must take care of the loan from that date. If you fail to do so, you are solely to blame for all consequences.

Yours truly,

Ms Lee refused to take care of Mr Kim's loan. On 1 September 2018, M Bank foreclosed and auctioned the property at the price of KRW 1.4 billion. Mr X was the successful bidder and became the owner of the property. M Bank demanded Mr Kim to repay the remaining balance (including the default rate of interest) which was KRW 0.3 billion. Mr Kim paid.

On 15 September 2018, Ms Lee sent another notice entitled "Notice of Termination (Reminder)" to Mr Kim and stated that "As you know, the contract was terminated on 25 May 2018 due to your fraudulent behaviour. In any event, you are not in a position to perform the contract anyway. Please return all the monies I had paid you (plus interest, of course). In addition, please pay me KRW 0.1 billion which I had spent in concluding the contract and in determining whether the contract was properly terminated by me. My lawyers tell me that my termination on 25 May was valid."

Mr Kim disagrees. Mr Kim asserts that the contract is binding and demands Ms Lee to

compensate him for the loss caused by Ms Lee's failure to take care of the loans.

Discuss how the dispute must be resolved. (modified from 2019 End Term Examination)

**[2] Question 2**

CH International is trading in refined sugar. The company buys sugar from various countries and sells it in the sugar market in Dubai. CH Int'l chartered a ship called "Turtle" from HJK, a shipowner who owns and operates several cargo ships. According to the charterparty, HJK must ready the ship for loading the cargo at the port of Rotterdam during 25-27 October 2022. The ship arrived in Rotterdam and was ready for loading as agreed. The cargo (which was 50 tons of sugar) was loaded on time and the ship started its voyage to Dubai on 1 November 2022. It would normally take 20 days to arrive in Dubai.

In breach of the charterparty, the ship deviated from the agreed route and arrived in Dubai on 5 December 2022, which was about two weeks later than expected. The captain of the Turtle knew that the cargo was sugar and that there was a sugar market in Dubai. But he did not know whether CH Int'l intended to sell the sugar immediately upon arrival of the cargo in Dubai port. He had no idea about the sugar price. In fact, the sugar price was rapid falling in November and December 2022. If the cargo had arrived on 20 November 2022, CH Int'l could have made a profit of USD 10,000 because the sugar price at that time was USD 700 per ton and CH Int'l had bought the sugar at the price of USD 25,000. On 5 December 2022, the sugar price was USD 400 per ton. CH Int'l sold the sugar at that price.

In January 2023, CH Int'l sued HJK for breach of contract and claimed damage in the amount of USD 15,000. HJK accepted the breach, but asserted that the damage should be calculated at two weeks' worth of 6% per annum interest on USD 25,000 (which was CH International's cost for acquiring the sugar), that is,  $\text{USD } 25,000 \times 0.06 \times 14/365 = \text{USD } 57.53$ . The lawsuit lasted for five months. At the close of the hearing on 15 June 2023, the sugar price in Dubai was USD 700 per ton.

Discuss how the damage, if any, should be calculated.

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