법철학과 유가사상

법철학과 유가사상 기말 시험 **– 2026.6.16**

- 완성된 답안은 6월16일 21:00까지 https://lawlec.korea.ac.kr/essay 에서 제출하십시오.
- 1번 문항에 대한 답안은 과제물 번호 "3"으로, 2번 문항에 대한 답안은 과제물 번호 "4"로 지정하여 제출하기 바랍니다.
- 답안 분량 제한은 없습니다. 아래 두 문제 모두 답하시기 바랍니다.
- 답안 작성에 Chat GPT 등 AI를 (일부라도) 사용한 경우, 그 점을 답안 첫머리에 반드시 공개하기 바랍니다.

문제 **[1]** 다음 구절들 및 그 외 논어의 구절을 고려하여, 예법(禮)과 공손함(恭)의 관계를 설명하라.

> 유자가 이렇게 말했다: "공손함이 예법에 가까우면 치욕을 멀리할 수 있다." (논어 1.13)
>
> 선생님이 이렇게 말했다. "예법에 맞지 않게 공손하면 고되기만 하지." (논어 8.2)
>
> 선생님이 이렇게 말했다. "다정하게 꾸며낸 말과 온화하게 지어낸 태도로 남을 대하고, 아주 공손하게 행동하는 것을 좌구명은 부끄러워했어. 나도 그래." (논어 5.24)
>
> 공손(恭)하고 경건(敬)한 마음이 예법이다. 사양(辭讓)하는 마음이 예법의 출발점이다. (맹자 告子上 6, 公孫丑上 6)

[이 문제의 답안은 법철학과 유가사상 "과제물 3"으로 제출]

문제 **[2]** 다음 구절을 참조하여 정치와 덕의 관계, 형벌과 예법의 관계를 설명하라.

"정략으로 통치하고 형벌로 다스리면 사람들이 요리조리 빠져나가고 부끄러움도 모르게 되지만, 덕으로 통치하고 예법으로 다스리면 부끄러움을 알게 되고 모든 게 제자리를 찾게 되지." (논어 2.3)

[이 문제의 답안은 법철학과 유가사상 "과제물 4"로 제출]

[끝]

Korean Contract Law I

End-term exam questions

Korean Contract Law I

16 June 2026

- Completed answers must be uploaded at https://lawlec.korea.ac.kr/essay by 18:00 on 16 June 2025.
- Answer to Question 1 should be uploaded as **written work No. 3**.
- Answer to Question 2 should be uploaded as **written work No. 4**.
- There is no length limit to your answers.
- If you have used (even partially) AI tools in preparing your answer, you must disclose that you are assisted by AI.

[1] Question 1

Mr Kim agreed to sell a plot of land to Mr Lee at the price of 6 billion KRW. It was agreed that the sale must be completed on 1 June 2019. On 1 May 2019, Mr Lee told Mr Kim that he would not be able to buy the land because his financial situation substantially deteriorated. Mr Kim terminated the contract on 1 September 2019 and sued Mr Lee for damages. The district court ruled on 1 October 2020 that Mr Lee must pay 0.6 billion KRW for damages. Mr Lee appealed. While the appellate proceedings are pending, Mr Kim sold the land to a third party at the price of 6.1 billion KRW on 1 February 2021.

The market value of the land in question was 5.4 billion in May – June 2019. The market value of the land rose to 5.7 billion in September 2019. At the close of the appellate legal proceedings (on 30 May 2021), the land was worth 6.2 billion KRW.

What is the correct amount of damages (if any) which must be awarded by the appellate court? (2021 End Term Examination question)

[Your answer to this question must be uploaded as **written work No. 3**.]

[2] Question 2

Alice agreed to sell her apartment to Bob at the price of 500 million KRW. The contract deposit (50 million KRW) was paid upon conclusion of the contract on 1 April 2023. The balance of the contract price was to be paid in two installments. The first installment must be paid on 30 April and the full balance must be paid on 1 June 2023, when the title to the apartment will be transferred to Bob. Alice and Bob understood and agreed that the current tenant, Charles, shall remain as the tenant until the expiry of the tenancy agreement on 31 December 2023.

The first installment was duly paid on 30 April 2023. On 1 June 2023, however, on the way to the estate agent to finalize the deal, Alice was hit by a car and hospitalized. She could not deliver the documents necessary to transfer the title to Bob. She is in a critical condition.

Bob had the fund ready on 1 June. However, since Alice did not show up, Bob did not send the money to Alice. While Alice was in the hospital and the title was still not transferred to Bob, a fire broke out in the apartment on 19 June 2023 because Charles forgot to shut off the LPG gas stove. The apartment is completed destroyed.

Alice’s son, David, sent an email to Bob and informed that the sale contract is now no longer binding. David offered to give full refund to Bob. But Bob declined. Bob argues that the apartment was worth 550 million at the time it was destroyed. Bob sues Alice to seek full refund plus a payment of damages in the amount of 50 million KRW.

Discuss how the dispute should be resolved. (2013 End Term Examination question, modified)

[Your answer to this question must be uploaded as **written work No. 4**.]

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

과제물 제출안내 (법철학과 유가사상)

2026학년 법철학과 유가사상 수업 과제물 제출 일정은 다음과 같습니다.

- 과제물의 분량은 A4 용지 2면 이내.
- 제출방법은 https://lawlec.korea.ac.kr/essay/ 에서 직접 업로드
- 제출 기한: 과제 [1]은 5월12일 23:00, 과제 [2]는 5월26일 23:00 까지

Chat GPT 등 AI를 (일부라도) 사용하여 과제물을 작성한 경우, 그 점을 과제물 첫머리에 반드시 공개하시기 바랍니다.

[과제1]

법의 구속력과 강제력에 대하여 설명하라.

[과제2]

논어의 첫 귀절 “學而時習之, 不亦說乎?” (學而 1.1)에 대해서는 “배우고 때로 익히면 즐겁지 아니한가”라는 해석과 “배우고, 그걸 적절한 때에 실천하면 기쁘지 않겠나”라는 해석이 가능한데, 이 두 해석 간의 차이점을 설명하라.

기말고사일정 및 과제물 제출 안내/End-term Exam and Written work assignments

핵심교양: 법철학과 유가사상

기말시험은 6월15일 목요일 오후2시에 강의실(교양관 605호)에서 실시합니다. 자신이 소지하는 모든 자료 참조 가능합니다(온라인 자료 포함, 노트북, 태블렛 등 지참 가능)(오픈북 시험).

과제물 제출 일정은 다음과 같습니다.

- 과제물의 분량은 A4 용지 2면 이내.
- 제출방법은 https://lawlec.korea.ac.kr/essay/ 에서 직접 업로드
- 제출 기한: 과제 [1]은 5월16일 23:00, 과제 [2]는 5월30일 23:00 까지

[과제1]

법의 구속력과 강제력에 대하여 설명하라.

[과제2]

논어의 첫 귀절 "學而時習之, 不亦說乎?" (學而 1.1)에 대해서는 "배우고 때로 익히면 즐겁지 아니한가?"라는 해석과 "배우고, 적절한 때에 그걸 실천하면 기쁘지 않겠나!"라는 해석이 가능한데, 이 두 해석 간의 차이점을 설명하라.

법학전문대학원: **Korean Contract Law I**

End-term examination will be held on 15 June at 10:30. You may consult all materials that are in your possession, including online materials (Open book examination).

Written works should be handed in as follows:

- Your written work should not exceed 2 sides of an A4 sheet.

- Completed written work must be uploaded at https://lawlec.korea.ac.kr/essay/
- Deadlines for the written works:
    - Assignment 1 must be handed in by 23:00 on 16 May.
    - Assignment 2 must be handed in by 23:00 on 30 May.

[Assignment 1]

Alice made an offer to Bob to sell her house in Seoul at the price of 360 million KRW. Alice's offer reached Bob on 24 March 2016. Bob took time to make up his mind. Bob sent the following email to Alice on Sunday 10 April at 11:32 am:

Dear Alice,

I have thought long and hard about your offer. Much as I would have hoped that you would offer a better price considering the deplorable state of maintenance (or lack thereof, rather) of the house, I decided to take it. Let's meet up next week to sort out the deposit payment of 36 million KRW (which is 10% of the contract price) and other details of the transaction.

Regards,

Bob

However, Alice's email server was experiencing a technical problem at the time and Bob's message could not be delivered to Alice's email account immediately. Bob's email server was holding the message and it kept trying to deliver the message.

On the same day, however, Alice telephoned Bob at 11:45 am (without knowing anything about Bob's email message) to tell him that she would be happy to make a better offer. She told Bob that she would agree to sell the house at 320 million KRW. Bob was happy to hear the good news and immediately agreed to buy the house at 320 million KRW. Bob did not say anything about the email because he simply assumed that Alice had read it when she telephoned.

Bob’s email was delivered to Alice on Monday 11 April 2016 at 9:42 am. When Alice opened her emails later that day, she realized that Bob’s email was sent before she telephoned him on Sunday morning. Alice was upset that Bob did not tell her about the email when they were speaking on the phone. Alice now insists that the contract price must be 360 million KRW. Bob was indignant because Alice changes her mind all the time. Bob insists that a new offer was made and it was accepted at the contract price of 320 million KRW.

Discuss how the dispute must be resolved.

[Assignment 2]

Viva Hospital (“Viva”) is a registered non-profit corporation licensed by the Minister of Health. Viva’s Memorandum of Incorporation stipulates that contracts which are worth more than KRW 1 billion must be approved by Viva’s founder, Dr. Chang.

Mr Bean is a director of Viva. On behalf of Viva, Mr Bean concluded a contract with Ms Kim at the price of KRW 1.5 billion to purchase a plot of land from her in order to have the new cancer research laboratory built on it. Mr Bean forged Dr Chang’s letter of approval for the contract and gave it to Ms Kim together with Viva’s Memorandum of Incorporation. The contract also has a provision where Mr Bean represented that the contract is in full compliance with Viva’s MOI and that Mr Bean has the full authority to conclude the binding contract on behalf of Viva.

Dr Chang discovered this transaction and claimed that the contract is null and void. Ms Kim insists that she was in good faith and that Viva cannot now disavow a contract which was executed by its director.

Discuss how this dispute must be resolved.

10. In his home town

1. When Confucius was in his home town, he was simple and meek. It looked as if he could barely speak. When he was in an ancestral temple or in a court, he spoke fluently without hesitation. But he was respectful.
[illegible]

2. In court, speaking to counsellors junior to him, he was frank and straightforward. With counsellors senior to him, he would debate cordially and courteously. When the ruler was present, he was polite and cautious. He was also austere and poised.
[illegible]

3. A ruler may ask him to receive a guest. When the guest arrives, he would wear a solemn face and tap the floor tile with his foot as a sign of respect. He would greet the guest from where he stood by joining his two hands at his chest. Before as well as after the greeting, his costume was neatly maintained. He would then move forward on his toes in quick steps like a fluttering bird. After the guest has left, he would always report back saying, “The guest has left without looking back.”
[illegible]

4. When entering the gate of a government office, he would always bend himself, as if the gate was not big enough. He would not stand in the middle of the gate. While entering the gate, he would not step on the threshold. When passing by a place housing ancestral tablets, he would wear a solemn face, tap the floor stone with his foot as a sign of respect and his speech would become like that of a feeble man. He would then hold the hem of his lower garment and climb up to the place,

bending himself and holding his breath almost as if he was not breathing. Coming out from the hall, as soon as he laid his foot on the first step, he would unwind. One could tell from his face that he was contented and elated. Having come down to the last step, he would respectfully move on in quick steps on his toes,
like a fluttering bird. When he re-passes by the place, he would be at ease and uninhibited.

[illegible]

5. When holding the jade insignia, he would bend himself, as if it was too heavy to hold. In receiving it from his superior or passing it to his subordinate, he would wear a face of trepidation. While he was holding the insignia, he would walk without lifting his heels from the ground, as if he was being carried away effortlessly. During sacrificial ceremonies, he looked like an expert in rituals and music. In private audience, he was jovial and congenial.

[illegible]

6. Our noble man avoided deep purple and orange in decorating the lapels of his coat. Red and violet were not used for his daily wear. In hot weather, he would wear an unlined jacket made of ramie. But he would always put on an outer garment over it before going out. Over a dark costume, he would wear a black lamb skin coat; over a white costume, he would wear a deer skin coat; over a brown costume, he would wear a fox skin coat. His usual skin coats were long except for the right-hand sleeve, which was cut short. He would always wear pyjamas when he went to bed. They were half his length. Fox and mink fur was used to give a full padding to his bedding. When the mourning period was over, he would wear decorations without restriction. With the exception of the prescribed courtly wear, he would always tailor down his clothes to fit him. Wearing a black lamb skin coat and black hat, he would not

attend a funeral. In the first month of the year, he would always wear the courtly costume and attend the court.

[illegible]

7. During purification, he would always rise at dawn, put on his cloth and say the sidereal prayer. During purification, he would always be on a special diet and stay in a different room.

[illegible]

8. He would prefer finely milled rice and thinly sliced meat. When the rice turned bad and began to have a funny taste, when the fish smelled slightly fishy, when the meat was a bit off, he would not eat. When the food was discoloured, he would not eat. When it smelled bad, he would not eat. When it was not piping hot, he would not eat. When it was not served at the right time, he would not eat.

When the food was not cut to the proper shape and size, he would not eat. When it was not accompanied by the right sauce, he would not eat. Even when meat was there in plenty, he would not let his appetite win over him. But he drank like a whale. He would not, however, go out of control. Purchased wine and dried meat from a market, he would not touch. He did not mind spicy food but he would not have it too much. After a sacrificial ceremony in a government office, he would not keep overnight the give-away meat. The meat used in a sacrificial ceremony at home, he would not keep it for more than three days. After three days, he would not eat it. While eating, he would not have long conversations. In bed, he would keep quiet. Even when he only had coarse rice and vegetable soup, he would set aside some of them for the spirits. He was always solemn when he did this.

[illegible]

寢不言。雖疏食菜羹，瓜祭，必齊如也。

9. If the cushions were not properly laid out, he would not sit.

席不正，不坐。

10. While drinking with the local people, only after the senior member has left would he also leave. When the local people were having a ritual to fend off a plague, he would wear his courtly costume and stand at the east side of the step.

鄉人飲酒，杖者出，斯出矣。鄉人儺，朝服而立於阼階。

11. When he was sending a man to a different country, he would bow twice and see him off. Lord Ji Kang sent him some medicine. He bowed and received it. Then he said, “Qiu is not equal to this. I dare not taste it.”

問人於他邦，再拜而送之。康子饋藥，拜而受之。曰：「丘未達，不敢嘗。」

12. His stable was burnt down. He came home from the court. He said, “Was anybody hurt?’ He did not ask about the horse.

廄焚。子退朝，曰：「傷人乎？」不問馬。

13. If a ruler sent him a dish, he would always correct his posture and have a taste of it first. If a ruler sent him raw meat, he would always cook it and eat it while it is hot. If a ruler sent him a live animal, he would always raise it. In attendance during a meal of a ruler, the ruler would set aside some food for the spirits first and then he would also eat. During serious illness, when the ruler was coming to see him, he would lay his head to the east and place the courtly costume on him and tie it with the belt. If a ruler summoned him, without waiting for the carriage to be harnessed, he would set off.

君賜食，必正席先嘗之；君賜腥，必熟而薦之；君賜生，必畜之。侍食於君，君祭，先飯。疾，君視之，東首，加朝服，拖紳。君命召，不俟

駕行矣。

14. When he was inside the Grand Temple, he would ask about everything.

入太廟，每事問。

15. A friend died. But the deceased had been homeless. He said, “Bring the corpse in my house for a funeral.” If it was a friend who sent him a gift, even though it might be a carriage or a horse, as long as it was not the give-away meat used in a sacrificial ceremony, he would not bow.

朋友死，無所歸。曰：「於我殯。」朋友之饋，雖車馬，非祭肉，不拜。

16. He did not sleep like a corpse. But he did not live in extravagance. If he saw that a man was in a mourning period, even though he knew him very well, he would invariably wear a solemn face. If he saw a man wearing the funeral cap or a blind man, even if the man was in a rag, he would always correct his posture. To those who were press-ganged to hard labour, he showed respect. He paid respect to those who were heavy laden. When he was served with an elaborate meal, he would always show a sign of astonishment and stand up. When there was a big lightening or a violent gale, he would invariably change his face.

寢不尸，居不容。見齊衰者，雖狎，必變。見冕者與瞽者，雖褻，必以貌。凶服者式之。式負版者。有盛饌，必變色而作。迅雷風烈，必變。

17. In climbing onto a carriage, he would always keep himself upright and hold the rope. Once in the carriage, he would not look around inside, he would not tell the driver to go fast, he would not point his finger at things.

升車，必正立執綏。車中，不內顧，不疾言，不親指。

18. Alarmed by people, the birds flew up. After circling around, they came down and gathered together. The Master said, Female pheasants in the mountain! It’s the right time! It’s

the right time!” Zi Lu served the bird to the Master. The Master sniffed the dish three times, then he rose.

色斯舉矣，翔而後集。曰：「山梁雌雉，時哉！時哉！」子路共之，三嗅而作。

Was Guan Zhong (管仲) a man of ren (仁)?

Guan Zhong (管仲; ca. 720BC-645BC) was the minister who assisted Duke Huan of Qi so that the State of Qi became the leading state (hegemon) during the Spring and Autumn Period of ancient China. But Confucius apparently had harsh things to say about him:

> *“Guan Zhong is a man of small calibre! (*관중은 쪼잔해*!* 管仲之器小哉！*)” (*八佾 *3.22)*

Someone asked clarification.

> *“You mean, he was frugal?* 管仲儉乎？*”*

Confucius did not mince his words. He made scathing remarks about Guan Zhong’s staggering wealth. According to Confucius, Guan Zhong did not know Li 禮 either.

> *He had three residences, each complete with a full array of domestic staff. How could he be frugal? Only a ruler can have a gate screen. But Guan Zhong had one. Only when a ruler entertains another ruler, can he have a cup stand. But Guan Zhong had a cup stand. If he knew Li, who didn’t?*

However, regarding the question of ethical integrity (仁), Confucius shows a very interesting response. Was Gaun Zhong a

man of ethical integrity? That was the question posed by Confucius' students.

> *Zi Gong said, "Guan Zong lacked ethical integrity, did he not? When Duke Huan of Qi had his brother Jiu killed, Guan Zhong was unable to commit suicide. He instead served Duke Huan as his minister." (□□ 14.17)*

Jiu was the elder brother of Duke Huan. Guan Zhong was originally serving Jiu. When there was an armed conflict between brothers who were competing for the throne of Qi, Guan Zhong attempted to assassinate Duke Huan. But the attempt was unsuccessful and Jiu had to flee to a neighbouring state. When Duke Huan eventually came to the throne of Qi, he put pressure on the ruler of the neighbouring state (who harbours Jiu) to have Jiu killed. Jiu was duly killed and his body was pickled and presented to Duke Huan. When a ruler is killed, it was 'appropriate' and perhaps 'ethical' for his minister such as Guan Zhong to commit suicide. For instance, minister Shao Hu who had been serving Jiu committed suicide when Jiu was killed. But Guan Zhong not only not killed himself but somehow enlisted the help of his close friend Bao Shuya (□□□) who was an aide to Duke Huan. Bao recommended Guan Zhong to Duke Huan and Guan Zhong became his minister. Guan Zhong must have had a superbe skill of winning the mind of his former enemy. Zi Gong, however, denounces Guan Zhong's apparent lack of 'ethical integrity'. However, Confucius replied as follows:

> *Guan Zhong acted as prime minister to the duke Huan, made him leader of all the princes, and united and rectified the whole kingdom. Down to the present day, the people enjoy the gifts which he conferred. Without Guan Zhong, we should now be wearing our hair unbound, and the lappels of our coats buttoning on the left side. Will you require from him the small fidelity of common men and common women, who would commit suicide in a stream or ditch, no one knowing anything about them? (□□ , 14.17)*

Zi Lu asked a similar question. Confucius’ reply was even more definitive.

> *When the duke Huan caused his brother Jiu to be killed, Shao Hu died with his master but Guan Zhong did not die. May not I say that he was lacking ethical integrity?*
> *The Duke Huan assembled all the princes together without even using weapons of war and chariots – it was all through the influence of Guan Zhong. Have ethical integrity like him! Such ethical integrity as his!* 子曰：「桓公九合諸侯，不以兵車，管仲之力也。如其仁！如其仁！」*(*憲問*, 14.16)*

There is another passage where Confucius extols Guan Zhong’s great virtue.

> *Someone asked about Zi Chan. Confucius replied. ‘He was kind.’ Someone asked about Zi Xi. Confucius said, ‘Oh dear, don’t ask me about him. Not him!’ Someone asked about Guan Zhong. Confucius said, ‘A great man, indeed. He grabbed the town of Pian which had three hundred households from the Bo family. The villagers only managed to have coarse meals, but no one had bad feelings until the end (even when they had no teeth from old age).’(*憲問*, 14.9)*

What then? All is well that ends well? The end justifies the means? All is forgiven as long as you get the result? Definitely not! There are simply too many passages where Confucius emphasised that the process counts, rather than the result. Even if you cannot hope to have a result, you must nevertheless endeavour in all earnest.

Ethical integrity, morality is far more complex. It cannot be simply explained in black on white. It is certainly not a matter of some “inflexible” principle. It is not something that can be approached from dogmatic or absolute terms.

A good deal of common sense and flexibility would put you on

the right path, provided that you have the right training and the right frame of mind – provided also that you have the determination to improve yourself constantly.

Advice to Kangshu (□□)

Original text

[Duke of Zhou] spoke thus: Lord of lords, my younger brother Feng! Our illustrious father the late King Wen (□□) has shown splendid virtues and prudently applied punishments (□□□□). He dared not despise widows and widowers. He employed the employable, respected the respectable. He was fearsome against the feared. He shined in the eyes of the people. He thus started our area, then it grew beyond our one or two regions and this is how we came to rule our western territory. All this while, he diligently sought counsel from the Lord Above (□□) and the Lord was pleased. Heaven therefore ordained King Wen to conquer the Yin. The heavenly mandate reached its territory and its people. They are provided for at the moment. Your humble elder brother (Duke of Zhou) made some efforts and thus you are here in this eastern territory.

Oh, Feng, keep this in mind. Whether these people will remain reverent would depend on whether you take the example of the late King Wen and follow his virtuous words (□□). Please do a comprehensive study of earlier sage kings of Yin so that you can govern these people well. You should uphold the teachings of Shang elders so that you can win their heart and know what to teach them. You should specially seek counsel of the ancient sage kings so that you make people prosper and protect them. When your virtues are great enough to reach the sky, you will not be cast away in the execution of the king’s commands.

My little brother Feng! Feel the pain of the people as if it is your own. Be mindful of the Heaven. Fearful as it may be, Heaven helps those who are sincere. You can see the public opinion in its broad outline, but it is difficult to retain small men. When you are there, give all your heart. Do not indulge in leisure and pleasure. Govern people instead. I heard thus, “Grievance does not arise from abundance or shortage; it arises from lack of principle in giving rewards and lack of the ruler’s efforts.”

It is true, my little brother, you must ensure that the Yin people are well protected and that they obey the king. You must assist the royal house in fulfilling the Heaven’s mandate by renovating these people (□□□).

Oh, Feng, please be cautious and transparent in applying punishments (□□□□). Suppose a person commits a small crime. If it is not a mishap but an intentionally committed violation of the rules, then the law is that – even though the crime may be small – he cannot but be put to death. On the other hand, even though the crime is great, if it was not intentionally committed but a disastrous mishap, then the equity is that – if the person has already fully admitted its fault – he shall not be put to death.

Oh, Feng, if these are properly done, people will obey splendidly. They will regulate themselves and strive for harmony treating the misdeed as if it is a disease. They will abandon their evil deeds. Protect them as if they are your own babies. They will prosper and be orderly. It is not you, Feng, who punish or execute people. Do not punish or execute them arbitrarily. It is not you, Feng, who cut the nose or ears of the people. Do not arbitrarily cut people’s nose or ears.

When ‘external’ affairs are presented to you, let the appropriate legal offi□cer (□□) deal with them according to the punishments of Yin which stand to reason. When interrogating a prisoner, reflect for five, six or upto ten

days before making the definitive decision. When legal officer pronounces the punishments in the proceedings you supervise, make sure that they are in accordance with the Yin law and the punishment and the execution are just. Do not use them to suit your personal feelings, saying, “I think this is proper”, “I think this is not in order”. [It is true, Feng, you are young. There is no one who has a heart like yours. You know my heart and my virtue.]

Those who commit the crime of robbing, stealing, treachery, killing, laying hands on other’s goods or committing violence without fearing one’s life, are to be abhorred. But the greatest evil to be abhorred all the more is lack of filial piety and brotherly love. The son who does not serve his father with respect, but greatly hurts his father’s heart; the father who does not love his son, but hates him; the younger brother who does not think of Heaven’s brightness, and does not respect his elder brother; the elder brother who does not have compassion for his tender younger brother, and treats him coldly and suppress him: if we do not deal with the people who commit these crimes, the law which our people have received from the Heaven will be greatly annihilated and disturbed. This is why these conducts need to be constrained. They must have the punishment or execution as set down by King Wen without pardon.

When the great command is disobeyed; moreover, when junior lords, village chiefs, their deputies and minor offi□cers sent out [to Yin] entrusted with power give commands arbitrarily and cause havoc; and when people in general, without scruple and without diligence, plague their ruler, evils arise. And I abhor them. This is why you need to deal with them and put them to death in accordance with rightness.

Also, when the ruler and the heads cannot manage to control their own family members and when their small offi□cers and retainers cause terror and commit cruelty, that is to greatly abandon the king’s commands and to use punishments without

virtue (□□□□). You too must never fail to uphold the law and make people happy just as King Wen made them happy through his cautious reverence for the law. Having made the people happy, if you can say, “I made it”, I shall be happy.

Feng! people should be guided by auspiciousness and happiness. Use the virtue of earlier sage kings of Yin and seek to govern people well. It is not right to lead people astray. If people do not follow your lead, then there is no government in that country.

Feng! I cannot but reflect upon and tell you these virtuous sayings about administration of punishments (□□□□□□□). At the moment, the people are not quiet. A lot of them have not made up their mind to follow us. They have not yet become one with us. Only Heaven will punish those who kill us. We should not blame them as long as their crimes are not with their magnates, are not widespread. It is said, “If it is manifest, it will be heard in Heaven.”

Oh, Feng! Be cautious and respectful. Do not cause grief. Do not use bad counsel, do not follow the crooked way. Please practice virtue diligently. Have firm resolve. Scrutinise your own virtue. Have a grandiose plan. Be generous to the people to bring them comfort. Then I shall have no occasion to blame you or to remove you.

Oh, my little brother Feng! Our mandate is not permanent. You must remember it. Do not make me remove you. Obediently carry out the mandate clearly. Uphold what you heard from me. Govern people well.

Go, Feng! Do not ruin the revered law. Listen to my advice. You will then be venerated by Yin people generation after generation.

Contract interpretation

The fundamental rule of contract interpretation is that contractual language must in principle be given effect as it is written. The Korean Supreme Court (the highest court in Korea for civil and criminal matters) has consistently ruled as follows:

> *Once the court is satisfied with the authenticity of the contractual document, the court must, in the absence of clear and convincing evidence to deny what is written, recognise the existence and the content of the parties' intent as it is written on the contractual document. (Supreme Court Judgment 2002Da23482 dated 28 June 2002)*

The importance of contractual language is further emphasised as follows:

> *In interpreting a contract, if the parties' true intent is not knowable, the interpretation should be based on the intent inferred from outward expressions rather than the intent inside the parties' mind because what constitutes the contractual intent is the intent inferred from expressions, i.e., the expressed intent, rather than the intent which was held in the parties' mind.*[2]
>
> [2]*Ibid.*

The Supreme Court also ruled that "contract interpretation aims to establish clearly the objective meaning the parties assigned to the expression. While the court is not always constrained solely by the language chosen by the parties, the

court's task is nevertheless to base itself on the contractual language and to interpret reasonably the objective meaning which the parties assigned to the expression regardless of what the parties might have entertained in their mind."[3]

If the objective meaning is unclear from the language of the contract, the Supreme Court has given guidance as follows: "when the court has to interpret the intent of the parties because there is a difference of views as to the interpretation of the contract, the interpretation must be done reasonably in accordance with logic and rules of experience, taking account comprehensively of the textual content, motives and circumstances leading to the agreement, the aim and purpose which are to be achieved by the agreement as well as the parties' true intent."[4]The Supreme Court has also held that the interpretation must be consonant with the notions of justice and equity as well as the common sense of the general public and the ordinary commercial understanding.[5]

3Supreme Court Judgment 2000Da40858 dated 23 March 2001. Also see Supreme Court Judgment 2002Da23482 dated 28 June 2002.

4Supreme Court Judgment 93Da32668 dated 25 March 1994; Supreme Court Judgment 96Da1320 dated 9 April 1996. Similar rulings are repeated in a number of cases. For example, Supreme Court Judgment 92Da47236 dated 24 August 1993. The "rules of experience" mean rules derived from the experience of living in society (□□□□□ □□□□ □□ □□).

5Supreme Court Judgment 2008Da90095, 90101 dated 14 May 2009.

To govern (政 zheng) and 孝(xiao)

1. The Night Sky

- The Master said, “To govern with virtue is like being the Pole Star. You stay put and all the stars venerate you.” 子曰：「為政以德，譬如北辰，居其所而眾星共之。」(2.1)
- Our illustrious father the King Wen greatly promoted virtue (德) and cautiously applied punishments (罰). 惟乃丕顯考文王 克明德慎罰. 尙書, 康誥 2

2. Everything in its right place: 君君，臣臣，父父，子子

- The Master said, “Govern people with politics and align them with punishments, they will evade and have no shame. Govern them with virtue and align them with Li, they will have decency and things will be in the right place (格).” 子曰：「道之以政，齊之以刑，民免而無恥；道之以德，齊之以禮，有恥且格。」(2.3)
- Duke Jing of Qi asked about governing. Confucius said, “A ruler should be a ruler, a minister should be a minister, a father should be a father and a son should be a son.” The Duke said, “Lovely answer! Suppose a ruler is not a rule, a minister is not a minister, a father is not a father and a son is not a son, then even if there may be grains of millet, how can I eat them?” 齊景公問政於孔子。孔子對曰：「君君，臣臣，父父，子子。」公曰：「善哉！信如君不君，臣不臣，父不父，子不子，雖有粟，吾得而食諸？」

3. Proper punishments (刑之中)

- **Pre-confucian sources:**
    - If governing is done properly, people will obey.

    有敘時乃大明服 (尚書, 康誥 6)

  - With upright application of proper punishments, you should guide and govern people to make them splendid 故乃明于刑之中，率乂于民棐彝。(尚書, 呂刑 3)

- **Analects:**
  - Duke Ai asked, “What should I do to make people obey?” Confucius replied, “If you promote and employ the straight to grind out the crooked, people will obey. If you promote and employ the crooked to grind out the straight, people will not obey.” 哀公問曰：「何為則民服？」孔子對曰：「舉直錯諸枉，則民服；舉枉錯諸直，則民不服。」(2.19)
  - Zi Lu said, “Suppose the ruler of Wei recruits you and entrusts the governing. What will you do first?” The Master said, “I would rectify names, first of all.” Zi Lu said, “There you go. You’re always taking a long detour, aren’t you? How come rectifying names is your first priority?” The Master said, “How uncivilised you are! A noble man would remain quiet when it is about something he does not know. If names are not correctly used, your speech will be feigned. With a feigned speech, you cannot accomplish anything. If things are not accomplished, the Li and the Music will not flourish. If the Li and the Music do not flourish, punishments will not be properly administered. If punishments are not properly administered, people would not know where to stand. If a noble man should name names, he must be able to defend it. If he should say things, he must be able to act on it. When it comes to speech, a noble man ought not to talk nonsense.” 子路曰：「衛君待子而為政，子將奚先？」子曰：「必也正名乎！」子路曰：「有是哉，子之迂也！奚其正？」子曰：「野哉由也！君子於其所不知，蓋闕如也。名不正，則言不順；言不順，則事不成；事不成，則禮樂不興；禮樂不興，則刑罰不中；刑罰不中，則民無所措手足。故君子名之必可言也，言之必可行也。君子於其言，無所苟而

已矣。」(13.3)

- The Master said, “A noble man cherishes virtue, a small man cherishes land. A noble man is mindful of punishment, a small man is mindful of benefit.” 子曰:「君子懷德，小人懷土；君子懷刑，小人懷惠。」(4.11)

- **Post-confucian sources:**
  - Through an upright application of punishments, let the people have the sense of shame. 以明刑恥之 (周禮, 秋官司寇 57)
  - Li does not reach down to the rank and file. Punishment does not reach up to the magnates. 禮不下庶人，刑不上大夫 (禮記, 曲禮上 68). ??
  - [When Confucius was appointed the Chief Law Enforcement Officer of Lu, he had executed a magnate Shao Zheng Mao (少正卯) on charges of corruption.] The words got around and a few months later, merchants selling pork or mutton did not try to rip off the customers; men and women used different sides of a road; no one touched lost or misplaced items in the street; and visitors from foreign countries obtained what they wanted from the officials without bribing them. (史記, 孔子世家 19)

4. xiao (孝) in the context of Zhou feudalism

- Master You said, “A person who loves his parents and brothers and yet loves to attack his superiors is hard to find. A person who does not love to attack his superiors and yet loves to start a rebellion is unheard of. A noble man will strive to get the basics properly done. When the root is solidly established, the Way will flourish. Respect for parents and affection for brothers are the root of ethical integrity.” 有子曰:「其為人也孝弟，而好犯上者，鮮矣；

[illegible](1.2)

- The Master said, “When your father is alive, you should observe what he intends. When he is dead, you should observe what he did. If you do not change your father’s way for three years, you can be called a dutiful son. [illegible](1.11)
- Zi Zhang said, “In the Documents, there is a passage ‘Gao Zong did not speak for three years when his father died.’ What does that mean?” The Master answered, “Not only Gao Zong, but all rulers in olden days were like that. When a ruler dies, officials reported to the Prime Minister and the governing was done by the Prime Minister’s order. This continues for three years.” [illegible](14.40)
    - ([illegible], [illegible] 23): When the Emperor Xiao Yi died, his son Wu Ding [=Gao Zong] was established as the new emperor. Emperor Wu Ding wanted to rejuvenate Yin but he could not secure his aides. For three years, he did not speak. He let the governing be done by the Prime Minister’s decisions and observed the trends of the country. [illegible]

- Master Zeng said, “I heard the Master saying as follows: Lord Meng Zhuang’s love for his parents can be emulated by others. But he did not replace his father’s ministers and he did not change his father’s policies. That is difficult to emulate.” [illegible](19.18)
- cf. Meng Zi’s misunderstanding: When a ruler dies, the new ruler would let the Prime Minister do the governing. The new ruler would eat porridge, his face dark with sorrow. He keeps wailing upon acceding to the throne. Officials down to the lowest grade dare not fail to grieve. [illegible] ([illegible], [illegible] 2)

- Confucius’ own remarks about mourning period: Three year mourning is normally practised everywhere. (17.21)

5. Honesty (□)

- Duke She (□□) told Confucius, “In my village, there is a very honest person. When his father stole a sheep, he testified against it.” Confucius said, “In my village, honesty is different. A father may cover up his son’s deed. A son may cover up his father’s deed. Honesty can be there.” [illegible](13.18)
- Duke She asked Zi Lu about Confucius. Zi Lu ignored him. The Master said, “Why didn’t you say that he is the kind of man who would forget about eating when he is outraged, forget his worries when he is happy and he does not know that old age will eventually get to him.” [illegible](7.19)
- Duke She asked about governing. The Master said, “If you make people near you happy, far away people will come to you.” [illegible](13.16)

What did Confucius say about honesty?

- One should live with honesty. If you live crookedly, all you can manage, if lucky, is to avoid being caught.” [illegible](□□ 6.19)
- The Master said, “There are three types of helpful friends and three types of harmful friends. Honest friends, sympathetic friends and erudite friends are beneficial. Bigoted friends, slippery friends and silver-tongued friends are harmful.” [illegible] (□□ 16.4)
- Zi Zhang asked, “What should an officer do to become a successful person?” The Master said, “What do you mean by ‘success’?” Zi Zhang answered, “Renowned in the

country, renowned in the family.” The Master said, “That is a renown. It is different from ‘success’. A successful person is honest in his substance and is fond of righteousness. He cautiously observes people’s speeches and appearances. He is considerate to people who are below him. Such a person is a success wherever he may be. A renowned person puts on an appearance of being ethical but his actions are against it. He remains and indulges in his position without self reflection. Such a person is bound to be renowned in the country and in the family.” 子張問：「士何如斯可謂之達矣？」子曰：「何哉，爾所謂達者？」子張對曰：「在邦必聞，在家必聞。」子曰：「是聞也，非達也。夫達也者，質直而好義，察言而觀色，慮以下人。在邦必達，在家必達。夫聞也者，色取仁而行違，居之不疑。在邦必聞，在家必聞。」(顏淵 12.20).

- When honesty is not in accordance with Li, it becomes a snare. 直而無禮則絞 (泰伯 8.2),
- When you cherish honesty and does not cherish learning, you end up in a straight jacket. 好直不好學 其蔽也絞 (陽貨, 17.8)
- Learning will make you overcome inflexibility. 學則不固 (學而 1.8)
- Zi Gong said, “Does a noble man also have hatred?” The Master said, “Of course. He hates those who speak ill of others. He hates those who live a lowly life and slander superior people. He hates those who have courage and yet fail to abide by Li. He hates those who are bold and yet have a closed mind.” The Master then said, “Ci (賜), do you also have hatred?” Zi Gong replied, “I hate those who beat around the bush and treat it as wisdom. I hate those who are rude and think that they are courageous. I hate those who rat on others and think that they are honest.” 子貢曰：「君子亦有惡乎？」子曰：「有惡：惡稱人之惡者，惡居下流而訕上者，惡勇而無禮者，惡果敢而窒者。」曰：「賜也亦有惡乎？」「惡徼以為知者，惡不孫以為勇者，惡訐以為直者。」 (陽貨 17.24)
- Modern debates about Lunyu 13.18 largely miss the complexity of honesty. Instead, they were lost in the maze created by introducing xiao (孝), ren (仁) and criminal procedural technicalities into the discussion:
    - H Rosemont, R Ames, “Family Reverence (xiao 孝) as the Source of Consummatory Conduct (ren 仁)” Dao, 7

(1), 9-19 (2008)
- Xiaomei Yang, “Reframing the Issue in 13.18 of the ‘Analects of Confucius’: Family Privileges in Criminal Litigation and the Confucian Insight”, Dao, 23(3), 377-395 (2024)

6. Mencius (372-289 BCE), Warring States Period (475-221 BCE), “xiao (孝) fundamentalism”

- Emperor Shun (舜) (legendary, 2294-2184)
- His father Gu Sou (瞽瞍)
- Justice Minister Gao Yao (皋陶)
- Gu Sou commits a murder and is arrested. Shun smuggles out Gu Sou. Shun and Gu Sou escape to a seaside town and they live happily ever after.
- Ethical Black Hole (孟子, 盡心上 35; 萬章上 1-3)

Xiao, Di (孝, 弟) should apply beyond the family

- Lord Ji Kang asked, “What should I do to encourage people to be respectful and loyal?’ The Master said, “Face them with splendour, they will be respectful. Show them filial love and compassion, they will be loyal. Take the good examples to teach those who are less able, that is to encourage.” (2.20)
- Someone said to Confucius, “Sir, why are you not engaged in governing?” The Master said, “In the Documents, it is said, ‘Filial love and brotherly love. Apply them to governing.(孝乎惟孝 友于兄弟 施於有政).’ What I do is also governing. Is it not governing?” (2.21)
- The Master said, “Hey guys, when you are at home, have filial love (孝 xiao). When you are outside, have brotherly love (弟 di). Be earnest and trustworthy. Comprehensively love all living beings but closeness

should be based on ethical integrity. Conduct should come first. Then, study culture and civilisation when you have energy to spare.” (1.6)

- Si Ma Niu was unhappy and said, “Everybody has brothers. But I am all alone.” Zi Xia said, “I heard thus: Life and death take their course as ordained. Wealth and poverty are made in Heaven. A noble man will tread cautiously and will not make mistakes. A noble man will respect people and abide by Li. If you conduct yourself in this manner, within the four seas, everyone is your brother. How can a noble man worry about not having a brother?” [illegible] (12.5)
- [Actually, Si Ma Niu had a brother, [illegible] Huan Tui, who attempted to assassinate Confucius. Analect 7.23. Zuo Zhuan, Duke Ai, 14]

[illegible]1 [illegible] [illegible]

Question 1

- Duty to disclose

Whether Mr Kim committed an act of deception will depend on whether Mr Kim has a duty to disclose and whether Mr Kim had the requisite intent to deceive and to induce Ms Lee to conclude the contract.

If it can be concluded that a road plan affecting a portion of the garden is not something which has a substantial impact on the buyer’s decision, there cannot be any duty to disclose on the part of Mr Kim.

- Ms Lee’s first notice of termination

Assuming that Mr Kim has no duty to disclose, Ms Lee's first notice of termination shall be invalid. Ms Lee shall be in repudiatory breach. Ms Lee shall also be in mora creditoris.

- Mr Kim's impossibility of performance

On or after the closing, both parties' contractual obligations shall remain obligations without a due date. As Ms Lee is in mora creditoris, Mr Kim shall only be liable for intentional or grossly negligent breach. Mr Kim's failure to pay interest on his loan, which led to the foreclosure of M Bank, shall be assessed as Mr Kim's **intentional** breach of contract. Mr Kim shall thus be held liable for his impossibility of performance. Ms Lee's second termination notice shall therefore be valid.

- Damage

Ms Lee shall be entitled to damage award (in addition to termination). But the amount shall be reduced taking account of the parties' comparative negligence.

- Alternatively, in the event Mr Kim is found to have a duty to disclose

If the court or the tribunal finds that the road plan which affects a portion of the garden has a **substantial** impact on Ms Lee's decision to purchase the property, then Mr Kim shall have a good faith duty to disclose the road plan. Mr Kim's failure can, in such a case, amount to a deception if Mr Kim had the requisite intent. Ms Lee's first 'termination' notice can in that case be interpreted as a notice of rescission (voidance). If Mr Kim did not have the requisite intent to deceive and to induce Ms Lee to conclude the contract, Mr Kim's failure to disclose can still constitute a breach of contract. In such a case, Ms Lee's first termination notice can most probably be valid (assuming that the road plan is found to have a **substantial** impact on Ms Lee's decision to purchase the property, Mr Kim's failure to disclose will be

assessed to be a ‘material’ breach).

Question 2

- If Y does not terminate the contract, but seek damages in lieu of performance

Then the amount of Y’s damage entitlement must be assessed as of the date of impossibility (1 Jan 2018). Y shall be entitled to the market value of the property as of 1 Jan 2018, which is 1.4 billion KRW plus interest from 2 Jan 2018.

X shall not have any defence. X shall be entitled to keep the money received from Y.

- If Y terminates the contract and seeks damage (which is not a wise step for Y to take)

Both parties must restore everything. Additionally, X has also to pay interest on the purchase price he received from the date he received the money. Y has also to pay market rate of rent for the property from the date he took the delivery.

Additionally, Y can choose between performance measure damage (0.4 billion KRW) or reliance measure damage.

X can have a defence of simultaneous performance to refuse (i.e., delay) payment of damage until Y disgorges the benefit of using the property (assuming Y has not done so to Z, see 2016Da240).

- If X did not know, at the time of the contract, that the property did not belong to him [however, this point was not considered in grading as it was not covered by this semester’s syllabus]

X can terminate the contract (Art, 571(1)). Then all the consequences of termination and the defence of simultaneous performance explained above shall apply.

X shall have to pay damage to Y (but Y can choose between

performance measure damage and reliance measure damage).