

법률학개론

시험일: 2026.6.16

- 시험 시간: 6월 16일 21:00 ~ <https://lawlec.korea.ac.kr/essay> 에서
시험을 보실 수 있습니다.
- 1번 문제를 선택하여 300자 이상, 2번 문제를 선택하여 400자 이상
답변하십시오.
- 답을 작성할 때 논리를 분명히 하십시오.
- 답을 작성할 때 Chat GPT 또는 AI (인공지능)를 사용하지 마십시오.

문제 [1] 법은 사회 질서를 유지하고, 법(法)의 지배(法治)를 실현합니다.

법(法)의 지배(法治)란: “법(法)이 사회 질서를 유지하고, 법(法)의 지배(法治)를 실현하는 것.” (헌법1.13)

법(法)의 지배(法治)란: “법(法)이 사회 질서를 유지하고, 법(法)의 지배(法治)를 실현하는 것.” (헌법8.2)

법(法)의 지배(法治)란: “법(法)이 사회 질서를 유지하고, 법(法)의 지배(法治)를 실현하는 것.” (헌법5.24)

법(法)의 지배(法治)란: “법(法)이 사회 질서를 유지하고, 법(法)의 지배(法治)를 실현하는 것.” (헌법6, 66)

[1번 문제를 선택하여 300자 이상 답하십시오]

문제 [2] 법은 사회 질서를 유지하고, 법(法)의 지배(法治)를 실현합니다.

“법(法)이 사회 질서를 유지하고, 법(法)의 지배(法治)를 실현하는 것.” (헌법 2.3)

[2번 문제를 선택하여 400자 이상 답하십시오]

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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 completely 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.**]

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□□□□□□□□: **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.

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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.

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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."

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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,

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)

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 officer (□□) 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 officers 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 officers 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."⁴The 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 (사회생활의 경험에서 비롯된 법규칙).

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，居其所而眾星拱之。」(2.1)
- Our illustrious father the King Wen greatly promoted virtue (德) and cautiously applied punishments (刑). 子曰：「周文王為西伯伯也，自此下皆受其術焉。是故君子居則貴之，動則敬之，以其德教加於百姓，是以天下莫不歸之。」 2

2. Everything in its right place: 齊景公問政

- 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 (齊).” 齊景公問政於孔子。孔子對曰：「君君，臣臣，父父，子子。」(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 ruler, 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，吾誰可以食也？」

3. Proper punishments (齊宣)

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

子曰：「政者，正也。君子必先正其身，然後正其家，然後正其國，然後正其天下。」(論語，卷 6)

- With upright application of proper punishments, you should guide and govern people to make them splendid (論語，卷 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." (論語，卷 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."

子曰：「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。」(論語，卷 19)

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.” 名譽與成功不同。成功者誠實於其本質，且好義。他謹慎地觀察人們的言談和舉止。他對於地位比他低的人，是體恤的。這樣的人，無論在何處，都是成功的。有名聲的人，表面上是合乎道德的，但實際上他的行為卻是相反的。他安於其位，且不加反省。這樣的人，必然在國家和家族中，都享有名聲。(論語 12.20)。

- When honesty is not in accordance with Li, it becomes a snare. 不誠則為罟 (論語 8.2),
- When you cherish honesty and does not cherish learning, you end up in a straight jacket. 好信不好學，自取滅亡 (論語, 17.8)
- Learning will make you overcome inflexibility. 學以成德 (論語 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 (齊), 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.” 子貢問曰：「君子亦有惡乎？」子曰：「有惡。惡稱人之惡者。惡居下流而汕上流者。惡勇而无禮者。惡果而无地者。惡聞過而無改者。」子曰：「齊亦有惡乎？」子貢曰：「有。惡巧言令色者。惡居下而汕上者。惡勇而无禮者。惡聞過而無改者。」(論語 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 (瞽叟)
- 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 (悖论, 孟子 35; 孟子 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. (孝悌也者 王政之本也).' 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?” (12.5)
 - [Actually, Si Ma Niu had a brother, Huan Tui, who attempted to assassinate Confucius. Analect 7.23. Zuo Zhuan, Duke Ai, 14]
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Question 1

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).