

Fundamentals Level – Skills Module

Corporate and Business Law (China)

Monday 8 December 2014



Time allowed: 2 hours

This paper is divided into two sections:

Section A – ALL 45 questions are compulsory and MUST be attempted

Section B – ALL FIVE questions are compulsory and MUST be attempted

Do NOT open this paper until instructed by the supervisor.

You must NOT write in your answer booklet until instructed by the supervisor.

This question paper must not be removed from the examination hall.

The Association of Chartered Certified Accountants

Paper F4 (CHN)

ACCA

Section A – ALL 45 questions are compulsory and MUST be attempted

Please use the space provided on the inside cover of the Candidate Answer Booklet to indicate your chosen answer to each multiple choice question.

1 Which of the following courts may set up several tribunals in the area under its jurisdiction, according to the conditions of population and number of cases?

- A Basic people's court
- B Intermediate people's court
- C Higher people's court

(1 mark)

2 What is jurisdiction by designation?

- A The jurisdiction agreed by the parties in their contract to hear their disputes
- B The jurisdiction authorised by the people's court at a higher level to try cases of first instance
- C The jurisdiction decided by people's courts at the same level, if all these courts have jurisdiction over a particular case
- D The jurisdiction decided in accordance with the location of the subject matter

(2 marks)

3 Disputes about which of the following shall be heard by a people's court that has the exclusive jurisdiction?

- A Sales contracts
- B Securities transactions
- C Real estate transactions

(1 mark)

4 Which of the following statements about territorial jurisdiction is correct?

- A A litigation concerning commercial dispute is under the jurisdiction of a court located in the place where the dispute takes place
- B A dispute brought over a contract is under the exclusive jurisdiction of a court located in the place where the contract is performed
- C A litigation brought against a legal person is under the exclusive jurisdiction of a court located in the place where the claimant is incorporated
- D Litigation brought against a natural person is under the jurisdiction of a court located in the place of the defendant's domicile

(2 marks)

5 Which of the following property rights becomes effective without being subject to a registration of property?

- A The creation of right in immovables
- B The modification of right in immovables
- C The natural resources owned by the State pursuant to law

(1 mark)

6 Which of the following statements about the delivery of movables is correct?

- A** The assignment of rights in vessels and aircrafts, if unregistered, shall not be enforced against a third party in good faith
- B** The creation of rights in movables shall not become effective upon delivery
- C** The assignment of rights in vessels and aircrafts shall not become effective without a registration

(1 mark)

7 Which of the following statements in relation to co-ownership is correct?

- A** Commonly-owned property refers to a situation where a joint owner enjoys the ownership of the property on the basis of their proportion
- B** Commonly-owned property refers to a situation where an owner enjoys the ownership of the property on a common basis
- C** Common ownership includes tenancy in common and joint ownership

(1 mark)

8 Which of the following rights is NOT held by a holder of a usufructuary right?

- A** To possess a piece of construction land
- B** To dispose of the property
- C** To construct a building on the construction land

(1 mark)

9 For the purposes of construction projects, the landowner shall first acquire the right to use the land for construction.

Which of the following projects, with regard to the land use right, must be allocated by means of auction or bidding?

- A** Building a supermarket in a residential area
- B** Building a rescue and aid centre of the district government
- C** Building a hospital for a community
- D** Building a middle school near a residential area

(2 marks)

10 Which of the following is NOT a legal remedy for a property holder to apply to a people's court where a property right is infringed?

- A** An order to confirm the right
- B** An order to return the original object
- C** An order to provide a guarantee
- D** An order to remove the impediment

(2 marks)

11 X fails to perform their obligation and Y seeks to exercise the right of mortgage.

Which of the following ways, in relation to the various ways for dealing with the mortgaged property, is NOT permissible by the law?

- A The mortgaged property may be converted by auction
- B The mortgaged property may be converted by being sold off
- C Parties may agree upon the means of realising the mortgage right
- D Parties may agree that the mortgaged property be used for offsetting the debts as per its value in the mortgage agreement

(2 marks)

12 Which of the following is allowed to be mortgaged under the Property Law?

- A Fund units and stock rights
- B The right to use construction land
- C Intellectual property
- D Receivables

(2 marks)

13 Which of the following statements about labour contracts is correct?

- A All labour contracts shall include a probation clause
- B The probation period in any labour contract shall not be shorter than three months
- C An employer may dissolve the labour contract during the period of probation
- D The probation period in any labour contract shall not exceed 12 months

(2 marks)

14 Which of the following statements in relation to a non-fixed term labour contract is correct?

- A It may not be dissolved by an employer under any circumstances
- B It shall be concluded where an employee has worked for the employer for a term of at least five years
- C It is a labour contract in which the employer and employee have agreed not to stipulate a definite end date
- D It may not be dissolved by an employee within ten years after the conclusion of such a labour contract

(2 marks)

15 Under which of the following circumstances may employees dissolve a labour contract?

- A The employer is declared bankrupt
- B The business licence of the employer has been revoked by the government
- C The employer is ordered to close its business by a competent court
- D The employer fails to provide labour protection or working conditions specified in the labour contract

(2 marks)

16 Under which of the following circumstances can an offer be withdrawn by the offeror?

- A The offer has not reached the offeree
- B The offer indicated a fixed time-limit for acceptance, which has passed
- C The offeree has replied to the offeror

(1 mark)

17 Which of the following statements about the effect of a contract is correct?

- A A sales contract is subject to approval before it comes into effect
- B A contract becomes effective upon its formation, unless otherwise provided by law
- C The parties to a contract are not allowed to agree that its effect is subject to certain conditions

(1 mark)

18 In order to claim the demur right of advance performance, some conditions must be met.

Which of the following is NOT a condition for claiming the demur right?

- A Both parties must owe obligations towards each other
- B There must be an order of performance
- C The party who claims this right must at first suspend its performance

(1 mark)

19 Which of the following statements about damages is correct?

- A The nature of damages is punitive and compensatory
- B Damages include compensation for material damage and expected profit
- C The nature of damages is compensatory only for material damage

(1 mark)

20 Appliance Co sent a fax to a department store, intending to enter into a sales contract for television (TV) sets.

Which of the following can be considered to be an offer?

- A 50 TV sets at a price of RMB 3,000 yuan each, please confirm within three days
- B 50 TV sets at a price of RMB 3,000 yuan each, please confirm but subject to our final decision
- C TV sets at a price of RMB 3,000 yuan each are available
- D 50 TV sets are available at a very attractive price, immediate delivery

(2 marks)

21 When Party X and Party Y conclude a contract, which of the following situations leads to a voidable contract?

- A The contract was concluded to evade tax levied by the State
- B The contract was concluded by serious misunderstanding
- C The contract was concluded to cheat Party M
- D The contract violated compulsory provisions of laws and administrative regulations

(2 marks)

- 22 Under which of the following circumstances may a party claim the statutory right of offsetting?**
- A** A property owner fails to pay the maintenance fees due and the tenant pays the fees with the rental due to the owner
 - B** A buyer fails to pay the first instalment of the price for the goods and the seller detains the goods
 - C** A car is provided to settle a debt with the creditor's consent
 - D** A repairing shop retains the television set due to the customer's failure to pay the service fee

(2 marks)

- 23 Which of the following statements in relation to liquidated damages is correct?**

- A** Parties to a contract must stipulate an amount of money as liquidated damages
- B** A party to a contract may claim liquidated damages and deposit where the other party breaches the contract
- C** Where they are significantly higher than the damages incurred, a party may petition the court to make an appropriate reduction
- D** They are a form of punishment in nature

(2 marks)

- 24 Under which of the following circumstances may a party dissolve a contract?**

- A** When the other party slightly delays performance of its obligation
- B** When the party meets a *force majeure*
- C** When the other party's capacity to perform the contract deteriorates
- D** When prior to the expiry of the period of performance, the other party expressly states that it will not perform its main obligation

(2 marks)

- 25 Which of the following statements about a limited liability company is correct?**

- A** It shall be liable for its debts to the extent of its registered capital
- B** It shall be liable for its debts to the extent of all capital subscribed by its shareholders
- C** It shall be liable for its debts to the extent of all of its assets

(1 mark)

- 26 Which of the following is NOT a shareholder's function at a shareholders' meeting?**

- A** Examining and approving reports of the board of directors
- B** Formulating and approving plans for the company's business operations
- C** Examining and approving plans for the company's profit distribution

(1 mark)

- 27 When director X is unable to attend the board meeting of a joint stock company, which of the following people can attend the board meeting on behalf of the director?**

- A** X's own lawyer
- B** The general manager of the company
- C** Another director of the company

(1 mark)

28 A company must allocate annual after-tax profits to the statutory common reserve fund on distribution.

What is the percentage to be allocated?

- A 5%
- B 10%
- C 15%

(1 mark)

29 Which of the following statements, in relation to the incorporation of a limited liability company, is NOT correct?

- A The paid-up capital shall reach RMB 100,000 yuan
- B The number of shareholders shall conform to the statutory number
- C The shareholders shall formulate the company's articles of association
- D The company shall have a name and an organisational structure as required

(2 marks)

30 When a joint stock company fails to be incorporated, which of the following statements about the promoter's liabilities is correct?

- A They shall be liable individually for the debts and expenses according to their proportion of shares of the registered capital
- B They shall be liable only for refunding the paid-up money to the subscribers
- C They shall be liable, jointly and severally, for refunding the paid-up money plus bank deposit interest to the subscribers
- D They shall not have any liabilities for the failure of incorporation under the principle of limited liability

(2 marks)

31 How is the chairman of the board of directors of a joint stock company appointed?

- A They are appointed by all the promoters of the company
- B They are appointed by the general meeting of the shareholders
- C They are appointed by the board of directors and approved by the general meeting of the shareholders
- D They are appointed by the board of directors

(2 marks)

32 Which of the following statements about the transfer of shares in a limited liability company does NOT conform with the Company Law?

- A The articles of association may stipulate conditions of the transfer which are different from those of the law
- B Where a shareholder intends to transfer their shares to a third party, the consent of three-quarters of all the shareholders must be secured
- C Under equal conditions, the other shareholders shall have priority to purchase the shares to be transferred
- D Where a people's court transfers shares under the compulsory enforcement procedure, it shall issue a notice to all other shareholders and the company

(2 mark)

33 Under the Company Law, a company may purchase its own shares under certain conditions.

Which of the following is NOT such a condition?

- A Where the company is to offer its shares to its senior executives
- B Where the company is to reduce its registered capital
- C Where the company is to fix the price of its stocks in the securities market
- D Where the company merges with another company which holds its shares

(2 marks)

34 Which of the following parties is NOT entitled to apply to a court for a bankruptcy liquidation?

- A The debtors themselves
- B The creditors of the debtor
- C The bankruptcy administrator

(1 mark)

35 According to the Enterprise Bankruptcy Law, the bankruptcy administrator has the right to plead to the court to revoke some transactions occurring within six months prior to the court accepting the application for bankruptcy with regard to the debtor's assets.

Which of the following is such a transaction?

- A Providing a guarantee to its subsidiaries
- B Giving up the creditor's rights
- C Trading with its connected enterprises

(1 mark)

36 After a court accepts an application for bankruptcy, which of the following is NOT covered by bankruptcy expenses?

- A Costs for litigations on bankruptcy cases
- B Expenses for the administration of the debtor's assets
- C Liabilities generated from any damage caused by the debtor's assets

(1 mark)

37 According to the Enterprise Bankruptcy Law, where an enterprise is unable to pay off its debts, the relevant parties may reach an agreement for rectification, rather than immediately liquidating the debtor's assets.

Which of the following may apply to the court for rectification?

- A Debtors
- B Creditors representing 5% or less of the total creditors' rights
- C The bankruptcy administrator

(1 mark)

38 Which of the following is NOT a function or duty of the bankruptcy administrator?

- A Taking over the assets and documents of the debtor
- B Deciding on the internal management of the debtor
- C Managing and disposing of the debtor's assets
- D Deciding the plan for distributing the insolvent assets

(2 marks)

39 After a court announces its acceptance of a bankruptcy application, within what period of time must any creditors of the debtor declare their creditors' rights?

- A Between 30 days and 6 months
- B Between 30 days and 3 months
- C Between 15 days and 3 months
- D Between 10 days and 1 month

(2 marks)

40 Which of the following items shall be distributed FIRST from the remaining assets on liquidation?

- A Social insurance premiums
- B Tax fees of the debtor as defaulted
- C Secured debt
- D Wages and salaries of the debtor's employees

(2 marks)

41 What is the maximum period for publicly issuing securities on the securities market?

- A 90 days
- B 60 days
- C 30 days

(1 mark)

42 According to the Securities Law, which of the following persons who is deemed to have knowledge of inside information is prohibited from taking advantage of it to engage in securities trading?

- A Any shareholder who holds at least 3% of the shares in a listed company
- B Any staff member of a listed company
- C Any director, supervisor or senior executive of a listed company

(1 mark)

43 Which of the following is NOT a condition for a limited liability company to issue publicly corporate bonds?

- A The value of its net assets shall not be lower than RMB 30,000,000 yuan
- B The average distributable profits of the company for the past three years must be sufficient to pay the interest on the corporate bonds for one year
- C The funds to be raised must be invested in conformity with the industrial policy of the State
- D The accumulated balance of the bonds shall not exceed 40% of the value of the net assets of the company

(2 marks)

44 According to the Securities Law, where an investor takes over a listed company through the securities market, for how long after the completion of the takeover must shares held by the purchaser not be sold?

- A** One month
- B** Three months
- C** Six months
- D** Twelve months

(2 marks)

45 Which of the following is a fraudulent behaviour in the management of companies?

- A** A listed company issuing corporate bonds relying on documents with false information
- B** A securities company using the internet to disseminate false information to investors
- C** A shareholder of a company making a false payment of capital contribution
- D** A listed company providing misleading information to the securities market

(2 marks)

Section B – ALL FIVE questions are compulsory and MUST be attempted

Please write your answers to all parts of these questions on the lined pages within the Candidate Answer Booklet.

- 1 Mr Ma and Ms Yang entered into a loan agreement and a security agreement, under which Mr Ma would provide his truck as the mortgage to Ms Yang for borrowing RMB 200,000 yuan. However, they failed to register the mortgage agreement.

Several months later, Mr Ma borrowed another RMB 200,000 yuan from Mr Lee and delivered his truck as the pledge to Mr Lee. The two parties then registered the pledge agreement.

Upon the expiration of the loan agreements, Mr Ma was unable to repay the capital and interest. A dispute occurred between Ms Yang and Mr Lee, since they intended to exercise the right of guarantee simultaneously.

Required:

In accordance with the Property Law of China:

- (a) Explain whether the mortgage agreement between Mr Ma and Ms Yang came into effect. (2 marks)
- (b) Describe when the right of pledge between Mr Ma and Mr Lee was established. (2 marks)
- (c) Explain who should be repaid in priority if the truck was auctioned. (2 marks)

(6 marks)

- 2 Seafood Co and Family Mart entered into a sales contract for a shipment of 10,000 packages of tinned food. The sales contract stipulated that Seafood Co was responsible for delivering the goods to Family Mart's place of business, and an amount of RMB 50,000 yuan was agreed upon to be liquidated damages for breach of contract.

After the conclusion of the contract, Seafood Co entrusted Links Logistics Co to carry the goods to Family Mart. However, Links Logistics Co only shipped 5,000 packages to Family Mart on time. During transportation of the rest of the goods, 1,000 packages got wet in the heavy rain and arrived at Family Mart's place of business 10 days late.

Required:

In accordance with the Contract Law of China:

- (a) Explain whether Family Mart was entitled to refuse to accept all the 10,000 packages of goods. (2 marks)
- (b) Explain whether Seafood Co could be exempted from liabilities caused by Link Logistics Co in the process of transportation. (2 marks)
- (c) Explain whether Family Mart was entitled to claim the RMB 50,000 yuan liquidated damages. (2 marks)

(6 marks)

- 3** Dano Stock Co, a listed company listing in the securities market with total assets of RMB 600 million yuan, intended to merge with a limited liability company (LLC) in the form of merger by absorption. LLC had total assets of RMB 250 million yuan and debts of RMB 50 million yuan, owed to a local electricity plant.

Required:

In accordance with the relevant provisions of the Company Law:

- (a) **Describe the relevant voting requirement by the general shareholders' meeting of Dano Stock Co to approve the merger.** (2 marks)
- (b) **Explain why such a voting requirement by the general shareholders' meeting is needed to pass a resolution.** (2 marks)
- (c) **State what right the creditors of the LLC should have once they receive notice of the company merger.** (2 marks)

(6 marks)

- 4** Due to a failure to pay its debts, in October 2014 the court accepted an application for bankruptcy by the creditors of Hangle Garment Co and designated a bankruptcy administrator. The bankruptcy administrator found that:
- (i) Hangle Garment Co had given up a credit of RMB 500,000 yuan owed by its affiliate enterprise in August 2013;
- (ii) Some shareholders of Hangle Garment Co failed to make full capital contributions as prescribed in the articles of association of the company;
- (iii) There was a contract between Hangle Garment Co and Bright Department Store, which was concluded before the bankruptcy application was accepted and had been partly performed.

Required:

In accordance with the Enterprise Bankruptcy Law of China:

- (a) **State whether the action of giving up credit could be revoked during the process of liquidation.** (2 marks)
- (b) **State how the lack of full capital contributions by some of the shareholders of the company should be dealt with.** (2 marks)
- (c) **State what right the bankruptcy administrator has regarding the partly-performed contract between Hangle Garment Co and Bright Department Store.** (2 marks)

(6 marks)

- 5** Due to its illegal business transactions, the business licence of Wayan Chemicals Limited Co was revoked by the government. The company proceeded to liquidation and the liquidation committee was formed according to law. The following events took place during the process of liquidation:
- (i) During the period of the declaration of the credits, the liquidation committee settled a debt of RMB 500,000 yuan to Mr Tang.
 - (ii) At the end of liquidation, the liquidation committee found that the insolvent assets of the company could not settle all the debts due, and decided to distribute the assets based on the proportion of each creditor's credit to the total debts.

Required:

- (a) **Explain what provision of law has been violated by the liquidation committee for settling Mr Tang's debts in advance.** (2 marks)
- (b) **Explain what provision of law has been violated by the liquidation committee for distributing assets based on the proportion of each creditor's credit to the total debts.** (2 marks)
- (c) **State what administrative liability might be incurred for the actions in violation of the law by the liquidation committee.** (2 marks)

(6 marks)

End of Question Paper