
Answers

- 1** This question requires candidates to explain the conditions for enacting local laws by the people's congresses at provincial level and the conditions for issuing rules and regulations by Ministries and Commissions under the State Council, and state the priority of the effect if there is conflict between the two under the essential legal system of China.
- (a)** People's congresses of provinces, autonomous regions and municipalities under the State Council may enact local laws suitable to local conditions and to be applied in its jurisdiction of administrative area, provided that such local laws do not contravene the Constitution or laws or administrative regulations adopted by the State Council.
 - (b)**
 - (i)** Ministries and Commissions under the State Council may issue rules and regulations under the conditions that they have been authorised by law and the administrative orders of the State Council. These rules and regulations shall not be in conflict with the laws adopted by the National People's Congress and the administrative regulations issued by the State Council.
 - (ii)** Where there is a conflict between rules and regulations issued by Ministries and Commissions under the State Council and the people's congresses at the provincial level within the same sphere of function, the local laws enacted by the people's congresses at provincial level shall prevail.
- 2** This question requires candidates to explain the term registration of the right of real property and the special provision on the registration of the state-owned natural resources, and state the jurisdiction of the real property registration and the functions of the certificate of real property ownership as well as the priority when there is a difference between the certificate and the record in the register under the Property Law:
- (a)** In accordance with Article 9 of the Property Law, registration of the right of real property refers to such a statutory procedure in which the registration organ registers a real right of the right holder so as to have the creation, change, transfer or elimination of the right of a real property become effective.
 - (b)** In accordance with Article 9 of the Property Law, the ownership of the natural resources which are owned by the State may choose not to be registered.
 - (c)** In accordance with Article 10 of the Property Law, the registration of a real property shall be executed by the registration organ of the place where the real property is located.
 - (d)** In accordance with Article 17 of the Property Law, the certificate of real property is the proof of the holder's ownership of real property. The items recorded in such a certificate shall be consistent with those recorded in the real property register. In the case where there is any inconsistency, the item recorded in the real property register shall prevail.
- 3** This question requires candidates to state the rules with respect to the probation clause in the labour contract under the Labour Contract Law.
- (a)** In accordance with Paragraph 2 of Article 19 of the Labour Contract Law, no probation period is permitted in a labour contract with a term to expire upon completion of a certain job or a labour contract with a term less than three months.
 - (b)** In accordance with Article 21, Article 39 and Article 40 (1) and (2) of the Labour Contract Law, an employer may dissolve a labour contract, during the probation period, if the employee meets any one of the following conditions:
 - (i)** is proved not to satisfy the conditions for employment;
 - (ii)** materially breaches the employer's rules and regulations;
 - (iii)** commits serious dereliction of duty, causing substantial loss to the employer;
 - (iv)** be liable for his crimes pursued in accordance with the law.In doing so, the employer shall give adequate reasons for the dissolution of the labour contract under such circumstance.
 - (c)** In accordance with Article 50 of the Labour Contract Law, the employer shall issue a proof of dissolution of a labour contract and, within 15 days, carry out the procedures for the transfer of the employee's file and social insurance account.
- 4** This question requires candidates to explain a contract by unauthorised agent, state the legal effect of a contract by unauthorised agent and the ways to deal with the contract by unauthorised agent under the Contract Law.
- (a)** A contract by an unauthorised agent refers to a contract which is concluded by a person who has no power of agency, who oversteps the power of agency or whose power of agency has expired and yet concludes it on behalf of the principal.

- (b) In accordance with Article 48 of the Contract Law, a contract by an unauthorised agent shall generally have no legal binding force on the principal without ratification by the principal, and the agent shall be held liable for their conduct.
- (c) In accordance with Article 48 of the Contract Law, in the case of a contract by an unauthorised agent, the counterparty to the contract may urge the principal to ratify the contract within one month. It shall be deemed as a refusal of ratification when the principal does not make any expression. A *bona fide* counterparty has also the right to cancel the contract before the contract is ratified. The cancellation shall be made by means of notice.
- 5 This question requires candidates to explain the term actual controller, state the statutory voting requirement to provide a guarantee to its shareholders or actual controller as well as the rule as to the inconsistency between the articles of association and the law in relation to the voting requirement when a limited liability company provides such a guarantee to particular persons under the Company Law.
- (a) Actual controller means any person who is not a shareholder of a company but can control the company's acts through an investment relationship, agreement or other arrangements with the company.
- (b) In accordance with Article 16 of the Company Law, where a limited liability company intends to provide a guarantee for its shareholders or actual controller, it shall hold a shareholders' meeting and decide the matter. The shareholders obtaining a guarantee or the shareholders controlled by the actual controller shall not attend in the voting of such matters. Voting is passed based on more than half of the voting rights held by other shareholders attending the meeting.
- (c) The special voting requirements with respect to the resolution of a shareholders' meeting for a limited liability company to provide a guarantee to its shareholders or actual controller are compulsory and may not be altered by articles of association of a company.
- 6 This question requires candidates to explain the circumstances in which the community liabilities will take place, state when the community liabilities can be cleared in the process of bankruptcy liquidation and at least TWO items which shall be regarded as the community liabilities under the Enterprise Bankruptcy Law.
- (a) In accordance with Article 42 of the Enterprise Bankruptcy Law, community liabilities refers to such liabilities as generated from the failure or acts by the debtor, a bankruptcy administrator or the relevant persons after the bankruptcy liquidation application is accepted by a people's court during the process of bankruptcy liquidation which constitute liabilities for all the creditors and shall be settled before the allocation of debtor's assets.
- (b) In accordance with Article 43 of the Enterprise Bankruptcy Law, the community liabilities can be cleared through the debtor's assets at any time during the process of bankruptcy liquidation.
- (c) In accordance with Article 42 of the Enterprise Bankruptcy Law, the following liabilities shall be deemed as community liabilities:
- (i) The liabilities as generated from a contract, the performance of which both parties fail to fulfil, upon the performance request by the bankruptcy administrator or debtors against the opposite party;
 - (ii) The liabilities are generated from the *negotiorum gestio* of the debtor's assets;
 - (iii) The liabilities as generated from the ill-gotten gains;
 - (iv) The labour costs and social insurance for the continuance of business operation, as well as other liabilities as incurred therefrom;
 - (v) The liabilities as generated from the damage which occurs in the performance of functions and duties by a bankruptcy administrator or other relevant personnel, and
 - (vi) The liabilities as generated from any damage caused by the debtor's property.
- 7 This question requires candidates to explain the doctrine of independent legal entity of a company and the system of disregard of corporate personality, and state the forms of liabilities for abuse of the independent legal entity.
- (a) In accordance with Article 3 of the Company Law, the doctrine of independent legal entity of a company means that a company is a separate legal entity, has the independent properties of a legal person and enjoys the right to such properties. Shareholders shall assume liability towards the company to the extent of the amount of capital contributions subscribed by them respectively. A company shall be liable for its debts to the extent of all its assets.
- (b) The system of disregard of corporate personality means that the shareholders of a company shall be liable for the debts or civil liabilities of the company where the shareholders abuse the doctrine of independent legal entity of a company to conduct any fraudulent behaviours damaging the interests of the company, or other shareholders, or creditors of the company.
- (c) Where the shareholders of a company abuse the independent status of corporate legal person and shareholders' limited liability to avoid debts and damage the interests of the company's creditors, the limited liability of the shareholder shall be disregarded. Such a shareholder shall undertake the joint and several liability for the company's debts.

- 8** This question requires candidates to deal with the legal issues relevant to the lost-and-found object under the Property Law.
- (a)** In accordance with Articles 109 and 112 of the Property Law, a lost-and-found object shall be returned to the right holder and the right holder, when obtaining the lost-and-found object, shall pay the person who finds the object such necessary expenses as the cost for safekeeping the object. The Property Law does not stipulate that a person is entitled to request a reward for finding the lost object. Therefore, Mr Ding could not request the reward from Ms Liang for returning the handbag.
 - (b)** In accordance with Article 112 of the Property Law, where the right holder publicly offers a reward for the lost object, he or she shall keep the promise when claiming the lost-and-found object. An offer of reward for the lost object is an offer to a non-specific offeree and an unilateral act. Whenever the offer takes effect, the offeror is bound by such an expression. Therefore, Ms Liang could not refuse to grant the reward on the ground that Mr Ding did not see the particular advertisement.
 - (c)** In accordance with Article 113 of the Property Law, where a lost-and-found object fails to be claimed within six months as of the date when the claiming announcement is published, it shall be owned by the State. Since the police published an announcement in the newspaper and received no claiming from Ms Liang, therefore, the handbag found by Mr Ding should become the property of the State when six months expired.
- 9** This question requires candidates to deal with the legal issues in relation to the transfer of contractual obligations under the Contract Law.
- (a)** In accordance with Article 84 of the Contract Law, the creditor's consent is required if the debtor transfers the contractual obligation in whole or in part to a third party. In this case Shenhua was a debtor who owed debts of RMB 800,000 yuan to Kangyi Chemicals. The transfer of debts would not be binding upon Kangyi Chemicals in general if Shenhua failed to notify the transfer and receive the consent from Kangyi Chemicals. However, Kangyi Chemicals has acknowledged the transfer and held Shenhua Holdings as its counterparty by filing a lawsuit against Shenhua Holdings, even though Shenhua failed to receive consent before the transfer. Therefore, the transfer agreement should be regarded as a valid one.
 - (b)** In accordance with Article 85 of the Contract Law, if the debtor transfers the contractual obligations, the new debtor may raise the defence of the original debtor against the creditor. In this case Shenhua Holdings became a new debtor after the transfer. Therefore, it should have the right to raise the defence against Kangyi Chemicals on the ground of the defects in the goods delivered by Kangyi Chemicals to the original debtor – Shenhua.
- 10** This question requires candidates to deal with the legal issue of the conditions for the public issue of corporate bonds under the Securities Law.
- (a)** In accordance with Article 32 of the Securities Law, securities to be offered to unspecific investors with a total face value exceeding RMB 50 million yuan shall be underwritten by an underwriting syndicate. Since the proposed public issue of corporate bonds would be RMB 70 million yuan, far more than the limitation of RMB 50 million yuan, it was not in conformity with the law by entrusting a securities company as the sole underwriter.
 - (b)** In accordance with Article 33 of the Securities Law, the maximum period for public issue of securities shall be 90 days. Since the proposed duration of the issue would be 100 days, longer than the limitation as prescribed by the law, the proposed plan for issuing corporate bonds as to the duration of issue was, therefore, not in conformity with the law.
 - (c)** In accordance with Article 16 of the Securities Law, the interest rate of the bonds shall not exceed the ceiling fixed by the State Council. The proposed interest rate by the board of directors was 5%, the same as the interest rate for savings deposit of one year. Hence the proposed interest rate was in conformity with the law.
 - (d)** In accordance with Article 16 of the Securities Law, funds raised through the issue of corporate bonds must be used for the purpose approved and shall not be used to make up the losses of the company or for non-production expenditure. Therefore, the proposed use of funds was not in conformity with the law.

- 1** 8–10 A thorough answer which explains the conditions for enacting local laws by the people’s congresses at the provincial level in part (a), the conditions for issuing rules and regulations by Ministries and Commissions under the State Council in part (b)(i) and states the priority of the effect if there is conflict between rules and regulations of Ministries and Commissions and the local laws in part (b)(ii).
- 6–7 An answer which gives correct points to part (b) but fails to answer (a). As an alternative, the answer correctly gives full points to part (a) and any one of part (b)(i) or (ii).
- 3–5 An answer which correctly gives points to part (a) plus some or no points in part (b). As an alternative, the answer correctly gives some points in part (b) but fails to answer part (a).
- 0–2 An answer which does not give any point in the two parts, or explains or states limited points between the two parts.
- 2** 8–10 An answer which explains the term registration of the right of real property, the special provision of the Property Law on the registration of the state-owned natural resources and the jurisdiction of the registration for real property and legal nature, and states correctly the functions of the certificate of real property and priority of effect where there is an inconsistency between the certificate and the record of register. As an alternative, the response correctly answers part (d) and any two parts among parts (a), (b) and (c).
- 6–7 An answer which explains the term registration of the right of real property in part (a), the special provision on the registration of the state-owned natural resources in part (b) and the jurisdiction of the registration of real property in part (c), but fails to states the priority in part (d). Alternatively, an answer correctly states the priority in part (d) and any one among parts (a), (b) and (c).
- 3–5 An answer which gives full points in any two parts among parts (a), (b) and (c), but fails to explain the remaining part and fails to state the priority in part (d).
- 0–2 An answer which does not explain the term registration of the right of real property in part (a), and fails to state any point in part (b) and (c). As an alternative, an answer which explains the term registration of the right of real property in part (a) but fails to state any point in part (b) and part (c).
- 3** 8–10 A thorough answer which states the various circumstances under which a labour contract is not allowed to contain a probation clause in part (a), two to three conditions for an employer to dissolve a labour contract during the period of probation in part (b) and the employer’s duty to issue a proof of dissolution of the labour contract as well as the procedures for the transfer of the employee’s file and social insurance account.
- 6–7 An answer which states correctly part (a) and part (c), plus one condition as required in part (b). Alternatively, an answer which states correctly part (a) or part (c), and two conditions as required in part (b).
- 3–5 An answer which states correctly any one of part (a) and part (c), plus one condition as required in part (b). Alternatively, an answer which states two conditions in part (b).
- 0–2 An answer which fails to state any points in the three parts, or states only very limited points in any one of the three parts.
- 4** 8–10 A thorough answer which explains the contract by unauthorised agent in part (a), the legal effect of a contract by unauthorised agent in part (b) and the measures which can be taken by the counterparty to the contract by unauthorised agent in dealing with the effect of such a contract in part (c).
- 6–7 An answer which states correctly any one of part (a) or part (b), plus a correct answer to part (c). Alternatively, an answer which states correctly both part (a) and part (b), with limited or no points in part (c).
- 3–5 An answer which states correctly part (c) but fails to state parts (a) and (b). As an alternative, the answer states correctly part (a) or (b), with limited or no points in part (c).
- 0–2 An answer which fails to state any points among the three parts, or states very limited points among the three parts.

- 5** 8–10 A thorough answer which explains the term actual controller in part (a), states correctly the statutory voting requirements for a limited liability company to provide a guarantee for its shareholders or actual controller in part (b) and the legal consequences when the relevant provision of the articles of association is inconsistent with the statutory voting requirements to provide a guarantee for its shareholders or actual controller in part (c).
- 6–7 An answer which states correctly the statutory requirement to provide a guarantee for its shareholders or actual controller in part (b) and the legal consequences when the provision of the articles of association is inconsistent with the voting requirement of law in part (c), but fails to explain the term actual controller in part (a). As an alternative, an answer which explains the term actual controller in part (a) and states most of points in part (b), but fails to state any points in part (c).
- 3–5 An answer which states correctly the statutory requirement to provide a guarantee for its shareholders or actual controller in part (b), but fails to explain the term actual controller in part (a) and fails to states any points in part (c). Alternatively, an answer which explains the term actual controller in part (a) and states correctly the legal consequences in part (c), but fails to state the statutory voting requirement to provide a guarantee for its actual controller in part (b).
- 0–2 An answer which fails to state any points in the three parts, or states only very limited points.
- 6** 8–10 A thorough answer which explains the circumstances in which the community liabilities will take place in part (a), states the time for the settlement of the community liabilities in the process of bankruptcy liquidation in part (b) and TWO items which should be regarded as community liabilities in part (c).
- 6–7 An answer which states correctly the time for the settlement of the community liabilities in part (b) and TWO items which should be regarded as community liabilities in part (c), but fails to explain the circumstances in which the community liabilities will take place in part (a). Alternatively, an answer which explains correctly the circumstances in which the community liabilities will take place in part (a) and states most of points in relation to the TWO items which should be regarded as community liabilities in part (c), but fails to state the time for the settlement of community liabilities in part (b).
- 3–5 An answer which explains the circumstances in which community liabilities will take place in part (a) and states correctly the time for the settlement of community liabilities in the process of bankruptcy liquidation, but fails to state any item which should be regarded as community liabilities in part (c). As an alternative, an answer which explains the circumstances in which community liabilities will take place in part (a), but fails to state part (b) and part (c), or limited points in part (b) or part (c).
- 0–2 An answer which fails to state any points, or states only very limited points.
- 7** 8–10 A thorough answer which explains the doctrine of independent legal entity of a company in part (a) and the system of disregard of corporate personality in part (b), and states correctly the forms of liabilities by the shareholder who abuses the independent legal entity of a company and causes damage in part (c).
- 6–7 An answer which explains both the doctrine of independent legal entity of a company in part (a) and the system of disregard of corporate personality in part (b), but fails to state the forms of liabilities by the shareholder who abuses the independent legal entity of a company in part (c). Alternatively, an answer which explains the doctrine of independent legal entity of a company in part (a) or the system of disregard of corporate personality in part (b), and states the forms of liabilities by the shareholder who abuses the independent legal entity of a company in part (c).
- 3–5 An answer which explains the doctrine of independent legal entity of a company in part (a) or the system of disregard of corporate personality in part (b), plus some points in part (c).
- 0–2 An answer which fails to explain the doctrine and the system of disregard of corporate personality in part (a) and part (b), and fails to state the forms of liabilities in part (c). An answer which explains or states very limited points in the three parts.
- 8** 8–10 An answer which states correctly the conclusion as to rules on the reward for the lost-and-found handbag in part (a) and (b), and the way to deal with the lost-and-found object after the claiming announcement in part (c).
- 6–7 An answer which gives the correct conclusions to parts (a) and (b), or parts (b) and (c), with all reasons to support such conclusion, and gives a correct conclusion to the other part but without any reasons to support such conclusion.
- 3–5 An answer which gives a correct conclusion in any one part among the three parts, with all or some reasons to support the conclusion, but fails to state in the other two parts. As a alternative, an answer which gives correct conclusions to any two parts among the three parts, but fails to give any reasons.
- 0–2 An answer which states merely limited points in any one of the three parts; or fails to state any points in the three parts.

- 9** 8–10 An answer which states correctly the conclusions to questions in the two parts, and gives all or most of the reasons to support the conclusions.
- 6–7 An answer which states correctly the conclusion to the question in part (a) with full reasons to support the conclusion, but fails to state part (b) or very limited points in part (b). As an alternative, the answer states the correct conclusion to part (b) with reasons to support such conclusion, and gives a correct conclusion but without any reasons to support such conclusion.
- 3–5 An answer which states correctly a conclusion to any one of part (a) or part (b), and gives reasons to support such a conclusion. As an alternative, an answer which gives a correct conclusion to any one part of part (a) or part (b) with no reasons to support such a conclusion, but fails to state the remaining part.
- 0–2 An answer which fails to state any point to the two parts, or states only very limited points in any one part of the two parts.
- 10** 8–10 An answer which states the correct conclusions to questions of the four parts, and gives all or some reasons to support the conclusions.
- 6–7 An answer which states the correct conclusions to questions of part (a) and any of part (b), or part (c) or part (d), and gives some reasons to support any one of the conclusions.
- 3–5 An answer which states correct conclusions to questions in any two parts among part (b), part (c) and part (d) with full or some reasons to support such conclusions, but fails to give the correct conclusion to the remaining part. Alternatively, an answer states a correct conclusion to part (a) with some reasons and any part among parts (b), (c) and (d), but fails to state the remaining parts.
- 0–2 An answer which fails to state any points in the four parts, or states only a correct conclusion to any part among part (b), (c) and (d), but fails to state the remaining parts.