
Answers

- 1 This question requires candidates to state the different levels of the Chinese law and regulations, and the hierarchy of the effect of law and regulations enacted by the different law-making authorities.
- (a) In accordance with the law-making powers, Chinese law, in a broad sense, can be divided into four levels:
- (i) the Constitution adopted by the National People's Congress (NPC);
 - (ii) laws, decisions and regulations (or any other titles else) adopted by the NPC or its Standing Committee;
 - (iii) administrative regulations adopted by the State Council;
 - (iv) local regulations adopted by the people's congresses at the different provinces, autonomous regions and municipalities directly under the State Council.
- (b) In accordance with the relevant provisions of the Constitution, the hierarchy of effect of laws and regulations enacted by different levels of law-making authorities is as follows:
- (i) The Constitution is the highest and fundamental law of China. It governs the social, economic and political sectors of the country. It is supreme over all other laws. Any law and administrative regulations which contravene the Constitution is void.
 - (ii) Laws, resolutions, orders and so on enacted by the NPC or its Standing Committee shall be applied nationwide. The NPC and its Standing Committee are the highest legislature and enact all the fundamental laws regarding every aspect of social life.
 - (iii) The State Council has been vested by the Constitution to work out administrative regulations, rules, etc according to laws. Administrative regulations regulate the matters within the functions of the State Council and are applied nationwide. In terms of the hierarchy of effect, they are superior over the local regulations adopted by the people's congresses at provincial levels.
 - (iv) Local people's congresses at provincial level are permitted to adopt local regulations suitable to local conditions and applicable only within the regions where the local people's congresses are located. Local regulations shall not contravene the Constitution, the laws adopted by the NPC or its Standing Committee, and the administrative regulations enacted by the State Council.
- 2 This question requires candidates to explain the meaning of *tenancy in common* and *joint tenancy*, and explain the external and internal relations of debtor-creditor with respect to the co-owned immovables or movables.
- (a) In accordance with Article 94 of the Property Law, *tenancy in common* with respect to co-ownership for property refers to such a form of ownership under which parties holding joint tenancy shall hold interest in a co-owned property (immovable or movable) in proportion to their respective shares.
- (b) In accordance with Article 95 of the Property Law, *joint tenancy* with respect to co-ownership for property refers to such a form of ownership under which the owners in common (tenants) shall jointly share the ownership of a property (immovable or movable).
- (c) In accordance with Article 102 of the Property Law, the co-owners shall, in terms of the external relations, enjoy joint and several credits and assume joint and several debts with respect to any credits or debts arising out of the co-owned immovable or movable property, unless it is otherwise provided by law, or the third party knows that there is no joint and several relationship.
- (d) In accordance with Article 102 of the Property Law, in the case of *tenancy in common*, internally the co-owners (tenants) shall, unless otherwise agreed among the co-owners, enjoy credits and assume debts arising out of the co-owned property in light of their respective proportions to the relevant property. A co-owner who has paid debts in excess of his proportion is entitled to recover from other co-owners. In the case of *joint tenancy*, the co-owners shall jointly enjoy credits and share debts.
- 3 This question requires candidates to state the rules with respect to monetary compensation by an employer in the case where a labour contract expires or is terminated under certain circumstances, as well as the statutory obligations for an employer where a labour contract expires or is terminated under the Labour Contract Law of China.
- (a) In accordance with Article 47 of the Labour Contract Law, the compensations shall be based on the years of employment of the employee at the rate of one month's salary for each full working-year. Any period of more than six months but less than 12 months shall be counted as one year. For any period of less than six months the compensation shall be one-half of his/her monthly wages. When the monthly salary of an employee is higher than three times the average local monthly salary of the previous year published by the government, the compensation shall be three times the average local monthly salary and shall not exceed a total of 12 years.

- (b) In accordance with Article 50 of the Labour Contract Law, where a labour contract expires or is terminated, the employer shall issue a certificate of termination or expiration of the labour contract. Furthermore, the employer shall, within 15 days, also carry out the procedures for the transfer of the employees' personal files and social security account. The employer shall keep the terminated or expired labour contract on file for no less than two years for reference purpose.
- 4 This question requires candidates to explain the meaning of taking effect of a contract, and explain the rules regarding the time or condition of taking effect of a contract under the Contract Law of China.
- (a) Taking effect of a contract means that a contract, upon the satisfaction of certain substantive conditions, takes effect and binds legally upon the parties to it.
- (b) In accordance with Article 44 of the Contract Law, generally a contract takes effect when it is signed by the parties to it. Where laws or administrative regulations require a procedure of approval, registration, etc, those provisions shall be followed. Therefore, under such circumstances a contract takes effect when the relevant approval and/or registration procedures are completed.
- In accordance with Article 45 of the Contract Law, parties may agree upon the conditions of taking effect of a contract. A contract becomes effective when such conditions are satisfied.
- In accordance with Article 46 of the Contract Law, parties may also agree upon the time limit for a contract to take effect. Therefore, a contract subject to time limit for taking effect becomes effective when the time limit is mature.
- 5 This question requires candidates to explain the registered capital of a limited liability company and the special requirements for a sole person limited liability company and liability of such company towards its debts under the Company Law of China.
- (a) In accordance with Article 26 of the Company Law, the registered capital of a limited liability company refers to the amount of capital contributions subscribed for by all of its shareholders as registered with the company registration authority.
- (b) In accordance with Article 59 of the Company Law, the minimum amount of registered capital of a sole-person limited liability company shall be RMB 100,000 yuan. The shareholder of such company shall, in a lump-sum, contribute in full the amount of capital as provided in the articles of association. A sole-person limited liability company is not allowed to reinvest to establish another one-person limited liability company.
- (c) In accordance with Article 64 of the Company Law, if the shareholder of a sole-person limited liability company cannot prove that the property of the company is independent from those of the shareholder's own property, the shareholder shall bear joint and several liabilities for the company's debts. The purpose of this special rule stands for the protection of the creditors of a sole-person limited liability company. Since the special corporate structure of such company would give rise to difficulties for its creditors to distinguish the company's assets from those of its sole shareholder. Without such a restriction the shareholder of a sole-person limited liability company may easily avoid the liability of the company by the general rules of limited liability of a company.
- 6 This question requires candidates to explain the term *compromise* and *creditor in compromise*, and state the legal effect of a compromise towards the various parties.
- (a) In accordance with Articles 95, 96 and 97 of the Enterprise Bankruptcy Law, the term *compromise* refers to such a system:
- The compromise may be filed to a court by the debtor directly or after the court has accepted an application for, but before an announcement of bankruptcy;
 - The compromise proposal shall be brought by a debtor, along with a draft of compromise, examined and approved by the court and adopted by the creditors' meeting during the liquidation procedure;
 - The compromise shall then be confirmed by the court.
- (b) In accordance with Article 100 of the Enterprise Bankruptcy Law, the term *creditor in compromise* refers to a party who enjoys a creditor's right, but without any property guaranty, against its debtor when the court accepts a relevant application for bankruptcy.
- (c) In accordance with Article 101 of the Enterprise Bankruptcy Law, the rights of a creditor in compromise against the guarantor of the debtor as well as other joint and several debtors shall not be affected by the compromise deed. That is to say the legal effect of the compromise does not extend to the guarantor of the debtor and other joint and several debtors. Although the compromise provides for the contents with respect to the exemption or delay of the rights of the creditor in compromise, the creditor in compromise shall exercise its creditor's right based on the original agreement or the relevant provisions of law against the guarantor or other joint and several debtors.

- 7 This question requires candidates to state the transaction limit of the stocks purchased by a purchaser, and the afterwards obligations towards the target company and report requirement of the purchaser after the completion of takeover of a listed company under the Securities Law of China.
- (a) In accordance with Article 98 of the Securities Law, the stocks purchased and held by a purchaser through the process of takeover of a listed company shall not be transferred for 12 months following completion of the takeover. The purpose of such limit is to prevent the purchaser from abusing the power to control the securities market, so as to protect the rights and interests of small and medium shareholders of the listed company and public investors.
 - (b) In accordance with Articles 99–101 of the Securities Law, upon the completion of takeover of a listed company the purchaser shall discharge the various obligations towards the target company and the relevant government agencies as follows:
 - (i) Where the purchaser merges with the target company and the latter dissolves, the purchaser shall replace the original stocks of the dissolved company.
 - (ii) The purchaser shall, within 15 days, report the particulars of the takeover to the securities regulatory authority under the State Council and the stock exchange and make the same known to the general public.
 - (iii) The purchaser shall get the necessary approval from the competent government authority where the takeover of a listed company involves shares held by an investment organisation authorised by the State.
- 8 This question requires candidates to deal with the legal issues in relation to *force majeure* under the Contract Law of China.
- (a) In accordance with Article 94 of the Contract Law, the parties to a contract may terminate the contract if the contract purpose cannot be realised due to *force majeure*. In the present case the chickens were destroyed due to bird flu spreading in Jianhu County. It was obviously in conformity with the condition of a *force majeure* and the condition for termination of a contract by parties under the Contract Law is satisfied. Therefore, Wanfa Co was entitled to terminate the sales contract.
 - (b) In accordance with Article 117 of the Contract Law, if the non-performance is caused by a *force majeure*, the liability shall be relieved in whole or in part, in accordance with the effect of the *force majeure*. Since the failure to ship the goods was a result of *force majeure*, not caused by the fault of Ludao Poultry, it should be exempted from the liability for failure to deliver the goods.
 - (c) In accordance with Article 97 of the Contract Law, after termination of the contract, the parties to the contract shall take any reasonable measures to settle the contractual obligations, whether performed or non-performed. The measures include the restitution or other remedial ones. In the present case Wanfa Co's declaration to terminate the contract should not affect its right to claim for restitution. On the other hand, the exemption of non-performance of the contract by Ludao Poultry did not grant it the right to retain the advance payment paid by Wanfa Co. Therefore, Ludao Poultry was under an obligation to return the advance payment to Wanfa Co.
- 9 This question requires candidates to handle the legal issues with respect to the pledge of right and the transfer of shares under a court order under the Property Law and the Company Law of China.
- (a) In accordance with Article 219 of the Property Law, in the case where the debtor defaults on the debts, the pledgee may negotiate with pledgor to take the pledged property at its estimated value to set off the debt, or by getting paid in priority from the proceeds by the auction or sale of the pledged property. This means that the pledgee may neither take the pledged property without an agreement with the pledgor, nor apply to the court for a compulsory transfer to the property in pledge.
In this case Ms Lee requested the court to transfer the pledged shares in the procedure of the execution of the judgement. Obviously her request for transferring Mr Kong's shares was against the relevant provision of law. Her request should not be supported by the court.
 - (b) In accordance with Article 73 of the Company Law, when the people's court transfers the shares of a shareholder of a limited liability company under the enforcement procedures as stipulated by laws, it shall notify the company and all of its shareholders. In such a circumstance, other shareholders shall have the priority to purchase the shares under equal conditions. If other shareholders fail to exercise their priority within 20 days upon the date of the notice of the people's court, they shall be deemed to have waived their priority to purchase. Therefore, the court should at first issue a notice to the company and all of its shareholders. If other shareholders did not exercise their priority to purchase Mr Kong's shares within the time limit of 20 days, the court might render an order to transfer Kong's shares to Ms Lee.

10 This question requires candidates to state the rules with respect to the declaration of the creditor's right under the Enterprise Bankruptcy Law of China.

- (a)** In accordance with Article 56 of the Enterprise Bankruptcy Law, where a creditor fails to claim its creditor's right within the term as decided by the people's court, it may make a supplementary declaration before the final distribution of the insolvent assets. This means that a creditor may claim its creditor's right even though its declaration is made after time limit decided by the court.

In this case Spring Travel Services came to claim its creditor's right after the first distribution of the insolvent assets and beyond the time limit of 60 days. Its declaration of the creditor's right is a supplementary one as provided for by the law. Therefore the declaration by Spring Travel Services was an effective one.

- (b)** Since it claimed its creditor's right after the first distribution of the insolvent assets, which resulted in the extra fees or costs in the examination and verification of such declaration, Spring Travel Services should bear such extra fees or costs. Furthermore, Spring Travel Services, as a party making a supplementary declaration after the first distribution of the insolvent assets, was not entitled to have a supplementary distribution to the first distribution of the insolvent assets.

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| 1 | 8–10 | A thorough answer which states the different levels of law and the relevant law-making authorities, as well as the principle to be followed by the law-making authorities. |
| | 6–7 | An answer which states the most of the points of both part (a) and (b), but fails to state one or two points in part (a) and part (b), or fails to state the principle regarding the superiority of effect in detail. |
| | 3–5 | An answer which state any one part of the question, or merely states very little about the different levels of law and the principle regarding the superiority of effect of law by the different levels of law-making authorities. |
| | 0–2 | An answer which states no or only one point in any part. |
| 2 | 8–10 | A thorough answer which explains the two terms, and states correctly the external and internal debtor-creditor relations in connection with co-owned immovables or movables. |
| | 6–7 | An answer explains <i>tenancy in common</i> and <i>joint tenancy</i> , and states correctly either one of the external or internal debtor-creditor relations in connection with co-owned immovables or movables. Alternatively, the answer correctly states the external or internal debtor-creditor relations, but fails to give a thorough explanation of the two terms. |
| | 3–5 | An answer which explains any one of the terms, but fails to state, or merely states very little, the external or internal debtor-creditor relations in connection with co-owned property. |
| | 0–2 | An answer does not explain any one of the terms <i>tenancy in common</i> or <i>joint tenancy</i> , and states very little as to the external and internal relations in connection with co-owned property. |
| 3 | 8–10 | An answer which states correctly the rule with respect to the monetary compensations to its employees in case a labour contract expires or is terminated by the parties, and the statutory obligations for an employer where a labour contract expires or is terminated. |
| | 5–7 | An answer which states some points as to the rule of monetary compensations by an employer to its employees if a labour contract expires or is terminated, and states part of the obligations for an employer to its employees after the expiration or termination of a labour contract. |
| | 3–4 | An answer which states merely limited points in part (a) and part (b); alternatively, an answer which states merely all the points in part (b) but fails to state any points in part (a). |
| | 0–2 | Little or no knowledge of this area. |
| 4 | 8–10 | A thorough explanation of the meaning of taking effect of a contract, and explain fully and correctly the rules regarding the time or conditions effect of a contract. The answer should indicate that the candidate understands clearly differences between the formation of a contract and taking effect of a contract. |
| | 5–7 | A sound understanding of the meaning of taking effect of a contract, and explain one or two points of the rules regarding the time or condition of taking effect of a contract. |
| | 3–4 | Limited understanding of the rules as to the time and conditions of taking effect of a contract, but fails to give an explanation of the meaning of taking effect of a contract. Alternatively, the answer explains the meaning of taking effect of a contract, merely explains very little as to the rules regarding the time or conditions of taking effect of a contract. |
| | 0–2 | Little or no knowledge of the area. |
| 5 | 8–10 | An answer shows a thorough understanding of the rules in relation to the sole-person limited liability company, including the registered capital, the restrictions on the minimum requirement for registered capital, the reinvestment by a sole-person limited liability company to other company, the special rule in relation to the liability towards the company's debts. |
| | 5–7 | An answer which shows sound understanding of the meaning of the registered capital of a limited liability company, but merely explains some of the restriction as to the reinvestment and the special rule as to the liability towards the company's debts. |
| | 3–4 | An answer which shows limited understanding of the question, merely gives an explanation to the meaning of the registered capital plus a limited answer to any one of part (b) or (c); or merely gives an full answer to part (b) and a very limited point to any one of part (a) or (c). |
| | 0–2 | Little or no knowledge of the area. |

- 6** 8–10 A thorough answer which explains the system of *compromise* and *creditor in compromise*, and states correctly the legal effect of a compromise against the guarantor of the debtor as well as other joint and several debtors.
- 5–7 An answer shows the sound understanding of compromise in the process of liquidation, but fails to state the legal effect of a compromise against the guarantor of the debtor and other joint and several debtor; alternatively, an answer which explains the term compromise or creditor in compromise, but shows only some understanding of the legal effect of a compromise against the guarantor and other joint and several debtors.
- 3–4 An answer shows little understanding of the rules as to compromise, or merely gives a correct answer to any one of part (a), (b) or (c).
- 0–2 Little or no knowledge of the area.
- 7** 8–10 An answer which states clearly the limit on the transaction of the stocks purchased by a purchaser in the process of takeover on the securities market, and states the afterwards obligations of the purchaser after the completion of takeover of a listed company.
- 5–7 An answer shows a sound understanding of this area, but merely stating some of the points that constitutes the purchaser's afterwards obligations towards the target company, and the report or approval requirements after the completion of takeover of a listed company.
- 3–4 An answer which states merely the limit of transaction on the stocks purchaser by a purchaser during the process of takeover of a listed company, but fails to state any points in part (b); alternatively, the answer shows some understanding of the afterwards obligations by a purchaser, but lacking in detail, and fails to state the transaction limit at all.
- 0–2 Little or no knowledge of the area.
- 8** 8–10 An answer correctly states all the three parts of this question and gives the reasons to support the answers. Or the answer correctly states all the three parts of this question and gives most of the reasons to support the answer.
- 5–7 An answer represents a sound understanding of the legal issues in the problem section and gives complete answers to any two parts of this question, or merely gives the conclusions to every part of this question but fails to give any reasons to support the conclusions.
- 3–4 An answer shows some understanding of the legal issues in the problem section and gives some correct conclusions, but fails to give any reasons to support the conclusions.
- 0–2 The answer gives very weak answer showing no, or very little, understanding of the question.
- 9** 8–10 An answer gives a complete conclusion to both part (a) and part (b), and gives the reasons to support the conclusions to the question.
- 5–7 An answer shows some understanding of the rules in relation to the pledge of rights and the transfer of shares of a limited liability company in the enforcement procedure under a court order, but fails to give the reasons to support the conclusions.
- 3–4 An answer shows the ability to understand the rules as to the pledge of rights or the transfer of shares in the enforcement procedure under a court order, but fails to give reasons to support the conclusions.
- 0–2 A very weak answer shows no, or very little, understanding of the question.
- 10** 8–10 An answer which gives a complete answer to each part of the question and gives correct reasons to support the answer, especially shows an ability to analyse how the bankruptcy administrator should deal with the situation of the supplementary declaration of creditor's right.
- 5–7 An answer shows a good understanding of the rule of the supplementary declaration of the creditor's right and gives a correct answer to part (a), but merely gives some correct points in part (b); alternatively, an answer states the full points in part (a) or part (b), but states very limited points in the other part.
- 3–4 An answer shows some understanding of the rules as to the supplementary declaration of creditor's right and giving only a correct conclusion to any one of the two parts, without any reasons.
- 0–2 An answer shows very little understanding of the question.