
Answers

- 1** This question requires candidates to explain the territorial jurisdiction of a Chinese court to deal with civil cases against a natural person and a legal person, and explain the term *exclusive jurisdiction* as well cases subject to *exclusive jurisdiction* under the Civil Procedures Law of China:
- (a)
 - (i) In accordance with Article 22 of the Civil Procedures Law, in case a civil lawsuit is brought against a natural person, the court at the place where the defendant has his/her domicile shall have jurisdiction over the case. If the place of the defendant's domicile is different from that of his/her habitual residence, the jurisdiction shall be based on habitual residence.
 - (ii) Where a lawsuit is brought against a legal person or any other organisations, such lawsuit shall be under the territorial jurisdiction of the court of the place where the legal person or other organisation has its domicile.
 - (b) In accordance with Article 34 of the Civil Procedures Law, *exclusive jurisdiction* refers to such special territorial jurisdiction under which the court of the place shall have exclusive jurisdiction over the cases, even if such jurisdiction contradicts the jurisdiction based on the rules of the common territorial jurisdiction.
 - (c) In accordance with Article 34 of the Civil Procedures Law, the exclusive jurisdiction is provided as follows:
 - (i) A dispute over real estate shall be under the jurisdiction of the court at the place where the estate is located;
 - (ii) A dispute over harbour operations shall be under the jurisdiction of the court at the place where the harbour is located;
 - (iii) A dispute over succession shall be under the jurisdiction of the court where the decedent had his/her domicile upon his/her death, or where the principal part of the estate is located.
- 2** This question requires candidates to explain the term *ownership*, state the forms of public notice for the change of the property rights in immovables and movables.
- (a) In accordance with Article 39 of the Property Law, *ownership* refers to such rights that a property owner shall have concerning the right to possess, the right to use, the right to receipt of proceeds from, and the right to dispose of its immovables or movables.
 - (b) In accordance with Article 9 of the Property Law, the creation, modification, assignment and/or termination of rights in immovables shall become effective once duly registered. Property rights shall not take effect without registration, unless otherwise provided by law. Therefore, any changes to the property rights in immovables require the duly registration according to laws and administrative regulations. Otherwise, such changes will not become effective.
 - (c)
 - (i) In accordance with Article 23 of the Property Law, unless otherwise provided by law, the creation and assignment of rights in movables shall become effective upon delivery.
 - (ii) In accordance with Article 25 of the Property Law, if an interest holder is in lawful possession of a movable property prior to the creation and assignment of the property rights therein, the property rights shall become effective when such legal act takes place.
- 3** This question requires candidates to explain the term *open-ended employment contract*, and state the various circumstances under which an open-ended employment contract must be concluded under the Labour Contract Law of China.
- (a) In accordance with Article 14 of the Labour Contract Law, an *open-ended employment contract* refers to such kind of employment contract in which the employer and the employee have agreed not to set up a definite expiration date.
 - (b) Under the following circumstances, an *open-ended employment contract* must be concluded by the employer and employee:
 - (i) The employee has been working for the employer for a consecutive period of not less than 10 years;
 - (ii) When an employer introduces the employment contract system for the first time or a state-owned enterprise re-concludes its employment contract with its employees as a result of enterprise restructuring, the employee has been working for the employer for a consecutive period of not less 10 years and there are less than 10 years from his/her statutory retirement age;
 - (iii) Prior to the renewal, two consecutive fixed-term employment contracts were concluded and the employee does not fall in any of the situations provided in Articles 39, 41(1) and 41(2).
 - (iv) If an employer fails to conclude a written employment contract with an employee within one year from the date on which he started hiring the employee, the employer and employee shall be deemed to have concluded an open-ended employment contract.

- 4** This question requires candidates to state the various legal remedies granted by law when the other party to a contract breaches the contract, especially state the conditions to be met for a party to pursue specific performance as a form of legal remedy under the relevant provisions of the Contract Law of China:
- (a)**
 - (i) In accordance with Article 94 of the Contract Law, if the other party fails to perform his contractual obligations or whose performance fails to conform to the contract, which results in that the purpose of the contract cannot be realised, a party may claim to rescind the contract as a legal remedy.
 - (ii) In accordance with Articles 107 and 111 of the Contract Law, the party may request the breaching party to adopt the appropriate remedial measures, such as repairing the defective goods, reducing the price of goods or services, etc.
 - (iii) In accordance with Articles 107, 112 and 113 of the Contract Law, the party may claim the damages against the breaching party.
 - (iv) In accordance with Article 107 and 110 of the Contract Law, the party may request the other party to perform the specific contractual obligations as agreed upon in their contract.
 - (b)** In accordance with Article 110 of the Contract Law, if one party fails to perform the non-monetary obligation or the performance of such obligation fails to conform to the contract, the other party may claim for specific performance except for the following cases:
 - (i) the obligation cannot be performed in law or in fact;
 - (ii) the object of the obligation is not suitable for enforcement or the cost for enforcement is excessively high;
 - (iii) the creditor fails to claim for performance within a reasonable period.
- 5** This question requires candidates to explain the two forms of incorporation of a joint stock limited company, and state the minimum registered capital and the statutory requirement for capital contributions by the sponsors of a joint stock limited company under the relevant provisions of the Company Law of China:
- (a)**
 - (i) In accordance with Article 78 of the Company Law, *incorporation by share offering* means a form of incorporation of a joint stock limited company in which the sponsors subscribe a portion of the shares to be issued by the company and offer the rest of the shares to the general public or to specific investors.
 - (ii) According to the same provision of law *incorporation by means of sponsorship* means a form of incorporation of a joint stock limited company in which the sponsors of a joint stock limited company subscribe all the shares to be issued by the company.
 - (b)** In accordance with Article 81 of the Company Law, the minimum amount of the registered capital of a joint stock limited company shall be RMB 5,000,000 yuan. If a higher minimum amount of the registered capital of a joint stock limited company is required by laws or administrative regulations, such provisions shall prevail.
 - (c)** In accordance with Article 81 of the Company Law, where a joint stock limited company is incorporated by means of sponsorship, the amount of initial capital contributions by all sponsors shall not be less than 20% of the registered capital, and the remaining part of the registered capital may be paid up by the sponsors within two years upon incorporation of the company; provided that, in the case of a investment company, it may be paid up within five years upon incorporation of the company.
- 6** This question requires candidates to state the conditions for a shareholder of a limited liability company to transfer his equity to a party other than the shareholders of this company, and state the procedures and conditions to be complied with when the transfer of the equity of a shareholder is under a court order.
- (a)** In accordance with Article 72 of the Company Law, where a shareholder intends to transfer his equity to a party other than the shareholders of the company, the consent of over half of all the shareholders must be secured. Such shareholder shall notify other shareholders for consent of the matter on the transfer of his equity. If the other shareholders fail to give a reply within 30 days upon receipt of such notice, they shall be deemed to have consented to such transfer. If over half of the other shareholders disapprove such transfer, then, those shareholders disapproving the transfer shall purchase the equity to be transferred. If such shareholders do not make the purchase, they shall be deemed to have consented to the transfer.
 - (b)** In accordance with Article 73 of the Company Law, when a people's court renders an order to transfer compulsorily the equity 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. Under such circumstances, other shareholders shall have the priority to purchase the equity under equal conditions. If other shareholders fail to exercise their priority to purchase within 20 days upon the date of the notice of the court, they shall be deemed to have waived their priority to purchase.

- 7** This question requires candidates to state the composition of the creditors' meeting, and state the rules of the creditors' meeting to approve a resolution during the process of the enterprise bankruptcy under the Enterprise Bankruptcy Law of China:
- (a)** In accordance with Article 59 of the Bankruptcy Law, the creditors' meeting is composed of all the creditors who have declared their creditors' right according to law when an enterprise goes into bankruptcy.
 - (b)** In accordance with Article 64 of the Enterprise Bankruptcy Law, any resolution of the creditors' meeting shall be approved by the following procedures: 50% or more of the creditors that have the right to vote and attend the meeting vote for the resolution concerned, representing 50% or more of the aggregate amount of the creditors' right free from property guaranty, unless it is otherwise prescribed by this law. Any creditor who has the right to guaranty on particular assets of its debtor and that has not given up the priority right to be repaid may not enjoy the right to vote for any matter as prescribed in the present law.
Where any creditor believes that a resolution of the creditors' meeting has violated law or damaged its interest, it may, within 15 days as of the day when the creditors' meeting makes a resolution, plead the people's court to revoke the resolution and to order the creditors' meeting to re-make a resolution according to law.
 - (c)**
 - (i)** In accordance with Article 65 of the Enterprise Bankruptcy Law, where a resolution involving any matters on the management of the debtor's assets or the conversion plan of the insolvent assets can not be adopted at the creditors' meeting, such resolution shall be ruled by the competent people's court.
 - (ii)** In accordance with Article 65 of the Enterprise Bankruptcy Law, where a resolution involving any matters on the distribution plan of the insolvent assets has not been adopted after a second voting at the creditors' meeting, such resolution shall be ruled by the competent people's court.
- 8** This question requires candidates to deal with the legal issues relating to security (guaranty) under the Property Law of China.
- (a)** In accordance with Article 208 and Article 212 of the Property Law, in cases where, to secure the payment of debts, the debtor pledges its movable property for possession by the creditor, if the debtor defaults on such debt, the pledgee shall have the priority to get payment from such pledged property. The right to the pledge shall be established upon delivery of the pledged property by the pledgor.
Mr Zhang and Mr Lee concluded a pledge agreement but Mr Lee did not possess the mini-bus. The right to the pledge would not be established. Therefore, the pledge agreement between Mr Zhang and Mr Lee did not come into effect.
 - (b)** In accordance with Article 212 of the Property Law, the legal relationship between Mr Zhang and Mr Wang was the pledgor and pledgee. Since they entered into a pledge agreement and Mr Zhang delivered the mini-bus as the pledge to Mr Wang, the pledge agreement came into effect. Therefore, the legal relationship of pledgor and pledgee has been established.
 - (c)** In accordance with Article 214 of the Property Law, during the period of the possession of the movable the pledgee is not allowed to dispose of the pledged property.
 - (d)** In accordance with Article 215 of the Property Law, the pledgee is under the obligation to keep the pledged property in a good condition; and if the pledged property is damaged or lost due to improper keeping, the pledgee shall be liable for compensation. In cases where any act of the pledgee may cause damage to or loss of the pledged property, the pledgor may request the pledgee to surrender the pledged property to a competent authority, or seek to take back the pledged property upon an earlier payment of the debt.
In this case Mr Wang lent the mini-bus to a third party without the consent of Mr Zhang and caused the damage of it, he was liable for compensation. Hence Mr Zhang was entitled to claim for damages against Mr Wang, even though the mini-bus was damaged by the transport company.
- 9** This question requires candidates to deal with the legal issues in relation to the bankruptcy liquidation under the relevant provisions of the Enterprise Bankruptcy Law of China.
- (a)** In accordance with Article 109 of the Enterprise Bankruptcy Law, an owner of the right to guaranty on the particular assets of the bankrupt enterprise may enjoy the priority right to be repaid by means of the particular assets.
In this case the office building, with the appraised value of RMB 2,400,000 yuan, had been mortgaged for a loan from Communication Bank. According to the above-mentioned provision of law Communication Bank, as a mortgagee of the office building, should enjoy the priority right to be repaid from the value of the office building. Since the principal RMB 2,000,000 yuan plus the interest of RMB 400,000 yuan were equivalent to the amount of the appraised value of the office building, the credit of Communication Bank could be satisfied by the appraised value of the office building.
 - (b)** In accordance with Article 40 of the Enterprise Bankruptcy Law, where a creditor is indebted with its debtor before an application for bankruptcy is accepted, it may claim to offset such debts with the bankruptcy administrator, provided that the situation falls within the exceptions set forth in this law.

In this case Hongyan Co owed a debt of RMB 7,000,000 yuan to Company A, while it also had a receivable of RMB 1,900,000 yuan under the rental contract. Therefore, the amount of RMB 1,900,000 yuan could be off-set from the debt of RMB 7,000,000 yuan.

- (c) In accordance with Article 31 of the Enterprise Bankruptcy Law, within one year before the court accepts a bankruptcy application, a bankruptcy administrator has the right to plead the court to revoke the act in which the bankrupt enterprise gave up the creditor's right.

In this case Hongyan Co had given up a credit in the amount of RMB 1,000,000 yuan before the court accepted the bankruptcy application, which had taken place within the period of one year before the court accepted the bankruptcy application. Therefore, the bankruptcy administrator might plead the court to revoke such act and recover this amount.

- (d) In accordance with Articles 109 and 40 of the Enterprise Bankruptcy Law as mentioned in Question (a) and (b) respectively, the common credits of bankruptcy shall be the remaining part of credits after the necessary deduction from the secured credits and settled by means of offset during the process of liquidation.

Based on the facts and the law, the following credits should be deemed as the common credits of bankruptcy:

- (i) Company A's credit due: RMB 5,100,000 yuan (7,000,000 – 1,900,000)
- (ii) Company B's credit under a sales contract payable by Hongyan Co: RMB 1,500,000 yuan.
- (iii) Company C's damages due to the termination of contract by the bankruptcy administrator: RMB 1,400,000 yuan.

10 This question requires candidates to deal with the legal issue of the demur right of advance performance under the Contract Law of China.

- (a) (i) Based on the facts in the question Dongfang Co was entitled to detain the remaining 5,000 M/T of iron ore. In accordance with Article 68 of the Contract Law, a party who shall perform first may suspend performance when there is evidence proving that the other party is under the circumstances as set forth in that Article. According to the cooperation contract Dongfang Co was to perform its contractual obligation first to deliver the second shipment of 5,000 M/T iron ore to Steel Co. Steel Co, however, did not carry the processed pig iron because it was short of the necessary funds to buy coke. This fact indicated that Steel Co's capacity for performance was deteriorating. Under the provision of the Contract Law, Dongfang Co might suspend its performance.
- (ii) In accordance with Article 69 of the Contract Law, the party who suspends performance shall notify the other party in time and resume performance when the other party provides an appropriate guarantee. Dongfang Co did give a written memo (a form of written notice) to Steel Co. Therefore, Dongfang Co complied with the statutory procedures to support its demur right of advance performance.
- (b) In accordance with Article 69 of the Contract Law, after the suspension of performance, if the other party neither recovers capacity for performance nor provides an appropriate guarantee within a reasonable time, the party who suspends performance may rescind the contract. It was clearly that Steel Co neither resumed the capacity for performing its obligation to carry the pig iron to Dongfang Co, nor provided an appropriate guarantee within a reasonable time. Therefore, Dongfang Co was entitled to dissolve the cooperation contract and to sell the remaining iron ore to any third party.
- (c) Based on the above-mentioned provisions of law and facts, Steel Co was a party who broke the cooperation contract. Dongfang Co was entitled to suspend performance and dissolve the contract. Hence Steel Co's claim against Dongfang Co should not be supported by the court.

- 1** 8–10 A thorough answer which explains the common territorial jurisdiction and the exclusive jurisdiction of the courts over the civil cases, and describe the civil cases which are fallen within the coverage of the exclusive jurisdiction of the courts.
- 6–7 An answer which explains the common territorial jurisdiction or the exclusive jurisdiction, and describes some of the civil cases that fall within the coverage of the exclusive jurisdiction.
- 0–5 An answer which merely explains the common territorial jurisdiction or the exclusive jurisdiction, but fails to describe the coverage of the exclusive jurisdiction. As an alternative, an answer which represents the basic understanding of part (a) or (b), but fails to describe any cases under the exclusive jurisdiction.
- 2** 8–10 A good explanation of the term ownership, completely pointing out the four categories of rights a property owner shall have, a thorough understanding of the procedure rules for the change of the property rights in immovables and movables, especially the rules and importance of the registration of immovables with the governmental agency.
- 5–7 A sound understanding of the area, at least stating one or two rights of ownership and a sound understanding of the procedure rules for the change of the property rights in immovables and movables.
- 3–4 Some understanding of the area, but lacking in detail, perhaps failing to explain completely the four kinds of rights a property owner shall have, or failing to state the procedure rules for the property rights in immovables or movables, or failing to point out the importance of the registration of immovables.
- 0–2 Little or no knowledge of the area.
- 3** 8–10 A thorough explanation of the meaning of the term open-ended employment contract, completely stating the various circumstances under which an open-ended employment contract must be concluded by the employer and employees.
- 5–7 A sound understanding of the meaning of the term open-ended employment contract, and stating clearly at least two kinds of circumstances under which an open-ended employment contract shall be concluded.
- 3–4 A basic understanding of the meaning of the term, but failing to state more than one circumstances under which an open-ended employment contract shall be concluded.
- 0–2 Little or no knowledge of the area.
- 4** 8–10 Thorough statement of the various legal remedies granted by the law for a party to a contract in case the other party breaches contract, and a good understanding of all or most of the exceptions under which a party may not claim for the specific performance as a form of legal remedy.
- 5–7 A sound understanding of the area, but lacking to state completely the various legal remedies and the exceptions for pursuing the specific performance as a legal remedy.
- 3–4 Some understating of the area but lacking in detail, perhaps failing to state most of the legal remedies or failing to state most of the conditions under which a party may not claim for the specific performance.
- 0–2 Little or no knowledge of the area.
- 5** 8–10 Answers will show a thorough understanding of the two forms of incorporation of a joint stock limited company, and the requirements on the registered capital for a joint stock limited company as well as the obligations of the sponsors to make their capital contributions where a joint stock limited company is incorporated by means of sponsorship.
- 5–7 A sound understanding of the forms of incorporation of a joint stock limited company and the requirements for the registered capital, but failing to point out the rules of making capital contributions by sponsors; or being able to give an answer to the requirements of the registered capital for a joint stock limited company and the obligations of the sponsors, but failing to state perfectly the forms of incorporation of a joint stock limited company,
- 3–4 Some understanding of the area but lacking in detail, perhaps lacking to explain the two forms of incorporation, or lacking to state the requirements for the registered capital and the obligations of the sponsors to make capital contributions.
- 0–2 Little or no knowledge of the area.

- 6** 8–10 A thorough statement of the rules for a shareholder of a limited liability company to transfer his equity to the outsider of the company, and a good understanding of the special procedures and conditions to be met if the transfer of equity being under an order of court.
- 5–7 A sound understanding of the area, although perhaps lacking in detail or failing to point out all the conditions in each part of this question.
- 3–4 Some understanding of the area, but lacking in detail, or failing to answer any part of this question.
- 0–2 Little or no knowledge of the area.
- 7** 8–10 A good statement of the composition of the creditors' meeting and the general conditions to be met for the creditors' meeting to approve a resolution, and a good understanding of the special conditions for the creditors' meeting to approve a resolution involving the matters on the settlement agreement or restructuring of an enterprise in the process of bankruptcy liquidation.
- 5–7 A sound understanding of the area, although perhaps lacking in detail.
- 3–4 Some understanding of the area, but lacking in detail, perhaps failing to state the general conditions or special conditions for the creditors' meeting to approve a resolution, or perhaps failing to understand the matters in relation to the settlement agreement or the restructuring of an enterprise in the process of bankruptcy liquidation.
- 0–2 Little or no knowledge of the area.
- 8** 8–10 Correct answers to all the four parts of this question and giving the reasons to support the answers, especially understanding the rule that the possession of the pledged property constitutes the condition for a pledge agreement to come into effect.
- 5–7 A sound understanding of the legal issues in the problem section and giving complete answers to any two parts of this question, or merely giving the conclusions to every part of this question but failing to give any reasons to support the conclusions.
- 3–4 Some understanding of the legal issues in the problem section and giving some correct conclusions, but failing to give any reasons to support the conclusions.
- 0–2 Very weak answer showing no, or very little, understanding of the question.
- 9** 8–10 A complete answer, highlighting and giving a correct judgement to each point of the question. It is also required to refer the relevant rules of law to support the judgements.
- 5–7 An accurate recognition of the problems inherent in the question, a basic ability to deal with the legal issues, together with an attempt to apply the appropriate rules of law to support the judgement.
- 3–4 An ability to understand some of the key issues, but failing to give an accurate answer to most parts of the question.
- 0–2 Very weak answer showing no, or very little, understanding of the question.
- 10** 8–10 A complete answer, highlighting and dealing with all of the issues presented in the problem section.
- 5–7 A good understanding of the legal issues in the problem section and giving a correct answer on two parts among the three parts, along with some reasons for the answer. However candidates fail to give the correct answer to one part.
- 3–4 Some understanding of the legal issues in the problem section and giving only a correct answer to any one of the three parts.
- 0–2 Very weak answer showing no, or very little, understanding of the question.