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# Answers

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- 1 This question requires candidates to explain the terms of *the transfer of jurisdiction* and *the designation of jurisdiction* by the Chinese courts in dealing with civil cases, and state how to deal with the special situations if the relevant court considers it is not a competent court to exercise the jurisdiction under the Civil Procedures Law of China.
- (a) In accordance with Article 36 of the Civil Procedures Law, the term *the transfer of jurisdiction* refers to such a form of jurisdiction when a court finds a case it has accepted is not under its jurisdiction, it shall refer the case to the court that shall have a proper jurisdiction over the case.
  - (b) In accordance with Article 37 of the Civil Procedures Law, the term *the designation of jurisdiction* refers to a special form of jurisdiction when a court having jurisdiction over a case considers that it is unable to exercise the jurisdiction for special reasons, a superior court shall designate another court to exercise jurisdiction. The designation of jurisdiction will also take place when two or more courts have jurisdiction over a dispute and the relevant courts cannot resolve the conflict of jurisdiction, the superior court designates the case to a particular court.
  - (c) In accordance with Article 36 of the Civil Procedures Law, if the court to which a case is referred through transfer of jurisdiction considers that the particular case is not under its jurisdiction, the relevant court shall report to the superior court for designation of jurisdiction. It is not allowed for this court to refer the case again to another court directly.
- 2 This question requires candidates to explain the term *the confirmation of property*, state the means of dispute settlement over the property rights and state the various claims entitled to a right holder if his property rights are infringed by other persons under the Property Law of China:
- (a) In accordance with Article 33 of the Property Law, the term *the confirmation of property* means where any disputes over the ownership or content of property arises, the interested parties may, through appropriate procedures as provided by the law, request relevant government department, court or other independent third party to confirm the owner of the property.
  - (b) In accordance with Article 32 of the Property Law, where the property rights of a holder are infringed by others, the holder may request the relevant institutions for the protection of the property rights by means of mediation, arbitration or litigation.
  - (c) The nature of disputes is different between the confirmation of property and the protection of property rights. For the former, the ownership of the property is in dispute. The interested party shall resort to the relevant institutes to confirm who shall be the owner of the property. For the latter, the holder has the lawful property rights but the right is infringed by others. Therefore, the holder requests the relevant institutes to protect his property rights.
  - (d) In accordance with Article 34 of the Property Law, where the immovables or movables of a holder are possessed by a party without an authority, the holder may claim for the returning of the original property (immovables or movables).
- 3 This question requires candidates to explain the term *labour service despatching*, and state the legal relations of the parties and the statutory terms of a labour contract between the entity despatching labour services and the person despatched under the Labour Contract Law of China.
- (a) In accordance with Article 59 of the Labour Contract Law, the term *labour service despatching* refers to a form of business transaction under which an entity despatching labour services, by the conclusion of a contract, despatches the persons (service provider) to another enterprise (the labour service purchaser) to work for a fixed period of time or to provide particular services as agreed in the contract.
  - (b) In accordance with Article 58 of the Labour Contract Law, the legal relations between the entity despatching labour service and the persons despatched to the labour service provider shall be the relations of employer and employee.
  - (c) In accordance with Article 58 of the Labour Contract Law, besides the general provisions as set forth in the law, the two parties shall enter into a fixed-term labour contract for a term of no less than two years. The wages and other compensations the persons despatched shall be prescribed in such labour contracts on a monthly basis. For the period when the service providers are out of work, the entity despatching labour services shall pay the minimum wage as fixed by the local government on a monthly basis.
- 4 This question requires candidates to explain the term *subrogate right (right of subrogation)* and state the conditions to be met if a party claims this right under the Contract Law of China:
- (a) In accordance with Article 73 of the Contract Law, the term *subrogate right (right of subrogation)* refers to such a right as authorised to a party (creditor) by the law to claim, in his own name, the creditor's right against a third party to whom there is not direct contractual relations between them.

- (b)** In accordance with Article 73 of the Contract Law, the following conditions shall be met if a party intends to exercise the right of subrogation against a third party:
- (i) The party claiming subrogate right shall be the creditor under a contract.
  - (ii) The debtor is reluctant to exercise his creditor's right against a third party, which causes harm to the creditor.
  - (iii) The debtor's credit against the third party has been matured.
  - (iv) The party claiming the subrogate right shall file a law suit against the third party to exercise such right.
  - (v) The subrogate right shall be exercised within the scope of creditor's credits towards his debtor.
- 5** This question requires candidates to state the rules in relation to the purchase of shareholder's equity by a company under the Company Law of China.
- (a)** In accordance with Article 75 of the Company Law, the pre-condition for a shareholder to request a limited liability company to purchase his equity is that he has voted against the relevant resolutions of a shareholders' meeting.
- (b)** In accordance with Article 75 of the Company Law, any shareholder who votes against the resolution of a shareholders' meeting relating to the relevant matters may, under any of the following circumstances, request the company to purchase his equity at a reasonable price:
- (i) where the company fails to distribute profits to its shareholders for consecutive five years, while the company has been continuously making profit for such five years;
  - (ii) where the company merges, divides or transfers its substantial assets; or
  - (iii) where the term of operation of the company expires as stipulated in the articles of association or other events occur for dissolution as stipulated in the articles of association, while the shareholders' meeting adopts a resolution on revision of the articles of association to make the company continue to exist.
- (c)** Where the shareholder and company fail to reach an agreement for the purchase of equity, the shareholder may file a lawsuit within 90 days upon the date of adoption of such resolutions against the company.
- 6** This question requires candidates to state the rules as to convene an extraordinary general shareholders' meeting by a joint stock company under the Company Law of China.
- (a)** In accordance with Article 101 of the Company Law, under the following circumstances, shall an extraordinary general shareholders' meeting be held by a joint stock company:
- (i) if the number of directors is less than that as provided by the Company Law, or less than two-thirds of the number as required by the articles of association of the company;
  - (ii) if the amount of the company's losses that have not been made up reaches one-third of the total amount of its paid-up share capital;
  - (iii) if shareholders holding separately or jointly 10% or more of the company's shares request to convene a shareholders' meeting;
  - (iv) if the board of directors deems it necessary;
  - (v) if the supervisory board proposes that such a meeting be convened.
- (b)** The extraordinary general shareholders' meeting shall be held within two months from the date on which any of the above-mentioned circumstances takes place.
- 7** This question requires candidates to explain the coverage of community liabilities and the order of settlement of bankruptcy expenses and community liabilities under the Enterprise Bankruptcy Law of China.
- (a)** In accordance with Article 42 of the Enterprise Bankruptcy Law, the following debts occurring after the court has accepted the application for bankruptcy shall be community liabilities:
- (i) The debts as generated from a contract that has not been discharged and required to be performed further by the bankruptcy administrator or debtor;
  - (ii) The debts as generated from the compensations and social insurance premiums for the continuance of business operations, and as well as any other liabilities as incurred therefrom;
  - (iii) The debts as generated from the possible damage resulted from the performance of functions and duties by a bankruptcy administrator or other relevant personnel; and
  - (iv) The debts as generated from any possible damage due to the debtor's assets.
- (b)** (i) In accordance with Article 43 of the Enterprise Bankruptcy Law, the community liabilities shall be settled through the debtor's assets at any time during the process of liquidation.

- (ii) Where the bankrupt expenses and community debts are generated from the liquidation process and the debtor's assets are not enough to pay off both the bankrupt expenses and community debts, the bankrupt expenses shall be paid off in priority. Where the debtor's assets are not enough to pay off the bankrupt expenses or community debts, they shall be settled proportionally to the total amount of the bankrupt expenses and community debts.

**8** This question requires candidates to determine the lawfulness of the resolutions of the shareholders' meeting, in terms of the replacement of supervisors, the issuance of corporate bonds and the use of statutory common reserve fund under the Company Law and the Securities Law of China.

- (a) In accordance with Article 52 of the Company Law, the supervisors as the representatives of employees shall be elected and appointed by the staff and workers of the company through the staff and workers congress, workers' assembly or other forms. Directors and senior executives of the company shall not concurrently serve as supervisors.

In this case, the replacement of Mr Wang by Mr Zhang was in conformity with the Company Law, as Mr Wang used to be a representative of Enterprise D.

However, the replacement of Mr Ding by Mr Lee was not in conformity with the Company Law, since Mr Ding was a representative of employees and should be replaced by employees of the company. The shareholders' meeting had no power to pass a resolution in this regard.

- (b) In accordance with Article 16 of the Securities Law, a company shall meet some conditions to issue corporate bonds: the net assets of a limited liability company shall not be lower than RMB 60,000,000 yuan; the average distributable profits of the company for the past three years shall be sufficient to pay the interest on the corporate bonds for one year, etc.

Based on the facts given, the resolution on the issuance of corporate bonds met the conditions as prescribed by the law. Since Yuanda Co's net assets reached the minimum requirement of RMB 60 million yuan and made profits for the past three consecutive years.

- (c) In accordance with Article 169 of the Company Law, a company's common reserve fund shall be used to make up the company's losses, to expand the operation or to increase the capital of the company by means of conversion. When the statutory common reserve fund of a company is converted into its capital, the remaining amount of the statutory common reserve fund shall not be less than 25% of the registered capital.

The resolution in relation to the transfer of the statutory common reserve fund to the registered capital was in conformity with the relevant provisions of the law, as the requirements for the net assets of the company and the remaining amount of the statutory common reserve fund are satisfied.

**9** This question requires candidates to deal with the allocation of the insolvent assets under the Enterprise Bankruptcy Law and Property Law of China.

- (a) In accordance with Article 184 of the Property Law, since the buildings were detained by an order of the court, it was forbidden for Singen Construction Company to dispose of them. Furthermore, the parties did not register the mortgage agreement according to Article 187 of the Property Law. For these reasons, the conclusion is that the mortgage agreement was an invalid one and the mortgage was not established. Therefore credit of Steel Company was the common credit.

- (b) In accordance with Article 113 of the Enterprise Bankruptcy Law, City Materials Company should be one of the common creditors. Since it had not been paid by Singen Co for providing the construction materials, the nature of the credit was receivables in common transactions.

- (c) According to the order of priority, City Materials Company should receive RMB 1.5 million yuan for its credit:

- (i) Remaining assets for the creditors = total assets 19,000,000 – expenses of liquidation 300,000 – wages and premium 3,500,000 – Tax 3,200,000 = 12,000,000 (remaining assets for the creditors)
- (ii) Assets for common creditors = 12,000,000 – 2,000,000 (credit secured under the mortgage agreement) = 10,000,000
- (iii) Total common credits = 29,000,000 – 7,000,000 (the 1st and 2nd orders of insolvent assets) – 2,000,000 (secured debts) = 20,000,000
- (iv) The ratio of settlement for common credits = 50%
- (v) City Materials Company's credit = 3,000,000 x 50%

- 10** This question requires candidates to deal with the legal issue as to the transfer of contract under the Contract Law of China.
- (a)** Seller was entitled to refuse to provide the goods. In accordance with Article 80 of the Contract Law, a creditor may transfer his contractual rights to a third party if he informs the debtor; otherwise, the transfer will not bind the debtor. Since Buyer did not inform Seller, Seller was not legally bound by such transfer and was entitled to refuse to deliver the goods to the third party.
  - (b)** The transfer of the sales contract by Buyer to Company X was invalid. In accordance with Article 84 of the Contract Law, the creditor's consent is required if a debtor transfers his contractual obligations in whole or in part to a third party. In this case Buyer was both a creditor as well as a debtor to the sales contract, because Buyer was under an obligation to pay the price upon taking over the goods. Since Buyer did not inform Seller and did not receive the consent from Seller, who was a creditor in terms of receiving the price from Buyer, the transfer of contract was invalid.

- 1** 8–10 A thorough answer which explains the two terms, and states how the relevant court deals with the special situation if it considers, upon the receipt of *the transfer of jurisdiction*, that the particular case is not under its jurisdiction.
- 6–7 An answer which explains *the transfer of jurisdiction* or *the designation of jurisdiction*, and states how the relevant court deals with the special situation as above-mentioned, or an answer which explains the two terms clearly.
- 3–5 An answer which explains any one of the terms on jurisdiction, but fails to state, or merely states very little, how the relevant court deals with the special situation as above-mentioned.
- 0–2 An answer which explains any one of the terms on jurisdiction in part or states how to deal with the special situation as above-mentioned in part.
- 2** 8–10 An answer which explains the term *the confirmation of property*; completely states the means of the protection of property; the difference between the confirmation of property and protection of property in terms of the nature of disputes; and the claims for a property holder if his property is possessed by other persons.
- 5–7 A sound understanding of the area, at least completely stating two or three parts of the question, or stating some contents of three or four parts of the question.
- 3–4 Some understanding of the area, but lacking in detail, perhaps merely stating any one part of the question, or stating some contents of at least two parts of the question but failing to give any answer to the other two parts.
- 0–2 Little or no knowledge of the area.
- 3** 8–10 A thorough explanation of the meaning of the term *labour service despatching*, clearly understanding the legal relations between the entity despatching labour services and the person despatched and stating the terms of contract and wages of the labour contract as required by the law.
- 5–7 A sound understanding of the meaning of labour service despatching, stating clearly either part (b) or part (c) of this question.
- 3–4 A basic understanding of the meaning of the term, but merely stating some contents of the other two parts; or an answer which explains completely the term *despatching labour services*, but fails to state the other two parts of the question.
- 0–2 Little or no knowledge of this area.
- 4** 8–10 A thorough explanation of the term *subrogate right*, and completely stating all the conditions to be met for a party to claim the subrogate right in the course of performing a contract.
- 5–7 A sound understanding of the meaning of subrogate right, but merely stating some of the conditions to be met for a party to claim this right.
- 3–4 Some understating of the area but lacking in detail, perhaps failing to state most of the conditions to be met for a party to claim the subrogate right.
- 0–2 Little or no knowledge of the area.
- 5** 8–10 An answer showing a thorough understanding of the rules as to the circumstances under which a shareholder of a limited liability company requests the company to purchase his equity at a reasonable price.
- 5–7 A sound understanding of this rule, but merely stating some of the circumstances under which a shareholder may request a company to purchase his equity at a reasonable price; or a sound understanding of this rule, but merely stating the legal remedy if he and the company fail to reach an agreement.
- 3–4 Some understanding of the rule but lacking in detail, perhaps failing to state the circumstances for a shareholder to request to purchase his equity or merely stating any one of the circumstances but failing to answer other parts of the question.
- 0–2 Little or no knowledge of the area.

- 6** 8–10 A thorough statement of the circumstances under which an extraordinary general shareholders’ meeting shall be held by a joint stock company, and the time limit for holding such an extraordinary general shareholders’ meeting.
- 5–7 A sound understanding of the area, although perhaps lacking in detail or failing to state all of the circumstances to convene an extraordinary general shareholders’ meeting; or merely stating some of the circumstances and the time limit for the joint stock company to convene an extraordinary general shareholders’ meeting.
- 3–4 Some understanding of the area, but lacking in detail, or failing to state most of the circumstances for an extraordinary general shareholders’ meeting.
- 0–2 Little or no knowledge of the area.
- 7** 8–10 A good explanation of the coverage of community liabilities and complete statement of the rule of settlement of bankrupt expenses and community liabilities during the liquidation process.
- 5–7 A sound understanding of meaning and coverage of the community liabilities, but merely stating some of the items that belong to the community liabilities or stating the rule of settlement of bankrupt expenses and community liabilities.
- 3–4 Some understanding of the area, but lacking in detail, perhaps failing to state most of the debts which shall be deemed as community liabilities and failing to state the rule of settlement of bankrupt expenses and community liabilities.
- 0–2 Little or no knowledge of the area.
- 8** 8–10 Correct answers to all the three parts of this question and giving the reasons to support the answers.
- 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 parts 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, especially stating the amount of assets to be allocated to City Materials Co.
- 5–7 Some understanding of the rules relevant to the allocation of the insolvent assets after the liquidation process, but failing to give an answer in detail.
- 3–4 An ability to understand the rules as to the allocation of the insolvent assets, 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, 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, along with some reasons for the answer, but failing to give the complete reasons to support the conclusions.
- 3–4 Some understanding of the legal issues in the problem section and giving only a correct conclusion to any one of the two parts with some reasons.
- 0–2 Very weak answer showing no, or very little, understanding of the question.