
Answers

- 1** This question requires candidates to explain the roles of judicial interpretations made by the Supreme People's Court, and state any one of the rules regarding the validity of a contract stipulated in the judicial interpretations of Contract Law.
- (a)** The roles of judicial interpretation made by the Supreme People's Court include:
- (i) Interpreting any legal issues that are new and uncertain, causing difficulties in understanding and enforcement of the law;
 - (ii) Adapting the law to changed circumstances and atoning for legislative insufficiency;
 - (iii) Developing and applying a coherent and unified approach to the application of law;
 - (iv) Determining the jurisdiction issue and giving guidance as operational criteria.
- (b)** In its judicial interpretation on the Contract Law, several rules are relevant to the validity of a contract that stipulate:
- (i) Where the approval or registration is required for the validity of a contract, and the parties fail to get approval or registration before the end of the debate in the first instance, the contract may be deemed as void by the court.
 - (ii) Where the law or administrative regulations require a contract to be registered but do not stipulate that such a contract shall take effect upon registration, the party's omission to register does not affect the validity of the contract.
 - (iii) A contract concluded exceeding the business scope of either party shall not be deemed as void by the court, except that the party has violated the rules as to the restrictive operations or concession by the State, or that the laws or administrative regulations prohibit such business operations.
- 2** This question requires candidates to explain the term 'right to use the land for construction', state various forms to establish such a right and the various forms of disposal of the right to use the land for construction by a holder of such a right under the Property Law.
- (a)** In accordance with Article 135 of the Property Law, the 'right to use the land for construction' refers to such a right under which a right holder is entitled to possess, use and seek proceeds from the land owned by the State, and shall be entitled to the construction of buildings, fixtures and their auxiliary facilities by making use of such land.
- (b)** In accordance with Article 137 of the Property Law, the creation of the right to use the land for construction can be established by forms of transfer or allotment, etc. Any acquisition of the right to use the land for construction for a commercial purpose shall take the form of transfer, such as auction, bid invitation or any other public bidding method.
- (c)** In accordance with Article 143 of the Property Law, the holder of the right to use the land for construction is entitled to dispose of this right in various ways, such as transfer, exchange, using it as an equity contribution to a company, donation or mortgage, unless the law provides otherwise.
- 3** This question requires candidates to explain the circumstances under which a labour contract is concluded that would make it invalid and the various provisions that would be regarded as invalid, and states the provisions with respect to liquidated damages for breach of contract by an employee that may be incorporated into a labour contract under the Labour Contract Law.
- (a)** In accordance with Article 26 of the Labour Contract Law, a labour contract shall be regarded as invalid or partially invalid if an employer uses such means as deception or coercion, or takes advantage of an employee's difficulties, to induce or force the employee to conclude a labour contract, that is contrary to the employee's true intent.
- (b)** In accordance with Article 26 of the Labour Contract Law, the following provisions in a labour contract shall be regarded as invalid or partially invalid:
- (i) the provisions under which an employer may disclaim its legal liability or denies the rights of a employee; or
 - (ii) the provisions violate the mandatory provisions of laws or administrative regulations.
- (c)** In accordance with Articles 22, 23 and 25 of the Labour Contract Law, a labour contract shall generally not stipulate that an employee bears any liquidated damages, unless the breach of a labour contract meets the special circumstances as prescribed in this law:
- (i) an employer provides special funds for an employee's training or gives the employee professional training. The particular labour contract may specify a term of service;
 - (ii) a labour contract contains a special provision as to the obligation of confidentiality by an employee with necessary compensation to be granted by the employer for such special obligation.

- 4** This question requires candidates to explain the term 'liquidated damages' and state the nature of them, and state the rules relating to the award of liquidated damages as well as the rule relating to the award of liquidated damages for delay in performing under the Contract Law.
- (a)** 'Liquidated damages' are one of the legal liabilities as incorporated in a contract and to be borne by a party who breaches the contract. The nature of liquidated damages is compensatory, not a punitive one.
 - (b)** In accordance with Article 114 of the Contract Law, the parties may agree that one party pays liquidated damages to the other in case of breach of contract according to the circumstances of the breach, they may also agree on the calculating method of damages caused by the breach. If the agreed amount of liquidated damages is excessively higher than the actual loss, a party may apply to the people's court or an arbitration tribunal for adequate mitigation. If the agreed amount of liquidated damages is excessively lower than the actual loss, a party may apply to the People's Court or an arbitration tribunal for an adequate increase.
 - (c)** Where the parties agreed upon the liquidated damages for delay in performance, the party shall still perform its contractual obligation after paying the liquidated damages.
- 5** This question requires candidates to state the special circumstances under which a joint stock company may purchase its own shares, and state the reasons why there is such a rule under the Company Law.
- (a)** In accordance with Article 143 of the Company Law, a company shall not purchase its own shares except under any of the following circumstances:
 - (1) where the company is to reduce its registered capital;
 - (2) where the company merges with another company holding shares of this company;
 - (3) where the company is to offer its shares to its employees as a reward; or
 - (4) where any shareholder of a company has objections to the resolution on division or merger of the company adopted by the general shareholders' meeting, and requires the company to purchase his/her shares.
 - (b)** The reasons that a joint stock company is generally not allowed to purchase its own shares are as follows:
 - (i) A company purchasing its own shares would become a shareholder of the same company that would result in the confusion of legal status between a company and its shareholders.
 - (ii) A company holding the shares of its own would result in such a situation in which part of the capital of the company, represented by the particular shares, is in a false position. It is not in conformity with the capital system of the Company Law.
 - (iii) If the company becomes a shareholder of its own, it may control the price of shares traded in the stock market and harm the interests of public investors by using the inside information of the company.
- 6** This question requires candidates to state the rules with respect to declaration of creditor's rights under the Enterprise Bankruptcy Law.
- (a)** In accordance with Article 48 of the Enterprise Bankruptcy Law, all the following items, defaulted by the debtor, need not declare during the course of declaration of creditor's rights: employees' wages, subsidies for medical treatment, fundamental pensions and insurance premiums as well as other funds to the employees as prescribed by laws and administrative regulations. The bankruptcy administrator shall work out a checklist of the above items and make an announcement.
 - (b)** In accordance with Articles 50–52 of the Enterprise Bankruptcy Law, where the relevant creditors/debtors are involved in several and joint liability during the course of declaration of creditor's right, the following rules shall be complied with:
 - (i) The joint and several creditors may be represented by any one of them to declare their creditors' right or may jointly declare the creditors' right.
 - (ii) Where the guarantor of a debtor or any other joint and several debtor has cleared off the liabilities on behalf of the debtor, the relevant party may declare its creditor's right on the basis of its right to recourse against the debtor.
 - (iii) Where the guarantor of a debtor or any other joint and several debtor has not yet paid off the debts on behalf of the debtor, it may declare its creditor's right on the basis of its future right to recourse against the debtor, unless the creditors have declared all the creditor's right against the bankruptcy administrator.
 - (iv) where several joint and several debtors are ruled to be governed by the procedures as prescribed in the law, the creditors have the right to declare their creditors' rights as a whole in each bankruptcy case respectively.

- 7** This question requires candidates to state the rules as to the disclosure of information under the Securities Law.
- (a)** In accordance with Article 68 of the Securities Law, the directors and senior executives of a listed company shall confirm in writing on the regular reports of the company. Its supervisory board shall examine and approve the company's regular reports worked out by the board of directors and shall put forward its opinion in writing on examination and approval. The directors, supervisors and senior executives of the company shall ensure the truthfulness, accuracy and completeness of the information disclosed by the company.
- (b)** In accordance with Article 193 of the Securities Law, where any issuer, listed company or other obligor of information disclosure fails to disclose the information according to relevant regulations or the information contains a falsehood, misleading statement or major omission, they shall bear the administrative liabilities as follows:
- (i) to be ordered by the Securities Regulatory Commission to make a rectification;
 - (ii) to be given a disciplinary warning by the Securities Regulatory Commission;
 - (iii) to be imposed a fine from RMB 300,000 yuan to RMB 600,000 yuan;
 - (iv) the persons who are directly in charge and directly responsible for such wrong doings will be given a disciplinary warning and a fine between RMB 30,000 yuan to RMB 300,000 yuan.
- 8** This question requires candidates to state the legal issue with respect to the assignment of ownership for movables under the Property Law.
- (a)** In accordance with Articles 23 and 24 of the Property Law, unless otherwise prescribed by any law, the creation or assignment of ownership of a movable shall come into effect upon delivery. The assignment of a motor vehicle should be registered after the conclusion of the contract. However, the relevant contract shall be effective and bind upon the two parties, even though the contract was not registered. The mere legal consequence for non-registration of the sales agreement was that where Mr Feng signed another contract to sell his car to a *bona fide* third party and have the contract registered, the ownership of the car should pass to that *bona fide* third party. Under such a circumstance, Mr Liu would not become a legitimate owner of the car. However, such a circumstance did not take place. Therefore, the sales agreement between Mr Feng and Mr Liu should be effective and bind upon them.
- (b)** In this case, Mr Feng duly delivered the car to Mr Liu and the ownership of the car passed to him. Although the sale of the car was subject to registration under the law and the parties failed to do so, the mere fact of the non-registration of the car would not affect the transaction between the two parties, nor Mr Liu's ownership along with the delivery of the car. The repair shop merely set up a contractual relationship with Mr Liu. It was nothing to do with the property right. Therefore, Mr Liu should be the legitimate owner of the car.
- (c)** Since Mr Liu was the legitimate owner of the car, his property right is protected by the law. The repair shop should be liable to Mr Liu for the damages to the car if it was caused by the defect of the air conditioner.
- 9** This question requires candidates to state the nature of set-off presented by Appliance Co, and the conditions to be met for the statutory set-off under the Contract Law of China.
- (a)** In accordance with Articles 99 and 100 of the Contract Law, there are two forms of set-off: statutory set-off and agreed set-off. Statutory set-off means that in case the conditions as prescribed by the law are satisfied, the right of set-off is established. As to the agreed set-off, it means that the set-off is carried out and based on a special agreement with respect to the set-off of the debts between the relevant parties. In this case when Appliance Co claimed the set-off of the debts, there was no such a special agreement between the two parties in this regard. Therefore, it was a form of statutory set-off.
- (b)** In accordance with Article 99 of the Contract Law, the conditions for statutory set-off when Appliance Co was claiming the right of offset include: both Appliance Co and Department Store owed the opposite party some amount of monetary debts; the debts have become due; the nature of the debts is identical, Appliance Co has issued a notice to Department Store; there is no statutory prohibition of such set-off. Hence, Appliance Co was entitled to claim the set-off of credits and debts with Department Store.
- 10** This question requires candidates to determine the legality of the resolutions adopted by the board of directors for approval by the general shareholders' meeting under the Company Law of China.
- (a)** The resolution of the board of directors on the distribution of dividends was not in conformity with law.
- According to Article 167 of the Company Law, when a company distributes the annual after-tax profits, it shall allocate 10% of its profits to its statutory common reserve fund. After a company makes up its losses and makes allocations to the statutory common reserve fund, a limited liability company or a joint stock company may distribute the remaining after-tax profits to its shareholders according to the provisions of this Law or the articles of association.

In this case Stationary Company intended to distribute all its after-tax profit, failing to allocate 10% of the profits to its statutory common reserve fund, and failing to make up its previous loss. Therefore, the resolution was not in conformity with the provisions of the Company Law.

- (b)** The resolution of the board of directors on placing the shares as a pledge for a loan was not in conformity with law. In accordance with the relevant provisions of the Company Law, shares are the certificates of right held by shareholders when they make their capital contributions to the company according to the articles of association. The company cannot be a holder of the shares it issued and cannot dispose of the shares of its shareholders through a resolution, no matter if there is a resolution of the board of directors or a resolution of the general shareholders' meeting. Therefore, any company is not allowed to place the shares of its shareholders as a pledge for a loan agreement by a resolution of the general shareholders' meeting.

- 1** 8–10 A thorough answer which explains the roles of judicial interpretations made by the Supreme People’s Court, and state correctly any one of the rules on the validity of a contract in the judicial interpretations on the Contract Law.
- 6–7 An answer which explains several points in part (a) and states correctly any one of the rules on the validity of a contract in the judicial interpretations on the Contract Law.
- 3–5 An answer which explains most of the points in part (a), but fails to state the judicial interpretation on the validity of a contract. As an alternative, the answer which explains one or two points in part (a) and states a little in relation to the validity of a contract in the judicial interpretation.
- 0–2 An answer which does not explain or explains only one point in part (a), but fails to state any one of the provisions in relation to the validity of a contract in the judicial interpretation.
- 2** 8–10 A thorough answer that explains the term ‘the right to use the land for construction’, and states correctly the forms to establish such a right and various forms of disposal of the right to use the land for construction under the Property Law.
- 6–7 An answer that explains the term the right to use the land for construction in part (a), and states some contents both in part (b) and (c), or states any one of the part (b) or part (c). As an alternative, the answer explains and states part of the contents as required, but omitted some other points.
- 3–5 An answer that explains the term in (a) or states any one in part (b) or (c), and gives little points to other parts. As an alternative, the answer gives some, not completed, points in part (a), (b) and (c).
- 0–2 An answer that does not explain or explain only one point in part (a), and fails to state any points in part (b) and (c) with respect to the forms to establish the right to use the land for construction and the forms of disposals of such a right.
- 3** 8–10 A thorough answer that explains the circumstances under which a labour contract is concluded that would make a labour contract invalid in part (a) and the various provisions that would be regarded as invalid in part (b), and states the provisions with respect to liquidated damages for breach of contract by an employee that may be incorporated into a labour contract in part (c). Any responses given to part (a) or (b) but that should be relevant to part (b) or (a) are acceptable.
- 6–7 An answer that states some circumstances under which a labour contract is concluded that would make it invalid and any one of the provisions that would be regarded as invalid in part (b), and any one of the circumstances under which a provision with respect to liquidated damages that may be incorporated in a labour contract in part (c).
- 3–5 An answer that explains limited points as to the circumstances under which a labour contract is concluded that would make it invalid in part (a) and states any one of the provisions that would be regarded as invalid in part (b), and states limited points in the circumstances with respect to liquidated damages that may be incorporated in a labour contract in part (c). As an alternative, the answer gives the completed or most of points to any one of part (a) or (b) or (c).
- 0–2 An answer that fails to state any points in part (a), (b) and (c), or states only very limited points.
- 4** 8–10 A thorough answer that explains the term ‘liquidated damages’ and its nature, and states correctly the rules relating to the award of liquidated damages in part (b) and the rule relating to the award of liquidated damages for delay in performing in part (c).
- 6–7 An answer that explains the term liquidated damages and its nature, and states some points with respect to the rules relating to the award of liquidated damages in part (b) or (c). As an alternative, the answer explains the term liquidated damages or its nature, and states some points with respect to the rules relating to the award of liquidated damages in part (b) and part (c).
- 3–5 An answer that explains the term liquidated damages or its nature, and states very limited points with respect to the rules relating to the award of liquidated damages. As an alternative, the answer fails to explain the term and the nature of liquidated damages, but states some points with respect to the rules relating to the award of liquidated damages in part (b) and (c).
- 0–2 An answer that fails to explain the term liquidated damages and its nature in part (a), and fails to state any points in part (b) and (c), or states only very limited points in part (a) or (b) or (c).

- 5** 8–10 A thorough answer that states the special circumstances under which a joint stock company may purchase its own shares, and the reasons why the law restricts the company to purchase its own shares.
- 6–7 An answer that states some circumstances under which a joint stock company may purchase its own shares, and limited points as to the reasons why the law restricts the company to purchase its own shares.
- 3–5 An answer that states limited points as to the circumstances under which a joint stock company may purchase its own shares, and no or limited points in part (b).
- 0–2 An answer that fails to state any points in part (b) and (c), or states only very limited points in part (a) or (b).
- 6** 8–10 A thorough answer that states the rules on the circumstances to declare the creditor's right, and the rules concerning the joint and several creditors/debtors during the course of declaration of creditor's right.
- 6–7 An answer that states the rules on the circumstances to declare the creditor's right, and some points of the rules concerning the joint and several creditors/debtors during the course of declaration of creditor's right.
- 3–5 An answer that states limited points on the rules on the circumstances to declare the creditor's right and limited or no points of the rules concerning the joint and several credits during the course of declaration of creditor's right in part (b).
- 0–2 An answer that fails to state any points in part (b) and (c), or states only very limited points in part (a) or (b).
- 7** 8–10 A thorough answer that states the relevant personnel of a listed stock company who are responsible for the truthfulness, accuracy and completeness of information disclosed in its regular reports, and the liabilities for wrong doings with respect to the disclosure of the material information in violation of law by the company and the above-mentioned personnel.
- 6–7 An answer that states the relevant personnel who are responsible for the information disclosed in its regular reports, and some points of the liabilities for wrong doings with respect to the disclosure of information in violation of law by the company and the above-mentioned personnel in part (b).
- 3–5 An answer that states limited points as to the personnel who are responsible for information disclosed in its regular reports, and limited points of the liabilities for wrong doings with respect to the disclosure of information in violation of law by the company and the above-mentioned personnel in part (b). As an alternative, the answer fails to state any points in part (a) but states some points in part (b).
- 0–2 An answer that fails to state any points in part (b) and (c), or states only very limited points in part (a) or (b).
- 8** 8–10 An answer which states the rule as to the passing of ownership for the car and the effect of the agreement, and states correctly the legitimate owner of the car as well as liability of the repair shop for the damaged car if the fire was caused by the defect of the air conditioner.
- 6–7 An answer that states correctly the rule as to the passing of ownership for the car and the effect of the agreement, but fails to make a correct determination on the owner of the car or the liability of the repair shop for the damaged car. As an alternative, the answer deals with all the three parts, but fails to give any reasons to support the conclusions.
- 3–5 An answer that only deals with any one part of the three parts, but fails to deal with other two parts. As an alternative, the answer gives a correct conclusion in part (b) or part (c), and states very limited points in part (a).
- 0–2 An answer that fails to state any points in three parts, or states only very limited points in three parts.
- 9** 8–10 An answer that states correctly the nature of set-off presented by Appliance Co, and all or most of the conditions to be met for Appliance Co to claim the set-off of credits and debts against Department Store.
- 6–7 An answer that states correctly the nature of set-off presented by Appliance Co, and some of the conditions to be met for Appliance Co to claim set-off. As an alternative, the answer fails to state the nature of set-off, and most of the conditions to be met for Appliance Co to claim set-off.
- 3–5 An answer that states the nature of set-off correctly, and limited points as to the conditions to be met for Appliance Co to claim set-off. As an alternative, the answer fails to state the nature of set-off presented by Appliance Co, but states some points as to the conditions to be met for Appliance Co to claim set-off.
- 0–2 An answer that fails to state any points in part (a) and (b), or states only very limited points in part (a) or (b).

- 10** 8–10 An answer that gives the correct determinations on the two resolutions as adopted by the board of directors with respect to the distribution of dividends and the placing of all the shares of the shareholders as a pledge for a loan and gives adequate reasons.
- 6–7 An answer that gives the correct conclusions on the two resolutions by the board of directors, but fails to give reasons to support the answer. As an alternative, the answer gives any one of the conclusions in part (a) or part (b) with reasons, and gives a conclusion in another part but without any reasons.
- 3–5 An answer that gives a correct conclusion in part (a) or part (b) with full or some reasons to support the conclusion, but fails to give any answer to another part.
- 0–2 An answer that fails to state any points in part (a) and (b), or states only very limited points in part (a) or (b).