
Answers

Section A

- 1 A
- 2 B
- 3 C
- 4 D
- 5 C
- 6 A
- 7 B
- 8 B
- 9 A
- 10 C
- 11 D
- 12 B
- 13 C
- 14 C
- 15 D
- 16 A
- 17 B
- 18 C
- 19 B
- 20 A
- 21 B
- 22 A
- 23 C
- 24 D
- 25 C
- 26 B
- 27 C
- 28 B
- 29 A
- 30 C
- 31 D
- 32 B
- 33 C
- 34 C
- 35 B
- 36 C
- 37 A
- 38 D
- 39 B
- 40 D
- 41 A
- 42 C
- 43 A
- 44 D
- 45 C

Section B

- 1 (a) The mortgage agreement between Mr Ma and Ms Yang could come into effect, although they failed to register the mortgage agreement. According to the Property Law, mortgage rights shall be established when such a contract comes into effect; without the registration, the mortgage right may not challenge any third party with good faith.
- (b) The right of pledge between Mr Ma and Mr Lee was established on the date when it was registered with the relevant government department.
- (c) Mr Lee should be repaid in priority. Since the pledge agreement has been registered, the mortgage agreement could not challenge the right of pledge which was duly registered.

- 2** (a) Family Mart was not entitled to refuse to accept all the 10,000 packages of goods, since the first 5,000 packages arrived timely without any defects. Furthermore, several days' delay of the second instalment does not constitute a fundamental breach of contract and did not entitle Family Mart to dissolve the contract.
- (b) Seafood Co could not be exempted from the liabilities caused by Link Logistics Co in the process of transportation. According to the sales contract it is Seafood Co's obligation to carry the goods to the place of Family Mart. Any failure committed by Link Logistics Co meant the breach of contract by Seafood Co.
- (c) Due to Seafood Co's breach of contract, Family Mart was entitled to claim liquidated damages but not the total amount. Although Seafood Co committed a breach of contract, it did not constitute a fundamental breach and should be liable for its breach proportionately.
- 3** (a) The merger plan should be decided by the general shareholders' meeting, and the resolution should be adopted at the general shareholders' meeting by two-thirds of the voting rights held by the shareholders attending the meeting.
- (b) According to the relevant provision of the Company Law, where the major assets purchased or sold within one year by a listed company exceed 30% of the total amount of its assets, the resolution shall be adopted by two-thirds of the voting rights held by the shareholders attending the meeting. Since the amount of the transaction exceeded 30% (200 million/600 million* 100% = 33%) of the total amount of Dano Stock Co's assets, it should be subject to such a requirement.
- (c) According to Article 74 of the Company Law, the creditors of LLC should have the right to claim full repayment of its debts by LLC or a corresponding guarantee from the Dano Stock Co within 30 days from the date of receipt of the notice or, within 45 days from the date of the first public announcement of the merger plan.
- 4** (a) The action of the debtor giving up the credit could not be revoked by the bankruptcy administrator in the process of liquidation. According to the Enterprise Bankruptcy Law, the bankruptcy administrator may petition to the court to revoke such an action occurring up to six months prior to the court's acceptance of the application for bankruptcy. In this case the action of giving up the credit took place beyond the six month limit, therefore, the condition to revoke is not satisfied.
- (b) According to the Enterprise Bankruptcy Law, where the court accepts an application for bankruptcy, and any capital contributor of the debtor fails to fulfil its obligation of capital contribution, the administrator shall require the relevant capital contributor to make full contribution of the capital it subscribed to, irrespective of the term for capital contribution.
- (c) The bankruptcy administrator has the right to decide whether to dissolve the contract or to continue to perform it.
- 5** (a) In accordance with Article 186 of the Company Law, the liquidation committee shall not satisfy any creditors during the period of declaration of claims. In this case the liquidation committee, in violation of the law, satisfied Mr Tang.
- (b) In accordance with Article 188 of the Company Law, if the liquidation committee discovers that there are insufficient assets in the company to pay off its debts, the committee shall apply to the people's court for a declaration of bankruptcy of the company. The fact that the liquidation committee decided to distribute the insolvent assets, even though they were insufficient to pay off its debts, was a violation of law.
- (c) In accordance with Article 207 of the Company Law, the relevant government authority may confiscate the illegal gains and impose a fine from one to five times the value of the illegal gains.

Section A

1–45 One or two marks per question; total marks 70

Section B

- 1** (a) 1 mark for the correct conclusion and 1 mark for the reasons.
(b) 2 marks for the correct conclusion as to the date of registration to be the date of the right of pledge.
(c) 1 mark for the correct conclusion, 1 mark for the reason.
- 2** (a) 1 mark for the correct conclusion that Family Mart was not entitled to refuse to accept all the goods. 1 mark for the reasons, including the separate instalments and minor breach of contract in relation to delay.
(b) 1 mark for the correct conclusion, 1 mark for the reasons to explain the conclusion.
(c) 1 mark for the correct conclusion, 1 mark for the reasons that Seafood Co should be partially liable for minor breach of contract.
- 3** (a) 1 mark for the correct conclusion and 1 mark for the reasons to give such a conclusion.
(b) 1 mark for the correct conclusion and 1 mark for the reasons.
(c) 1 mark for the correct conclusion and 1 mark for the reasons.
- 4** (a) 1 mark for the conclusion and 1 mark for the reason that the action took place beyond the six months limit.
(b) 1 mark for the correct conclusion and 1 mark for the reason.
(c) 1 mark for each right of the bankruptcy administrator.
- 5** (a) 1 mark for the correct conclusion and 1 mark for explanation.
(b) 1 mark for the correct conclusion and 1 mark for explanation.
(c) 1 mark for the point as to the confiscation of illegal gain and 1 mark for the point as to the fine.