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# Answers

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**Section B**

- 1** (a) The real estate contract was a valid one even if the Bank disagrees with the transaction between Mr Dong and Ms Lee. According to the Property Law, if a contract to create, modify, assign and terminate rights in immovables, it shall take effect upon conclusion of the contract; the fact that no registration has been made shall not affect the validity of such contract.
- (b) The relevant government authority could lawfully refuse to register the real estate contract, even though Ms Lee promised to repay the outstanding amount of the loan. According to the Property Law, if a mortgagor transfers the mortgaged property during the mortgage term, it shall receive the consent of the mortgagee or the transferee pays off the debts. Since the Bank refused to give consent and Ms Lee merely promised to pay off the debts, the conditions to transfer a mortgaged property were not satisfied.
- (c) Since Ms Lee repaid the outstanding amount of the loan and extinguished the mortgage, the government authority should register the contract, as the conditions to transfer the mortgaged property have been satisfied.
- 2** (a) The legal nature of the fax sent by Food Shop was an invitation to offer, not an effective offer, since this fax contained only the name and quantity of the goods, lacking the essential and necessary factor for an effective offer, i.e. the price of the goods. Hence, it was only an invitation to offer.
- (b) The legal nature of taking delivery of the goods by Food Shop was an acceptance. Since the delivery of the goods by Sanyi Farm indicated its expression to enter into a contract with Food Shop in the way of action, it constituted an offer. According to the Contract Law, an offeree may take various ways to accept the offer, such as written form, oral form or action. In this case Food Shop took delivery of the goods; it was an acceptance in the form of action.
- (c) There was a contract between Sanyi Farm and Food Shop. According to relevant provisions of the Contract Law, the formation of a contract takes place by way of offer and acceptance. Where an acceptance made by the offeree reaches the offeror, a contract is formed. In this case Sanyi Farm delivered the goods, which was an offer. Food Shop, as an offeree, took over the goods and resold the goods. This meant Food Shop accepted the offer by Sanyi Farm. Therefore, a contract was formed.
- 3** (a) According to the Company Law, when a shareholder intends to transfer their shares, under equal conditions the other shareholders shall have priority to purchase. Where two or more shareholders fail to reach an agreement as to the respective proportion of purchase, they shall exercise the priority in proportion to their respective shares. Hence, Zhao and Sun would share the shares from Qian 50% each.
- (b) According to Article 75 of the Company Law, any shareholder of a limited liability company may require the company to purchase their shares with a reasonable price if they meet any one of the circumstances as set. Since Lee's request did not fall within any circumstance prescribed by the Law, his request should not be upheld by the court if he brought a law suit.
- (c) Qian was entitled to transfer his shares. Zhao agreed with transfer; Lee failed to give a reply within 30 days upon receipt of the notice, which should be deemed as a consent to the transfer. Sun intended to exercise his right of priority but offered a lower price than that of the listed company. Therefore, Qian has met all the conditions to transfer his shares to the listed company.
- 4** (a) According to the Enterprise Bankruptcy Law, where a creditor is indebted with their debtor before the bankruptcy application is accepted by the court, they may claim for debts' offset to the bankruptcy administrator. Since the rental for the year of 2014 was due and the two quarters of service fees occurred before the acceptance of the application by the court, Stine's debt might be offset from his credit.
- (b) According to the law, after the court accepts a bankruptcy application, the bankruptcy administrator shall decide to terminate or continue to perform the contract and notify the decision to the other parties concerned. Mering was declared bankrupt and lost its capacity, so it would be impossible to continue the leasing contract. Therefore the request of Stine to terminate the leasing contract was in conformity with the law.
- (c) By way of offsetting, Stine might reduce his losses in the liquidation process. Since Mering was unable to settle its debts due, it meant that the credits of all creditors could not be repaid fully at the end of liquidation. Therefore the debts owed to Mering should be settled in full by Stine.

- 5 (a)** Mr Ding's act of accepting bribery violated the criminal law and the relevant rules of the Company Law as well. Besides the criminal charges, he should be liable for his fraudulent behaviour of damaging the interests of Daqing and its shareholders. Therefore, Ms Huang was entitled to bring a law suit against general manager Mr Ding on the ground that his acts caused her loss of interests.
- (b)** With respect to Daqing's damage, Ms Huang should first request the board of directors or supervisory board to take legal action against Everbright Co. Where these two bodies refuse to take reasonable actions, Ms Huang might, in her own name but for the interests of the company, bring a shareholder representative litigation against Everbright Co. On the other hand, she might also bring a direct litigation against Everbright Co on the ground that the connected transactions caused indirect damage to the shareholder's interests.

**Section B**

- 1** (a) 1 mark for the correct conclusion and 1 mark for the reasons.  
(b) 1 mark for the correct conclusion and 1 mark for the reasons for the denial of the government to register the contract.  
(c) 1 mark for the correct conclusion and 1 mark for the reasons.
- 2** (a) 1 mark for the correct conclusion as to the legal nature of the fax sent by Food Shop, 1 mark for the reasons.  
(b) 1 mark for the correct conclusion, 1 mark for the reasons to explain the conclusion.  
(c) 1 mark for the correct conclusion as to the formation of the contract, 1 mark for the reasons that a contract was formed by way of offer and acceptance.
- 3** (a) 1 mark for the correct conclusion, 1 mark for the reasons to explain such a conclusion.  
(b) 1 mark for the correct conclusion, 1 mark for the reasons. The conditions for a shareholder to request the company to purchase their shares are not needed.  
(c) 1 mark for the correct conclusion, 1 mark for the reasons.
- 4** (a) 1 mark for the correct conclusion, 1 mark for the reasons.  
(b) 1 mark for the correct conclusion, 1 mark for the reasons.  
(c) 1 mark for the correct conclusion, 1 mark for the reasons to explain the reasons why offset should be in Stine's interests.
- 5** (a) 1 mark for the correct conclusion, 1 mark for the reasons.  
(b) 2 marks for the shareholder's representative litigation in Ms Huang's own name but for the interests of the company and 2 marks for the direct litigation in Ms Huang's own name for her own interests.