
Answers

- 1 This question requires candidates to explain the rule of *exclusive jurisdiction*, state the disputes that are subject to exclusive jurisdiction and the relationship between exclusive jurisdiction and territorial jurisdiction under the Civil Procedures Law of China.
- (a) *Exclusive jurisdiction* refers to such special territorial jurisdiction under which the court of the place shall have exclusive jurisdiction over certain cases, even if such jurisdiction contradicts the jurisdiction based on the rules of common territorial jurisdiction.
 - (b) In accordance with Article 34 of the Civil Procedures Law, the following disputes are subject to exclusive jurisdiction:
 - (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 deceased had his/her domicile upon his/her death, or where the principal part of the estate is located.
 - (iv) A dispute over registration shall be under the jurisdiction of the court where the registered office is located.
 - (c) The exclusive jurisdiction is a kind of special territorial jurisdiction. Where a dispute may be heard by two or more courts on the basis of territorial jurisdiction, the court having exclusive jurisdiction shall prevail.
- 2 This question requires candidates to explain the term *divided co-ownership interest in buildings*, and state the coverage of such form of ownership as well as the rules with respect to the transfer of residential or commercial properties in a building under the Property Law of China.
- (a) *Divided co-ownership interest in buildings* refers to a situation where an owner has ownership over the exclusive parts within the building, such as the residential houses or the houses used for business purposes, and has an undivided ownership and right to common management over the common parts other than the exclusive parts of the same building.
 - (b) In accordance with Articles 73 and 74 of the Property Law, the roads within the building zone or community other than the public roads in the cities and towns, the green fields within the building zone or community other than the green fields owned by cities and towns or owned expressly by individuals, the parking spaces and garages occupying the roads or other fields, shall be co-owned by all owners and belong to all owners.
 - (c) In accordance with Article 72 of the Property Law, where an owner transfers the residential or commercial house within a building, the co-ownership and the right to common management enjoyed by the owner over the jointly-owned parts shall be transferred accordingly.
- 3 This question requires candidates to state the remedial measures for an employee to take if an employer fails to pay wages according to the labour contract, the legal effect on labour contracts where an employer changes its business name, or legal representative or legal personality under the Labour Contract Law of China.
- (a) In accordance with Article 30 of the Labour Contract Law, if an employer delays to pay wages, or fails to make payment in full amount as agreed in a labour contract, the employee may apply to the local labour arbitration commission to protect his or her right. An employee may also apply to the local people's court for an order to pay. The people's court shall directly issue such an order according to the law.
 - (b) In accordance with Articles 33 and 34 of the Labour Contract Law, a labour contract shall be performed without any impact by any one of the following changes of the employer: change of its business name, change of the legal representative or the person who is in charge of the employer, change of the investors of the employer. Furthermore, where an employer is merged or divided, or any changes in its legal personality, the existing labour contracts shall remain effective and continue to be performed by the legal entity that has succeeded the rights and obligations of the original employer.
- 4 This question requires candidates to state the rules as to the invalidity of the provisions concerning exemptions contained in a contract, and the ways of treatment where a contract is decided to be invalid or is cancelled under the Contract Law of China.
- (a) In accordance with Article 53 of the Contract Law, the following provisions concerning exemptions contained in a contract shall be deemed as invalid:
 - (i) the provisions that exclude one party's liability for personal injury caused to the other party;
 - (ii) the provisions that exclude one party's liability for property loss caused to the other party by its intentional misconduct or gross negligence.

- (b)** In accordance with Article 58 of the Contract Law, after a contract is decided to be invalid, the following ways to handle the consequences caused by the invalid contract may be adopted:
 - (i) The parties shall return any properties acquired from such an invalid contract.
 - (ii) Where the returning in kind is impossible or unnecessary because of the special nature of the subject matter of the contract, monetary compensations shall be made on the basis of the value of the property.
 - (iii) The party at fault shall indemnify the other party for its loss sustained as a result. Where both parties are at fault, the parties shall bear their respective liabilities accordingly.

5 This question requires candidates to state the rules for a listed company to pass a resolution under certain special circumstances in accordance with the relevant provisions of the Company Law of China.

- (a)** In accordance with Article 122 of the Company Law, purchases or sales of any important assets or the amount of guarantee provided by it exceeds 30% of the total amount of its assets within one year, the relevant matters shall be decided by the shareholders' general meeting and the resolutions shall be adopted on an affirmative vote of two-thirds of the voting rights held by the shareholders attending the meeting.
- (b)** In accordance with Article 125 of the Company Law, where any director of a listed company has an affiliate relationship with the enterprises related to the matters to be decided at the meetings of the board of directors, such directors may not exercise the voting rights upon the particular resolution nor may exercise the voting rights on behalf of other directors. The meeting of the board of directors may be held if more than half of the directors having no such affiliate relationship attend the meetings, and the resolution made at the meetings of the board of directors shall be passed by more than half of directors having no such affiliate relationship. Where the number of the directors having no such affiliate relationship who attend the meetings is less than three, the particular matters shall be submitted to the shareholders' general meeting of the listed company for examination and resolution.

6 This question requires candidates to state the duties and functions of a bankruptcy administrator as to the conversion plan of solvent assets, and the means of the conversion of assets during the process of bankruptcy liquidation under the Enterprise Bankruptcy Law of China.

- (a)** In accordance with Article 111 of the Enterprise Bankruptcy Law, a bankruptcy administrator shall be under the duty and have the functions as follows:
 - (i) A bankruptcy administrator shall draft a conversion plan of insolvent assets and submit it to the creditors' meeting for examination;
 - (ii) A bankruptcy administrator shall, according to the conversion plan of insolvent assets that has been adopted at the creditors' meeting or that has been confirmed by a people's court according to relevant provisions of the present Law, sell the insolvent assets by means of conversion at a proper time.
- (b)** In accordance with Article 112 of the Enterprise Bankruptcy Law, the following rules shall be complied with during the process of the conversion of insolvent assets:
 - (i) The conversion of insolvent assets shall be conducted through auction, unless otherwise agreed by the creditors' meeting;
 - (ii) An insolvent enterprise may be wholly or partially sold by means of conversion. Where an enterprise is to be sold by means of conversion, the intangible assets and other assets thereof may be separately sold by means of conversion.
 - (iii) Any assets that shall not be auctioned or whose transfer is restricted shall be handled through other methods as prescribed by laws and regulations.

7 This question requires candidates to state the statutory conditions to be satisfied to have the stocks listed under the Securities Law and the possible additional conditions by a security exchange.

In accordance with Article 50 of the Securities Law, where a joint stock company applies to have its shares listed, the following conditions shall be satisfied:

- (i) The stocks of the company have already been issued publicly with the approval of the securities regulatory authority under the State Council;
- (ii) The total amount of the company's share capital is not less than RMB 30 million yuan;
- (iii) The stocks of the company issued publicly amount to 25% or more of the total stocks of the company; where the total amount of the company's share capital is more than RMB 400 million yuan, the ratio of the stocks issued publicly shall amount to 10% or more of the total stocks; and

- (iv) The company must have no records of involvement in serious illegal activities in the previous three years, and its financial and accounting statements must contain no false information in the same period.

A stock exchange may also stipulate stricter conditions for listing if such conditions have been approved by the securities regulatory authority under the State Council.

8 This question requires candidates to deal with the legal issues with respect to the legal relations between mortgage and lease under the Property Law of China.

(a) Ms Lee's grounds for refusal to leave the house cannot be established. In accordance Article 190 of the Property Law, when the mortgaged property is leased after the mortgage has been established, the leasehold shall not be held against the registered mortgage. However, where the lease agreement had been concluded before the mortgage contract, the original leasehold shall not be affected by the mortgage. It means that the leasehold depends on the time of its conclusion against the mortgage contract. In this case, the lease agreement was concluded after the registration of the mortgage agreement, therefore it shall not be held against the registered mortgage.

(b) Ms Lee should leave the house so as to make it possible to have the judgement enforced, even though the lease agreement has not yet matured at the time when Credit Association advised her to leave. Since the lease agreement was still an effective one between Mr Fang and Ms Lee and Ms Lee was a *bona fide* party, Ms Lee should be entitled to request compensation from Mr Fang under the lease agreement for his breach of contract.

9 This question requires candidates to deal with the legal issue of *force majeure* under the Contract Law of China.

(a) Seller's argument of *force majeure* should not be established. In accordance with Article 117 of the Contract Law, *force majeure* means any objective circumstances which are unforeseeable, unavoidable and insurmountable at the time of the conclusion of the contract. In addition, Article 121 of the Contract Law provides that where a party's breach was attributable to a third person, it shall nevertheless be liable to the other party for breach. Any dispute between the party and such third person shall be resolved in accordance with the law or the agreement between the parties.

In this case, due to the stop of production by a fire accident, Seller's supplier was unable to supply the goods; this meant that it was not Seller but its supplier who met the *force majeure*. According to Article 121 of the Contract Law, Seller should be liable to Buyer for breach of contract by failure to deliver the goods.

(b) Buyer's claim for liquidated damages should be supported by the court. In accordance with Article 114 of the Contract Law, parties to a contract may prescribe that if one party breaches the contract, it will pay a certain sum of liquidated damages to the other party in light of the degree of breach. In this case, Seller and Buyer prescribed that the liquidated damages should be 20% of the total amount of the price and Seller was a party in breach. Therefore, it should be liable for the liquidated damages.

Buyer's claim for damages should not be supported by the court. In accordance with Article 114 of the Contract Law, the liquidated damages as prescribed by the parties are compensatory in nature. Buyer, by receiving the liquidated damages, has already recovered all its loss caused by Seller's breach of contract. Therefore, its claim for liquidated damages and damages concurrently should not be supported.

10 This question requires candidates to explain the relevant rules in relation to the incorporation of a joint stock company under the Company Law of China.

(a) In accordance with Article 79 of the Company Law, to incorporate a joint stock company, there shall be not less than two and not more than 200 sponsors, of which more than half must have their domicile within the territory of China. However, in this business proposal more than half of sponsors would have their domicile outside the territory of China. It is not in conformity with the Company Law.

(b) In accordance with Article 85 of the Company Law, where a joint stock company is incorporated by means of share offer, the shares subscribed for by the sponsors shall not be less than 35% of the total amount of the company's shares. Under the proposal, the amount of shares to be subscribed by sponsors was RMB 30 million yuan which accounted for 30% of the total shares of the company. Therefore, it is not in conformity with the Company Law.

(c) In accordance with Articles 83 and 27 of the Company Law, a shareholder may make his capital contributions to a company in currency or by contributing such non-currency property as material objects, intellectual property rights and land use rights at their appraised value that may be evaluated in currency and may be transferred. The amount in currency should not be less than 30% of the registered capital, which means not all capital need be in currency. Therefore, this part of the proposal is not in conformity with the Company Law, as sponsors might make their capital contributions with various forms as prescribed by the law.

- 1** 8–10 A thorough answer which explains the rule of exclusive jurisdiction, and states correctly all the cases that shall be subject to exclusive jurisdiction and the relations between exclusive jurisdiction and common territorial jurisdiction.
- 6–7 An answer which explains the rule of exclusive jurisdiction, and states correctly any two of the cases that shall be subject to exclusive jurisdiction as well as the basic meaning of its relation with common territorial jurisdiction.
- 3–5 An answer which explains the rule of exclusive jurisdiction or states the legal relation between exclusive jurisdiction and common territorial jurisdiction; or an answer which explains the term exclusive jurisdiction and states any one of the cases that shall be subject to exclusive jurisdiction.
- 0–2 An answer which does not explain or explains very limited points in part (a), but fails to state any one point in part (b) and part (c); or an answer which fails to explain and state in part (a) and part (c) respectively, but states only one of the cases that is subject to exclusive jurisdiction.
- 2** 8–10 A thorough answer that explains the term divided co-ownership interest in buildings, and states correctly any parts within a building or community that shall be co-owned by all owners and the rule with respect to the transfer of privately owned residential or commercial properties in a building.
- 6–7 An answer that explains the term divided co-ownership interest in buildings, and states some parts of a building that belong to the co-ownership by all owners in part (b) and the rule as to the transfer of privately owned properties in a co-owned building in part (c); or fails to explain the term in part (a), but states correctly the parts of a building that belong to the co-ownership by all owners in part (b) and the rule as to the transfer of privately owned properties in a co-owned building in part (c).
- 3–5 An answer that explains the term in part (a) and states some points in part (b) or the rule as to the transfer of residential or commercial properties in a building by all the owners in part (c). As an alternative, the answer explains the basic meaning of the term in part (a) and states limited points in part (b) and part (c).
- 0–2 An answer which does not explain the term divided co-ownership interest in buildings, and states limited points or no point in part (b) with respect to the parts within a building that shall be owned by owners on the basis of co-ownership, or limited point or no point in part (c) with respect to the rule as to the transfer of residential or commercial properties in a building by co-owners.
- 3** 8–10 A thorough answer that states the remedial measures an employee is entitled to take in part (a), and states correctly the legal effect on the labour contracts in various circumstances with respect to the changes taken place by an employer in part (b).
- 6–7 An answer that states the remedial measures an employee is entitled to take in part (a), and states correctly the legal effect on the labour contracts under any two circumstances as described in part (b). As an alternative, an answer that states any one of the remedial measures in part (a) and correctly the major contents in part (b).
- 3–5 An answer that states correctly any one part and some points in the other part.
- 0–2 An answer that fails to state any points in both parts, or states only very limited points.
- 4** 8–10 A thorough answer that states the rule as to the invalidity of the provisions concerning exemptions in part (a), and states correctly the ways to handle the consequence resulted from the invalidity a contract in part (b).
- 6–7 An answer that states the rule as to the invalidity of provisions concerning exemptions in part (a), and states some points as to the ways to handle the consequence resulted from the invalidity of a contract in part (b). As an alternative, an answer that fails to state the rule as to the invalidity of provision concerning exemptions in part (a), but states correctly the ways to handle the consequence resulted from the invalidity of a contract in part (b).
- 3–5 An answer that states correctly the rule as to the invalidity of provisions concerning exemptions in part (a) and limited content in part (b). As an alternative, an answer that fails to state the rule in part (a), but states some or main contents in part (b).
- 0–2 An answer that fails to state any points in part (a) and part (b), or states very limited points in part (a) or part (b).

- 5** 8–10 A thorough answer that states the special rules for a listed company to pass a resolution with a special voting requirement by shareholders' general meeting in part (a), and the rules for a listed company to examine and vote for certain matters that require a special vote by the board of directors under certain circumstances in part (b).
- 6–7 An answer that states completely the special rules in part (a) and some points of the special rules in part (b), or states completely the special rules in part (b) but fails to state any points in part (a). As an alternative, the answer states some points both in part (a) and part (b).
- 3–5 An answer that states completely the special rules in part (a) but fails to state the rules in part (b). Alternatively, the answer states some points in part (a) and part (b).
- 0–2 An answer that fails to state any points in part (a) and part (b), or states only very limited points in part (a) and part (b).
- 6** 8–10 A thorough answer that states the duty and function of a bankruptcy administrator with respect to conversion and the rule as to the conversion of insolvent assets during the process of bankruptcy liquidation.
- 6–7 An answer that states completely the duty and function of a bankruptcy administrator with respect to conversion, and some points as to the means of the conversion of insolvent assets during the process of bankruptcy liquidation. As an alternative, the answer states correctly the means of the conversion of insolvent assets in part (a), but fails to state the duty and function of a bankruptcy administrator with respect to the conversion plan of insolvent assets in part (b).
- 3–5 An answer that states completely the duty and function of a bankruptcy administrator with respect to conversion in part (a), but no or limited points in part (b). As an alternative, the answer states some points in part (a) and part (b).
- 0–2 An answer that fails to state any points in part (a) and part (b), or states only very limited points in part (a) or part (b).
- 7** 8–10 A thorough answer that states the statutory conditions to be satisfied to list the stocks of a joint stock company on the securities market and the possible stricter conditions for a joint stock company to list its stocks.
- 6–7 An answer that states at least three points of the statutory conditions but fails to state the additional conditions by the stock exchanges, or states two of the conditions for a joint stock company to list its stocks on the securities market and the additional conditions adopted by the stock exchanges.
- 3–5 An answer that states at least two of the conditions to be satisfied by a joint stock company to list the stocks on the securities market, and fails to state the stricter conditions that may be adopted by the stock exchanges. As an alternative, the answer states one of the conditions and states the additional conditions by the stock exchanges as well as the approval requirement.
- 0–2 An answer that fails to state any points, or states only very limited points with respect to the conditions to be satisfied by a joint stock company to list its stocks on the securities market.
- 8** 8–10 An answer which states correctly the rule as to the effect of the mortgage agreement on the lease contract that is concluded after the mortgage agreement in part (a), and states the way to deal with the situation in which Ms Lee had to leave the house in part (b).
- 6–7 An answer that states correctly any one rule in part (a), and the ways to deal with the situation as described in part (b). As an alternative, the answer gives a correct conclusion as to the effect of the mortgage agreement over the lease contract in part (a), but states limited or no reasons to support the conclusion and fails to state the ways of handling the situation as described in part (b).
- 3–5 An answer that states points in part (a) and (b). As an alternative, an answer states major content in one part but fails to give any point in another part.
- 0–2 An answer that states merely limited points in one part but fails to state any points in another part; or fails to state any points in both parts.
- 9** 8–10 An answer that states correctly the conclusions to questions in both part (a) and (b), and gives all or most of the reasons to support the conclusions.
- 6–7 An answer that states correctly the conclusion to any one of the questions in part (a) or part (b) and gives reasons to support the conclusion, plus limited points of another part. As an alternative, the answer states correctly the conclusions in both part (a) and part (b), but could not give reasons to support the conclusions.
- 3–5 An answer that states correctly the conclusion to any one of the questions in part (a) or part (b), and gives all or some reasons to support such a conclusion.
- 0–2 An answer that fails to state any points in part (a) and part (b), or states only very limited points in part (a) or part (b).

- 10** 8–10 An answer that states the correct conclusions to questions in parts (a), (b) and (c), and gives all or some reasons to support the conclusions.
- 6–7 An answer that gives any two correct conclusions to questions among the three parts, and gives some reasons to support such conclusions.
- 3–5 An answer that states a correct conclusion to questions among the three parts or some reasons to support such a conclusion, but fails to give any answer to another part. As an alternative, an answer that gives correct conclusions to any two questions among the three parts but fails to give reasons to support such conclusions.
- 0–2 An answer that fails to state any points of the questions in the three parts, or states only very limited points in any one part.