
Answers

- 1** This question requires candidates to explain the term jurisdiction, state the general jurisdiction for a contractual dispute, the rules to be complied with by the parties to choose the jurisdiction of the court over a contractual dispute and the various courts, other than those under the general jurisdiction, which can be chosen by the parties to hear their contractual dispute under the legal system of China.
- (a) The term jurisdiction refers to a judicial power to exercise authority over all persons and things within its territory.
 - (b) In accordance with Article 24 of the Civil Procedure Law, a lawsuit brought in relation to a contractual dispute shall generally be under the jurisdiction of the court located in the place where the defendant has its domicile or where the contract is performed.
 - (c) In accordance with Article 25 of the Civil Procedure Law, the parties to a contract shall not violate the statutory rules as to the jurisdiction of level and the exclusive jurisdiction when they choose the jurisdiction of the court over their contractual dispute.
 - (d) The parties to a contract may agree to choose the jurisdiction among the courts in the place, other than those under the general jurisdiction for a contractual dispute, where the contract is signed or where the object of the action is located to hear their contractual dispute.
- 2** This question requires candidates to explain the meaning and the legal nature of the right to the use of construction land, state such rights for the commercial purposes which shall be created by a form of allocation and the creation of such a right under the Property Law:
- (a) The right to the use of construction land is a kind of usufructuary right in legal nature. In accordance with Article 135 of the Property Law, the holder of such a right has the right to possess, use and seek proceeds from the land owned by the state, and shall be entitled to erect buildings, architectures and their auxiliary facilities on such land. The ownership of the construction land belongs to the state.
 - (b) In accordance with Article 137 of the Property Law, as regards land used for industry, commerce, tourism, entertainment, residential housing or any other commercial purposes, or there are at least two intended land users interested in the same piece of land, the assignment of the right to the use of construction land shall adopt such means as auction, bid invitation or any other public bidding methods.
 - (c) In accordance with Article 139 of the Property Law, to create the right to the use of construction land, an application for the registration of such a right shall be submitted to the relevant registration department. The right to the use of construction land shall be created as of the completion of such registration.
- 3** This question requires candidates to state the conclusion of the collective labour contract represented by the trade union, the compulsory requirements for a collective labour contract concerning the compensation and working conditions, and the condition for a collective labour contract to come into effect under the Labour Contract Law.
- (a) In accordance with Article 51 of the Labour Contract Law, a collective contract shall be concluded by the trade union, on behalf of the enterprise's employees, and the employer. Where the enterprise does not have a trade union, the collective contract shall be concluded by the employer with a representative chosen by the employees under the guidance of the trade union at the next higher level.
 - (b) In accordance with Article 55 of the Labour Contract Law, a collective labour contract shall stipulate the rates for wages or salaries and standards for working conditions no lower than the minimum rates and standards for working conditions as prescribed by the local government.
 - (c) In accordance with Article 54 of the Labour Contract Law, after a collective contract has been concluded, it shall be submitted to the labour administration department. The collective contract shall become effective upon the expiration of 15 days from the date of receipt thereof by the labour administration department, unless the labour administration department raises any objections to the contract.
- 4** This question requires candidates to state the rules with respect to a third party who is involved in the performance of a contract or whose failure causes a party's breach of contract under the Contract Law.
- (a) In accordance with Article 65 of the Contract Law, the parties to a contract may agree that a third party performs the obligation to the creditor. The debtor shall be responsible to the creditor for the breach of contract, where no contractual obligation has been performed by the third party as designated by the parties or the performance fails to conform to the agreement.

- (b) In accordance with Article 117 of the Contract Law, *force majeure* means any objective circumstances which are unforeseeable, unavoidable and insurmountable. By invoking *force majeure* a party may exempt their liability from the breach of contract caused by the above-mentioned circumstances.
- (c) In accordance with Article 121 of the Contract Law, one party shall take the liability for breach of contract to the other party where the breach of contract is caused by a third party. The dispute between the party and the third person shall be resolved according to the contract between them or the relevant provisions of law. As the third party's failure is not an objective circumstance, it cannot be exempted from their liability based on *force majeure*.

5 This question requires candidates to state the various illegal activities, relevant to the use of the funds of a company, committed by a director or a senior executive of a company which will damage the interest of the company and the conditions to be satisfied for a shareholder of a stock company to protect the interests of the company under the Company Law.

- (a) In accordance with Article 149 of the Company Law, the following activities, relevant to the use of the funds of a company, committed by a director or a senior executive are illegal and will damage the interests of a company:
 - (i) misappropriating the company's funds;
 - (ii) depositing the company's funds in their own personal accounts or in personal accounts of other individuals;
 - (iii) in violation of the company's articles of association and without the consent of the shareholders' meeting or the board of directors, lending company's funds to others or using the company's property to provide guarantee for others.

Note: Candidates were only required to describe TWO kinds of illegal activities.

- (b) In accordance with Article 152 of the Company Law, the following conditions shall be met where a shareholder of a stock company intends to protect the interests of the company due to a director's or a senior executive's damaging of the interests of the company:
 - (i) the shareholder(s) shall hold, individually or jointly, 1% or more of the company's shares for no less than 180 consecutive days;
 - (ii) the said shareholder(s) have requested, in writing, the supervisory board to bring a lawsuit against the relevant persons before the court;
 - (iii) the supervisory board refused to file such a lawsuit or failed to file a lawsuit within 30 days upon its receipt of such request.

6 This question requires candidates to state the costs or fees to be repaid in priority before the insolvent assets can be liquidated, and the orders of liquidation for the insolvent assets at the end of bankruptcy procedure under the Enterprise Bankruptcy Law.

In accordance with Article 113 of the Enterprise Bankruptcy Law, the cost for bankruptcy procedure and the community liabilities shall be repaid prior to the liquidation of the insolvent assets at the end of the bankruptcy procedure.

The insolvent assets shall be liquidated according to the following sequence:

- (i) The wages and subsidies owed to the employees for medical treatment and disabled persons, comfort and compensatory expenses as defaulted by the bankrupted enterprise; the pension and fundamental medical insurance premiums owed but not yet transferred to the employees' personal accounts; as well as the compensation for employees as prescribed by relevant laws and administrative regulations.
- (ii) The social insurance premiums and taxations as defaulted by the bankrupted enterprise other than those prescribed by the aforesaid provisions.
- (iii) The common credit of bankruptcy.

Where the insolvent assets are not enough to satisfy the requirements for liquidation, they shall be distributed according to the proportion.

7 This question requires candidates to explain the term inside information in securities transactions, and describe the various types of information which shall be deemed as inside information under the Securities Law.

- (a) In accordance with Article 75 of the Securities Law, the term inside information refers to the information which is not disclosed to the public investors which, in the course of securities trading, concerns the business operations and financial affairs of a company or the information having a material impact on the market price of a company.
- (b) In accordance with Article 75 of the Securities Law, the following information shall constitute inside information in relation to the capital and assets of a stock company:
 - (i) plans concerning distribution of dividends or increase of capital;
 - (ii) material changes in the equity structure of the company;
 - (iii) any mortgage, sale or write-off of a major asset used for the business of the company the value of a single transaction of which exceeds 30% of the asset;

- (iv) the plan for the acquisition of a listed company;
- (v) major changes in guaranty of the company's obligation;
- (vi) any other important information which has been recognised by the securities regulatory authority as having a market impact on the trading prices of securities.

8 This question requires candidates to deal with the legal issues relevant to the dissolution of a contract, the date of dissolution for a contract and the legal procedure for a party who objects to the dissolution under the Contract Law.

- (a)** In accordance with Article 94 (2) and Article 108 of the Contract Law, where one party explicitly expresses or demonstrates through the party's own act that the performance of the contractual obligation is not intended, the other party may declare the dissolution of the contract before the expiration of the period for performance.

According to these provisions of law and the relevant facts, Ms Chan was entitled to dissolve the contract. Although the time limit for the registration of the transfer of property did not expire, Mr Lee's acts demonstrated that he explicitly refused to perform the major obligation to handle the registration matters by taking back the Certificate of Property and keeping silence to Ms Chan's request. These facts demonstrated he did not intend to perform his obligations and entitled Ms Chan to dissolve the contract.

- (b)** In accordance with Article 96 of the Contract Law, a party shall notify the other party if he wants to dissolve the contract according to Article 93 (2) and Article 94 of this law. The contract is dissolved at the time the other party receives the notice. Therefore, 28 January was the date on which the contract was dissolved.

- (c)** In accordance with Article 96 of the Contract Law, Mr Lee might apply to the people's court or an arbitration institution for affirming the effect of the dissolution of the contract declared by Ms Chan if he held that Ms Chan had no right to dissolve the contract.

9 This question requires candidates to deal with the legal issues in relation to the contribution of the capital and the establishment of a limited liability company under the Company Law.

- (a)** In accordance with Article 26 and Article 27 (3) of the Company Law, the amount of initial capital contributions paid by all the shareholders shall not be less than 20% of the registered capital; the capital contribution in cash by all shareholders shall not be less than 30% of the registered capital. In this case, the initial capital contribution paid by Yolo Co was more than 20% (1 million/4.5 million = 22%) of the registered capital and the capital in cash provided by Mr Wang met the requirement of no less than 30% (1.5 million/4.5 million = 33.33%) of the registered capital of the company; therefore the company would be legitimately established.

- (b)** In accordance with Article 27 (2) of the Company Law, the non-currency property contributed as capital shall undergo an appraisal, valuation and verification, and shall not be overvalued or undervalued. Therefore the capital contribution in the form of technology by City College should be appraised before it was actually put into the company.

- (c)** In accordance with Article 28 (2) of the Company Law, shareholders failing to make capital contributions in full shall not only make up the remaining amount of capital but also be liable for breach of contract towards the shareholders who have made their capital contributions in full and on time. Hence, Mr Wang should make up the remaining RMB 500,000 yuan and pay damages to City College and Yolo Co in accordance with the contract or law.

10 This question requires candidates to deal with the legal issue of the declaration of credits during the process of liquidation under the Enterprise Bankruptcy Law.

- (a)** Huadong Holdings Co should be a qualified creditor and was entitled to declare its credit even though it had not yet borne the guarantor's obligation. In accordance with Article 51 of the Enterprise Bankruptcy Law, where the guarantor of a debtor or any other related joint and several debtor has not yet cleared the liabilities on behalf of the debtor, it may declare its creditor's right on the basis of its future right to recourse against the debtor.

Although Huadong Holdings Co had not borne its mortgagor's obligation, this obligation still existed. Where Materials Co came to request Huadong Holdings Co to discharge its obligation, it had to pay the price under the guarantee agreement.

- (b)** In accordance with Article 51 of the Enterprise Bankruptcy Law, where the main creditor – Materials Co – has declared all the creditor's rights to the bankruptcy administrator, Huadong Holdings Co cannot declare credit during the process of liquidation, since General Contractor owed an amount of RMB 6 million yuan to Materials Co and this debt was guaranteed by Huadong Holdings Co. Where General Contractor failed to pay the price, Materials Co might have an alternative to claim its credit against Huadong Holdings Co or General Contractor. Once Materials Co has chosen to declare its credit to the bankruptcy administrator, it cannot request Huadong Holdings Co to bear its guarantor's obligation. Under such a circumstance Huadong Holdings Co would not bear any guarantor's obligation in the future, therefore, it is not a qualified creditor against the debtor.

- 1 8–10 A thorough answer which explains the term jurisdiction in part (a), and states the general jurisdiction over contractual disputes in part (b), the rule to be followed by the parties intending to agree upon the jurisdiction over a contractual dispute in part (c) and the various courts, other than those under the general jurisdiction for the contractual dispute, which can be chosen by the parties to hear their contractual dispute in part (d).
- 6–7 An answer which explains the term jurisdiction in part (a) and states correctly either part (b) or part (d), but fails to answer part (c). As an alternative, the answer explains the term jurisdiction, states correctly the general jurisdiction over a contractual dispute in part (b) and some points either in part (c) or part (d), but fails to state other points in these parts.
- 3–5 An answer which explains the term jurisdiction in part (a) and states correctly part (c), but fails to state parts (b) and (d). Alternatively, an answer which fails to explain the term jurisdiction in part (a) and the courts which can be chosen by the parties to hear their contractual disputes in part (d), but states correctly parts (b) and (c). Also the answer which correctly explains or states any one part among the four parts, plus some points in other parts.
- 0–2 An answer which does not explain the term in part (a) and state the rules in relation to the jurisdiction over a contractual dispute in the other three parts, or states limited points among the four parts.
- 2 8–10 An answer which explains the meaning of the right to the use of construction land and its legal nature, states correctly the creation of such a right for commercial purposes by a form of allocation and the registration requirement for the creation of such a right.
- 6–7 An answer which explains the meaning of the right to the use of construction land in part (a) and states correctly any one part between part (b) or (c). Alternatively, an answer which fails to explain the meaning of the right to the use of construction land in part (a), but states correctly both parts (b) and (c) with most of the points in these two parts.
- 3–5 An answer which explains the meaning of the right to the use of construction land and states some points in part (b) or (c), but fails to explain the legal nature of this right. As an alternative, the answer fails to explain the meaning of the right and its legal nature in part (a), but states any one of part (b) or (c) plus some points in another part.
- 0–2 An answer which does not explain the meaning of the right to the use of construction land and its legal nature, states no or very limited points in part (b) or (c). As an alternative, an answer which explains the meaning of the right to the use of construction land in part (a), but fails to state any points in parts (b) and (c).
- 3 8–10 A thorough answer which states the trade union to represent the employees to conclude a collective labour contract in part (a), and states the compulsory terms with respect to wages and standards of working conditions in part (b) and the rule as to the effect of a collective labour contract in part (c).
- 6–7 An answer which states any two parts among the three parts.
- 3–5 An answer which states correctly any one part among the three parts, but fails to state or states some points in the other two parts.
- 0–2 An answer which fails to state any points in the three parts, or states only very limited points in any one of the three parts.
- 4 8–10 A thorough answer which states the rule as to the liability of the debtor resulting from the failure of performance of the obligation by a third party in part (a), explains correctly the meaning of *force majeure* in part (b) and the rule as to the liability of a party whose breach of contract is caused by a third party in part (c).
- 6–7 An answer which states correctly any one of part (a) or part (b), plus a correct answer to part (c). As an alternative, an answer which states correctly parts (a) and (b), with limited or no points in part (c).
- 3–5 An answer which states correctly part (c) but fails to state parts (a) and (b). As an alternative, the answer states correctly part (a) or (b) with limited or no points in part (c).
- 0–2 An answer which fails to state any points in both parts, or states very limited points among the three parts.
- 5 8–10 A thorough answer which states the activities committed by a director or a senior executive which will damage the rights and interests of the company in part (a), and the conditions to be satisfied for a shareholder of a stock company to protect the rights and interests of the company in part (b).
- 6–7 An answer which states correctly the activities in part (a) and some points in part (b). Alternatively, an answer which states correctly part (b), but fails to state part (a).
- 3–5 An answer which states some or the most of points in part (b), but fails to state part (a). Alternatively, an answer which states part (a) but fails to state or states very limited points in part (b).
- 0–2 An answer which fails to state any points in the two parts, or states only very limited points.

- 6** 8–10 A thorough answer which explains the costs or fees to be repaid in priority before the insolvent assets can be liquidated, and states correctly the order of liquidation for insolvent assets.
- 6–7 An answer which explains the costs or fees to be repaid in priority before the insolvent assets can be liquidated, and states the order of distribution of insolvent assets after the completion of the bankruptcy procedure. As an alternative, the answer states most of points in relation to the order of distribution of insolvent assets, but fails to explain what shall be repaid before the insolvent assets can be liquidated and the ways to deal with the situation where the insolvent assets are not enough to satisfy the requirements for liquidation.
- 3–5 An answer which explains the costs or fees to be repaid in priority before the insolvent assets can be liquidated and very limited points in relation to the order of distribution of insolvent assets. As an alternative, the answer states some points in relation to the order of distribution of insolvent assets, but fails to explain what shall be repaid before the insolvent assets can be liquidated.
- 0–2 An answer which fails to state any points, or states only very limited points.
- 7** 8–10 A thorough answer which explains the term inside information in part (a), and describes at least four items of information which shall be regarded as inside information in relation to the capital and assets of a stock company in part (b).
- 6–7 An answer which explains the term inside information in part (a), and describes some points in part (b).
- 3–5 An answer which fails to explain the term inside information in part (a), and describes some items of information in part (b). As an alternative, the answer describes the most of points in part (b), but fails to explain the term inside information in securities transactions.
- 0–2 An answer which fails to explain the term inside information, and fails to describe any information which shall constitute inside information or describes very limited points which shall constitute inside information in relation to capital and assets of a stock company.
- 8** 8–10 An answer which states correctly as to the right of dissolution of the contract by Ms Chan with reasons in part (a) and the date of dissolution of the contract in part (b), and the legal procedure which might be taken by Mr Lee where he objected to the dissolution of the contract in part (c).
- 6–7 An answer which gives correct conclusions for both parts (a) and (b) with all reasons to support such conclusions, but fails to answer part (c). As an alternative, the answer which states correctly parts (a) and (c) with some reasons to support such conclusions, but fails to answer part (b).
- 3–5 An answer which gives a correct conclusion in any one part of in part (a) or part (c) with some reasons to support the conclusion, but fails to state in the other parts; or an answer which states correctly in parts (b) and (c) with full reasons to support the conclusions, but fails to answer part (a).
- 0–2 An answer which states merely limited points in any one of the three parts but fails to state any points in the other parts; or fails to state any points in the three parts.
- 9** 8–10 An answer which states correctly the conclusions to the questions in the three parts, and gives all or most of the reasons to support the conclusions.
- 6–7 An answer which states correctly the conclusions to any two of the questions among the three parts with reasons to support such conclusions, but fails to state the remaining part. As an alternative, the answer states the correct conclusions to all the three parts, but fails to give any reasons to support such conclusions.
- 3–5 An answer which states correctly a conclusion to any one of the questions among the three parts, and gives reasons to support such a conclusion. As an alternative, an answer which gives correct conclusions to any two parts among the three parts with no reasons to support such conclusions, but fails to state the remaining part.
- 0–2 An answer which fails to state any point among the three parts, or states only very limited points in any one part of the three parts.
- 10** 8–10 An answer which states the correct conclusions to the questions of both parts (a) and (b), and gives all or some reasons to support the conclusions.
- 6–7 An answer which states the correct conclusions to the questions of both parts (a) and (b), and gives some reasons to support any one of the conclusions.
- 3–5 An answer which states a correct conclusion to the question in part (a) or part (b) with full or some reasons to support such a conclusion, but fails to give the conclusion to another part.
- 0–2 An answer which fails to state any points of the questions in parts (a) and (b), or states only very limited points in part (a) or (b).