
Answers

Section A

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

Section B

- 1 The purpose of the question was to test the candidates' ability to apply their knowledge of the provisions of Article 7 of the Civil Code in relation to formation of civil contracts.
- (a) Trang's letter had all of the characteristics required to be considered as an offer.
- The letter was addressed to three specific persons. It indicated both the price and the quantity of goods to be sold, with a deadline for acceptance. Not all of these features are necessary for an offer to be created, provided the communication is sufficiently definite.
- As Trang is a book dealer and has written to his customers, it must be assumed that there was an intention to enter into a legally binding agreement.
- (b) Canh's reply was a counter-offer and not an acceptance. She assumed that a 5% discount would apply, but unless Trang alluded to this in his offer, this would be considered to be a modification of the terms of the original offer. The counter-offer cancels the original offer and creates a new offer, which Trang could accept, reject or respond to with a counter-offer.

Thuy's letter advising Trang of her change of heart was communicated too late to revoke the acceptance. The Civil Code permits withdrawal of the notice of acceptance of an offer, but only if it is received before or at the same time as the original offer. Therefore, a binding contract came into effect.

Toan's acceptance arrived after Trang's offer had expired. In such cases, the provisions of the Civil Code regard the late acceptance as a new offer, which Trang would be able to accept, reject or respond to with a counter-offer. Unless Trang accepted this new offer, no binding contract came into effect. However, if the lateness of the acceptance was due to objective reasons which Trang knew, or ought to have known, the acceptance could be regarded as binding.

2 The question tested the candidates' understanding of the provisions of the Law on Enterprises in relation to the right of a partner to withdraw from a partnership and the obligations arising from doing so. It also required candidates to set down the right of a partner to demand information from another partner in respect of business dealings.

(a) A partner can serve notice of resignation from the partnership at any time. However, Article 138 of the Law on Enterprises states that six months' notice is required for withdrawal of capital, and that the resigning partner will be liable for any obligations incurred by the partnership for a period of two years.

(b) Phong therefore bears liability for any obligations up to the time of his withdrawal, and would also be liable for any additional financial burden incurred by Hai in completing the unfinished work.

Even if Phong had not resigned, he violated the provisions of Article 138(3)(c) by not carrying out his work honestly and diligently, which in itself is a ground for exclusion from the partnership.

(c) According to the Law on Enterprises, all partners are members of the Partner's Council and as such have a right to require information on business activities carried out by any other member.

Article 133 forbids partners from taking part in business activities in the same line of business on their own account or on behalf of others. Further, Article 134 compels partners to submit regular truthful and accurate reports on work they have carried out. Conversely, any partner has the right to demand such information.

Therefore, Phong would be compelled by law to provide Hai with information on his private business dealings, to share the profits he has made, and to pay compensation to Hai in respect of any damage caused to the partnership.

3 The question tested the candidates' understanding of the law on dividends, as set out in Article 93 of the Law on Enterprises.

(a) Article 93 states that dividends must be decided with reference to the net profits of the company and can only be sourced from profits retained by the company.

Generally, payments of dividends cannot be made out of capital, as the principle of capital maintenance is regarded in law as a *quid pro quo* for the privilege of limited liability. Therefore, the additional share capital raised cannot be used as a source of dividend payments.

In the case of XXX Company, the 3 million dong profit is the maximum dividend payable, so the decision to pay 5 million dong in total dividends is illegal.

(b) YYY Company cannot pay a dividend to its shareholders, as there are no retained earnings to distribute.

However, if the company chooses not to make payments to bondholders, it would be in default on its obligations, as interest to creditors is a contractual obligation. Depending on the covenants contained in the bonds, this could have serious implications for the company, including litigation by the bondholders.

4 The question tested the candidates' understanding of the rights of shareholders in the context of their ability to constrain the decisions and actions of the board of management.

(a) Article 108(4) of the Law on Enterprises compels the board of management to discharge its duties in compliance with the law as well as the constitutional documents of the company. By diversifying its business activities downstream from manufacture into retail, this decision in itself would be a breach of this duty, for which members of the board of management would be accountable. Any shareholder who has been a member of the company for more than one year would have the right to petition the court to suspend such a decision.

In practice, shareholders may decide to take action by convening a general meeting. This requires the support of any shareholder or group of shareholders with an aggregate holding of shares exceeding 10% of share capital.

(b) Article 108(4) lays down the consequences for the board of management if they act in contravention of the law or the constitutional documents of the company. It renders members of the board of management personally liable on a joint basis for any damage inflicted on the company as a result of their actions or decisions.

Any member of the board of management who opposed unlawful resolutions would be exempt from liability.

In addition, the general meeting of shareholders could remove one or more members of the board of management from their posts, and could propose new candidates of their own choosing.

5 The question tested the candidates' understanding of insider dealing.

- (a) The Law on Securities states that price sensitive information is that which is capable of influencing the prices of listed securities. In order for this to be the case, the information will not yet be in the public domain and it must be sufficiently specific to the company to enable an investor who has prior access to the information to make a profit or avoid a loss.

In the case scenario, the information relates to the financial performance of BBB Company. As the information has not yet been published, any potential investor who has access to it would have an advantage of being able to deal and capitalise on the potential increase in prices which would arise from eventual publication. Cam, Linh and Anh are all able to make potential gains from the increase in the share price of BBB Company which will probably happen as a result of the financial performance being better than expected, whilst investors who are not privy to this information will not have such an opportunity.

It is necessary to regulate the disclosure and use of price sensitive information in order to reduce the prospect of destabilising securities markets.

- (b) The Law on Securities lays down three offences: dealing on the basis of access to inside information, disclosing price sensitive information and encouraging others to deal.

In the case scenario, Cam has clearly breached two of these provisions. Though it is not known whether Cam dealt on his own account, he disclosed information to Linh and encouraged her to deal.

In turn, it is likely that Linh committed an offence by encouraging her friend Anh to deal. It is probable that Linh knew the nature of her brother's work and that he should not have been passing the information on to her. If she had no knowledge at all of this, she could offer this as a defence.

Anh has received inside information but perhaps did not know the legal significance of the advice given to her by Linh. If this was the case, she would not be guilty of any offence.

If Cam or Linh dealt in the securities, they would be committing an offence. Anh's potential liability depends on the extent to which she knew the origin or significance of the information she received.

Section A

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

Section B

- 1**
- (a)** Offer addressed to specific persons 1 mark
Sufficiently precise 1 mark
Intent to create binding agreement 1 mark
(3 marks)

 - (b)** Application to Canh 1 mark
Application to Thuy 1 mark
Application to Toan 1 mark
(3 marks)
(Total 6 marks)
- 2**
- (a)** Right to resign 1 mark
Breaches of Law on Enterprises 1 mark
(2 marks)

 - (b)** Obligations arising from time with partnership 1 mark
Subsequent obligations for damage 1 mark
(2 marks)

 - (c)** Right to information 1 mark
Right to profits 1 mark
(2 marks)
(Total 6 marks)
- 3**
- (a)** Dividends paid from net profits 1 mark
Additional capital cannot be included 1 mark
Correct conclusion 1 mark
(3 marks)

 - (b)** No obligation to pay dividends 1 mark
Obligation to pay interest 1 mark
Consequences of not paying interest 1 mark
(3 marks)
(Total 6 marks)
- 4**
- (a)** Provisions of Law on Enterprises 1 mark
Legal action by any shareholder 1 mark
Action through convening meeting/resolutions 1 mark
(3 marks)

 - (b)** Directors liable for breach of legislation 1 mark
Directors jointly liable for damage to company 1 mark
Dissentient directors not liable 1 mark
(3 marks)
(Total 6 marks)

- 5 (a)** Price sensitive information not in public domain
Specific to company/securities
Capable of destabilising capital market
- 1 mark
1 mark
1 mark
(3 marks)
- (b)** Application to Cam
Application to Linh
Application to Anh
- 1 mark
1 mark
1 mark
(3 marks)
(Total 6 marks)