
Answers

- 1 This question requires candidates to explain the term *exclusive jurisdiction*, and state the major legal characters of exclusive jurisdiction under the Civil Procedures Law of China.
- (a) In accordance with Article 34 of the Civil Procedures Law, exclusive jurisdiction refers to such a special territorial jurisdiction under which the court of place shall have the exclusive jurisdiction over the cases, even if such jurisdiction is in conflict with the jurisdiction based on the rules of common territorial jurisdiction.
 - (b) The legal characteristics of the exclusive jurisdiction rest with the following:
 - (i) Exclusive jurisdiction is a special rule of territorial jurisdiction. To determine the exclusive jurisdiction over a particular dispute it is necessary for a court to find the relevant territorial factor involved in the case. Therefore the basis of the exclusive jurisdiction is same as that of the common territorial jurisdiction.
 - (ii) Exclusive jurisdiction shall specially be prescribed by the law, and be strictly complied with both by the parties to the dispute and the courts hearing the case. It means that parties may not agree upon a jurisdiction in conflict with exclusive jurisdiction. Any choice of forum by parties against the rule of exclusive jurisdiction shall be null and void. On the other hand, any judgement based on the jurisdiction in violation of the rule of exclusive jurisdiction may be refused to enforcement by the court in the place on which the exclusive jurisdiction is based.
- 2 This question requires candidates to explain the term *right of lien*, and state the conditions to be met for a party to claim the right of lien under the Property Law of China.
- (a) In accordance with Article 230 of the Property Law, right of lien refers to such a right where an obligor fails to pay off its debts due, the obligee may take lien of the movable that is owned by the obligor and lawfully in the obligee's possession, and has the right to seek compensation in priority from such movable. Right of lien is a statutory right that cannot be established by a contract between the parties concerned.
 - (b) In accordance with Articles 231 of the Property Law, the following conditions shall be satisfied simultaneously where an obligee intends to claim the right of lien:
 - (i) The obligee shall lawfully possess the movable of the obligor, such as the goods for transportation by a carrier or the equipment for repairing by a repairing plant. The immovable cannot be the subject matter of right of lien, even though it may be lawfully possessed by a party.
 - (ii) The movable taken as lien by the obligee and obligee's right shall fall into a same legal relationship, except for the lien between enterprises.
 - (iii) The obligor does not settle his debts due.
- 3 This question requires candidates to state the power of the labour administration in exercising its supervisory and examining functions, and the various administrative sanctions the labour administration may impose on an employer if it violates the law and labour contract under the Labour Contract Law of China.
- (a) In accordance with Article 75 of the Labour Contract Law, in exercising its supervisory and examining function, the labour administrations at county level or above shall have the authority to review any documents relating to labour contracts and collective labour contracts, and conduct an on-the-spot inspection of the work premises. Both the employer and the employees shall truthfully provide relevant information and materials.
 - (b) In accordance with the provisions relating to the legal liabilities in the Labour Contract Law, the labour administration may issue administrative orders to an employer if it violates the law:
 - (i) To order the employer to rectify the labour contract if an employer fails to incorporate the statutory provisions in the labour contracts or fails to provide the labour contracts to the employees;
 - (ii) To order the employer to return the identity cards to the employees within a specified period of time if the employer illegally detains the identity cards of the employees;
 - (iii) To order the employer to pay wages or salaries if employer fails to pay an employee his or her wages or salaries in full and on time as agreed in the labour contract or stipulated by the law;
 - (iv) To order the employer to pay overtime payment if the employer arranges overtime without making overtime payment;
 - (v) To order the employer to make up the shortfall if it fails to pay the labour compensation in conformity with the minimum wage as stipulated by local government;
 - (vi) To order the employer for rectification if the probation period stipulated by an employer violates the law;
 - (vii) To order the employer to return the property to the employees within a specified period of time if it collect the property as security or under some other guise;
 - (viii) To order the employer to issue the certificates of dissolution or certificates of termination of labour contracts if the employer fails to issue such documents in violation of the law.

- 4** This question requires candidates to explain the term *termination of contract*, and state the major differences between dissolution of contract and termination of contract under the Contract Law of China.
- (a)** Termination of contract refers to such a situation where the rights and obligations arising out of a contract come to an end due to various statutory circumstances prescribed by the law or agreed upon by the parties to the contract.
 - (b)** In accordance with Articles 91, 93 and 94 of the Contract Law, the major differences between dissolution of contract and termination of contract rest with:
 - (i)** Termination of contract is only relevant to the state of a contract, while dissolution of contract is relevant to a legal action taken by a party to the contract under the conditions as prescribed by the law or agreed by the parties;
 - (ii)** Termination of contract is a much wider concept than dissolution of contract. Termination of contract covers the circumstances of dissolution of contract;
 - (iii)** Termination of contract does not require a party to make a notice to the other party; while dissolution of contract requires the party that intends to dissolve a contract to make a notice to the other party. Without such a notice there will be no dissolution of contract.
- 5** This question requires candidates to state the legal characters of three forms of limited liability companies, the requirements on capital under the Company Law of China.
- (a)**
 - (i)** In accordance with Articles 24, 58 and 65 of the Company Law, a common limited liability company should be incorporated by no more than 50 shareholders; the shareholders may be a natural person or legal person, state-owned enterprise or private owned enterprise.
 - (ii)** A sole-person limited liability company shall be set up by only one natural person or legal person. The wholly state-owned company is a company with limited liability invested solely by the state. Therefore, any investor other than the State cannot be a legitimate shareholder of a wholly state-owned limited liability company.
 - (b)** In terms of the requirements for capital:
 - (i)** A common limited liability company shall have a minimum registered capital of RMB 30,000 yuan, unless otherwise provided for by the law or administrative regulations.
 - (ii)** The minimum registered capital for a sole-person limited liability company shall be RMB 100,000 yuan.
 - (iii)** There is no specific requirement on the minimum registered capital for the wholly state-owned company under the Company Law.
- 6** This question requires candidates to state the legal effect of the acceptance of an application for bankruptcy by the court with respect to the preservative measures against the assets of the debtor, the procedure for execution and the pending legal actions against the debtor respectively under the Enterprises Bankruptcy Law of China:
- (a)** In accordance with Article 19 of the Enterprise Bankruptcy Law, where an application for bankruptcy is accepted by a people's court, the relevant preservative measures against the debtor's assets shall be dissolved. These measures include preservative measures during a civil litigation and preservative measures prior to a civil procedure. The relevant debtor's assets shall be listed as the bankrupt assets after the releasing of the preservative measures.
 - (b)** In accordance with Article 19 of the Enterprise Bankruptcy Law, where an application for bankruptcy is accepted by the people's court, the relevant enforcement procedures shall be suspended. The enforcement procedures include the enforcement of civil judgements, conciliation documents and arbitral awards, etc. Creditors may, based on the effective legal documents after the suspension of the enforcement procedures, claim their credits to the relevant people's court accepting the application for bankruptcy.
 - (c)** In accordance with Article 20 of the Enterprise Bankruptcy Law, where a people's court accepts an application for bankruptcy, any pending civil litigations or arbitration proceedings involving the relevant debtor shall be suspended. The civil litigations or arbitration proceedings will be resumed after a bankruptcy administrator, designated by the competent court, takes over the debtor's assets.
- 7** This question requires candidates to explain the term *sponsor* in underwriting of securities, the objective of the law to set up the sponsorship in underwriting securities and the various legal liabilities of a sponsor in providing professional services under the Securities Law of China:
- (a)** In accordance Article 11 of the Securities Law, the term sponsor refers to a qualified person (or an institute) who is responsible for verifying cautiously the application documents and information disclosure materials of any issuer, and supervising as well as urging the issuer to normatively operate the offer of securities.

- (b) The objective of the legislation to set up the system of sponsorship is to prevent the market risks from occurrence, regulate the operation of the listed companies and protect the rights and interests of investors through the joint legal liability of the issuer and sponsor.
- (c) In accordance with Article 192 of the Securities Law, a sponsor may be subject to the following legal liabilities for his wrong doings or failure to perform his duty properly in providing professional services:
- (i) He may be ordered to make a rectification, his illegal incomes be confiscated, and be imposed a fine not less than the amount of but not more than five times the business incomes;
 - (ii) If the circumstances are serious, his business permission may be suspended or cancelled;
 - (iii) The person in charge may be given a disciplinary warning and fined for not less than RMB 30,000 yuan but not more than RMB 300,000 yuan. If the circumstances are serious, the person in charge may be disqualified.
- 8** This question requires candidates to determine the nature of right held by Mr Lee and to deal with the legal issues with respect to the relationship between the ownership of the natural resources and the right of management of land, and state the protection of privately owned property under the Property Law of China.
- (a) In accordance with Articles 117 and 125 of the Property Law, with respect to immovables and movables owned by someone else, a usufructuary is entitled to possess, use and collect proceeds from it in accordance with law. A holder of the right to management of land has the right to possess, utilise and collect proceeds from the cultivated land, woodland and grassland, etc under the contracted management thereof, and is entitled to do such agricultural production activities as planting, forestry, etc. Therefore, Mr Lee's right to the management of land is a kind of usufructuary right.
- (b) In accordance with Article 46 of the Property Law, mineral resources, water and sea areas shall be in the ownership of the State. Therefore, the ownership of the coal mine shall neither belong to Mr Lee, nor belong to the villagers as a whole. Although Mr Lee is a legitimate holder of the right to management of land, this right could not extend to the natural resources under the land. The usufructuary right of Mr Lee could not prevail over the ownership of the natural resources held by the State.
- (c) In accordance with Article 121 of the Property Law, the ownership of the natural resources does not affect Mr Lee's right to the management of land. The right of management of land is protected by the Property Law and other relevant laws. Since villagers were not the right holders to the management of land and coal under the land, they should be liable for the damages to the trees incurred for their illegal actions in digging coal in Mr Lee's mountain.
- 9** This question requires candidates to deal with the legal issues with respect to the deposit as a form of guarantee for the performance of contract, and the relevant legal remedies for breach of contract under the Contract Law of China.
- (a) In accordance with Article 115 of the Contract Law, a deposit paid by one party to the other constitutes a guarantee to perform the contract. If the party who accepts the deposit fails to perform the contractual obligations, it shall return twice the amount of the deposit. In the present case Gas Company accepted the deposit paid by Yaowa Company but failed to provide the full quantity of natural gas as agreed in the contract. Therefore, Yaowa Company's claim for the refund of twice the amount of the deposit shall be supported by the court.
- (b) In accordance with Article 107 of the Contract Law, the party who fails to discharge its contractual obligations shall be liable for the breach of contract in various forms, such as specific performance, adopting remedial measures or making compensation for losses, etc. In accordance with Article 110 of the Contract Law, the party who suffered losses due to the other party's breach of non-monetary obligation shall be entitled to request for specific performance of the contract, unless under the circumstances are otherwise provided for by law. In this case Gas Company failed to discharge its obligation to provide 4,000 m³ daily, which was a non-monetary breach in nature. The full supply of gas is also a substantive condition for Yaowa Company to carry out its business operation. Hence, the request by Yaowa Company for specific performance of contract should be supported by the court, though it also claimed for the refund of twice the amount of the deposit as a legal remedy.
- 10** This question requires candidates to deal with the legal issues in relation to the merger of company under the Company Law of China.
- (a) In accordance with Article 122 of the Company Law, where the major assets purchased or sold by a listed company exceed 30% of the total amount of its assets within one year, it shall be resolved at the general shareholders' meeting and adopted by two-thirds of the voting rights held by the shareholders attending the meeting. In the present case, the amount of the transaction exceeded 30% of the total amount of Kingmart's assets. Therefore, it should be subject to such a resolution of the general shareholders' meeting.
- (b) In accordance with Article 174 of the Company Law, when companies merge, the company shall inform its creditors of the

intended merger plan within 10 days following the date on which the merger resolution is adopted by its general shareholders' meeting, and make announcement in newspaper within 30 days. Hence, Kingmart should inform its creditors and make an announcement pursuant to the relevant provision of law.

- (c)** In accordance with Articles 174 and 175 of the Company Law, where companies merge, their creditors are entitled to claim full repayment of their debts or provision of a corresponding guarantee from the company within 30 days from the date of receipt of the notice or, within 45 days from the date of the first public announcement for those who have not received the notice. Meanwhile if companies merge, the claims and debts of the parties to the merger shall be succeeded to the absorbing company or the newly established company when companies are merged. Pursuant to the above provisions the electricity plant might request Dahua to settle the debt or provide a guarantee; it might also request Kingmart to bear the debt since Dahua Company would dissolve after the completion of the merger.

- 1** 8–10 A thorough answer which explains the term exclusive jurisdiction, and state the major legal characters of exclusive jurisdiction with respect to the basis of exclusive jurisdiction and the effect of the rule of exclusive jurisdiction.
- 6–7 An answer which explains the term exclusive jurisdiction, and states the major legal characters of exclusive jurisdiction or the basis of exclusive jurisdiction and the effect of such rule.
- 3–5 An answer which explains the term exclusive jurisdiction, but merely states very little the points in part (b).
- 0–2 An answer which explains the term exclusive jurisdiction, or states very little on the points in part (b).
- 2** 8–10 A thorough answer which explains the term right of lien, and state completely the conditions to be met for a party to claim the right of lien.
- 6–7 An answer which explains the term right of lien, and state at least two conditions to be met for a party to claim right of lien. Alternatively, the answer states most of the conditions to be met for a party to claim right of lien, but fails to explain the term right of lien.
- 3–5 An answer which explains the term, but fails to state, or merely states very little, the conditions to be met for a party to claim right of lien.
- 0–2 An answer which does not explain the term right of lien, and states no or very little as to the conditions to be met for a party to claim right of lien.
- 3** 8–10 An answer which states the power of the labour administration in exercising its supervisory and examining functions, and states the various administrative orders the labour administration may impose on an employer for its violation of the Labour Contract Law.
- 5–7 An answer which state some points of both parts (a) and (b), showing a sound understanding of the area; or states completely the various power of the labour administration in exercising its supervisory and examining functions, and states some points in part (b).
- 3–4 An answer which states the powers of the labour administration in exercising its supervisory and examining functions, but states very little as to the administrative orders that may incur for an employer if it violates the Labour Contract Law.
- 0–2 Little or no knowledge of the area.
- 4** 8–10 A thorough explanation of the term termination of contract, clearly understanding the major differences between dissolution of contract and termination of contract.
- 5–7 An answer which explains the term termination of contract, and state most of the differences between dissolution and termination of contract.
- 3–4 An answer which shows a basic understanding of the meaning of the term dissolution of contract, but merely stating little as to the differences between the dissolution and termination of contract.
- 0–2 Little or no knowledge of this area.
- 5** 8–10 An answer which states all the legal characters of the shareholders for a common limited liability company, sole-person limited liability company and exclusive state-owned company, and state relevant requirements of capital for the three forms of limited liability companies.
- 5–7 An answer which shows a sound understanding of the different legal characters of the shareholders for three forms of limited liability companies, and states some points in relation to the requirements of capital of the three forms of limited liability companies.
- 3–4 An answer which shows some understating of the area but lacks in detail, perhaps failing to state most of the legal characters with respect to the shareholders or the requirements of capital for the different forms of limited liability companies.
- 0–2 Little or no knowledge of the area.

- 6** 8–10 An answer which states correctly the various legal effects of the acceptance of an application for bankruptcy by the court, including the preservative measures against the assets of the debtor, the procedures for enforcement against debtor and the pending legal action against the debtor.
- 5–7 An answer which states any two rules relating to the legal effect of acceptance of an application for bankruptcy by the court on the various legal procedures against the debtor, but fails to state one of the three rules.
- 3–4 An answer which shows some understanding of the rules but lacks detail; or alternatively, states correctly but merely any one of part (a), (b) or (c).
- 0–2 Little or no knowledge of the area.
- 7** 8–10 An answer which explains correctly the term sponsor in underwriting of securities, and states most points in relation to the objective of the legislation to set up the sponsorship system in underwriting of securities and the legal liabilities of a sponsor for his wrong doings in providing professional services.
- 5–7 An answer which explains the term sponsor, and states some points in relation to the objective of the legislation and the legal liabilities of a sponsor for his wrong doings; or alternatively, explains the term sponsor, and states some points in part (c) but fails to answer part (b); or alternatively, an answer which explains the term, and states correctly the point in part (b) and gives very little to part (c).
- 3–4 An answer shows some understanding of the area, but lacks detail; or explains the terms and states the objective of the legislation, but fails to state most of the legal liabilities of a sponsor for his wrong doings in providing professional services.
- 0–2 Little or no knowledge of the area.
- 8** 8–10 An answer correctly determines the nature of the right of Mr Lee and ownership of the coal mine, and states correctly how the court should deal with the claim brought by Mr Lee, gives reasons to support the answer.
- 5–7 An answer represents a sound understanding of the legal issues in the problem section and gives complete answers to any two parts of this question, or alternatively the answer merely gives the conclusions to every part of this question but fails to give any reasons to support the conclusions.
- 3–4 An answer shows some understanding of the legal issues in the problem section and gives one correct conclusion, but fails to give any reasons to support the conclusion.
- 0–2 An answer gives very weak answer showing no, or very little, understanding of the question.
- 9** 8–10 A complete answer, highlighting and giving a correct explanation as to the legal nature of deposit, especially states the rule relating to specific performance as a legal remedy granted by the Contract Law to a party who suffered losses due to breach of contract by the other party.
- 5–7 An answer shows some understanding of the nature of deposit, and specific performance as a form of legal remedy and its conditions, but fails to give an answer in detail.
- 3–4 An answer shows the ability to understand the nature of deposit but fails to answer the specific performance as a form of legal remedy; or states some points as to the specific performance but fails to give answer to part (a) of the question.
- 0–2 A very weak answer shows no, or very little, understanding of the question.
- 10** 8–10 An answer which gives complete answers to the issues presented in the problem sections.
- 5–7 An answer which shows a good understanding of the legal issues in the problem sections and gives a correct answer on any two parts, along with some reasons for the answer, but failing to give answer on any one of the parts; or alternatively, states the correct conclusions for all the issues but fails to give reasons to support the conclusions.
- 3–4 An answer which shows some understanding of the legal issues in the problem sections and gives only a correct conclusion to any one of the three parts with incomplete reasons.
- 0–2 A very weak answer shows no, or very little, understanding of the question.