

科目：民法(財產法)

系所組：財經法律學系碩士班

一、二十一歲之甲獨立經營一家餐廳，聘請乙擔任職員，並對合作廠商丙表示，乙為甲之代理人，由乙全權處理餐廳採購事宜。餐廳經營一段時間後，甲發現乙之能力不足以處理採購事務，即對乙表示撤回乙之代理權。惟乙仍繼續以甲之代理人身份向丙訂購產品。問：當丙向甲請求支付價款時，甲得否拒絕？(25分)

二、甲有一登記在其名下之 A 耕地，自 1995 年 5 月 5 日起，為鄰人乙擅自在其上興建一違章建築之 B 屋居住迄今。試問：(25分)

1. 甲於 2019 年 1 月 11 日依物上請求權請求乙拆屋還地時，乙為時效消滅之抗辯，是否有理？
2. 乙於 2019 年 1 月 11 日主張依時效取得請求登記為 A 地之地上權人、永佃權人或農育權人，是否有理？

三、甲駕駛汽車，因違規超車不慎撞毀乙的汽車，乙在其汽車修繕期間，並未另租代用車或使用其他交通工具，係免費借用其朋友的車子。另戊因近日時有地震發生，見丙的牆壁有因地震而倒塌之虞，為免丙的牆壁因地震而倒塌，乃擅自拿丁之建築材料予以修繕補強。試附理由及依據，分別說明下列問題：(25分)

1. 乙得如何向甲請求損害賠償？乙得否就其因汽車不能使用所喪失之物的使用利益，請求甲損害賠償？
2. 戊得對丙為如何之主張？丁得對戊、丙行使如何之權利？可否主張丙係不當得利？

四、甲與乙建商於民國 107 年 10 月 20 日，簽訂 A 停車位買賣契約書，價金新台幣 150 萬元。乙建商之推銷員丙與甲辦理簽約，因甲表示其現金不足，乙之推銷員丙對甲表示：可約定分期付款，乙目前正好與 K 銀行合作，提供 48 期償還之年息 5% 的優惠貸款方案，甲計算後評估每月還款數額尚可負擔，丙遂拿出 K 銀行的定型化貸款申請書，指導甲填寫相關資料，並更改 A 車位買賣契約書之分期付款約定，而約定 A 車位之價金即貸款於停車位過戶移轉登記之日由 K 銀行直接轉帳到乙建商指定之帳戶，日後甲再分期償還本件貸款予 K。對此，甲以為仍是分期付款買賣，即與乙之推銷員丙簽約完畢。嗣後建商乙依約於 107 年 11 月 10 日將 A 停車位移交予甲，並於 107 年 11 月 20 日辦畢所有權移轉登記，約定之價金款項亦已轉帳至乙建商之帳戶。三個星期後，甲發現所購買之 A 停車位之升降機械設計不良，支柱焊接點曾發生斷裂意外卻未妥善修繕補強，乙之推銷員丙於訂約時卻未告知，甲遂通知乙，以存證信函表明「基於意思表示之瑕疵而撤銷意思表示」與「基於物之瑕疵而解除買賣契約」等意旨。試問：甲對乙得如何為法律上之主張？甲得否拒絕向 K 銀行償還貸款？(25分)

※ 考生注意：1. 考生須在「彌封答案卷」上作答。

2. 本試題紙空白部分可當稿紙使用。

3. 考生於作答可否使用計算機、法典、字典或其他資料或工具，以簡章之規定為準。

科目：商事法(證券交易法、公司法)

系所組：財經法律學系碩士班

一、A為經營電子產業之股份有限公司，且股票已上市買賣（在台灣證券交易所掛牌上市，以下簡稱A公司），公司董事共五席，董事長甲及董事乙、丙共持股超過公司股份總數51%，為因應景氣變化之需要，考慮現金增資，惟A公司股價一直未有好表現，最近半年以來每股股價都維持在新臺幣（以下同）八元至十元之間，故A公司擬採私募之方式，在章程所定資本額範圍內，由董事會提案經股東會決議後由董事長甲利用符合私募對象資格條件友人丁、戊等充作人頭帳戶認股，並由甲出資以每股股價四元，每人認購六千萬元，共籌集一億二千萬元資金，同時依規定時間程序向主管機關申報備查，丁、戊於取得持股後於第二十個營業日即以每股股價八元將所認股票私下出售予符合資格條件對象之自然人己，獲利一億二千萬元並歸還與甲。試請檢具理由說明下列問題：

- 〈一〉本案之私募過程是否有違反法令規定？董事甲、丁與戊應負如何之法律責任？(15分)
- 〈二〉丁、戊與己之轉讓行為否違反證券交易法之規定？轉讓之法律責任與效果如何？(10分)

二、在股份有限公司資本三大原則下，公司原則上不得自將股份收回、收買或收為質物，此為股份回籠禁止原則，依現行公司法第167條之規定，試請檢具理由說明下列問題：

- 〈一〉股份回籠禁止原則有那些例外之情形？(10分)
- 〈二〉母子公司間可否交叉持股？其是否違反股份回籠禁止原則？(10分)
- 〈三〉違反股份回籠禁止原則之法律效果與法律責任為何？(5分)

三、X股份有限公司為一家從事手機零件製造的非公開發行公司。近來受到中美貿易戰的影響，公司業績大幅衰退。A、B、C三人合計持有X公司百分之三十五的股權，因對於公司近期營運表現不佳表示憂心，擬號召志同道合的股東自行召集股東臨時會，討論公司營運事宜。試附理由及法律依據回答下列問題：(25分)

- 〈一〉A、B、C三人可否號召志同道合的股東，不待請求X公司董事會或經主管機關許可之情況下，自行召集股東會？
- 〈二〉為求股東會的順利召開，股東A等人可否請求X公司或股務代理機構提供股東名簿？
- 〈三〉X公司股東會開會時，可否以視訊會議方式為之？

四、A股份有限公司於民國108年2月18日至3月25日期間，以每股三十元之價格公開收購B上市公司百分之三十的普通股股票。老邱為A公司董事長，阿財是B公司的股東。兩人有下列問題想要請教您：(25分)

- 〈一〉老邱想知道在公開收購期間，A公司若變更收購條件，是否違反證券交易法之規定？
- 〈二〉阿財想知道現行公開收購制度中有何保護目標公司股東之機制，以防止收購人收購條件成就後不履行收購義務？

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共 50 題, 每題 2 分

(I) Vocabulary Test: Please choose the word that best completes the sentence.

1. Windows and Apple are \_\_\_\_\_ in the computer software industry.  
(A)commenters (B) compensators (C) compatriots (D) competitors
2. If I do not like the clothes I bought at the store, I can take it back to the store, and the store will have to give me a \_\_\_\_\_ of my money.  
(A)refill (B) refund (C) reject (D) reimbursement
3. Simon had a very \_\_\_\_\_ experience that he will remember for the rest of his life when he got to talk with the President face-to-face.  
(A)memory (B) memorandum (C) memorial (D) memorable
4. Some research reports \_\_\_\_\_ that drinking green tea makes you live longer, but it is hard to prove that in real life.  
(A)allocate (B) motion (C) claim (D) description
5. When I get a parking ticket, it means that I violated the parking \_\_\_\_\_ at the place where I parked my car.  
(A)space (B) ordinance (C) opportunities (D) obligations
6. Everyone should have a dream and try to \_\_\_\_\_ it.  
(A)accomplice (B) elevate (C) accomplish (D) aggravate
7. The \_\_\_\_\_ of being tall is that your head might hit many things.  
(A)discourage (B) discrimination (C) detriment (D) disclosure
8. The financial \_\_\_\_\_ in 2008 caused many people to lose all their retirement money in the stock market.  
(A)curse (B) crisis (C) downfall (D) plight
9. Jack did not \_\_\_\_\_ anything in his life, but he was not happy.  
(A)lack (B) obtrude (C) objections (D) manage
10. Please \_\_\_\_\_ the hot pot carefully. You do not want to burn yourself.  
(A)injury (B) handle (C) elevate (D) conduct
11. Because John didn't earn very much from his job, he \_\_\_\_\_ with making sure there is enough money for his family.  
(A)poverty (B) perished (C) angry (D) agonized
12. The minimum wage in the United States is so low that usually you need to have more than one job in order to \_\_\_\_\_.  
(A)make meeting (B) making ends (C) make meets end (D) make ends meet
13. The police stopped a car because it was going over the speed limit and looked very \_\_\_\_\_.  
(A)suspect (B) suspicious (C) suspenseful (D) subjective
14. Joan's wish was to go to Paris since she was a little girl, and it was \_\_\_\_\_ on her honeymoon.  
(A)rejected (B) fulfilled (C) tarnished (D) investigated

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15. Cara had close friends throughout school, and these friends were all \_\_\_\_\_ influences in her life.

- (A) positive (B) closeness (C) general (D) monitored

(II) Cloze Test: Please select the most appropriate item to complete the sentences.

Passage I.

I never had an easy time 16. \_\_\_\_\_. My mother got sick and had to go to the hospital a lot. My father had to work and care for four children. I was the oldest of all kids, so I had to 17. \_\_\_\_\_ of all my siblings. My father lost his job when I was in sixth grade, so I 18. \_\_\_\_\_ work when I was in middle school. I enjoyed earning money, and I quickly lost interest in school. Why go to school when I could be earning money doing odd jobs 19. \_\_\_\_\_ for other people? It was only later in my life that I realized how important a good education is.

16. (A) grow up (B) growing up (C) growing uping (D) grow uping  
 17. (A) take care (B) took care (C) give care (D) gave care  
 18. (A) starting to (B) had been started (C) being started (D) started to  
 19. (A) here and there (B) there (C) theirs (D) here

Passage II.

The people's right to property is guaranteed by Article 15 of the Constitution. Although the State may, according to law, 20. \_\_\_\_\_ the people's property for public use or other objects of public interest, it should forthwith provide reasonable, and comparable 21. \_\_\_\_\_, so that it complies with the legislative 22. \_\_\_\_\_ of the constitutional guarantee of their rights of property.

20. (A) taken (B) domain (C) expropriate (D) conceal  
 21. (A) comparison (B) award (C) consideration (D) compensation  
 22. (A) intentional (B) intent (C) original (D) origin

Passage III.

According to The Code of 23. \_\_\_\_\_ Procedure stipulates in Article 376: "Once judged by the court of second instance, cases involving the following offenses are not 24. \_\_\_\_\_ to the court of third instance: 1. Offenses with a 25. \_\_\_\_\_ punishment of no more than three years imprisonment, detention, or a fine only."

23. (A) Crime (B) Criminal (C) Criminality (D) Commercial  
 24. (A) appealable (B) appeal (C) appellate (D) appellee  
 25. (A) major (B) much (C) most (D) maximum

26 In the continental legal system, the law is formed by the \_\_\_\_\_.  
 (A) parliament (B) government (C) judges (D) prosecutors

27 The \_\_\_\_\_ Code defines certain crimes and punishments.  
 (A) Sentence (B) Crime (C) Penal (D) Offense

28 Which of the following is the correct statement of law in relation to the burden of proof in criminal and civil cases?  
 (A) In criminal cases, the burden of proof is on the defense. In civil cases, the burden of proof is on the claimant.  
 (B) In criminal cases, the burden of proof is on the prosecution. In civil cases, the burden of proof is on the claimant.  
 (C) In criminal cases, the burden of proof is on the prosecution. In civil cases, the burden of proof is



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on the defense.

(D) In both criminal and civil cases, the burden of proof is on the defense.

29 \_\_\_\_\_ is the crime which is punished by prison sentence.

(A) Theft (B) Offence (C) Infraction (D) Felony

30 What is the difference between private law and public law?

(A) Private law refers to the relationship between individual citizens. Public law refers to the relationship between individual citizens and the state.

(B) Public law refers to the relationship between individual citizens. Private law refers to the relationship between individual citizens and the state.

(C) Private law relates to crimes committed inside the home. Public law relates to crimes committed in public places.

(D) Private law relates to court hearings conducted in private. Public law relates to court hearings conducted in public.

31 Under the terms of his Agreement the Tenant shall \_\_\_\_\_ the Property on the termination date stipulated hereunder.

(A) evacuate (B) empty (C) vacate (D) give up

32 Which of the following accurately reflects the distinction between substantive and procedural law?

(A) Substantive law reflects the rules on procedure and evidence. Procedural law reflects the elements or conditions for the law to apply.

(B) Procedural law reflects the rules on procedure and evidence. Substantive law reflects the elements or conditions for the law to apply.

(C) Substantive law and procedural law are synonymous.

(D) None of the options given are correct.

33 In a company structure there is a legal \_\_\_\_\_ between the business and its owners.

(A) severability (B) severance (C) split (D) separation

34 Sarah Smith was unable to attend the meeting and so \_\_\_\_\_ a proxy to vote on her behalf.

(A) took (B) elected (C) deployed (D) appointed

35 Mr. Jones applied to \_\_\_\_\_ a loan of NT\$1,000,000, as he had insufficient money to pay his tax demand.

(A) take out (B) borrow (C) have (D) use

36 In a limited liability partnership the liability of a partner is usually limited to the amount of his or her capital \_\_\_\_\_

(A) charge (B) investment (C) contribution (D) donation

37 Which of the following is the most accurate description of civil law?

(A) Civil law is an aspect of public law.

(B) Civil law relates to controlling conduct or wrong-doing of which it disapproves.

(C) Civil law relates to the enforcement of particular forms of behaviour.

(D) Civil law is a form of private law and involves the relationships between individuals.

38 Broadly speaking, any confidential business information which provides an enterprise a competitive edge may be considered a \_\_\_\_\_.

(A) competitive enterprise

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- (B) unauthorized user
- (C) breach of contract
- (D) trade secret

39 Amelia Hunter has been declared bankrupt by the court and has had to \_\_\_\_\_ from his position as company director.

- (A) quit (B) depart (C) resign (D) leave

40 Miya Hopkins \_\_\_\_\_ the offer she had made to purchase Darren Lake's car before he accepted it, as she had changed her mind about buying it.

- (A) revoked (B) cancelled (C) renounced (D) annulled

41 A(n) \_\_\_\_\_ is operated by partners who share profits and are liable for losses.

- (A) partnership (B) corporation (C) institution (D) association

42 Allison Clarks is suing her employer on the grounds of age \_\_\_\_\_.

- (A) bias (B) discrimination (C) prejudice (D) intolerance

43 When there is a claim for negligence one of the considerations is whether the harm caused to the claimant by the acts or omissions of the defendant was reasonably \_\_\_\_\_.

- (A) anticipated (B) predictable (C) expected (D) foreseeable

44 Because she failed to deliver the goods on the agreed date the other party to the contract is suing her for \_\_\_\_\_ of contract.

- (A) failure (B) infringement (C) breach (D) violation

45 Which of the following is the MOST accurate description of arbitration?

- (A) An informal meeting between the parties involving a discussion as to how the issue may be resolved
- (B) An adjudicative process where the parties submit their dispute, for a binding decision, to an impartial tribunal
- (C) A meeting between the parties where an impartial third party facilitates discussions
- (D) None of the options given is correct

46 The relationship between a parent and a child is created by birth or \_\_\_\_\_.

- (A) undertaking (B) absorption (C) adoption (D) assumption

47 If a person who is already married remarries, it is called \_\_\_\_\_.

- (A) fraud (B) bigamy (C) incest (D) cheat

48 The company is primarily regulated by its articles of \_\_\_\_\_.

- (A) members (B) meeting (C) association (D) minutes

49 The registered capital of the company may be paid in \_\_\_\_\_ or in kind.

- (A) cash (B) notes (C) funds (D) coins

50 The \_\_\_\_\_ for the job consists of the base salary plus incentive payments.

- (A) consideration (B) compensation (C) indemnification (D) indemnity