

科目：民法(財產法)

系所組：財經法律學系碩士班

一、甲與乙通謀作成A寶石之買賣，並進一步為通謀虛偽之A寶石所有權移轉行為，並將A寶石交付給乙。乙持有該寶石後，將其出賣給丙，並做成所有權移轉行為。

請解析甲、乙、丙三人的法律關係。(25分)

二、甲於某日夜間將其汽車違規停放於路口，影響夜間行車安全，乙於是日夜間駕車行經該路口轉彎時，因受該違規停車影響，有過失而撞傷十五歲之丙，致丙之雙手因而殘廢。另戊未經授權擅自使用尚無名氣之影星丁之肖像，為其商品作廣告，該商品因而非常暢銷，戊因而獲得鉅利。試附理由及依據，分別說明下列問題：(25分)

1. 丙得對甲、乙為如何之主張及行使如何之權利？
2. 丁得對戊為如何之主張及行使如何之權利？可否就戊因商品暢銷而獲得之鉅利，請求賠償或返還？

三、民法第 757 條規定：「物權除依法律或習慣外，不得創設。」

試問：1. 依習慣創設之物權應具備如何之要件？(10分)

2. 讓與擔保是否為習慣法創設之擔保物權？其理由及作用何在？(15分)

四、乙至甲藝術品公司購買A藝術品，約定價金為100萬元，乙已先給付十分之一之定金，因重量過重且需專業運送以免藝術品受損，雙方約定清償地為乙於台中市之住所，即約定由甲公司將A藝術品送至乙於台中之住所，乙則於台中住所受領該物並付款。於交付日之二日前，乙突然告知甲公司，請甲公司將A藝術品送至新竹科學園區乙上班之公司；甲公司對此表示，運送至新竹所增加的風險，甲不願負責；乙並未對此明確回應，乙僅表示願意支付增加的運費；甲則回應會如期送至乙於新竹的上班地。交付日當天，因甲公司的運送車故障送修，甲公司將A藝術品包裝完畢後，委由甲公司所信任之丙運送公司代為運送。不料，丙公司之司機丁於運送途中，違反交通規則，闖紅燈而與戊發生車禍，車上的A藝術品恰巧遭撞擊並不慎掉落而全毀。因A藝術品已滅失，乙並未受領，也拒絕支付價金。試附理由說明：甲公司是否仍得向乙請求支付買賣A藝術品之價金？甲或乙是否得向何人請求損害賠償？(25分)

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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、公司法第 167 條規定，股份有限公司原則上不得自將股份收回、收買或收為質物，其立法目的為何？公司法與證券交易法有何例外規定？未依規定自將股份收回、收買或收為質物之法律效果如何？(25 分)

二、A 股份有限公司為經營半導體業務之上櫃公司（以下簡稱為 A 公司），民國 105 年 10 月 25 日 A 公司於公開資訊觀測站公告調降該公司稅前淨利預測數，將由新臺幣（以下同）7 億元下降為負 2 億元，係因大陸子公司存有鉅額虧損之重大消息，另於 106 年 4 月 10 日經簽證會計師丙等確定損失金額後，A 公司於 106 年 5 月 1 日於公開資訊觀測站公告調降該公司稅前淨損預測數與實際數差異，係因該公司增加認列 100% 轉投資大陸子公司損失及備抵存貨跌價損之消息，甲為 A 公司之董事長基於長期與乙為網球球友之關係，在公開資訊觀測站揭露各該消息前，於球場球敘聊天時皆已告訴乙該公司之財務狀況，乙在公開資訊觀測站揭露各該消息前轉告其配偶丁，乙、丁於 105 年 10 月 4 日各賣出持股 120 張 A 公司股票；又乙、丙、丁於 106 年 4 月 15 日各賣出持股 100 張 A 公司股票，A 公司股票價格一路由民國 105 年 10 月 22 日之 85 元一路跌至 106 年 5 月 1 日之收盤價 25 元。試請檢具理由說明本案之甲、乙、丙、丁是否構成違反內線交易禁止之規定？(25 分)

三、X 股份有限公司為一家從事營造的非公開發行公司，阿明自 2016 年起擔任該公司董事迄今，現任董事任期為自 2019 年 6 月 20 日起(任期 3 年)。近期該公司董事長老黃在未經董事會決議之情況下，私自將該公司之註冊商標移轉給另一家 Y 股份有限公司。試附理由回答下列問題：(25 分)

(一)設阿明在 2018 年 4 月間執行業務有重大損害公司之行為，其後遭持有 X 公司已發行股份總數百分之五的股東小凱依公司法第 200 條之規定，訴請法院裁判解任。阿明在訴訟中表示，系爭行為係發生在前一任董事期間，X 公司於 2019 年 6 月股東常會改選董事，其連任 X 公司董事，故其與 X 公司間即重新發生委任關係，而小凱以發生於前一任期之情事，訴請解任現任任期之董事職務，應屬無據。則小凱以阿明前任期所發生之事由解除其現任之董事職務，是否有據？

(二)老黃在未經 X 公司董事會決議之情況下，私自將該公司註冊商標移轉給 Y 公司之行為，其效力如何？

四、老王為 X 上市公司的董事長，老吳為該公司總經理兼董事。X 公司主要從事 DRAM 及 DRAM 模組測試與買賣業務，近年來因 DRAM 價格下跌，公司獲利大幅衰退並出現虧損。老王和老吳為隱匿公司獲利衰退之情形，乃指示財會部門主管阿春自 2019 年第 1 季起之各期財務報告中隱匿公司虧損之事實，並為不實之記載。上開財務報告重大不實之情事，在今年(2020 年)1 月經媒體揭露後，X 公司股價因而重挫。小邱雖未閱讀 X 公司財務報告，但其長期觀察 X 公司股價低迷，自 2019 年 5 月中旬起公司股價開始呈現緩步上漲走勢，因而於 2019 年 8 月以每股 35 元買進 X 公司股票一萬股。阿順於 2018 年 12 月以每股 31 元買進 X 公司股票八千股，其後 X 公司股價一直未高於其買進之價格，因此阿順原本認為一旦股價上漲至其成本價即賣出 X 公司股票。在 X 公司不實財務報告公布後，股價開始呈現上漲之趨勢，阿順因而改變其以成本價賣出 X 公司股票之決定，而擬於每股漲至 40 元時，始獲利了結。若小邱與阿順二人至今年 1 月底皆未賣出其持有之 X 公司股票，則依證券交易法之規定，小邱與阿順可否向 X 公司請求財務報告不實之損害賠償？其交易因果關係及損失因果關係應如何證明？(25 分)

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科目：英文

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1. The U.S. Constitution is the _____ law in this country.
(A) intermediate (B) authoritarian (C) supreme (D) autocratical
2. Neither Congress nor any state may pass a law that _____ with the Constitution.
(A) convokes (B) convenes (C) complies (D) conflicts
3. Laws that _____ business have their origin in the lawmaking authority granted by the U.S. Constitution.
(A) contradict (B) comply (C) counterplead (D) govern
4. The U.S. Constitution _____ the structure and powers of the government, as well as the limitations on those powers.
(A) delineates (B) convenes (C) mitigates (D) relays
5. _____ is the basis for the structure of the government in the United States.
(A) Dictatorship (B) Federalism (C) Totalitarianism (D) Regime
6. Congress shall make no law _____ the freedom of speech.
(A) profiling (B) abridging (C) providing (D) depicting
7. All persons born or _____ in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.
(A) registered (B) domiciled (C) existed (D) naturalized
8. No State shall deprive any person of life, liberty, or property, without _____ of law.
(A) due diligence (B) due process (C) double jeopardy (D) sovereign immunity
9. The freedom of speech guaranteed by the Constitution will be restrained whenever speech becomes _____.
(A) defamatory (B) dignitary (C) actionable (D) commercial
10. Congress has power over spending and commerce, but the president can _____ that legislation.
(A) endorse (B) advocate (C) justify (D) veto
11. With this system of _____, no one branch of government can accumulate too much power.
(A) filibuster (B) coming and going (C) checks and balances (D) choice of forum
12. This power was _____ to the federal government to ensure the uniformity of rules governing the movement of goods through the states.
(A) bargained (B) delegated (C) bailed (D) arbitrated
13. An agreement includes a valid offer and a valid _____.
(A) acceptance (B) collateral (C) compensation (D) claimer
14. _____ is the inducement to enter into a contract.
(A) Burden (B) Assignee (C) Consideration (D) Consolidation
15. Both parties entering into the contract must have the contractual _____ to do so.
(A) conciliation (B) capacity (C) merger (D) performance

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16. The contract must be made to accomplish some goal that is legal and _____ public policy.
(A) precedent (B) enforcement (C) contradict (D) not against
17. Apparent consent of both parties must be _____ .
(A) deceitful (B) genuine (C) defendant (D) corporate
18. The contract must be in whatever _____ the law requires.
(A) form (B) fundamentalism (C) franchise (D) drawee
19. A _____ of contract occurs when a contractual promise is not fulfilled.
(A) performance (B) endorsement (C) breach (D) diligence
20. The consumer who is injured while using a product may attempt to sue the manufacturer because of a _____ in the product.
(A) jurisdiction (B) settlement (C) defect (D) establishment
21. Those who _____ the acts are to blame, or bear the fault, for these injuries.
(A) dispute (B) commit (C) complain (D) bring
22. _____ rules require someone to compensate the injured party without regard fault.
(A) Intentional torts (B) Negligence liability (C) Strict liability (D) Disclaimer
23. The function of tort law is to provide the injured party with some _____.
(A) remedy (B) rescission (C) discrimination (D) commission
24. The fiduciary duties of the directors and officers include the duty of care and the duty of _____.
(A) recital (B) royalty (C) loyalty (D) sanction
25. Directors are obligated to be honest and to use _____ business judgement in the conduct of corporate affairs.
(A) severable (B) injunctive (C) prima facie (D) prudent
26. Under the common law, the acceptance must correspond in all respects with the offer if it is to be effective. In contract law, this rule is known as “_____”.
(A) mirror image rule (B) supplementary rule (C) counteroffer rule (D) effective rule
27. She put her house up as _____ for the bank loan.
(A) installment (B) deposit (C) collateral (D) real property
28. He will _____ a lawsuit against you.
(A) request (B) provide (C) petition (D) file
29. In discovery, the questioning of witnesses who have knowledge about the subject matter of the dispute is called “_____”.
(A) production of documents (B) interrogatory (C) deposition (D) cross examination
30. According to Article 240 of ROC Criminal Law, a person who _____ a male or female under the age of twenty to leave his or her family or another who has the custody of the male or female shall be sentenced to imprisonment for not more than three years.
(A) abets (B) abducts (C) remits (D) perverts

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31. _____ is a false spoken statement about someone that is intended to damage the good opinion that people have.
(A) Tampering (B) Larceny (C) Slander (D) Apprehension
32. Where the parties to an agreement stipulate in advance that, if a breach occurs, the one who committed the breach shall pay to the other a fixed sum of money, the amount so agreed upon is called _____ if it is the intention of the parties that it shall represent the loss sustained and it does actually approximately represent such loss.
(A) liquidated damages (B) nominal damages
(C) compensatory damages (D) consequential damages
33. A _____ is a person who has full legal capacity.
(A) trustee (B) minor (C) major (D) waiver
34. The _____ doctrine is a legal metaphor in the United States used to describe evidence that is obtained illegally. It includes evidence gathered from just about any kind of police conduct that violates a defendant's constitutional rights.
(A) fish of the polluted water (B) fruit of the poisonous tree
(C) soil of the contaminated land (D) virus of the contagious disease
35. A _____ is either a government minister with no specific responsibilities or a minister who does not head a particular ministry.
(A) minister without office (B) co-minister (C) cabinet minister (D) minister without portfolio
36. A(n) _____ is a person who affects the legal position of another, called a principal, in dealings with third parties.
(A) offerer (B) director (C) lender (D) agent
37. A contract of marine insurance is a contract whereby the insurer undertakes to _____ the assured against marine losses, that is to say, the losses incident to a marine adventure.
(A) impeach (B) indemnify (C) incriminate (D) interpellate
38. A _____ is the name given to a bundle of monopoly rights which give the person the exclusive right to exploit an invention for a stated period of time.
(A) patent (B) disclosure (C) mortgage (D) service mark
39. The purpose of an action for _____ is to prevent one trader from misappropriating the goodwill and reputation which has been built up by another.
(A) copyright (B) contract (C) passing off (D) forgery
40. A _____ is a sale of a security (stocks, bonds, options) at a loss and repurchase of the same or substantially identical security shortly before or after.
(A) short sale (B) wash sale (C) margin sale (D) profit sale
41. For the law to become effective, it must be passed by a _____ in the legislature.
(A) quest (B) quote (C) quorum (D) quantum
42. The term _____ denotes a company organized by two or more or one government or corporate shareholder, with the total capital of the company being divided into shares and each shareholder being liable for the company in an amount equal to the total value of shares subscribed by him.

科目：英文

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(A) Company Limited by Shares

(B) Unlimited Company with Limited Liability Shareholders

(C) Limited Company

(D) Unlimited Company

43. The practice of selling goods in Taiwan at a price below the price at which the same or similar goods are sold in the home market is known as “_____”.

(A) tie-ins (B) price fixing (C) boycott (D) dumping

44. A(n) _____ clause requires a country to provide any concessions, privileges, or immunities granted to one nation in a trade agreement to all other World Trade Organization member countries.

(A) subsidy (B) appropriate action (C) most-favored-nation (D) customs valuation

45. _____ are the rules to attribute a country of origin to a product in order to determine its "economic nationality".

(A) Rules of production (B) Rules of origin (C) Rules of geography (D) Rules of nationality

46. In the case of a check payable to Sarah Smith (the payee), a _____ would be the signature of Sarah Smith on the back side of the check without any other words above or below his signature.

(A) restrictive endorsement

(B) blank endorsement

(C) total endorsement

(D) unlimited endorsement

47. A _____ is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person or to bearer.

(A) promissory note (B) bill of exchange (C) cheque (D) letter of credit

48. He gained access to the building by _____ a police officer.

(A) committing (B) confessing (C) impersonating (D) ransoming

49. According to Article 36 of ROC Criminal Law, which of the following is an “Accessory punishment”?

(A) Deprivation of citizen’s rights (B) Confiscation (C) Forced collection (D) Custody

50. The director owes a _____ duty to the company and its shareholders.

(A) fiduciary (B) evanescent (C) coextensive (D) inexcusable