

科目：民法(財產法)

系所組：財經法律學系碩士班

一、某甲家財萬貫卻相當低調，不欲在他人面前顯露財產。某日甲在一精華地段看中A屋，市價新台幣兩億元，甲即與其好友乙商量，將購入之A屋借用乙之名義登記於乙的名下，乙表示同意，兩人隨即完成所約定之行為。然而在甲與乙完成登記後不久，乙陷入財務危機，急需一筆金錢週轉，乙因此將登記於其名下的A屋以市價兩億元出賣給丙，並完成所有權移轉行為，將A屋登記於丙的名下。請分析甲、乙、丙間之法律關係。(25分)

二、甲所有之A房屋因年久失修，乃與乙訂立承攬契約，由乙施工修繕，乙因施工有誤，致A房屋之磁磚掉落，打傷路過之行人丙。另甲將其所有之B汽車以價金一百萬元(新台幣，以下同)出賣於丁，嗣又將B汽車以一百十萬元出賣給戊，並交付A汽車於戊，完成移轉所有權手續。試附理由及依據，說明下列問題：(25分)

1. 丙就其受傷，得否向甲或乙請求損害賠償？
2. 關於B汽車之買賣，丁得對甲為如何主張而行使權利？可否主張戊侵害其債權，請求戊損害賠償？

三、甲向乙銀行融資借款新台幣(下同)3,000萬元，除由甲自己提供市值2,000萬元之A地設定抵押權於乙外，並商請摯友丙提供市值2,500萬元之B地設定抵押權於乙，共同擔保甲對乙之融資借款。試問：當事人間宜設定共同普通抵押權或共同最高限額抵押權？其利弊各如何？(25分)

四、甲對乙負債卻無力清償，乙於取得執行名義後，向法院聲請對甲之A地進行查封，進而依法拍賣而由丙取得A地。丙繳足價金且受點交占有A地，惟卻遲未向地政機關辦理A地之所有權變更登記，從而A地所有權之登記名義人仍為甲。嗣後，丙因意外死亡，其繼承人X不知丙曾依強制執行程序取得A地一事，A地因而無人使用。後甲因病死亡，其繼承人Y知悉甲生前曾有A地一事，見A地無人使用，Y遂占有之，並於A地上興建一B屋。B屋屬違章建築而未辦理登記，後Y將B屋出租與丁經營早餐店。試附理由說明：X發現上述情事後，是否得向丁或何人請求拆除B屋並返還A地？X是否得向丁或何人請求返還占用A地期間相當於租金之不當得利？(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、在股份有限公司資本維持之原則下，公司法規定股份有限公司除法令另有規定外，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之規定。試請檢具理由說明下列問題：(25分)

(一)所謂之法令另有規定係指那些情形？

(二)控制與從屬公司間可否交叉持股？其是否違反股份回籠禁止原則？

(三)現行法令規定與實務見解對於違反股份回籠禁止原則之法律效果與法律責任為何？

二、某甲為A電子業上市公司董事長，同時以法人代表身分被指派擔任A公司轉投資百分之五十一之B投資股份有限公司董事長，甲鑒於A公司股價一直低迷，於是自民國108年9月間起指示由B投資股份有限公司連續買進A上市公司股票，自108年9月20日之每股股價新臺幣(以下同)二十元，連續拉擡至同年9月30日每股三十五元，並於108年10月1日全數賣出後獲利五千萬元。試請檢具理由說明甲之行為是否構成違反證券交易法之相關規定？(25分)

三、X股份有限公司於110年1月25日召開股東會，由於該次股東出席股數未達代表已發行股份總數過半數股東之出席，因而依公司法第175條規定通過假決議，並將假決議通知各股東，於一個月內再行召集股東會。試附理由及法律依據回答下列問題：(25分)

(一)阿章為X公司股東，因無法親自出席1月25日的股東會，而出具委託書，委託代理人老楊，出席股東會。若其未於股東會開會五日前將委託書送達公司，則股東會當天，老楊可否代理出席？又阿章所為委託行為於一個月內再行召集之股東會是否仍有效力？

(二)小張於110年1月29日始成為X公司股東，則小張能否出席一個月內再行召集之股東會？

四、A公司為一家從事食品加工的上市公司。老鄧為該公司董事長，阿傑為該公司總經理。試問：(25分)

(一)老鄧因得知A公司重大未公開的利空消息，並於該消息公開前賣出其所持有之A公司股票，而被檢察官以違反證券交易法內線交易之規定提起公訴。惟老鄧表示其於得知該消息前，即已委託專業人士依其專業判斷買賣股票，所以其賣出A公司股票之行為並未構成內線交易。則老鄧賣出其持股之行為有無違反證券交易法內線交易之規定？

(二)阿傑最近因資金需求，擬賣出部分其所持有之A公司股票。證券交易法對於阿傑所持有A公司股票之轉讓有何限制？

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1. Citizenship has its responsibilities as well as its _____, and in time of war the burden is always heavier.
(A) commensurations (B) aggregations (C) burglaries (D) privileges
2. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental _____.
(A) hardships (B) impacts (C) institutions (D) agencies
3. Inanimate objects are sometimes parties in _____.
(A) warfare (B) litigation (C) plaintiff (D) condition
4. Human dignity is _____.
(A) adjudicatory (B) inviolable (C) alpine (D) aesthetic
5. No one shall be _____ to the death penalty, or executed.
(A) condemned (B) trusted (C) represented (D) governed
6. Everyone has the right to respect for his or her physical and mental _____.
(A) integrity (B) judgment (C) revocation (D) consideration
7. No one shall be subjected to _____ or to inhuman or degrading treatment or punishment.
(A) torture (B) franchisee (C) revocation (D) warranty
8. No one shall be held in _____ or servitude.
(A) franchisor (B) slavery (C) vendor (D) revocation
9. The right to marry and the right to found a family shall be guaranteed in accordance with the national laws _____ the exercise of these rights.
(A) conceding (B) accessing (C) infringing (D) governing
10. A ship has a legal personality, a fiction found useful for _____ purposes.
(A) compulsory (B) real (C) intangible (D) maritime
11. _____ in human beings is prohibited.
(A) Injuncting (B) Performing (C) Trafficking (D) Discreting
12. Personal data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other _____ basis laid down by law.
(A) quasi (B) legitimate (C) executory (D) unilateral
13. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it _____.
(A) ruled (B) recognized (C) reelected (D) rectified
14. Everyone has the right to freedom of peaceful assembly and to freedom of _____ at all levels.
(A) association (B) stock (C) confession (D) will.
15. The arts and scientific research shall be free of _____. Academic freedom shall be respected.
(A) confirmation (B) constraint (C) communication (D) segregation

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16. Everyone has the right to engage in work and to pursue a freely chosen or accepted ____.
(A) session (B) occupation (C) congregation (D) therapy
17. No one may be _____ of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss.
(A) deprived (B) conceded (C) ruled (D) defeated
18. The use of property may be _____ by law in so far as is necessary for the general interest.
(A) regulated (B) contradicted (C) complied (D) counterpleaded
19. Any _____ based on any ground such as sex, race, colour, ethnic or social origin, age or sexual orientation shall be prohibited.
(A) discrimination (B) consideration (C) assignee (D) consolidation
20. Every worker has the right to protection against _____ dismissal.
(A) naturalized (B) domiciled (C) unjustified (D) unprotected
21. Every worker has the right to limitation of _____ working hours, to daily and weekly rest periods and to an annual period of paid leave.
(A) procedure (B) protection (C) condition (D) maximum
22. The family shall _____ legal, economic and social protection.
(A) enjoy (B) profile (C) deliver (D) practice
23. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be _____.
(A) plaintiff (B) valid (C) void (D) applicable
24. Any limitation on the exercise of the rights and freedoms must be provided for by law and respect the _____ of those rights and freedoms.
(A) essence (B) extent (C) immunity (D) double jeopardy
25. Subject to the principle of _____, limitations may be made only if they are necessary and genuinely meet objectives of general interest or the need to protect the rights and freedoms of others.
(A) appropriation (B) minimization (C) proportionality (D) deidentification
26. The two parties of a contract should _____ their obligations.
(A) keep (B) do (C) make (D) perform
27. You are not _____ to unemployment benefit if you have never worked.
(A) entitled (B) alleged (C) able (D) given
28. _____ are moveable items of property which are neither land nor permanently attached to land or a building, either directly or vicariously through attachment to real property.
(A) Trees (B) Real estate (C) Chattels (D) Bridges
29. Not only are people responsible for the intentional harm they cause, but their failure to act as a reasonable person that would be expected to act in similar circumstances will also give rise to compensation. _____, if it causes injury to another, can give rise to a liability suit

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under tort.

(A) Crime (B) Duty (C) Harm (D) Negligence

30. She claimed the police had used _____, threats, and promises to obtain the statement illegally.

(A) eviction (B) coercion (C) sanction (D) adjudication

31. The presidential candidate _____ his reputation by winning several primary elections.

(A) consolidated (B) predominated (C) justified (D) altered

32. The judge _____ the death penalty on the criminal.

(A) implicates (B) instructs (C) inflicts (D) imposes

33. The international concern of nuclear _____ should be handled under the principle of the international law.

(A) enlargement (B) proliferation (C) engagement (D) solicitation

34. Sometimes statutes are _____ more than once.

(A) implied (B) expressed (C) ordered (D) amended

35. To _____ means to drive or force out or away; to discharge or reject; to cut off from membership or relations.

(A) expel (B) repel (C) dispel (D) propel

36. _____ is unauthorized assumption and exercise of rights of ownership over personal property belonging to another.

(A) An offence (B) Infringement (C) Conversion (D) Stricture

37. Out of the thirteen cases, only four judges have been convicted and removed from office. State officials are similarly subject to _____ by the legislatures of their respective states.

(A) pardon (B) impeachment (C) misdemeanor (D) detriment

38. _____ is the power or right to decide or act according to one's own judgment; freedom of judgment or choice.

(A) Abatement (B) Discretion (C) Malevolence (D) Ejection

39. A _____ is a false, malicious and damaging spoken statement about a person.

(A) slander (B) battery (C) tenement (D) spite

40. An _____ burglar is someone who has been accused of being a burglar but against whom no charges have been proved.

(A) escaped (B) alleviated (C) immured (D) alleged

41. The attorney had lied at the testimonial session and was later _____ by the Bar Association because of his dishonesty.

(A) disbursed (B) disbanded (C) disbarred (D) distributed

42. _____ refers to a legal agreement by which a bank, building society, etc. lends money at interest in exchange for taking title of the debtor's property, with the condition that the conveyance of title becomes void upon the payment of the debt.

(A) Mortgage (B) Engagement (C) Insurable interest (D) Indemnity

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43. A _____ is a check drawn by a bank upon itself. The bank, in effect lends its credit to the purchaser of the check.
(A) negotiable check (B) deposit check (C) cashier's check (D) payee's check
44. Any foreign shareholder whose shares are purchased pursuant to Article 4(4) of the joint venture law is entitled to _____ the full amount of the purchase price he receives.
(A) liquidate (B) repatriate (C) discharge (D) promulgate
45. If an individual who was driving while intoxicated crashed his or her car and was killed, the immediate cause of death was the crash. The _____ cause, however, was the individual's state of intoxication.
(A) fair (B) near (C) proximate (D) approximate
46. Actions that may result in a _____ lawsuit range from a doctor's failure to diagnose cancer to a doctor making an improper cut during surgery, resulting in unexpected permanent disability.
(A) defamation (B) malpractice (C) strict liability (D) vicarious liability
47. _____ are awarded both to deter the defendant and others from conduct similar to the conduct that gave rise to the lawsuit, and to punish the defendant. They are often awarded to set a public example and generally are in excess of provable injuries.
(A) Punitive damages (B) Compensatory damages (C) Nominal damages (D) Actual damages
48. _____ bars right of action unless it is filed within a specified period of time after injury occurs, while statute of repose terminates any right of action after a specific time has elapsed, regardless of whether there has as yet been an injury.
(A) Statute of Reservation (B) Statute of Stipulation (C) Statute of limitation
(D) Statute of Approximation
49. In a tort case against several people alleged to have harmed the plaintiff jointly, the defendants often assert _____ against each other, each claiming a right of contribution from the others.
(A) counterclaim (B) cross-claim (C) cross examination (D) re-cross claim
50. A _____ occurs when you sell stock you do not own. If the stock price drops, investors can buy the stock at the lower price and make a profit. If the price of the stock rises and investors buy it back later at the higher price, he/she will incur a loss.
(A) swift sale (B) swing sale (C) wash sale (D) short sale