

Questions for entrance exam 2010

Question 1 to 10 by Prof. Hinrich Julius

1. A new tort law was approved in December 2009 by the Standing Committee of the National Peoples Congress of China, regulating liabilities for a range of circumstances, for example traffic accidents, medical accidents, work-related injuries, pollution. Many of the substantial issues regulated in this new law are already object of regulations in other laws and regulations as well as court interpretations. For example the duty to compensate emotional damages was already acknowledged by the Supreme Court in 2002, a liability for environmental pollution does already exist in Chinas "General Principles of Civil Law" from 1987 and several specific laws and the product-liability is already regulated in the Food Safety Law and the Law on Liability for Product Quality . Critics argue that the law does not introduce new substantial matters in the field of tort law. What are the major arguments for a central regulation like this, even though in some fields it only repeats already existing laws, regulations and interpretations?

2. In December 2009 Akhmal Shaikh, a British citizen of Pakistani origin, was the first European being executed in China in more than 50 years. He was arrested at Ürümqi International Airport in December 2007 carrying 4 kilograms of Heroin hidden in his baggage. It seems that Central Asian drug smugglers, using his delusional ambitions to become a pop star in China , convinced him to take a suitcase with heroin on board a plane into China . In the court proceedings he first declared himself mentally sane and later pleaded for an examination on mental disorder. With the argumentation that under Chinese law necessary evidence of earlier mental health problems could not be provided, a specific examination of his health did not take place. In spite of many efforts by an international organization working against the death penalty "Reprieve" and the British government Shaikh was executed on December 29th 2009. This case was discussed widely in the international press. Which arguments could be used to criticize this court decision? What are the arguments in favor of the deciding court and the Chinese Government?

3. In 2010 the Greece is having difficulties to refinance its public debt. More than 35 billion € need to be refinanced in 2010. Government bonds early in 2010 had to pay an interest rate of 6,25 %, a rate around 3 % higher than Germany would have to accept. The European Union Treaty contains a so called "no bailout clause", meaning that the member states are not responsible for debt of other members. Possible solutions to the debt crisis of Greece (and possibly other highly indebted European countries) are bilateral agreements with other member states to support future fiscal policy, an intervention of the European Central Bank (which does not yet have the power to react) or an intervention of the International Monetary Fund. Furthermore Greece will have to decide on budget reforms. Please discuss advantages and disadvantages of each of these reactions.

4. A European Company wants to invest in China . Having read a lot about “rule of law” and the relevance of personal contacts (“guanxi”) its representative in Beijing does not know how to proceed? Contacts with relevant people, company structure, necessary licenses, work permits, finding premises and finding staff are all very important. How would you structure his next steps? What needs to be done first and what can wait? What is more important than other things?

5. Conflicts among neighbors are known in China and Europe . Greater legal problems can especially be seen, when these neighbors are owners of the respective flats. The Chinese property law (and comparable legislations in other countries) regulates possible conflicts (decoration work, remodeling, repairs, usage of common ground, parking spaces, noise, pets...). Without detailed knowledge of the regulations, which possible means of solving conflicts (or making common decisions) do you see in a compound of 200 flats and families plus 15 commercial units plus a parking ground owned by the managing company?

6. Medical malpractice was an important issue during the drafting of the new Chinese Tort Law. Please take two typical cases as examples to discuss necessary areas of regulation.

a) A healthy middle aged man is brought to the hospital due to an accident on his way to work. A broken joint was diagnosed and he has to stay in the hospital. Two days later he dies. His wife does not know why nor can she get any information from the hospital.

b) A patient is treated in a hospital and with all possible care no reason for his disease could be found. Only an examination of his body after his death gives the necessary information that could have saved his life.

7. Medical malpractice was an important issue during the drafting of the new Chinese Tort Law. Please take two typical cases as examples to discuss necessary areas of regulation.

a) In an understaffed hospital the doctors and nurses give their best to provide care for all patients. Due to the error of one doctor after too long working hours, a false medication was prescribed to a patient that damages his health.

b) Without information of the patient a new medication is given to him by the hospital, which leads to severe damages.

8. The property market in China is booming. Seller and buyer of an apartment do need a secure and safe way to sell and buy. Agreement, transfer of money, transfer of ownership and transfer of the apartment itself needs to be organized. All countries of the world have different regulations on the organization of the actions. Please discuss possible safe ways to organize the sale of an apartment (How to insure, that the seller receives the purchase price? How to insure that the buyers becomes owner of the apartment?).

9. Please discuss the relationship of car insurance and regulations regarding traffic accidents. Tort Laws in all countries of the world regulate the liability of car drivers hurting other traffic participants. Why do many countries know mandatory car insurance against accidents? Why do most countries have ceilings on the maximum amounts to be covered by these insurances?

10. Every country of this world has some form of insolvency proceedings. An enterprise insolvency law is in effect in China since June 2007. Why is it necessary to regulate insolvency proceedings in a market economy and what needs to be regulated?

Question 11 to 15 by Prof. Wang Jianxun

11. It is widely reported that the State Council is making an ordinance on expropriation, which would regulate the takeover of private property under the condition of public interest. But practitioners, experts, and the ordinary people do not agree upon the meaning and scope of public interest. Could you propose an approach to define public interest to shed some light on the debate?

12. Some have recently argued that the household registration system (the *hukou* system) should not be dismantled primarily because the government has no financial capability of providing the same welfare benefits for the rural people as those enjoyed by the urban residents. Do you, as a legal analyst, agree with this argument and reasoning? Why?

13. Quite a few metropolitans, including Beijing, are enforcing a policy of prohibiting or limiting automobiles to run on certain dates to mitigate traffic jam. One supporting reason for the enforcement of this policy is that the majority of the people surveyed uphold it. Do you think that the policy is consistent with the current Chinese laws and the Constitution of 1982? Can the majority support of the policy help justify it?

14. In the past few years, a number of citizens have been arrested for disseminating rumors on the internet, including the case of earthquake rumor in Shanxi province a few months ago. In your view, should rumors be under the protection of the freedom of speech provided in the Chinese Constitution? Why?

15. Some legal scholars maintain that the Chinese courts ought not to practice judicial review, partially because, according to the Chinese Constitution, the authority to interpret the Constitution is exclusively assigned to the Standing Committee of the National People's Congress, which implies that the courts have no authority to perform the task of constitutional interpretation. How do you evaluate this argument and reasoning?

Question 16 to 24 by Prof. Pissler

16. Please describe shortly the legislative system of the PRC. Which state organs are involved from the drafting of a new law to the promulgation?

17. What are the legal devices of a Chinese citizen to challenge the decision of a state organ to reject the application to issue a specific administrative act (e.g. the permission to establish a company)?

18. Explain the difference between contractual obligations and obligations arising from tortious acts.

19. What is the importance of the concept of limited liability in business organizations (e.g. in a limited liability company)? Under which circumstances should there be exceptions to the concept of limited liability?

20. Please explain why there is a potential conflict of interests between shareholders and managers in most legal forms of business organizations.

21. Please explain the differences between mediation/conciliation, arbitration and court proceedings.

22. What is the characteristic of non-profit organisations (as opposed to for-profit organisations) and which forms of these organisations are available under Chinese law?

23. What idea stands behind the concept of res judicata (unappealability of a judgement etc.) and why is this concept challenged in China ?

24. What is the role of the Supreme Peoples' Court of the PRC in the court system and the legislative system in China ?

Question 25 to 29 by Prof. Colneric

25. Imagine a country in which discrimination on grounds of sex is prohibited. An employer dismissed a woman because she is pregnant. Is this discrimination on grounds of sex?

26. Imagine a country in which discrimination on grounds of sex is prohibited. A municipality in that country does not admit women to its fire brigade. Is this discrimination on grounds of sex?

27. Imagine a country in which discrimination on grounds of age is prohibited. An airline company dismisses all the pilots that have reached the age of 55. Is this discrimination on grounds of age?

28. Imagine a country in which discrimination on grounds of disability is prohibited. A woman who suffers from a skin disease affecting her face was not employed by a company because of this. Is this discrimination on grounds of disability?

29. Imagine a country which prescribes the principle of equal pay for male and female workers for equal work or work of equal value. In a company full time workers get extra vacation payment. Part time workers do not receive such payment. 90 % of the part time workers and 40 % of the full time workers are women. Has the company infringed the above mentioned principle?

Question 30 by Prof. Fang Liufang

30. In China, a law diploma is not required as a condition to attend the state judicial examination (国家司法考试). Given this circumstance, why should you attend the law school?