

对外经济贸易大学

2000 年攻读硕士学位研究生入学考试

法学专业英语试题

一、请把下述英文译成中文 (20 分)

1、第 1 题 (8 分)

(c) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this [Act]. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

2、第 2 题 (12 分)

§ 3.04 Ultra Vires

(a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) in a proceeding by a shareholder against the corporation to enjoin the act;

(2) in a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) in a proceeding by the Attorney General under section 14.

(c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

二、请把下述中文译成英文 (20 分)

(1) 如果买方应根据合同规定订明货物的形状、大小或其它特征, 而他在议定的日期或在收到卖方的要求后一段合理时间内没有订明这些规格, 则卖方在不损害其可能享有的任何其它权利的情况下, 可以依照他所知的买方的要求, 自己订明规格。

(2) 如果卖方自己订明规格, 他必须把订明规格的细节通知买方, 而且必须规定一段合理时间, 让买方可以在该段时间内订出不同的规格。如果买方在收到这种通知后没有在该段时间内这样做, 卖方所订的规格就具有约束力。

三、请阅读下述案例, 并根据要求简要回答下列问题 (用中文, 25 分)

Hopkins v. Racine Malleable & Wrought Iron Co.

137 Wis. 583, 119 N. W. 301 (1909)

The plaintiff having secured a patent upon a certain farm gate and having had some undisclosed negotiations with the defendant, a manufacturer of malleable irons, the latter on March 10, 1905, mailed to him the following writing:

Hopkins Gate Contract. The Racine Malleable & Wrought Iron Company hereby agrees with Floyd Hopkins to furnish, at any time

hereafter during the life of the patent, castings for the patent improved farm gate of said Hopkins, known as the Hopkins' gate. We agree to furnish the above named castings for forty cents per set at our shops to be shipped to any point of the United States or Canada.

There was no reply, but from time to time, up to July, 1906, the plaintiff ordered castings in quantities from 50 to 150 sets, and they were supplied by the defendant. On October 29, 1906, the defendant wrote [plaintiff] that it had approximately 400 sets of castings on hand, but was unwilling to continue the business after that stock was exhausted. "Orders that are placed after the stock on hand now is exhausted will be billed at revised prices."

On December 27, 1906, plaintiff mailed to the defendant the following letter: "I wish one thousand sets of Farmer Hopkins' gate castings manufactured and ready for delivery May 1, 1907." To which the defendant replied January 30th: "It is not possible for us to make the thousand set of Farmer Hopkins' gate castings at the present time."

Plaintiff brought suit for damages for defendant's refusal to comply with the order of December 27, 1906, and judgment was rendered by the court, without a jury, for damages.

No principle is more elementary in the law of contracts than that consideration is essential to their validity, and that a wholly executory contract for mutual acts is of no binding force upon one party unless and until the other has become bound thereby. There is not the slightest suggestion that the plaintiff ever, even in the most informal manner, bound himself to the conditions expressed in that offer. With him it was entirely optional at all times to purchase his supplies of irons wherever he chose. True, as he from time to time ordered a shipment from the defendant, he became bound to pay for

such shipment according to the terms of the offer, and then, for the first time, did defendant become bound to fill his order. This element of consideration in the form of mutuality being wholly lacking in the instant case, defendant's letter of March 10, 1905 at most constituted a continuing offer to furnish castings upon payment of the specified price, and might be revoked at any time by the defendant, except as to orders thereunder prior to the revocation.

Judgment reversed.

问题:

(1) 在本案中, 被告的诺言是什么? 该诺言有没有对价? 如果有, 该对价是什么?

(2) 法官判决该合同有效还是无效? 其理由是什么? 其法理依据又是什么?

四、请阅读以下案例, 并用英文回答问题 (共 35 分)

Plaintiff Zappala & Co., Inc. (Zappala) manufactures concrete blocks. It entered a contract with defendant Pyramid Company of Glens Falls (Pyramid) in which Zappala agreed to manufacture and deliver to Pyramid a quantity of pigmented (colored) concrete blocks for use in the construction of a shopping mall. The contract contained a written warranty that all blocks would conform in color and texture to a sample.

Zappala supplied 52,060 blocks for an agreed price of \$76,403.01. Pyramid's agent at the job site objected to 904 blocks claiming they did not conform in color to the sample. He notified Zappala of the nonconformity and put the off-color blocks aside, refusing initially to permit their use in the construction of the mall. Later, however, with the knowledge and consent of Pyramid's agent, the off-color blocks were used in constructing the walls of the mall.

Zappala offered to replace the discolored blocks or to coat the walls once with a paint-like substance called Silibond that would have masked the discoloration. Pyramid refused both offers and sought as damages for the discolored blocks the cost to coat all walls of the mall with Silibond every five years for the next 35 years. Zappala refused and sued to collect the contract price. If the 1980 UN Convention is applied, who will win? On what reason?