

## 2002 年对外经济贸易大学国际法专业英语考研试题

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## 一、案例分析（用中文回答）40%

Stone v. American Lacquer Solvents Co.

343 A. 2d 174 (1975)

Harold E. Stone became chairman of the board of directors of American Lacquer Solvents Co. ( hereafter referred to as American) on December 7, 1967. On that date, American's board of derectors adopted a resolution that upon Stone's death, his wife, Rachel, would be paid an \$8,000 annual pension by American until her death or remarriage. Teh resolution was adopted in consideration for services to be rendered to American by Stone, and it further provided that it could not be revoked without his consent.

In March 1968 Stone and his wife encountered martial difficulties. Stone contacted Shaw, the president and general manager of American, and told him that he wanted the pension resolution cancelled. Shaw contacted the company's legal counsel and, acting in accordance with his advice as to the procedure to be followed, prepared a letter from Stone to the board of directors of American, saving, "It is my wish that the Resolution dated December 7, 1967 concerning a pension for my wife Rachel be rescinded." Stone signed and personally delivered the letter to Shaw on March 3.

On March 11, 1968, Shaw convened a special meeting of the board of directors of American. Five of the seven members of the board attended the meeting; and when Stone's letter was brought to their attention, they voted unanimously to rescind the resolution of December 7, 1967. Stone was not notified of the meeting and did not attend.

Stone died on November 1, 1968; and when American refused to pay his widow, Rachel, the pension provided for in the resolution, she sued for specific performance. The trial court ruled that the resolution and been validly rescinded by the board at the meeting of March 11, 1968, and hence the plaintiff had no claim. She appealed the decision.

Eagen, Justice

... As a general rule the directors of a corporation may bind a corporation only when they act at a legal meeting of the board. If they purport to act at a meeting which is not a legal meeting, their action is not that of the corporation, and the corporation, absent ratification or acquiescence, is not bound.

As to special meetings of the board of director of a corporation, the general rule in Pennsylvania is that such a meeting held without notice to some or any of the directors and in their absence is illegal, and action taken at such a meeting, although by a majority of the directors, is invalid absent ratification or estoppel. However, this notice requirement may be waived by a director either prior or subsequent to the special meeting, provided such waive is in writing. Additionally, any action which may properly be taken at a meeting of a board of directors of a corporation may be affected and is binding without a meeting, if a consent in writing setting forth the action so taken is signed by each and every member of the board and filed with the secretary of the corporation.

A reading of the trial court's opinion filed in support of its decree upholding the legality of the

Board's section of March 11, 1968, rescinding the Board's prior Resolution providing for the payment of the pension to the plaintiff was based on three grounds, any one of which, if correct, would warrant its ruling.

First, the court conclude that Stone's letter of March 3, 1968, constituted a consent to the Board's subsequent action rescinding the pension Resolution. The difficulty with this position is that the applicable statute requires that such a consent be executed after the meeting and that it specifically set forth the action taken, and that it be filed with the secretary of the corporation. Stone's letter does not meet these requirements.

Secondly, the court conclude [that] Stone's letter of March 3, 1968, constituted a waiver of receipt of notice of the meeting of March 11, 1968. The difficulty with this position is that the letter does not refer to the meeting or indicate in any way that notice thereof is waived. The letter amounts to no more than an expression of desire or consent to rescind the pension Resolution.

In connection with its conclusion that Stone's letter constituted a waiver of notice of the meeting, the court reasoned that no purpose would be served by Stone's presence at the meeting since the other Directors were merely acceding to Stone's wishes and request. This analysis overlooks the rationale for the salutory rule that all directors receive notice of special meeting. That rationale is that "each member of a corporate body has the right of consultation with the others, and has the right to be heard upon all questions considered, and it is presumed that if the absent members had been present they might have dissented, and their arguments might have convinced the majority of the unwisdom of their proposed action and thus have produced a different result." We agree with this rationale and, in view of the presumption embodied therein, we cannot concur in the trial court's premise that Stone and other Directors were of one mind as regards the pension rescission. In relation to this, we specifically note that another member of the Board of Directors failed to attend the meeting of March 11, 1968, and there is nothing in the record to show if he received notice of the meeting, or ever consented to the action taken at the meeting.

Finally, the court concluded that the rescinding resolution of Board was voidable only and that Stone's silence and failure to object thereto prior to his death amounted to a ratification. The difficulty with this position is that there is nothing in the record to show that Stone was ever made aware that the meeting of March 11, 1968, had been held or knew the rescinding resolution had been adopted by the Board. Under the circumstances, it cannot be said a ratification was effected... [Reversed and ... remanded for further proceeding...]

思考题:

1. 请以时间顺序为线索陈述本案基本事实。
2. 为什么原告要求实际履行的救济方法?
3. 根据宾州公司法, 在什么情况下董事会特别会议可宣布为无效?
4. 初审法院是基于哪三条理由驳回原告起诉的? 上诉法院是如何分别否定这三条理由的?
5. Mr. Stone 生前还可以采取什么补救办法避免出现本案判决?

## 二、英译汉 (共 60 分)

### 1、 APPLYING VALUATION THEORY TO LAW PRACTICE

We have seen that some of the poorest methods of valuation are often used in practice. And what

of the undisputed favorite- DCF? One writer says succinctly: "capitalization of earnings ordinarily is not a desirable method of setting the values of shares in a close corporation." This is not because it doesn't make sense, but because it requires estimation of the inestimable: future cash flows and the appropriate discount rate. That's only two things to estimate, as we said before, but they are often too difficult to serve as good planning guides.

How then do we value in practice? We use the information we have, trying best to stick to the sensible theory of DCF. Applying theories of valuation to a world of imperfect knowledge is the job for the accountant, appraiser, financial analyst and entrepreneur. And it is the good attorney's job to understand what these people are doing when legal issues arise. The next part reviews the bookkeeping and related issues of making payments to owners, and in the next three parts we turn to the most common applications of this valuation theory.

## 2. CORPORATE GOVERNANCE

There is no expression in German law corresponding to the one of "corporate governance". As seen from the American perspective corporate governance deals with the role of the different interests relevant in a corporation and their representatives and ultimately the question of how the law regulates or should regulate these roles. German law, including employees among the agents of the AG who participate in management has already made an important step into that direction. The corporation does not only serve the interests of the shareholders.

Taking into account other interests as opposed to only those of the shareholders is visibly reflected in the notion of the "interest of the corporation" as a formula to harmonize the different powers and groups acting in a corporation. One of the questions raised in this context is, which particular interests are to be considered as relevant for the AG in certain situations. Another question to be answered is according to which criteria conflicts between them are to be decided.

## 3. Appraisal