对外经济贸易大学硕士学位研究生入学考试初试模拟试题二

模拟考试科目：859 法学专业英语

（请注意：此试卷适用于报考国际法学专业的考生）

来源：爱考机构

一、阅读下面的三则案例，并请用中文回答每个案例后面的问题（每题 40 分，共 120 分）：

（一）案例一：

North Ocean Shipping Co. Ltd. v. Hyundai Construction Co. Ltd and Another
[1979] 3 W.L.R. 419
Queen's Bench Division
BD (Comm)
ocatta J.

1978 June 6, 7, 8, 9, 12, 13, 14, 15, 16, 19; July 20

A shipbuilding company entered into a contract by which they agreed to build a tanker for ship owners for a fixed price in United States dollars, payment to be made in five instalments. The company agreed to open a letter of credit to provide security for repayment of instalments in the event of their default in the performance of the contract. After the owners had paid the first instalment, the United States dollar was devalued by 10 per cent. upon which the company put forward a claim to an increase of 10 per cent. in the remaining instalments. The owners, asserting that there was no legal ground on which the claim could be made, paid the second and third instalments without the additional 10 per cent., but the company returned both instalments. The owners suggested that the company should subject their claim to arbitration, but they declined to do so, and requested the owners to give them a final and decisive reply to their demand for an increase by a certain date, failing which they would terminate the contract. The owners, who at that time were negotiating a very lucrative contract for the charter of the tanker, replied that although they were under no obligation to make additional payments, they would do so "without prejudice" to their rights, and requested that the company arrange for corresponding increases in the letter of credit. The company agreed to do so in June 1973, and the owners remitted the remaining instalments, including the 10 per cent. increase, without protest. The tanker was delivered to the owners in November 1974 but it was not until July 1975 that the company knew that the owners were claiming the return of the extra 10 per cent. paid on the four instalments with interest and the matter was *706 referred to arbitration. The arbitrators stated a special case for the opinion of the court on a question of law.

…

I must next consider whether even if that agreement, varying the terms of the original shipbuilding contract of April 10, 1972, was made under a threat to break that original contract and the various increased instalments were made consequently under the varied agreement, the increased sums can be recovered as money had and received. Mr. Longmore submitted that they could be, provided they were involuntary payments and not made, albeit perhaps with some grumbling, to close the transaction.

Certainly this is the well-established position if payments are made, *715 for example, to avoid the wrongful seizure of goods where there is no prior agreement to make such payments. The best known English case to this effect is probably Maskell v. Horner [1915] 3 K.B. 106, where the plaintiff had over many years paid illegal tolls on his goods offered for sale in the vicinity of Spitalfields Market. The plaintiff had paid under protest, though the process was so prolonged, that the protests became almost in the nature of jokes, though the plaintiff had in fact suffered seizures of his goods when he had not paid. Lord Reading C.J. did not say that express words of protest were always necessary, though they might be useful evidence to negative voluntary payments; the circumstances taken as a whole must indicate that the payments were involuntary. Buckley L.J. at p. 124, regarded the making of a protest before paying to avoid the wrongful seizure of one's goods as "a further factor," which went to show that the payment was not voluntary. Pickford L.J. at p. 126 likewise regarded the fact of protest as "some indication" that the payer intended to resist the claim.

There are a number of well-known examples in the books of English cases where the payments made have been involuntary by reason of some wrongful threatened action or inaction in relation to goods and have subsequently been recovered, but where the issue has not been complicated by the payments having been made under a contract. Some of these cases have concerned threats to seize, seizure or wrongful detention of goods, Maskell v. Horner being the best known modern example of the former two categories and Astley v. Reynolds (1731) 2 Str. 915 a good example of the latter category, where a pawnbroker refused to release plate when the plaintiff tendered the money lent and, on demand, more than the legal rate of interest, since without this the pawnbroker would not release the plaintiff's plate. The plaintiff recovered the excess, as having paid it under compulsion and it was held no answer that an alternative remedy might lie in trover.

…

First, I do not take the view that the recovery of money paid under duress other than to the person is necessarily limited to duress to goods falling within one of the categories hitherto established by the English eases. I would respectfully follow and adopt the broad statement of principle laid down by Isaacs J. cited earlier and frequently quoted and applied in the Australian cases. Secondly, from this it follows that the compulsion may take the form of "economic duress" if the necessary facts are proved. A threat to break a contract may amount to such "economic duress." Thirdly, if there has been such a form of duress leading to a contract for consideration, I think that contract is a voidable one which can be avoided and the excess money paid under it recovered.

I think the facts found in this ease do establish that the agreement to increase the price by 10 per cent. reached at the end of June 1973 was caused by what may be called "economic duress." The Yard were adamant in insisting on the increased price without having any legal justification for so doing and the owners realised that the Yard would not accept anything other than an unqualified agreement to the increase. The owners might have claimed damages in arbitration against the Yard with all the inherent unavoidable uncertainties of litigation, but in view of the position of the Yard vis-à-vis their relations with Shell it would be unreasonable to hold that this is the course they should have taken: see Astley v. Reynolds (1731) 2 Str. 915. The owners made a very reasonable offer of arbitration coupled with security for any award in the Yard's favour that might be made, but this was refused. They then made their agreement, which can truly I think be said to have been made under compulsion, by the telex of June 28 without prejudice to their rights. I do not consider the Yard's ignorance of the Shell charter material. It may well be that had they known of it they would have been even more exigent.

If I am right in the conclusion reached with some doubt earlier that *720 there was consideration for the 10 per cent. increase agreement reached at the end of June 1973, and it be right to regard this as having been reached under a kind of duress in the form of economic pressure, then what is said in Chitty on Contracts, 24th ed. (1977), vol. 1, para. 442, p. 207, to which both counsel referred me, is relevant, namely, that a contract entered into under duress is voidable and not void:

"... consequently a person who has entered into a contract under duress, may either affirm or avoid such contract after the duress has ceased; and if he has so voluntarily acted under it with a full knowledge of all the circumstances he may be held bound on the ground of ratification, or if, after escaping from the duress, he takes no steps to set aside the transaction, he may be found to have affirmed it."

On appeal in Ormes v. Beadel, 2 De G.F. & J. 333 and in Kerr J.'s case [1976] 1 Lloyd's Rep. 293 there was on the facts action held to amount to affirmation or acquiescence in the form of taking part in an arbitration pursuant to the impugned agreement. There is nothing comparable to such action here.

…

I have come to the conclusion that the important points here are that since there was no danger at this time in registering a protest, the final payments were made without any qualification and were followed by a delay until July 31, 1975, before the owners put forward their claim, the correct inference to draw, taking an objective view of the facts, is that the action and inaction of the owners can only be regarded as an affirmation of the variation in June 1973 of the terms of the original contract by the agreement to pay the additional 10 per cent. In reaching this conclusion I have not, of course, overlooked the findings in paragraph 45 of the special case, but I do not think that an intention on the part of the owners not to affirm the agreement for the extra payments not indicated to the Yard can avail them in the view of their overt acts. As was said in Deacon v.

Transport Regulation Board [1958] V.R. 458, 460 in considering whether a payment was made voluntarily or not: "No secret mental reservation of the doer is material. The question is - what would his conduct indicate to a reasonable man as his mental state." I think this test is equally applicable to the decision this court has to make whether a voidable contract has been affirmed or not, and I have applied this test in reaching the conclusion I have just expressed.

I think I should add very shortly that having considered the many authorities cited, even if I had come to a different conclusion on the issue about consideration, I would have come to the same decision adverse to the owners on the question whether the payments were made voluntarily in he sense of being made to close the transaction.

Judgment for respondents with costs of argument before court. (R. D.)

请用中文回答下列问题（共 40 分）：

1. “The owner, who at that time were negotiating a very lucrative contract for the charter of the tanker”对于认定胁迫不能成立是否是重要的事实？

2. 船主 6 月 28 日的电传、船主不加反对地支付了全部的分期付款等事实对于认定胁迫是否成立是否是重要的事实？

3. 法官是如何看待船主在其 6 月 28 日的电传中加入的“without prejudice to our rights”这一用语的？如果船主每次向造船厂发出电传或寄送款项时都讲一遍这样的话，你认为结果应当如何？

4. 在本案中，造船厂是否实施了胁迫行为？其主要的表现是什么？

5. 关于胁迫的构成和后果，你从本案能归纳出哪些法律规则？

（二）案例二：

Hamilton County Municipal Court, Ohio. DEITSCH et al.
v.
The MUSIC COMPANY.
No. 81CV12895.
Jan. 10, 1983.
PAINTER, Judge.

This is an action for breach of contract. Plaintiffs and defendant*7 entered into a contract on March 27, 1980, whereby defendant was to provide a four-piece band at plaintiffs' wedding reception on November 8, 1980. The reception was to be from 8:00 p.m. to midnight. The contract stated “wage agreed upon-$295.00,” with a deposit of $65, which plaintiffs paid upon the signing

of the contract.

Plaintiffs proceeded with their wedding, and arrived at the reception hall on the night of November 8, 1980, having employed a caterer, a photographer and a soloist to sing with the band. However, the four-piece band failed to arrive at the wedding reception. Plaintiffs made several attempts to contact defendant but were not successful. After much wailing and gnashing of teeth, plaintiffs were able to send a friend to obtain some stereo equipment to provide music, which equipment was set up at about 9:00 p.m.

This matter came on to be tried on September 28, 1982. Testimony at trial indicated there were several contacts between the parties from time to time between March and November 1980. The testimony of plaintiff Carla Deitsch indicated that she had taken music to the defendant several weeks prior to the reception and had received a telephone call from defendant on the night before the wedding confirming the engagement. Defendant's president testified that he believed the contract had been cancelled, since the word “cancelled” was written on his copy of the contract. There was no testimony as to when that might have been done, and no one from defendant-company was able to explain the error. There was also testimony that defendant's president apologized profusely to the mother of one of the plaintiffs, stating that his “marital problems” were having an effect on his business, and it was all a grievous error.

The court finds that defendant did in fact breach the contract and therefore that plaintiffs are entitled to damages. The difficult issue in this case is determining the correct measure and amount of damages.

Counsel for both parties have submitted memoranda on the issue of damages. However, no cases on point are cited. Plaintiffs contend that the entire cost of the reception, in the amount of $2,643.59, is the correct measure of damages. This would require a factual finding that the reception was a total loss, and conferred no benefit at all on the plaintiffs. Defendant, on the other hand, contends that the only measure of damages which is proper is the amount which plaintiffs actually lost, that is, the $65 deposit. It is the court's opinion that neither measure of damages is proper; awarding to plaintiffs the entire sum of the reception would grossly overcompensate them for their actual loss, while the simple return of the deposit would not adequately compensate plaintiffs for defendant's breach of contract.

Therefore, we have to look to other situations to determine whether there is a middle ground, or another measure of damages which would allow the court to award more than the deposit, but certainly less than the total cost of the reception.

[1] It is hornbook law that in any contract action, the damages awarded must be the natural and probable consequence of the breach of contract or those damages which were within the contemplation of the parties at the time of making the contract. **1304 Hadley v. Baxendale (1854), 9 Exch. 341, 156 Eng.Rep. 145.

Certainly, it must be in the contemplation of the parties that the damages caused by a breach

by defendant would be greater than the return of the deposit-that would be no damages at all.

The case that we believe is on point is Pullman Company v. Willett (Richland App.1905), 7 Ohio C.C. (N.S.) 173 , affirmed (1905), 72 Ohio St. 690, 76 N.E. 1131 . In that case, a husband and wife contracted with the Pullman Company for sleeping accommodations on the train. When they arrived, fresh from their wedding, there *8 were no accommodations, as a result of which they were compelled to sit up most of the night and change cars several times. The court held that since the general measure of damages is the loss sustained, damages for the deprivation of the comforts, conveniences, and privacy for which one contracts in reserving a sleeping car space are not to be measured by the amount paid therefor. The court allowed compensatory damages for the physical inconvenience, discomfort and mental anguish resulting from the breach of contract, and upheld a jury award of $125. The court went on to state as follows:

"It is further contended that the damages awarded were excessive. We think not. The peculiar circumstances of this case were properly [a] matter for the consideration of the jury. The damages for deprivation of the comforts, conveniences and privacy for which he had contracted and agreed to pay are not to be measured by the amount to be paid therefor. He could have had cheaper accommodations had he so desired, but that he wanted these accommodations under the circumstances of this case was but natural and commendable, and we do not think that the record fails to show any damages, but, on the contrary it fully sustains the verdict and would, in our opinion, sustain even a larger verdict had the jury thought proper to fix a larger amount." (Emphasis added.) Pullman Company v. Willett, supra, at 177-78; see, also, 49 Ohio Jurisprudence 2d 191, Sleeping Car Companies, Section 6.

Another similar situation would be the reservation of a room in a hotel or motel. Surely, the damages for the breach of that contract could exceed the mere value of the room. In such a case, the Hawaii Supreme Court has held the plaintiff was "not limited to the narrow traditional contractual remedy of out-of-pocket losses alone." Dold v. Outrigger Hotel (1972), 54 Haw. 18, 22, 501 P.2d 368, at 371-37 2 .

[2] The court holds that in a case of this type, the out-of-pocket loss, which would be the security deposit, or even perhaps the value of the band's services, where another band could not readily be obtained at the last minute, would not be sufficient to compensate plaintiffs. Plaintiffs are entitled to compensation for their distress, inconvenience, and the diminution in value of their reception. For said damages, the court finds that the compensation should be $750. Since plaintiffs are clearly entitled to the refund of their security deposit, judgment will be rendered for plaintiffs in the amount of $815 and the costs of this action.

Judgment accordingly.

请用中文回答下列问题（共 40 分）：

1、在本案中，被告违约的事实是什么？

2、被告想通过证实由于合同上已打上“Canceled”一字，主张合同已被解除，他成功了吗？为什么？

3、本案中，难以解决的争议点是什么？

4、本案中，原告和被告的主张分别是什么？请说明法院是否同意他们的主张及其理由。

5、在本案中，法院采取的中间道路是什么？

6、在本案中，法官引用了 Pullman Company v. Willett 一案，请简要概括该案的事实和法院的判决。

7、在本案中，法官为什么还引用了 Dold v. Outrigger Hotel （1972） 一案？

8、在本案中，法院的判决是什么？

9、作为一般原则，在违约诉讼中，对有关精神损害赔偿的请求是得不到支持的。在本案中，为什么法院对精神损害赔偿予以支持？你同意这一判决吗？

（三）案例三：

Supreme Court of North Dakota.Harold E. HANEWALD, d/b/a Hanewald & Sons, Inc.;
Plaintiff and Appellant,
andHanewald & Sons, Inc., Plaintiff,
v.
BRYAN'S INC., a North Dakota corporation; George D. Bryan; Keith L. Bryan; and Joan Bryan, Defendants and Appellees,
And Camilla Larson, Defendant.
Civ. No. 870324.
Sept. 20, 1988.

MESCHKE, Justice.

Harold E. Hanewald appealed from that part of his judgment for $38,600 plus interest against Bryan's, Inc. which refused to impose personal liability upon Keith, Joan, and George Bryan for that insolvent corporation's debt. We reverse the ruling that Keith and Joan Bryan were not personally liable.

On July 19, 1984, Keith and Joan Bryan incorporated Bryan's, Inc. to “engage in and operate a general retail clothing, and related items, store....” The Certificate *415 of Incorporation was issued by the Secretary of State on July 25, 1984. The first meeting of the board of directors elected Keith Bryan as president and Joan Bryan as secretary-treasurer of Bryan's, Inc. George

Bryan was elected vice-president, appointed registered agent, and designated manager of the prospective business. The Articles of Incorporation authorized the corporation to issue "100 shares of common stock with a par value of $1,000 per share" with "total authorized capitalization [of] $100,000.00." Bryan's, Inc. issued 50 shares of stock to Keith Bryan and 50 shares of stock to Joan Bryan. The trial court found that "Bryan's, Inc. did not receive any payment, either in labor, services, money, or property, for the stock which was issued."

On August 30, 1984, Hanewald sold his dry goods store in Hazen to Bryan's, Inc. Bryan's, Inc. bought the inventory, furniture, and fixtures of the business for $60,000, and leased the building for $600 per month for a period of five years. Bryan's, Inc. paid Hanewald $55,000 in cash and gave him a promissory note for $5,000, due August 30, 1985, for the remainder of the purchase price. The $55,000 payment to Hanewald was made from a loan by the Union State Bank of Hazen to the corporation, personally guaranteed by Keith and Joan Bryan.

Bryan's, Inc. began operating the retail clothing store on September 1, 1984. The business, however, lasted only four months with an operating loss of $4,840. In late December 1984, Keith and Joan Bryan decided to close the Hazen store. Thereafter, George Bryan, with the assistance of a brother and local employees, packed and removed the remaining inventory and delivered it for resale to other stores in Montana operated by the Bryan family. Bryan's, Inc. sent a "Notice of Rescission" to Hanewald on January 3, 1985, in an attempt to avoid the lease. The corporation was involuntarily dissolved by operation of law on August 1, 1986, for failure to file its annual report with the Secretary of State.

Bryan's, Inc. did not pay the $5,000 promissory note to Hanewald but paid off the rest of its creditors. Debts paid included the $55,000 loan from Union State Bank and a $10,000 loan from Keith and Joan Bryan. The Bryan loan had been, according to the trial court, "intended to be used for operating costs and expenses."

Hanewald sued the corporation and the Bryans for breach of the lease agreement and the promissory note, seeking to hold the Bryans personally liable. The defendants counterclaimed, alleging that Hanewald had fraudulently misrepresented the business's profitability in negotiating its sale. After a trial without a jury, the trial court entered judgment against Bryan's, Inc. for $38,600 plus interest on Hanewald's claims and ruled against the defendants on their counterclaim. The defendants have not cross appealed these rulings.

The trial court, however, refused to hold the individual defendants personally liable for the judgment against Bryan's, Inc., stating:

"Bryan's, Inc. was formed in a classic manner, the $10,000.00 loan by Keith Bryan being more than sufficient operating capital. Bryan's Inc. paid all obligations except the obligation to Hanewald in a timely fashion, and since there was no evidence of bad faith by the Bryans, the corporate shield of Bryan's Inc. should not be pierced."

Hanewald appealed from the refusal to hold the individual defendants personally liable.

Insofar as the judgment fails to impose personal liability upon Keith and Joan Bryan, the corporation's sole shareholders, we agree with Hanewald that the trial court erred. We base our decision on the Bryans' statutory duty to pay for shares that were issued to them by Bryan's, Inc.

[1] Organizing a corporation to avoid personal liability is legitimate. Indeed, it is one of the primary advantages of doing business in the corporate form. See generally 1 W. Fletcher, C yclopedia of the Law of Private Corporation s § 1 4 (1983); J. Gillespie, The Thin Corporate Line: Loss of Limited Liability Protection, 45 N.D.L.Rev.*416 363 (1969). However, the limited personal liability of shareholders does not come free. As this court said in Bryan v. Northwest Beverages, 69 N.D. 274, 285 N.W. 689, 694 (1939) , "[t]he mere formation of a corporation, fixing the amount of its capital stock, and receiving a certificate of incorporation, do not create anything of value upon which the company can do business." It is the shareholders' initial capital investments which protects their personal assets from further liability in the corporate enterprise. See Cross v. Farmers' Elevator Co. of Dawson, 31 N.D. 116, 153 N.W. 279, 282 (1915) ; Jablonsky v. Klemm, 377 N.W.2d 560, 566 (N.D.1985) (quoting Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 810 (Iowa 1978)) ["shareholders should in good faith put at the risk of the business unencumbered capital reasonably adequate for its prospective liabilities."]; and J. Gillespie, supra, 45 N.D.L.Rev. at 388 ["Proper capitalization might be envisioned as the principal prerequisite for the insulation of limited liability."]. Thus, generally, shareholders are not liable for corporate debts beyond the capital they have contributed to the corporation. See 1 F. O'Neal and R. Thompson, O'Neal's Close Corporations § 1.09 (3rd ed. 1987).

This protection for corporate shareholders was codified in the statute in effect when Bryan's, Inc. was incorporated and when this action was commenced, former § 10-19-22, N.D.C.C.:

"Liability of subscribers and shareholders.-A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued."

This statute obligated shareholders to pay for their shares as a prerequisite for their limited personal liability.

The kinds of consideration paid for corporate shares may vary. Article XII, § 9 of the state constitution says that "[n]o corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void." Section 10-19-16, N.D.C.C., allowed "[t]he consideration for the issuance of shares [to] be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation.... [But] [n]either promissory notes nor future services shall constitute payment or part payment for shares of a corporation." And only "[w]hen payment of the consideration ... shall have been received by the corporation, [can] such shares ... be considered fully paid and nonassessable." Id. The purpose of these constitutional and statutory provisions is "to protect the public and those dealing with the corporation...." Bryan v. Northwest Beverages,

supra, 285 N.W. at 69 4 .

[2] In this case, Bryan's, Inc. was authorized to issue 100 shares of stock each having a par value of $1,000. Keith Bryan and Joan Bryan, two of the original incorporators and members of the board of directors, were each issued 50 shares. The trial court determined that “Bryan's Inc. did not receive any payment, either in labor, services, money, or property, for the stock which was issued.” Bryans have not challenged this finding of fact on this appeal. We hold that Bryans' failure to pay for their shares in the corporation makes them personally liable under § 10-19-22, N.D.C.C., for the corporation's debt to Hanewald.

[3] Drafters' comments to § 25 of the Model Business Corporation Act, upon which § 10-19-22 was based, sketched the principles:

*417 “The liability of a subscriber for the unpaid portion of his subscription and the liability of a shareholder for the unpaid balance of the full consideration for which his shares were issued are based upon contract principles. The liability of a shareholder to whom shares are issued for overvalued property or services is a breach of contract. These liabilities have not been considered to be exceptions to the absolute limited liability concept.

“Where statutes have been silent, courts have differed as to whether the cause of action on the liabilities of shareholders for unpaid consideration for shares issued or to be issued may be asserted by a creditor directly, by the corporation itself or its receiver, or by a creditor on behalf of the corporation. The Model Act is also silent on the subject for the reason that it can be better treated elsewhere.” 1 Model Business Corporation Act Annotated 2d, Comment to § 25, at pp. 509-510 (1971).

This court, in Marshall-Wells Hardware Co. v. New Era Coal Co., 13 N.D. 396, 100 N.W. 1084 (1904) , held that creditors could directly enforce shareholders' liabilities to pay for shares held by them under statutes analogous to § 10-19-22. We believe that the shareholder liability created by § 10-19-22 may likewise be enforced in a direct action by a creditor of the corporation.

Our conclusion comports with the generally recognized rule, derived from common law, that “a shareholder is liable to corporate creditors to the extent his stock has not been paid for.” 18A Am.Jur.2d C orporation s § 86 3 , at p. 739 (1985). See also, Id. at §§ 906 and 907. One commentator has observed:

“For a corporation to issue its stock as a gratuity violates the rights of existing stockholders who do not consent, and is a fraud upon subsequent subscribers, and upon subsequent creditors who deal with it on the faith of its capital stock. The former may sue to enjoin the issue of the stock, or to cancel it if it has been issued, and has not reached the hands of a bona fide purchaser; and the latter, according to the weight of authority, may compel payment by the person to whom it was issued, to such extent as may be necessary for the payment of their claims.” 11 W. Fletcher, C yclopedia of the Law of Private Corporation s § 520 2 , at p. 450 (1986).

See also Providence State Bank v. Bohannon, 426 F.Supp. 886, 890 (E.D.Mo.1977) , aff'd, 572 F.2d 617 (8th Cir.1978) ; Eubanks v. Allstate Insurance Co., 441 F.2d 7 (5th Cir.1971) ; and Sieb's Hatcheries v. Lindley, 108 F.Supp. 415 (W.D.Ark.1952) . The shareholder "is liable to the extent of the difference between the par value and the amount actually paid," and "to such an extent only as may be necessary for the satisfaction of" the creditor's claim. 11 W. Fletcher, s upra , § 524 1 , at pp. 550, 551.

[4] The defendants asserted, and the trial court ruled, that the $10,000 loan from Keith and Joan Bryan to the corporation was nevertheless "more than sufficient operating capital" to run the business. However, a shareholder's loan is a debt, not an asset, of the corporation. Where, as here, a loan was repaid by the corporation to the shareholders before its operations were abandoned, the loan cannot be considered a capital contribution. See Sher v. Malden Taxi, Inc., 4 Mass.App. 404, 349 N.E.2d 366, 370-371 (1976) ; Amfac Mechanical Supply Co. v. Federer, 645 P.2d 73, 79-80 (Wyo.1982) ; J.L. Brock Builders, Inc. v. Dahlbeck, 223 Neb. 493, 391 N.W.2d 110, 116 (1986) .

*418 We conclude that the trial court, having found that Keith and Joan Bryan had not paid for their stock, erred as a matter of law in refusing to hold them personally liable for the corporation's debt to Hanewald. The debt to Hanewald does not exceed the difference between the par value of their stock and the amount they actually paid. Therefore, we reverse in part to remand for entry of judgment holding Keith and Joan Bryan jointly and severally liable for the entire corporate debt to Hanewald. The judgment is otherwise affirmed.

请用中文回答下列问题（共 40 分）：

1. 在初审法院中，法院的判决中已经要求 Bryan's Inc.赔偿 Hanewald$38,600 及其利息，到底什么原因又使 Hanewald 上诉？

2. 在本案中，上诉法院主张在什么条件下，股东才能免除个人责任，你是否同意？为什么？

3. Crane 法官的反对意见是什么？

4. 对于本案的两种意见，你有什么看法？请结合本案事实加以分析。

二、翻译题（每题 15 分，共 30 分）：

（一）英译汉（15 分）：

13. Anti-Dumping, Countervailing Duties

…

(a) When determining price comparability in a particular case in a manner not based on a strict comparison with domestic prices or costs in China, the importing WTO Member should ensure that it had established and published in advance (1) the criteria that it used for determining whether market economy conditions prevailed in the industry or company producing the like

product and (2) the methodology that it used in determining price comparability. With regard to importing WTO Members other than those that had an established practice of applying a methodology that included, inter alia, guidelines that the investigating authorities should normally utilize, to the extent possible, and where necessary cooperation was received, the prices or costs in one or more market economy countries that were significant producers of comparable merchandise and that either were at a level of economic development comparable to that of China or were otherwise an appropriate source for the prices or costs to be utilized in light of the nature of the industry under investigation, they should make best efforts to ensure that their methodology for determining price comparability included provisions similar to those described above.

（二）汉译英（15 分）

第二十四条 股东可以用货币出资，也可以用实物、工业产权、非专利技术、土地使用权作价出资。对作为出资的实物、工业产权、非专利技术或者土地使用权，必须进行评估作价，核实财产，不得高估或者低估作价。土地使用权的评估作价，依照法律、行政法规的规定办理。

以工业产权、非专利技术作价出资的金额不得超过有限责任公司注册资本的百分之二十，国家对采用高新技术成果有特别规定的除外。

第二十五条 股东应当足额缴纳公司章程中规定的各自所认缴的出资额。股东以货币出资的，应当将货币出资足额存入准备设立的有限责任公司在银行开设的临时账户；以实物、工业产权、非专利技术或者土地使用权出资的，应当依法办理其财产权的转移手续。

股东不按照前款规定缴纳所认缴的出资，应当向已足额缴纳出资的股东承担违约责任。