

VIRGINIA BOARD OF BAR EXAMINERS
Roanoke, Virginia – July 28, 2015

GREEN BOOKLET - Write your answer to Question 6 in the GREEN Answer Booklet 6

6. Tom and Jerry lived in Norfolk, Virginia, where they had grown up together. They were unemployed, broke, and unable to find work. Jerry suggested that they rob a bank. After some discussion, they decided that the best plan would be for each of them to rob a bank on the opposite sides of the city at the same time. They believed this would confuse the police, delay response time, and improve their chances of getting away. They agreed that Jerry would rob the A&S Bank on the east side of town and that Tom would rob the Bluewater Bank on the west side, both at 10:00 a.m. on April 1.

At 9:00 a.m. on April 1, Tom and Jerry set out on their mission in Jerry's car. Jerry drove Tom to the Bluewater Bank. En route, Jerry handed Tom a toy pistol and told him to enter the bank at precisely 10:00 a.m. and that he (Jerry) would enter the A&S Bank simultaneously. They coordinated their watches and, as Jerry dropped Tom off in front of the Bluewater Bank, Jerry said, "OK, let's do it. I'll pick you up where we talked about."

At 10:00 a.m., Jerry entered A&S Bank, and saw no one present but a teller. He brandished a real handgun and handed the teller a note and a cloth bag. The note stated, "Put all the money in your cash drawer in the bag and give it to me. Don't make a sound, and nobody will get hurt." Seeing the handgun, the teller emptied the cash drawer into the bag.

At the same time on the other side of town, Tom entered the Bluewater Bank and, with the toy gun concealed in his coat pocket, walked to a teller window. He was so nervous that all he could do was whisper to the teller, "This is a robbery." The teller said, "I'm sorry. I didn't hear what you said." At that point, Tom turned, rushed back outside, took out his cell phone, and sent Jerry a text message saying, "I can't do it. I'm outta here."

Back at the A&S Bank, Jerry received the text message and quickly responded, "Stick to the plan." Tom saw Jerry's message, went straight to the bus terminal, and boarded a bus for Richmond. Meanwhile, Jerry took the money-filled bag from the A&S teller. At gunpoint, he told the teller to come out from behind the counter, forced her to lie face down on the floor about 15 feet from the counter, and told her not to move or make a sound for the next 15 minutes.

Unbeknownst to Jerry, the teller had activated a silent alarm, and the police were waiting for him as he ran out of the bank. Jerry later confessed and told the police about everything that had happened between him and Tom from the time they first talked about robbing the banks up to and including Tom's text message. Tom subsequently was arrested in Richmond.

The Commonwealth's Attorney charged Tom with the following crimes: (i) conspiracy; (ii) attempted robbery of the Bluewater Bank; and (iii) robbery of the A&S bank.

The Commonwealth's Attorney charged Jerry with abduction.

- (a) **Do the facts support a prima facie case against Tom on each of the three crimes with which he is charged, what defenses might Tom assert, and what is the likely outcome on each defense? Explain fully.**
- (b) **Do the facts support a prima facie case against Jerry on the crime of abduction, what defenses might he assert, and what is the likely outcome on each defense? Explain fully.**

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PURPLE BOOKLET - Write your answer to Question 7 in the PURPLE Answer Booklet 7

7. Shockoe Construction Company (“Shockoe”) is a family-owned general contracting firm located in Richmond, Virginia. K.T. Davis (“Davis”) is the President and Chief Executive Officer of Shockoe. He recently succeeded his father in that position, the latter having become Chairman of the Board of Directors. The Davis family members own all of the stock of Shockoe.

Linda Lane (“Lane”) and her law firm have served as legal counsel to Shockoe and have done all of the legal work for the company. Lane has also served for many years as the Davis family lawyer.

Tim Winston (“Winston”), the company’s Chief Financial Officer, has been with Shockoe for many years, but owns no stock and is not a member of the company’s Board of Directors. Last year, Winston came to Lane’s office and asked her to prepare his will. He explained that he has no close relatives and that Shockoe and many of its employees have been his whole life. He told Lane that, because he has lived frugally, he now has a substantial estate that he would like to leave entirely to RVA Bank in trust for the benefit of disabled employees of Shockoe. Lane prepared the will as directed by Tim, and it was properly executed in Lane’s office.

Last week, Davis asked Lane to attend an urgent meeting of the Shockoe Board of Directors. At the meeting, Davis told the Board that in his opinion Winston, while always a good and faithful employee, was “slowing down in his old age” and was showing signs of carelessness with certain financial matters and should be dismissed from employment with the company. Davis is certain that Winston will not leave voluntarily and will have to be fired. Davis and the Board asked Lane for advice on how best to handle Winston’s discharge to avoid any claims he might have against the company. Lane often worked with Winston in his role as CFO, but, aside from having prepared Winston’s will as he requested, neither Lane nor her firm performed any other legal work for him.

- (a) **Under the Rules of Professional Conduct, would it be ethically permissible for Lane, in her role as legal counsel for Shockoe, to render the legal advice requested by Davis and the Board? Explain fully.**

- (b) **Under the Rules of Professional Conduct, would it be ethically permissible for Lane to inform Davis and the Board of the provisions of Winston’s will and his generous intentions for Shockoe’s disabled employees? Explain fully.**
- (c) **Under the Rules of Professional Conduct, was it ethically proper for Lane to have prepared Winston’s will? Explain fully.**

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GOLD BOOKLET - Write your answer to Question 8 in the GOLD Answer Booklet 8

8. Peanut, Inc., (“Peanut”) is a Virginia corporation, operating a wholesale peanut business. Peanut is governed by a six-member Board of Directors and has 200 outside shareholders. Victor, the son of Peanut’s founder, was the Chairman and Chief Executive Officer of Peanut until his death in July of 2014. Victor failed to graduate from high school and was not a good business person. Victor’s value to the corporation related to his family, community, and industry connections.

In February 2012, Victor convinced the Board of Directors of Peanut to purchase the assets and assume the liabilities of Old Sweden Corp. (“Old Sweden”), a small manufacturer of chisel plows used specifically in the peanut industry. Old Sweden was owned by Victor’s best friend, Amy. Amy was Old Sweden’s sole owner and, acting solely in her capacity as the director of manufacturing, agreed to sell the company to Peanut. One of the members of the Peanut Board of Directors, Linus, asked questions about the potential liabilities of Old Sweden, but there was no actual due diligence investigation. Victor told the remaining Board members that Amy had assured him that all of Old Sweden’s liabilities were shown on the corporate books. After a brief discussion of the pros and cons of the purchase at the Board meeting, the Board voted unanimously to purchase Old Sweden, and the purchase was consummated.

In June 2013, the Peanut Board of Directors, at a regularly scheduled Board meeting with Victor present, voted unanimously to loan Victor \$175,000 to use for the purchase of a used Cessna airplane. The loan was made from Peanut corporate funds, and Victor purchased the airplane.

In September 2013, a number of former employees of Old Sweden sued Peanut, as Old Sweden’s successor, claiming wage violations of the Fair Labor Standards Act (FLSA). An investigation by Peanut before closing the purchase of Old Sweden’s assets and assuming its liabilities would have revealed these undisclosed claims by the former Old Sweden employees.

In January 2014, the Board of Directors of Peanut was presented with a settlement demand of \$600,000 for a global settlement of the FLSA suit. The Board of Directors voted unanimously to approve the settlement, which caused the corporate debts of Peanut to exceed its assets.

In July 2014, Victor was flying his Cessna from Richmond to Virginia Beach, when the plane crashed in Surry County. Victor was killed as a result of the crash. Victor’s only asset was the airplane, which was a total loss as a result of the crash, and Victor had failed to procure any insurance on the Cessna. As a result, the \$175,000 loan will not be repaid by Victor.

Through shareholder action, the Board of Directors of Peanut has now been lawfully replaced. The new Board seeks your legal advice on the following questions:

- (a) **Was the decision to sell Old Sweden to Peanut made by Amy, acting solely as Old Sweden's Director of Manufacturing, lawful? Explain fully.**
- (b) **Did the previous Peanut Board of Directors act within its power in purchasing the assets and assuming the liabilities of Old Sweden without first seeking shareholder approval? Explain fully.**
- (c) **Is it likely that the members of the previous Peanut Board of Directors can be held individually liable for (i) the \$600,000 paid on the FLSA claims; (ii) the \$175,000 loan to Victor? Explain fully.**

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ORANGE BOOKLET - Write your answer to Question 9 in the ORANGE Answer Booklet 9

9. Dave Davis, a resident of Alexandria, Virginia, retained the legal services of Lance & Lawson ("L & L"), a New York law firm with its only office in New York City, to represent him as a claimant in a National Futures Association ("NFA") arbitration proceeding. As part of that proceeding, on the advice of L & L, Davis retained the expert witness services of Professor Wallace Wade, a resident of Lexington, Kentucky, for \$10,000 per day plus expenses.

The retainer agreement between Davis and L & L established the hourly billing rates for L & L and required Davis to pay all costs and expenses, including the NFA filing fee and expert witness fees. The retainer agreement, which did not address where the arbitration hearing would be held, nor where the legal services would be rendered, was sent by L & L via Priority U.S. Mail to Davis at his home, where he signed the agreement in ink and then sent the original back by overnight delivery service to his lawyers' New York City office, as instructed. Shortly after receipt of the signed retainer agreement, L & L initiated the arbitration proceeding. Within a few days, Davis received the following email from L & L: "As an addendum to our retainer agreement, as we discussed yesterday by phone, if we don't get you a recovery, we will reimburse you 50% of Wade's bill."

Over the course of the next three months, L & L communicated frequently from New York by phone and email with Davis, while the latter was in Virginia, met with Davis in his home in Alexandria on two occasions to prepare for the arbitration hearing, and both Larry Lance and Louis Lawson were present in Washington, D.C. for a one-day pre-hearing mediation conference and at the arbitration hearing held five days in Washington, D.C. and four days in Tysons Corner, Virginia.

Davis' claim in the NFA proceeding was rejected, and he recovered nothing. He blamed what he considered to be Wade's inept testimony for the loss and refuses to pay Wade's fee.

Following the conclusion of the NFA proceeding, Wade filed a Complaint against Davis in the U.S. District Court for the Eastern District of Virginia for non-payment of expert witness fees based on breach of contract. Davis was properly served with the Complaint this morning, July 28, 2015.

Davis intends to deny liability to Wade, whom Davis now regards as an incompetent blowhard. Davis also believes that in the event he is found liable to Wade, L & L is legally responsible for half based on the earlier email from L & L to Davis.

Davis consults with you as his new lawyer and asks the following questions:

- (a) **Within what number of days must Davis serve an Answer to Wade's Complaint and what is the date on which he must begin counting that number of days?**
- (b) **Although he intends to deny liability to Wade, is there a procedure by which Davis can assert a claim against L & L for payment of "50% of Wade's bill" as a part of the civil action Wade commenced in the U.S. District Court, and, if so, within what period of time may he do so without leave of court? Explain fully.**
- (c) **In the event L & L asserts lack of personal jurisdiction as an objection to being made a party to Wade's litigation, how should the District Court rule? Explain fully.**

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Proceed to the Multiple Choice Questions in the Multiple Choice Blue Booklet.