

Applicant Number

16296



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In re Bryan Carr

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In re Bryan Carr

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FILE

Anders, Davis & Waters
Attorneys at Law
6241 Lowell Street
Franklin City, Franklin 33205

To: Examinee
From: Miles Anders
Re: Bryan Carr
Date: July 28, 2015

My friend and former college roommate Bryan Carr has consulted me about a credit card problem he is facing. I offered to help him figure out a strategy for responding.

Bryan's mother died last year. Since then his father, Henry Carr, has become more and more dependent upon Bryan. Several months ago, Henry asked Bryan if Bryan could pay the estimated \$1,500 it would take to repair Henry's van. Bryan gave his credit card to Henry and told him that he could charge all the repairs but could not use the card for anything else. Bryan also gave Henry a letter that said Bryan was giving Henry permission to use the card. In the end, the total repair cost was \$1,850, which was charged to Bryan's card.

Bryan forgot to get the credit card and letter back from his father, and Henry used the card to buy several things in addition to the auto repairs. Over several months, Henry charged gasoline, groceries, books, and, most recently, power tools to Bryan's account. Bryan always pays the entire balance on his credit cards each month, and he had already paid for the first three months of purchases without noticing Henry's charges. However, earlier this month, Bryan discovered the unauthorized purchases. He promptly contacted the bank that issued the card to dispute the charges. The bank has notified him that he is responsible for all charges.

Bryan would like our advice about his legal obligation to pay the bank for the charges Henry made in March, April, May, and June, as detailed in the statements for these months. Please draft an opinion letter for my signature to Bryan. This letter should advise Bryan of the extent of his liability for each of Henry's purchases. The letter should follow the attached firm guidelines for opinion letters.

Anders, Davis & Waters
Attorneys at Law
6241 Lowell Street
Franklin City, Franklin 33205

OFFICE MEMORANDUM

To: Associates
From: Managing partner
Re: Opinion letters
Date: September 5, 2013

The firm follows these guidelines in preparing opinion letters to clients:

- Identify each issue separately and present each issue in the form of a “yes or no” question. (E.g., Is the client’s landlord entitled to apply the security deposit to the back rent owed?)
- Following each issue, provide a concise one- or two-sentence statement which gives a “short answer” to the question.
- Following the short answer, write a more detailed explanation and legal analysis of each issue, incorporating all important facts and providing legal citations. Explain how the relevant legal authorities combined with the facts lead to your conclusions.
- Bear in mind that, in most cases, the client is not a lawyer; avoid using legal jargon. Remember to write in a way that allows the client to follow your reasoning and the logic of your conclusions.

Transcript of telephone conversation between Miles Anders and Bryan Carr
July 24, 2015

Anders: Bryan, I heard your voicemail message. I'm sorry you are having problems, and I'd like to help. Can you tell me what happened?

Carr: Well, you know that my mom died late last year. My dad has been devastated. They were married for 40 years. My mom had always organized and maintained their household and paid all the bills. Now my dad is pretty much at a loss for how to cope. Even though this is a busy season for my landscaping business, I've tried to step in to support him as much as I can, including paying some of his bills. It's been tough keeping up with all that's going on.

Anders: Can you tell me more about your dad's situation? I'm asking because I understand that this has contributed to your current problem.

Carr: About four months ago, my dad came to me after his van broke down. He had gotten a repair estimate for \$1,500, and he didn't have the money on hand to pay for the repairs. I decided to help him out and told him I would pay whatever it cost to have his van repaired. I also told my dad it was a loan, but honestly, I was never going to ask him to pay me back. I love my dad and wanted to help him in his time of need.

Anders: How did you give him the money?

Carr: I let him use one of my credit cards. It seemed the easiest thing to do at the time. I had a card that had a zero balance on it. It's with Acme State Bank. When I gave my dad the credit card, I told him that he could charge the van repairs, but I also specifically told him that that was the only purchase or charge he should make on the card.

Anders: Did you do anything else?

Carr: Yes, I wrote a letter that said that my dad was authorized to use my credit card and gave it to him. I think I also wrote the credit card account number and expiration date on the letter. I made a copy of the letter and have it in my desk. I will scan it and email it to you as soon as we get off the phone.

Anders: Did the letter say anything about restricting the purchase specifically to the van repairs?

Carr: No, it didn't.

Anders: Did your dad charge the repairs?

Carr: Yes, my dad used my Acme State Bank card to pay for the van repairs. The final bill was somewhat more than the original estimate. Apparently an additional part was needed, making the total repair cost \$1,850. That was \$350 more than the original estimate. My dad charged the total amount to my credit card.

Anders: Then what happened?

Carr: With all that was going on in my life, I forgot to get my credit card back from my dad until about six weeks ago. When I finally did, I also got back the letter I'd given him. Unfortunately, I subsequently learned that my dad had already used the card to make additional purchases without ever asking my permission or even telling me. In fact, he even used my account information after returning the card and letter.

Anders: How did you find out about the additional purchases?

Carr: When I was reviewing and preparing to pay my current credit card statement, I noticed a \$1,200 charge to Franklin Hardware Store for power tools. I knew I had not made this purchase. I called my dad to see if he knew anything about the power tools purchase.

Anders: What did your dad say?

Carr: He admitted he had used my account number to buy the power tools. He told me he wanted to prove to himself and the rest of the family that he could take care of the house, and he impulsively went to buy some tools to make some household repairs. He said he had written the account information on a piece of paper before returning the credit card and my letter to me.

Because my dad had already returned the credit card and my letter to me before he purchased the tools, he said he merely presented the credit card account name, number, and expiration date to the hardware store clerk. The clerk must have been out of his mind, but he accepted the information my dad presented and charged the tools to my account. My dad feels terrible and has apologized profusely. He is so ashamed of himself.

Anders: Are these the only other charges your dad made?

Carr: I wish. He also admitted that before he returned my card, he had used it to buy gas, groceries, and books over the past few months.

Anders: What did you do after you learned of all these transactions?

Carr: I pulled out my file with my Acme State Bank credit card statements and reviewed my statements for the past several months. Sure enough, upon review, I noticed that during the past four months, in addition to the van repairs, my dad had charged gasoline on two occasions at Friendly Gas, groceries on one occasion at the Corner Market, books at Rendell's Book Store, and most recently, the power tools at the Franklin Hardware Store. I always pay the entire balance on my credit cards on the due date each month. All the gas, grocery, and book charges made by my dad have already been paid in full. I noted this fact by writing "Paid—BC" on each of the past statements. I never noticed these charges before I paid my statements. The truth is, I usually don't review the bills very carefully, and I didn't notice the gas, grocery, and book charges because he and I both shop at the same places. I probably gave each statement a quick glance, if that. However, I have not yet paid the current credit card statement for June with the \$1,200 power tools charge.

Anders: Have you contacted the bank or done anything else?

Carr: I called the bank to discuss the problem. They directed me to fill out and send in their form disputing the charges. I did this right away.

Anders: What happened?

Carr: This morning I received a letter from the bank informing me that I was responsible for all the charges. That's when I called your office.

Anders: What would you like to see happen?

Carr: I know my dad did something he shouldn't have done; I told him to return the tools if he still could. But he's a senior citizen and in considerable distress. The various vendors should not have allowed him to use my credit card. I know he had the card in his possession for all but the power tools purchase, but it's still not right for the bank to say I'm responsible. I'd like to know whether the bank can hold me responsible for each of the charges my dad made.


Anders: Bryan, we'll look into this quickly. Meanwhile, please don't pay your credit card statement until you get further advice from us. I'll be back in touch before the current payment due date.

March 12, 2015

To Whom It May Concern:

I, Bryan Carr, give my father, Henry Carr, permission to use my Acme State Bank credit card: account number 474485AC66873641, expiration date 09/2017. If you have any questions, please feel free to call me at 555-654-8965.

Thank you,


Bryan Carr

ACME STATE BANK
P.O. Box 309
Evergreen, Franklin 33800

Billing Statement: March 2015

Bryan Carr
6226 Lake Drive
Franklin City, FR 33244

Account Number 474485AC66873641

New Charges

DATE	DESCRIPTION	AMOUNT
March 16, 2015	Schmidt Auto Repair	\$1,850.00
	Total	\$1,850.00

Payment Due Date April 30, 2015
Minimum Due \$55.50

DIRECT ALL INQUIRIES TO
(800) 555-5555

MAKE ALL CHECKS PAYABLE TO
Acme State Bank
P.O. Box 309
Evergreen, FR 33800

THANK YOU FOR YOUR BUSINESS!

PAID-BC April 29, 2015

ACME STATE BANK
P.O. Box 309
Evergreen, Franklin 33800

Billing Statement: April 2015

Bryan Carr
6226 Lake Drive
Franklin City, FR 33244

Account Number 474485AC66873641

April 30, 2015 Payment Received \$1,850.00

New Charges

DATE	DESCRIPTION	AMOUNT
April 10, 2015	Friendly Gas Station	\$75.00
April 16, 2015	Corner Store	\$55.00
April 21, 2015	Friendly Gas Station	\$76.50
	Total	\$206.50

Payment Due Date Minimum Due
May 31, 2015 \$15.00

DIRECT ALL INQUIRIES TO
(800) 555-5555

MAKE ALL CHECKS PAYABLE TO
Acme State Bank
P.O. Box 309
Evergreen, FR 33800

THANK YOU FOR YOUR BUSINESS!

PAID-BC May 30, 2015

ACME STATE BANK
P.O. Box 309
Evergreen, Franklin 33800

Billing Statement: May 2015

Bryan Carr
6226 Lake Drive
Franklin City, FR 33244

Account Number 474485AC66873641

May 31, 2015 Payment Received \$206.50

New Charges

DATE	DESCRIPTION	AMOUNT
May 16, 2015	Rendell's Book Store	\$45.70
	Total	\$45.70

Payment Due Date Minimum Due
June 30, 2015 \$15.00

DIRECT ALL INQUIRIES TO
(800) 555-5555

MAKE ALL CHECKS PAYABLE TO
Acme State Bank
P.O. Box 309
Evergreen, FR 33800

THANK YOU FOR YOUR BUSINESS!

PAID-BC June 29, 2015

ACME STATE BANK
P.O. Box 309
Evergreen, Franklin 33800

Billing Statement: June 2015

Bryan Carr
6226 Lake Drive
Franklin City, FR 33244

Account Number 474485AC66873641

June 30, 2015 Payment Received \$45.70

New Charges

DATE	DESCRIPTION	AMOUNT
June 21, 2015	Franklin Hardware Store—power tools	\$1,200.00
	Total	\$1,200.00

Payment Due Date Minimum Due
July 31, 2015 \$36.00

DIRECT ALL INQUIRIES TO
(800) 555-5555

MAKE ALL CHECKS PAYABLE TO
Acme State Bank
P.O. Box 309
Evergreen, FR 33800

THANK YOU FOR YOUR BUSINESS!

LIBRARY

**Excerpts from Federal Truth in Lending Act
15 U.S.C. §§ 1602 and 1643**

§ 1602 Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

...

(k) The term "credit card" means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

...

(o) The term "unauthorized use," as used in section 1643 of this title, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

* * *

§ 1643 Liability of holder of credit card

(a) Limits on liability

(1) A cardholder shall be liable for the unauthorized use of a credit card only if—

(A) the card is an accepted credit card;

(B) the liability is not in excess of \$50;

...

(E) the unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as a result of loss, theft, or otherwise; and

(F) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it.

...

(d) **Exclusiveness of liability.** Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

Excerpts from Restatement (Third) of Agency (2006)

§ 1.01 Agency Defined

Agency is the fiduciary relationship that arises when one person (a “principal”) manifests assent to another person (an “agent”) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.

§ 2.01 Actual Authority

An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal’s manifestations to the agent, that the principal wishes the agent so to act.

§ 2.03 Apparent Authority

Apparent authority is the power held by an agent or other actor to affect a principal’s legal relations with third parties when a third party reasonably believes the actor has authority to act on behalf of the principal and that belief is traceable to the principal’s manifestations.

§ 3.01 Creation of Actual Authority

Actual authority, as defined in § 2.01, is created by a principal’s manifestation to an agent that, as reasonably understood by the agent, expresses the principal’s assent that the agent take action on the principal’s behalf.

§ 3.03 Creation of Apparent Authority

Apparent authority, as defined in § 2.03, is created by a person’s manifestation that another has authority to act with legal consequences for the person who makes the manifestation, when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation.

§ 3.11 Termination of Apparent Authority

- (1) The termination of actual authority does not by itself end any apparent authority held by an agent.
- (2) Apparent authority ends when it is no longer reasonable for the third party with whom an agent deals to believe that the agent continues to act with actual authority.

BAK Aviation Systems, Inc. v. World Airways, Inc.

Franklin Court of Appeal (2007)

In 2005, BAK Aviation Systems, Inc. (BAK), issued a credit card to World Airlines, Inc. (World), to purchase fuel for a corporate jet leased by World from BAK. World designated Ken Swenson, an independent contractor hired by World, as chief pilot of the leased jet and gave him permission to make fuel purchases with the BAK credit card but only in connection with *non-charter* flights involving World executives. However, Swenson used the credit card to charge \$89,025 to World in connection with *charter* flights involving non-World customers prior to the cancellation of the credit card in 2006. When World refused to pay, BAK sought recovery in court.

The trial court entered judgment for BAK for the full amount in dispute. The court held that the federal Truth in Lending Act, which limits a cardholder's liability for "unauthorized" uses, did not apply to charges incurred by one to whom the cardholder had voluntarily allowed access for another purpose. World appeals.

The Truth in Lending Act, 15 U.S.C.

§ 1643(a), places a limit of \$50 on the liability of a credit cardholder for charges incurred by an "unauthorized" user. This appeal concerns the applicability of this provision to a card bearer who was given permission by the cardholder to make a limited range of purchases but who subsequently made additional charges on the card. We conclude that Swenson, who incurred the charges, was not an "unauthorized" user within the meaning of § 1643(a) and therefore affirm.

Congress enacted the 1970 Amendments to the Truth in Lending Act in large measure to protect credit cardholders from unauthorized use perpetrated by those able to obtain possession of a card from its original owner. The amendments limit the liability of cardholders for all charges by third parties made without "actual, implied, or apparent authority" and "from which the cardholder receives no benefit." 15 U.S.C. §§ 1602(o), 1643. Where an unauthorized use has occurred, the cardholder can be held liable only up to a limit of \$50 for the amount charged on the card, if certain conditions are satisfied. 15 U.S.C. § 1643(a)(1)(B).

By defining “unauthorized use” as that lacking “actual, implied, or apparent authority,” Congress intended, and courts have accepted, primary reliance on principles of agency law in determining the liability of cardholders for charges incurred by third-party card bearers. Under the parameters established by Congress, the inquiry into “unauthorized use” properly focuses on whether the user acted as the cardholder’s agent in incurring the debt in dispute. A cardholder, as principal, can create actual authority only through manifestations to the user of consent to the particular transactions into which the user has entered. *See* RESTATEMENT (THIRD) OF AGENCY § 3.01.

“Implied authority” has been held to mean actual authority either (1) to do what is necessary, usual, and proper to accomplish or perform an agent’s express responsibilities or (2) to act in a manner in which an agent believes the principal wishes the agent to act based on the agent’s reasonable interpretation of the principal’s manifestations in light of the principal’s objectives and other facts known to the agent. These meanings are not mutually exclusive. Both fall within the definition of

actual authority. *See* RESTATEMENT (THIRD) OF AGENCY § 2.02, comment (b).

With respect to the transactions Swenson made in connection with the charter flights, we conclude that no actual or implied authority existed.

Unlike actual or implied authority, however, apparent authority exists entirely apart from the principal’s manifestations of consent to the agent. Rather, the cardholder, as principal, creates apparent authority through words or actions that, reasonably interpreted by a third party from whom the card bearer makes purchases, indicate that the card bearer acts with the cardholder’s consent. *See* RESTATEMENT (THIRD) OF AGENCY § 3.03.

Though a cardholder’s relinquishment of possession of a credit card may create in another the appearance of authority to use the card, the statute clearly precludes a finding of apparent authority where the transfer of the card was without the cardholder’s consent, as in cases involving theft, loss, or fraud. However elastic the principle of apparent authority may be in theory, the language of the 1970

Amendments demonstrates Congress's intent that charges incurred as a result of *involuntary* card transfers are to be regarded as unauthorized under §§ 1602(o) and 1643.

Because the Truth in Lending Act provides no guidance as to uses arising from the *voluntary* transfer of credit cards, the general principles of agency law, incorporated by reference in § 1602(o), govern disputes over whether a resulting use was unauthorized. These disputes frequently involve, as in this case, a cardholder's claim that the card bearer was given permission to use a card for only a limited purpose and that subsequent charges exceeded the consent originally given by the cardholder. Acknowledging the absence of actual authority for the additional charges, a majority of courts have declined to apply the Truth in Lending Act to limit the cardholder's liability, reasoning that the cardholder's voluntary relinquishment of the card for one purpose gives the bearer apparent authority to make additional charges. (Citations omitted.)

Nothing about the BAK credit card itself, or the circumstances surrounding the purchases, gave fuel sellers reason to distinguish the authorized fuel purchases

Swenson made for the *non-charter* flights from the disputed purchases for the *charter* flights. It was industry custom to entrust credit cards used to make airplane-related purchases to the pilot of the plane. By designating Swenson as the pilot and subsequently giving him the BAK card, World thereby imbued him with more apparent authority than might arise from voluntary relinquishment of a credit card in other contexts. In addition, with World's blessing, Swenson had used the card, which was inscribed with the registration number of the Gulfstream jet, to purchase fuel on non-charter flights for the same plane. The only difference between those uses expressly authorized and those now claimed to be unauthorized—the identity of the passengers—was insufficient to provide notice to those who sold the fuel that Swenson lacked authority for the charter flight purchases.

Here, the disputed charges were not "unauthorized" within the meaning of 15 U.S.C. §§ 1602(o) and 1643(a)(1). Accordingly, BAK was entitled to recover the full value of the charges from World under their credit agreement. The judgment of the trial court is affirmed.

Transmutual Insurance Co. v. Green Oil Co.

Franklin Court of Appeal (2009)

This is an appeal from a holding of the trial court finding against defendant Green Oil Co. and in favor of plaintiff Transmutual Insurance Co. In March 2000, Transmutual obtained a Green Oil credit card for use in its business. Transmutual's office manager, Donna Smith, was responsible for requesting credit cards for Transmutual employees and paying bills. Smith did not have the authority to open new credit accounts for Transmutual; only its general manager had this authority.

On May 16, 2005, Smith made a written request to Green Oil for a GreenPlus credit card. A GreenPlus credit card may be used for purchases of goods and services other than those furnished at gasoline service stations. The GreenPlus application was signed by Smith as office manager. It also contained a signature purporting to be that of Alexander Foster as general manager and secretary-treasurer of Transmutual; however, the trial court determined that Foster's signature was forged by Smith.

During the period from May 2005 until July 2008, Smith wrongfully and fraudulently

used the GreenPlus card to obtain goods and services in the amount of \$26,376.53. Transmutual paid for these purchases with checks signed by Smith and an authorized officer. During this time, Transmutual employed accounting firms to perform audits, but they did not discover the fraud.

Under the federal Truth in Lending Act, 15 U.S.C. § 1643(a), a cardholder is liable only for a limited amount if certain conditions are met and if the use of the credit card was unauthorized. Accordingly, the initial determination is whether or not the use of the credit card in the case at hand was unauthorized. The federal definition of "unauthorized use" is "a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit." 15 U.S.C. § 1602(o). The test for determining unauthorized use is governed by agency law, and agency law must be used to resolve this issue.

Smith did not have actual or implied authority to request a GreenPlus credit card.

The trial court correctly determined that the principle of apparent authority controls in this case.

Apparent authority is created when a third party reasonably believes the actor to be authorized and the belief is traceable to the manifestation of the principal. RESTATEMENT (THIRD) OF AGENCY § 3.03. Transmutual is bound by Smith's acts under apparent authority only to third persons who have incurred a liability in good faith and without ordinary negligence. The trial court correctly determined that Green Oil acted negligently by issuing Smith a GreenPlus credit card without independently verifying her authority. Because of Green Oil's negligence, the trial court determined that Green Oil, as the card issuer, could not rely upon Smith's ostensible authority to establish the existence of agency between Smith and Transmutual.

However, the trial court erred in not looking beyond Green Oil's negligence in issuing Smith the card. After receiving the first statement from Green Oil containing the fraudulent charges, Transmutual was negligent in not finding and reporting Smith's fraud. If the person or entity to whom a credit card is issued is careless, that

person or entity may be held liable.

The federal Truth in Lending Act does not address whether cardholder negligence removes the statutory liability limit. However, we believe that Transmutual's negligence in not examining its monthly statements from Green Oil removes this case from the statutory limit on cardholder liability.

A cardholder has a duty to examine his credit card statement promptly, using reasonable care to discover unauthorized signatures or alterations. If the card issuer uses reasonable care in generating the statement and if the cardholder fails to examine his statement, the cardholder is precluded from asserting his unauthorized signature against the card issuer after a certain time.

The facts at hand are similar. Green Oil was not negligent in billing Transmutual. If someone at Transmutual other than Smith had examined its statements from Green Oil, he or she would have discovered Smith's fraud. Transmutual had the responsibility to institute internal procedures for the examination of the statements from Green Oil which would have disclosed Smith's

deception. Transmutual had sole power to do so. Transmutual's failure to institute such procedures is the cause of that portion of the embezzlement that occurred following the billing from Green Oil that contained the first evidence of Smith's fraud.

Transmutual's negligence leads us to reexamine whether Smith acquired apparent authority in her use of the GreenPlus card after Transmutual became negligent. In *Farmers Bank v. Wood* (Franklin Ct. App. 1998), we set forth the test to determine whether or not apparent authority exists. The authority must be based upon a principal's conduct which, reasonably interpreted, causes a third person to believe that the agent has authority to act for the principal.

Thus, if a principal acts or conducts his business, either intentionally or through negligence, or fails to disapprove of the agent's acts or course of action so as to lead the public to believe that his agent possesses authority to act or contract in the name of the principal, the principal is bound by the acts of the agent within the scope of his apparent authority as to persons who have reasonable grounds to believe that the agent has such authority and in good faith deal with him.

Farmers Bank, supra.

Green Oil was negligent in issuing Smith the GreenPlus card. However, during Smith's fraudulent use of the card, Green Oil was not negligent. Rather, Transmutual (the cardholder) was negligent in not requiring that someone other than Smith examine its monthly statements. Smith embezzled money from Transmutual for three years through her fraudulent use of the GreenPlus credit card. During this lengthy period of embezzlement, Transmutual always paid its monthly bill to Green Oil.

Transmutual contends that it is not proper for the court to consider the fact that Transmutual paid all the Green Oil credit card charges. That contention is without merit. As a result of Transmutual's acts of paying the charges and its failure to examine its credit card statements so that it could notify Green Oil of the fraud, Transmutual allowed Green Oil to reasonably believe that Smith was authorized to use the credit card.

We conclude under the principles of apparent authority that Transmutual is liable for all of Smith's purchases from the time the credit card was issued.

Reversed.

MULTISTATE PERFORMANCE TEST DIRECTIONS

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin. This test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.

The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

Your response must be written in the answer book provided. If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

Although there are no restrictions on how you apportion your time, you should allocate approximately half your time to reading and digesting the materials and to organizing your answer before you begin writing it. You may make notes anywhere in the test materials; blank pages are provided at the end of the booklet. You may not tear pages from the question booklet.

This performance test will be graded on your responsiveness to the instructions regarding the task you are to complete, which are given to you in the first memorandum in the File, and on the content, thoroughness, and organization of your response.