**Alternate Case Problems**

*Chapter 6*

**Criminal Law and Cyber Crime**

**6-1.** **Criminal Intent.** While at a grocery store, Moses Racquemore stuffed two pack­ages of meat into his pants and was just pulling his shirt down over them when he no­ticed that the store manager and a security guard were watching him. He returned the meat to the counter, but he was arrested for shoplifting anyway. Had Racquemore committed a criminal act? Were Racquemore’s actions in the store sufficient to prove the element of intent? Discuss. [*Racquemore v. State*, 204 Ga.App. 88, 418 S.E.2d 448 (1992)]

**6-2. Criminal Liability.** In January 1988, David Ludvigson was hired as chief execu­tive officer of Leopard Enterprises, a group of companies that owned funeral homes and cemeteries in Iowa and sold “pre-need” funeral contracts. Under Iowa law, 80 percent of the funds obtained under such a contract must be set aside in trust until the death of the person for whose benefit the funds were paid. Shortly after Ludvigson was hired, the firm began having financial difficulties. Ludvigson used money from the funeral con­tracts to pay operating expenses until the company went bankrupt and was placed in receivership. Ludvigson was charged and found guilty on five counts of second-degree theft stemming from the misappropriation of these funds. He appealed, alleging, among other things, that he was not guilty of any crime, because he had not intended to per­manently deprive any of the clients of their trust funds. Furthermore, because none of the victims whose trust funds were used to cover operating expenses was denied serv­ices, no injury was done. Will the court agree with Ludvigson? Explain. [*State v. Ludvigson,* 482 N.W.2d 419 (Ia. 1992)]

**6-3. Searches and Seizures.** The city of Ferndale enacted an ordinance regulating massage parlors. Among other things, the ordinance provided for periodic inspections of the establishments by “[t]he chief of police or other authorized inspectors from the City.” Operators and employees of massage parlors in Ferndale filed a suit in a Michigan state court against the city. The plaintiffs pointed out that the ordinance did not require a warrant to conduct a search and argued in part that this was a violation of the Fourth Amendment. On what ground might the court uphold the ordinance? Do massage par­lors qualify on this ground? Why or why not? [*Gora v. City of Ferndale,* 456 Mich. 704, 576 N.W.2d 141 (1998)]

**6-4. Criminal Liability.** On the grounds of a school, Gavin T., a fifteen-year-old stu­dent, was eating lunch. He threw a half-eaten apple toward the outside wall of a class­room some distance away. The apple sailed through a slowly closing door and struck a teacher who was in the room. The teacher was knocked to the floor and lost conscious­ness for a few minutes. Gavin was charged, in a California state court, with assault by “any means of force likely to produce great bodily injury.” The court found that he did not intend to hit the teacher but only intended to see the apple splatter against the out­side wall. To send a “message” to his classmates that his actions were wrong, however, the court convicted him of the charge. Should Gavin’s conviction be reversed on appeal? Why or why not?[*In re Gavin T.,* 66 Cal.App.4th 238, 77 Cal.Rptr.2d 701 (1998)]

**6–5. Theft of Trade Secrets.**  Four Pillars Enterprise Co. is a Taiwanese company owned by Pin Yen Yang. Avery Dennison, Inc., a U.S. corporation, is one of Four Pillars’s chief competitors in the manufacture of adhesives. In 1989, Victor Lee, an Avery employee, met Yang and Yang’s daughter Hwei Chen. They agreed to pay Lee $25,000 a year to serve as a consultant to Four Pillars. Over the next eight years, Lee supplied the Yangs with confidential Avery reports, including information that Four Pillars used to make a new adhesive that had been developed by Avery. The Federal Bureau of Investigation (FBI) confronted Lee, and he agreed to cooperate in an operation to catch the Yangs. When Lee next met the Yangs, he showed them documents provided by the FBI. The documents bore “confidential” stamps, and Lee said that they were Avery’s confidential property. The FBI arrested the Yangs with the documents in their possession. The Yangs and Four Pillars were charged with, among other crimes, the attempted theft of trade secrets. The defendants argued in part that it was impossible for them to have committed this crime because the documents were not actually trade secrets. Should the court acquit them? Why or why not? [*United States v. Yang*, 281 F.3d 534 (6th Cir. 2002)]

**6–6. Sixth Amendment.**  The Sixth Amendment secures to a defendant who faces possible imprisonment the right to counsel at all critical stages of the criminal process, including the arraignment and the trial. In 1996, Felipe Tovar, a twenty-one-year-old college student, was arrested in Ames, Iowa, for operating a motor vehicle while under the influence of alcohol (OWI). Tovar was informed of his right to apply for court-appointed counsel and waived it. At his arraignment, he pleaded guilty. Six weeks later, he appeared for sentencing, again waived his right to counsel, and was sentenced to two days’ imprisonment. In 1998, Tovar was convicted of OWI again, and in 2000, he was charged with OWI for a third time. In Iowa, a third OWI offense is a felony. Tovar asked the court not to use his first OWI conviction to enhance the third OWI charge. He argued that his 1996 waiver of counsel was not “intelligent” because the court did not make him aware of “the dangers and disadvantages of self-representation.” What determines whether a person’s choice in any situation is “intelligent”? What should determine whether a defendant’s waiver of counsel is “intelligent” at critical stages of a criminal proceeding? [*Iowa v. Tovar*, 541 U.S. 77, 124 S.Ct. 1379, 158 L.Ed.2d 209 (2004)]

**6–7. Larceny.** In February 2001, a homeowner hired Jimmy Smith, a contractor claiming to employ a crew of thirty workers, to build a garage. The homeowner paid Smith $7,950 and agreed to make additional payments as needed to complete the project, up to $15,900. Smith promised to start the next day and finish within eight weeks. Nearly a month passed with no work, while Smith lied to the homeowner that materials were on “back order.” During a second month, footings were created for the foundation, and a subcontractor poured the concrete slab, but Smith did not return the homeowner’s phone calls. After eight weeks, the homeowner confronted Smith, who promised to complete the job, worked on the site that day until lunch, and never returned. Three months later, the homeowner again confronted Smith, who promised to “pay [him] off” later that day but did not do so. In March 2002, the state of Georgia filed criminal charges against Smith. While his trial was pending, he promised to pay the homeowner “next week” but again failed to refund any of the funds paid. The value of the labor performed before Smith abandoned the project was between $800 and $1,000, the value of the materials was $367, and the subcontractor was paid $2,270. Did Smith commit larceny? Explain. [*Smith v. State of Georgia,* 592 S.E.2d 871 (Ga.App. 2004)]

**6–8. Trial.** Robert Michels met Allison Formal through an online dating Web site in 2002. Michels represented himself as the retired chief executive officer of a large company that he had sold for millions of dollars. In January 2003, Michels proposed that he and Formal create a limited liability company (a special form of business organization discussed )—Formal Properties Trust, LLC—to “channel their investments in real estate.” Formal agreed to contribute $80,000 to the company and wrote two $50,000 checks to “Michels and Associates, LLC.” Six months later, Michels told Formal that their LLC had been formed in Delaware. Later, Formal asked Michels about her investments. He responded evasively, and she demanded that an independent accountant review the firm’s records. Michels refused. Formal contacted the police. Michels was charged in a Virginia state court with obtaining money by false pretenses. The Delaware secretary of state verified, in two certified documents, that "Formal Properties Trust, L.L.C." and "Michels and Associates, L.L.C." did not exist in Delaware. Did the admission of the Delaware secretary of state’s certified documents at Michels’s trial violate his rights under the Sixth Amendment? Why or why not? [*Michels v. Commonwealth of Virginia,* 47 Va.App. 461, 624 S.E.2d 675 (2006)]

**6–9**. **White-Collar Crime.**Helm Instruction Co. hired Patrick Walsh to work as its comptroller. Walsh convinced Helm’s president, Richard Wilhelm, to hire Shari Price as Walsh’s assistant. Wilhelm was not aware that Walsh and Price were engaged in an extramarital affair. Over the next five years, Walsh and Price spent more than $200,000 of Helm’s funds on themselves. Among other things, Walsh drew unauthorized checks on Helm’s accounts to pay his personal credit-card bills. Walsh also issued unauthorized salary increases, overtime payments, and tuition reimbursement payments to Price and himself, altering Helm’s records to hide the payments. After an investigation, Helm officials confronted Walsh. He denied the affair with Price and argued that his unauthorized use of Helm’s funds was an “interest-free loan.” Walsh claimed that it was less of a burden on the company to pay his credit-card bills than to give him the salary increases to which he felt he was entitled. Did Walsh commit a crime? If so, what crime did he commit? Discuss. [*State v. Walsh,* 113 Ohio St.3d 1515, 866 N.E.2d 513 (6 Dist. 2007)]

**6–10.** **Searches and Seizures.** Three police officers, including Maria Trevizo, pulled over a car with suspended registration. One of the occupants, Lemon Johnson, wore clothing consistent with membership in the Crips gang. Trevizo searched him “for officer safety” and found a gun. Johnson was charged with illegal possession of a weapon. What standard should apply to an officer’s search of a passenger during a traffic stop? Should a warrant be required? Could a search proceed solely on the basis of probable cause? Would a reasonable suspicion short of probable cause be enough? Discuss. [*Arizona v. Johnson,* 555 U.S. 323, 129 S.Ct. 781, 172 L.Ed.2d 694 (2009)]