

Model answer for Question 1 (C)

(Question 1 continued)

ID: ~~00000~~

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Hartnell

QUESTION 1C

The issue is whether there has been a violation of the Foreign Corrupt Practices Act (FCPA). The FCPA, 15 USC sec. 78dd-1, -2, -3, prohibits payment or offer of payment of bribes, directly or indirectly, to foreign officials, foreign parties, foreign party officials, and foreign candidates for public office. Looking at this question through the elements:

✓✓
✓✓
✓✓
✓✓✓
✓

1) Domestic Concern: includes individuals, and would include Ivan because Ivan is an individual. Also covered under the FCPA are issuers and, somewhat disturbingly, "others." (pretty broad, no?) *yes, that's the point!*

✓✓
✓
✓
✓✓

2) Interstate Commerce: Ivan lives in California, Ned lives in Australia; presumably, Ivan urged Ned over the phone or via electronic transmission, which would count as a channel of commerce, and thus satisfying this element easily.

✓ ✓
✓ ✓
✓ ✓

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3) Corruptly and Willfully: Ivan knew that his paint guns were banned in Australia when he urged Ned to "do whatever it takes to clear the goods through customs," and Ivan must have known that doing so would involve some illegal activity, else he could have and probably would have cleared the goods through customs himself.

✓✓
✓✓
✓
✓✓

4) Offer, Promise, or Payment of Anything of Value: Ivan did not explicitly offer or promise anything of value to Ned. However, Ivan likely knew that clearing banned paintarms through Australian customs would require a few carrots, although the customs inspector did not bite. Whether some kind of remuneration could be inferred by the arrangement requires little imagination, as Ivan was very keen to enter the Asian

But no obligation to do so under CIF term

✓

32
✓
✓

paintball market and was in the middle of a disputed business transaction with the very same guy, in fact. It is doubtful that Ned's extracurricular arrangement with his cousin could be imputed to Ivan because Ivan had no knowledge of those events and in fact could only be harmed by them. Also at issue is whether Ned "did whatever it took," since he only tried to bribe one person and was unsuccessful.

✓
✓
38
✓
✓
✓
✓
- well, surely not breach of contract!

5) Knowledge of payment to Foreign Official: Under the circumstances, it is probable that Ivan envisioned a scene where Ned bribed the right people in Australian customs when he told Ned to "do whatever it takes [to do something illegal]." This customs officer is probably considered to be a foreign official because of the nature of the position and the high probability of misconduct, if the "right" people were involved. Therefore, Ivan probably satisfied this element despite never knowing how much, in what form, etc. - Ned, in this instance, was Ivan's instrumentality.

✓
✓
✓
✓
✓
potentially, at least
✓
✓
✓

6) Purpose of Obtaining / Retaining Business: Ivan, as noted above, was keen to sell his masks and guns in Asia. As the cache of paint weapons was more or less stranded at customs, Ned had not paid, and Ivan wanted to move them so that they could be sold) it can be inferred that Ivan's purpose was both obtaining new business as well as retaining Ned's "business."

well, Ivan's already sold them to Ned...

52
✓
✓
57

7) Business Nexus: this element is easily satisfied because Ivan effectively cajoled Ned into bribing a foreign official to further his business interests around the globe; in this case, Australia.

✓
✓
✓
60

excellent