



Multistate Performance Test

February 2021 MPT Summaries

In re Mills (February 2021, MPT-1) In this performance test, the client, Charlotte Mills, is considering whether to pursue legal action against Ramble Group (Ramble) for breach of contract. The dispute arises from an event planning engagement that Mills undertook for Ramble. After Mills had begun preparations for the event (a spring festival with a 5k run), Ramble decided to use another event coordinator. The task is to draft an objective memorandum analyzing whether there is an enforceable contract between Mills and Ramble and what damages Mills may be able to recover in an action for breach of contract. Examinees must consider the import of Mills's written proposal (which was not signed by either party) and review the email exchanges between Mills and Ramble's owner, Kathryn Burton, to determine whether the elements required for contract formation are present. The File contains the instructional memorandum from the supervising attorney, a summary of the client interview, the written event planning proposal, and email correspondence. The Library contains three Franklin appellate cases.

State v. Kilross (February 2021, MPT-2) This performance test requires the examinee to draft a persuasive argument in support of a motion to exclude the use of certain evidence at trial. The State of Franklin has charged the client, Bryan Kilross, with robbery of a liquor store. Because Kilross has no alibi witnesses, it is likely that he will have to testify in his defense, but defense counsel is concerned that Kilross's prior felony conviction for robbery will prejudice his case. The examinee is asked to draft the argument in support of a motion to preclude admission of the prior conviction as impeachment under Franklin Rule of Evidence 609. The File contains the task memorandum from the supervising attorney, the firm's guidelines for writing persuasive briefs, the transcript of the client interview, a file memorandum from an investigator, a copy of the indictment for the previous robbery charge, and a transcript of the plea hearing for that charge. The Library contains the Franklin statutes defining the crimes of theft and robbery, Franklin Rule of Evidence 609, and two appellate cases.



Multistate Performance Test

July 2021 MPT Summaries

Winston v. Franklin T-Shirts Inc. (July 2021, MPT-1) In this performance test, the plaintiff photographer sued for copyright infringement after the defendant printed 2,000 T-shirts for a political campaign using a photo from 1985 taken by the plaintiff. The photo depicted a university student being led away in handcuffs after a political protest. Decades later, when that student ran for mayor, the defendant created and sold the T-shirts. In the current lawsuit, the defendant will move for summary judgment arguing that its use of the photo qualifies as fair use, an affirmative defense codified in the Copyright Act, which excuses acts that otherwise would be infringing. As the law clerk for the federal judge hearing the case, the examinee is asked to prepare a bench memorandum for the judge analyzing the defendant's claim of fair use under the four fact-specific factors identified in the Act and discussing the arguments that each party will likely make with respect to each factor. The File contains the instructional memorandum and the parties' agreed statement of facts. The Library contains excerpted sections of the Copyright Act, 17 U.S.C. §§ 106 and 107, and three U.S. District Court cases.

In re Canyon Gate Property Owners Association (July 2021, MPT-2) In this performance test, the client, Canyon Gate Property Owners Association, seeks legal advice on whether to uphold the denial of a home improvement application submitted by Canyon Gate homeowners Charles and Eleanor Stewart. The Stewarts sought approval (1) to construct a new 600-square-foot structure adjacent to their existing house, connected by a covered walkway, and (2) to install an eight-foot-tall fence to create a separate backyard for the new structure. The Association's Architectural Control Committee (ACC) has denied the application, and the Stewarts have appealed the decision to the Association's board of directors. Examinees' task is to draft an opinion letter to the board analyzing and evaluating (1) whether the board should uphold the ACC's denial of the Stewarts' application and (2) if the board affirms the ACC's denial and the Stewarts sue the Association, what the likely outcome and potential remedies would be. The File contains the instructional memorandum, the law firm's guidelines for drafting opinion letters, a summary of the client interview, the ACC's denial letter, excerpts from the Association's Covenants, Conditions, and Restrictions, and a file memorandum defining certain terms at issue. The Library contains excerpts from the Franklin Property Code and two Franklin appellate cases.