



Multistate Performance Test

## February 2023 MPT Summaries

***In re Hill (February 2023, MPT-1)*** In this performance test, the client, Jasmine Hill, purchased a motor boat from Reliant Boating, a local boat dealer, with the understanding that although the boat was used, it was in perfect working condition. After purchasing the boat, Hill discovered that the boat's motor had a cracked engine block and needed to be replaced because the damage was not repairable. She has now replaced the motor and would like to know what legal remedies she has against Reliant. The examinee's task is to draft an objective memorandum analyzing and evaluating whether Hill has one or more viable claims under the Franklin Deceptive Trade Practices Act (DTPA) and what specific relief she would be entitled to if she were to succeed in a DTPA action. The File contains the instructional memorandum from the supervising attorney, a client interview transcript, email correspondence between Hill and Reliant's owner, the boat's bill of sale, and a repair invoice. The Library consists of excerpts from the Franklin Business Code and two Franklin appellate cases.

***B&B Inc. v. Happy Frocks Inc. (February 2023, MPT-2)*** The examinee's law firm has represented Happy Frocks Inc., a maker of children's clothing, in a lawsuit brought by B&B Inc. for trademark infringement. At a post-trial hearing, the court orally informed the parties of its conclusion that Happy Frocks was liable for trademark infringement and required the submission of briefs on the remedies plaintiff B&B was seeking. Those remedies include a permanent injunction, actual damages, and that portion of Happy Frocks's profits attributable to the trademark infringement. The examinee is tasked with preparing a persuasive brief arguing that no award of profits is justified in this case. The File contains the instructional memorandum, the firm's guidelines for persuasive briefs, excerpts from the trial transcript, and the transcript of the post-trial hearing in which the court orally announced its conclusion that Happy Frocks was liable for trademark infringement and asked for briefing on B&B's requested remedies. The Library contains excerpts from the United States Supreme Court decision in *Romag Fasteners, Inc. v. Fossil Group, Inc.*, holding that willfulness is not a prerequisite to an award of profits, and a Franklin federal district court decision in *Spindrift Automotive Accessories, Inc. v. Holt Enterprises, Ltd.*, setting forth the factors to be analyzed in determining if an award of profits is justified as a remedy for trademark infringement.

***Dobson v. Brooks Real Estate Agency (July 2023, MPT-1)*** In this performance test, the client, Peter Dobson, has sued the Brooks Real Estate Agency alleging negligence in connection with injuries that Dobson suffered when he slipped and fell on the ice-covered sidewalk adjacent to the defendant's building. The examinee's task is to prepare the argument section of the brief in support of a motion in limine. The purpose of the motion is to persuade the court to bar admission at trial of two pieces of evidence: Dobson's conversation with a neighbor and the deposition testimony of a physician who is now deceased. In addition, the motion seeks to permit the introduction of the insurance policy on the defendant's building. The File contains the task memorandum, the firm's guidelines for writing persuasive trial briefs, a transcript of the client interview, a file memorandum summarizing a related action against Dobson's employer, an investigator's memorandum, and excerpts from the deceased physician's deposition testimony. The Library contains selected provisions from the Franklin Rules of Evidence, which are identical to the Federal Rules of Evidence, and two Franklin cases: *Reed v. Lakeview Advisers LLC* (discussing the "admission by silence" hearsay exclusion), and *Thomas v. WellSpring Pharmaceutical Co.* (discussing the use of former testimony).

***Martin v. The Den Breeder (July 2023, MPT-2)*** This performance test requires the examinee to write an advice letter to the client, Anthony Martin, assessing his potential claims against Simon Shafer, who raises purebred Irish wolfhounds under a sole proprietorship called "The Den Breeder." About six weeks ago, Martin purchased an Irish wolfhound puppy from Shafer. Martin became concerned when the puppy, which he had named Ash, began appearing listless, especially after eating. Testing by Martin's veterinarian revealed that Ash had a congenital defect of the liver that impaired the liver's ability to filter toxins from his blood. This condition can be treated with surgery, but at a cost of at least \$8,000. Martin wants to know what legal recourse he has against Shafer. He wants to keep Ash, but he also wants Shafer to pay for treating Ash's condition and refund the full purchase price. To properly advise Martin, the examinee must analyze the parties' contract as well as the impact of Franklin's "Pet Lemon Law" and its version of the Uniform Commercial Code. The File contains the task memorandum, the firm's guidelines for preparing advice letters to clients, a transcript of the client interview, the contract of sale, an email from Ash's veterinarian, and an article describing Ash's condition. The Library includes selections from the Franklin Uniform Commercial Code and from the Franklin Pet Purchaser Protection Act, and an appellate case, *Cohen v. Dent* (Fr. Ct. App. 2020).