



2012 Multistate Performance Test Information Booklet



2012 Examination Dates:

February 28, 2012

July 24, 2012




www.ncbex.org

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NOTE: The information in this booklet is believed to be correct at the time of publication. Since rules and policies of jurisdictions change, examinees are advised to consult the jurisdictions directly for the most current information.



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Contents

Notice to Examinees	2
Introduction	3
The Multistate Performance Test	3
Jurisdiction Information	3
About the National Conference of Bar Examiners	3
Accommodations for Persons with Disabilities	3
Test Preparation	3
Description of the Examination	4
Instructions for Taking the Test	5
Skills Tested	6
MPT Sample Tests	7



NOTICE TO EXAMINEES

The following conduct is prohibited during the examination, as it undermines the integrity and fairness of the examination process:

- Bringing unauthorized devices (whether turned on or off) or unauthorized materials into the testing room, including, but not limited to, calculators, cameras, cell phones, pagers, personal digital assistants, text messaging devices, audio or video recording devices, scanners, language translators, and written materials;
- Bringing test materials, unauthorized devices, or unauthorized materials out of the testing room during any scheduled or unscheduled break or at the conclusion of the testing period;
- Copying answers from another examinee or sharing answers with another examinee; and
- Continuing to work after a supervisor has instructed examinees to stop writing.

Engaging in prohibited conduct during the examination could result in some or all of the following penalties:

- Civil liability;
- Criminal penalties;
- Cancellation of the examinee's test scores;
- Denial of the examinee's application to sit for future exams;
- Denial of the examinee's bar application on character and fitness grounds; and
- Disciplinary action by a bar authority if the examinee is already admitted to practice law.

Introduction

The Multistate Performance Test

The Multistate Performance Test (MPT) is developed by the National Conference of Bar Examiners (NCBE) and is administered by participating jurisdictions on the Tuesday before the last Wednesday in February and July of each year. This booklet provides the examinee with a general description of the MPT, an outline of the skills tested, and summaries of previously administered tests.

Jurisdiction Information

Examinees should contact the jurisdiction to which they seek admission to ascertain whether the MPT is administered as part of the jurisdiction's bar examination and to find out the relative weight given to the MPT and other scores. To obtain information about bar admission requirements or to apply for admission to the bar, examinees should contact the appropriate jurisdiction. Contact information for jurisdictions can be found on the Bar Admissions page at www.ncbex.org.

About the National Conference of Bar Examiners

NCBE is a not-for-profit corporation founded in 1931. The mission of the Conference is to work with other institutions to develop, maintain, and apply reasonable and uniform standards of education and character for eligibility for admission to the practice of law; and to assist bar admission authorities by providing standardized examinations of uniform and high quality for the testing of applicants for admission to the practice of law, disseminating relevant information concerning admission standards and practices, conducting educational programs for the members and staffs of such authorities, and providing other services such as character and fitness investigations and research.

Accommodations for Persons with Disabilities

An examinee with a documented disability may be eligible for auxiliary aids or services in order to complete the MPT. The standard version of the MPT is printed in 12-point Times New Roman font. The MPT is also available in Braille, in large-print (18- and 24-point Helvetica font) versions, on audio CD, and as a Microsoft Word document on a data CD for use with screen-reading software. All decisions and arrangements for accommodations are made by the jurisdictions, and each jurisdiction has its own formal application and approval process. Examinees seeking accommodations must apply separately to each jurisdiction in which they plan to take the MPT. Contact information for each jurisdiction's bar admissions office can be found on the Bar Admissions page at www.ncbex.org.

Test Preparation

NCBE publishes study aids for the MPT that include MPT items from previously administered tests and corresponding Point Sheets, which describe the factual and legal points encompassed within the lawyering tasks to be completed and outline the possible issues and points that might be addressed by an examinee. MPTs and Point Sheets may be purchased from NCBE by visiting www.ncbex.org to access the NCBE online store or to print an NCBE Publications Order Form. MPTs and Point Sheets from older administrations are available at no cost on the NCBE website. Summaries of previously administered MPTs are available at no cost on the NCBE website and on pages 7–11 of this booklet.

Description of the Examination

NCBE offers two 90-minute MPT items per administration. A jurisdiction may select one or both items to include as part of its bar examination. (The MPT is a component of the Uniform Bar Examination [UBE]. Jurisdictions administering the UBE use two MPTs as part of their bar examinations.)

The MPT is designed to test an examinee's ability to use fundamental lawyering skills in a realistic situation. Each test evaluates an examinee's ability to complete a task that a beginning lawyer should be able to accomplish.

The materials for each MPT include a File and a Library. The File consists of source documents containing all the facts of the case. The specific assignment the examinee is to complete is described in a memorandum from a supervising attorney. The File might also include transcripts of interviews, depositions, hearings or trials, pleadings, correspondence, client documents, contracts, newspaper articles, medical records, police reports, or lawyer's notes. Relevant as well as irrelevant facts are included. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client's or a supervising attorney's version of events may be incomplete or unreliable. Examinees are expected to recognize when facts are inconsistent or missing and are expected to identify potential sources of additional facts.

The Library may contain cases, statutes, regulations, or rules, some of which may not be relevant to the assigned lawyering task. The examinee is expected to extract from the Library the legal principles necessary to analyze the problem and perform the task. The MPT is not a test of substantive law; the Library materials provide sufficient substantive information to complete the task.

The MPT requires examinees to (1) sort detailed factual materials and separate relevant from irrelevant facts; (2) analyze statutory, case, and administrative materials for applicable principles of law; (3) apply the relevant law to the relevant facts in a manner likely to resolve a client's problem; (4) identify and resolve ethical dilemmas, when present; (5) communicate effectively in writing; and (6) complete a lawyering task within time constraints.

These skills are tested by requiring examinees to perform one or more of a variety of lawyering tasks. For example, examinees might be instructed to complete any of the following: a memorandum to a supervising attorney, a letter to a client, a persuasive memorandum or brief, a statement of facts, a contract provision, a will, a counseling plan, a proposal for settlement or agreement, a discovery plan, a witness examination plan, or a closing argument.

Instructions for Taking the Test

The back cover of each test booklet contains the following instructions:

You will have 90 minutes to complete one MPT or three hours to complete two MPTs. The MPT 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 taking the MPT on a laptop computer, 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.

The MPT 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.

Skills Tested

The Multistate Performance Test examines six fundamental lawyering skills that are required for the performance of many lawyering tasks. The following description of these skills is based in part on the “Statement of Fundamental Lawyering Skills” from *Legal Education and Professional Development: An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, known as the MacCrate Report (ABA 1992).

1. **Problem solving.** The examinee should demonstrate the ability to develop and evaluate strategies for solving a problem or accomplishing an objective. Problem solving includes the ability to
 - A. identify and diagnose the problem;
 - B. generate alternative solutions and strategies;
 - C. develop a plan of action;
 - D. implement a plan of action; and
 - E. keep the planning process open to new information and new ideas.

2. **Legal analysis and reasoning.** The examinee should demonstrate the ability to analyze and apply legal rules and principles. Legal analysis and reasoning includes the ability to
 - A. identify and formulate legal issues;
 - B. identify relevant legal rules within a given set of legal materials;
 - C. formulate relevant legal theories;
 - D. elaborate on legal theories;
 - E. evaluate legal theories; and
 - F. criticize and synthesize legal arguments.

3. **Factual analysis.** The examinee should demonstrate the ability to analyze and use facts and to plan and direct factual investigation. Factual analysis includes the ability to
 - A. identify relevant facts within a given set of factual materials;
 - B. determine the need for factual investigation;
 - C. plan a factual investigation;
 - D. memorialize and organize information in an accessible form;
 - E. decide whether to conclude the process of fact gathering; and
 - F. evaluate the information that has been gathered.

4. **Communication.** The examinee should demonstrate the ability to communicate effectively in writing. Communication includes the ability to
 - A. assess the perspective of the recipient of the communication; and
 - B. organize and express ideas with precision, clarity, logic, and economy.

5. **Organization and management of a legal task.** The examinee should demonstrate the ability to organize and manage a legal task. Organization and management includes the ability to
 - A. allocate time, effort, and resources efficiently; and
 - B. perform and complete tasks within time constraints.

6. **Recognizing and resolving ethical dilemmas.** The examinee should demonstrate the ability to represent a client consistently with applicable ethical standards. Ethical representation includes
 - A. knowledge of the nature and sources of ethical standards;
 - B. knowledge of the means by which ethical standards are enforced; and
 - C. ability to recognize and resolve ethical dilemmas.

MPT Sample Tests

The following are summaries of the February 2009 through February 2011 MPTs. Study aids containing previously administered MPTs and corresponding Point Sheets may be purchased from NCBE by visiting the NCBE online store at www.ncbex.org. MPTs and Point Sheets from older administrations, as well as summaries of previously administered MPTs, are available at no cost on the NCBE website.

February 2009 Summaries

Phoenix Corporation v. Biogenesis, Inc. (February 2009, MPT-1)

The law firm of Amberg & Lewis LLP represents Biogenesis, Inc., a large biotechnology company that is the defendant in a breach-of-contract suit regarding payment of patent royalties. A jury trial is set to begin in a month and is expected to last six weeks. The plaintiff in that suit, Phoenix Corporation, has filed a motion to disqualify the Amberg firm as Biogenesis's attorneys, arguing that Amberg inadvertently received a letter covered by the attorney-client privilege and that Amberg's actions with respect to that letter violate the Franklin Rules of Professional Conduct and will incurably prejudice Phoenix's case. Examinees are associates at the law firm that has agreed to represent the Amberg firm in defending it against the motion to disqualify. Examinees' task is to prepare an objective memorandum evaluating the merits of Phoenix's argument for the Amberg firm's disqualification. The File contains a task memorandum from the supervising attorney, a transcript of the client interview, the privileged letter that is the subject of the motion to disqualify, and Phoenix's brief in support of its motion for disqualification. The Library contains the text of the Franklin Rules of Professional Conduct at issue and two cases.

Ronald v. Department of Motor Vehicles (February 2009, MPT-2)

In this performance test, examinees work for a sole practitioner who represents Barbara Ronald in an administrative proceeding before the Franklin Department of Motor Vehicles (DMV). The DMV suspended Ronald's driver's license for allegedly operating a motor vehicle with a blood-alcohol level of at least 0.08 percent, the legal limit. Ronald requested an administrative hearing to challenge the suspension. Because this is an administrative proceeding, and not a criminal prosecution, the DMV must prove by a preponderance of the evidence that Ronald drove a motor vehicle with a prohibited blood-alcohol content.

The administrative hearing officer has heard the evidence and has directed the parties to submit written briefs. Examinees' task is to draft a persuasive memorandum arguing that the police officer did not have a reasonable suspicion warranting the stop of Ronald's car, that the hearing officer cannot rely solely on the blood test report to find that Ronald was driving with a blood-alcohol content of 0.08 percent or more, and finally, that in light of all the evidence, the DMV has not proved that Ronald was operating a motor vehicle while intoxicated. The File contains the memorandum from the supervising attorney, the administrative hearing transcript, the police report, and the blood-alcohol test results. The Library contains a selection of Franklin statutes and three cases.

July 2009 Summaries

Jackson v. Franklin Sports Gazette, Inc. (July 2009, MPT-1)

The client, the *Franklin Sports Gazette*, a weekly tabloid sports newspaper, has been sued by Richard "Action" Jackson, a star baseball player, for an alleged violation of Jackson's right of publicity under Franklin's recently enacted right-of-publicity statute. The *Gazette* ran a photograph of Jackson, only partially visible, sliding into home plate as part of its coverage of a baseball game. Jackson's complaint arises from the *Gazette's* use of that same photo in a print advertisement soliciting subscriptions. The *Gazette* seeks the law firm's assistance in defending against the suit. Examinees' task is to draft an objective memorandum analyzing whether there is a cause of action under Franklin's right-of-publicity statute and identifying the *Gazette's* possible legal arguments to oppose such a cause of action. The File contains the instructional memorandum from the supervising attorney, a summary of the client interview and background research, an internal memorandum from the *Gazette* approving the advertisement, and a copy of the advertisement itself. The Library contains the Franklin Right of Publicity Statute, excerpts from its legislative history, and three right-of-publicity cases decided under the previous common law in Franklin.

In re City of Bluewater (July 2009, MPT-2)

Examinees are employed by the Bluewater City Attorney's Office. The City plans to provide water and sewer services to a proposed 500-acre subdivision and to collect the corresponding revenue for such services. However, the City has just received a demand letter from Turquoise Water Supply Corporation (TWS), threatening to sue the City if it proceeds with its plan to provide water and sewer services to the subdivision site, which has not yet been annexed by the City. TWS claims to have the exclusive right under federal and state law to provide such services to the site. This presents an issue of first impression in Franklin. Examinees' task is to draft a response to TWS's demand letter, addressing TWS's contentions and persuasively setting forth the City's right to provide the services in question. The File contains the instructional memorandum, a preliminary research memorandum, the TWS demand letter, a newspaper article about the proposed subdivision, and a copy of the City's draft service plan. The Library includes the relevant provisions of the federal statute and the Franklin Code regarding water utilities, and two Columbia cases.

February 2010 Summaries

State of Franklin v. McLain (February 2010, MPT-1)

The client, Brian McLain, has been charged with violating various sections of the Franklin Criminal Code dealing with methamphetamine, a controlled substance. The charges are based on evidence seized from McLain after police stopped him for investigatory purposes, acting on an anonymous tip that an individual matching McLain's description had been seen purchasing items at a convenience store that, while entirely legal, are known ingredients of methamphetamine production. The officer searched his car, finding the goods described in the tip, together with a small plastic bag containing what appeared to be a marijuana cigarette. McLain was arrested and booked. After questioning, McLain directed the police to a "meth lab" where they found chemicals and equipment used to manufacture methamphetamine, as well as the drug itself. McLain was charged with possession of methamphetamine with intent to distribute, possession of laboratory equipment and supplies with the intent to manufacture methamphetamine, and manufacture of methamphetamine. He has moved to suppress all evidence seized by police on the ground that the officer lacked reasonable suspicion to stop him. He has also moved to dismiss the charge of possession of equipment with the intent to manufacture methamphetamine on the ground that it is a lesser-included offense of manufacture of methamphetamine. Examinees' task is to draft the arguments in support of both motions. The File consists of a memorandum from the supervising attorney describing the assignment, the criminal complaint, the motion to suppress evidence and to dismiss Count 2, the transcript of the anonymous call to the crime hotline, and excerpts from the transcript of the evidentiary hearing. The Library contains the relevant Franklin statutes and three cases—two relating to investigatory stops and one dealing with lesser-included offenses.

Logan v. Rios (February 2010, MPT-2)

In this performance test, examinees are associates at a law firm. The client, Trina Rios, owner of a toy store called Trina's Toys, has been sued by Karen Logan, who claims that she slipped in a puddle of water and fell while shopping in the toy store. As a result, Logan sued Rios, claiming that Rios violated her duties as a premises owner. Rios pled an affirmative defense of contributory negligence, which, if proven, would be a complete defense to Logan's action. Local court rules require parties to attend an early dispute resolution (EDR) conference, at which a neutral evaluator (the EDR judge) attempts to facilitate settlement of the case. Examinees' task is to prepare an initial draft of part of the EDR statement, which will be submitted to the EDR judge. The EDR statement is confidential and is not shared with any other party. Thus, examinees should candidly discuss the strengths and weaknesses of their client's case. The File contains the instructional memo from the supervising attorney, the local rule and form concerning EDR conferences and statements, the complaint, an investigator's report, and excerpts of the depositions of plaintiff Karen Logan and Nick Patel, a toy store employee. The Library includes a Franklin Supreme Court Approved Jury Instruction concerning the premises liability of property owners with commentary on the duty of property owners and on contributory negligence.

July 2010 Summaries

In re Hammond (July 2010, MPT-1)

In this performance test, examinees work for a law firm, which has received a request for guidance from another attorney, Carol Walker, related to her representation of William Hammond. A suspicious fire destroyed a building that Hammond owned and that housed his business. He has sought Walker's advice about whether he has any criminal exposure related to the fire and whether he may file an insurance claim for the loss of the building. While Walker suspects that Hammond may have been involved in the fire, Hammond has not admitted or denied involvement and Walker has not explicitly asked. Walker wants to know whether she can successfully move to quash a subpoena duces tecum compelling her to appear before a grand jury convened to investigate the fire and to testify and produce materials relating to her communications with Hammond. Examinees' task is to prepare the argument section of a brief in support of the motion to quash on the grounds that under the Franklin Rules of Professional Conduct and the Franklin Rules of Evidence, Walker may not be compelled to give the testimony or produce materials. The File contains the instructional memorandum from the supervising attorney, a memorandum on persuasive briefs, a letter from Walker to the firm, two memoranda from Hammond's case file, a police report, the subpoena duces tecum, and the motion to quash. The Library contains provisions of the Franklin Rules of Professional Conduct, the Franklin Rules of Evidence, and the Franklin Criminal Code, and two cases from other jurisdictions bearing on a question, unresolved in Franklin, involving the attorney-client privilege and the crime-fraud exception.

In re City of Ontario (July 2010, MPT-2)

In this performance test, examinees work for the City Attorney for the City of Ontario, Franklin. The City Attorney has been reviewing the city ordinances and procedures that cover the Liquor Control Commission, the administrative agency composed of the mayor and the city council that is responsible for granting liquor licenses and enforcing the relevant city ordinances. The City Attorney is concerned that the current Commission procedures would not be given preclusive effect by the courts should a licensee appeal a decision. Examinees' task is to draft an objective memorandum analyzing whether the courts would be likely to grant preclusive effect to the Commission's decisions and recommending what changes to the current procedures would make it more likely that the courts would do so. In addition, examinees should consider how any recommended changes would affect the City's goal of having cost- and time-effective procedures for addressing violations of the Liquor Control Act. The File contains the instructional memorandum from the City Attorney, excerpts from the City of Ontario Liquor Control Ordinances, and the Notice of Liquor Control Violation form used by the City. The Library includes three cases.

February 2011 Summaries

Butler v. Hill (February 2011, MPT-1)

Examinees' law firm represents Jennifer Butler in a divorce action against Robert Hill. Jennifer was 17 and pregnant when the marriage ceremony was performed in 2003, and Robert forged the required signatures on the parental consent form. Jennifer and Robert lived together as a married couple for over six years, and they have two children. When Jennifer learned that Robert had been having an affair, she decided to end the marriage. Shortly thereafter, she discovered that Robert had been married before, and that he and his first wife were divorced in 2008—that is, several years after Jennifer and Robert's marriage ceremony. Examinees' task is twofold. First, they are asked to draft a brief objective memorandum for the supervising partner analyzing whether the parties' marriage ceremony in September 2003 had any legal effect under the Franklin Family Code. Second, examinees are to prepare a closing argument in which they persuasively set forth the case for why the court should conclude that Jennifer and Robert are married under Franklin law and that Jennifer should be awarded more than 50 percent of the marital property. The File consists of the task memorandum, the partner's memorandum to the file, a transcript of an interview with a neighbor, the couple's marriage certificate, the divorce judgment for Robert's first marriage, the deed for the parties' residence, and an invitation to their anniversary party. The Library contains the relevant sections of the Franklin Family Code and three cases relating to void marriages, common law marriages, and the division of marital property.

In re Magnolia County (February 2011, MPT-2)

In this performance test, examinees are employed by the Magnolia County Counsel's Office. The county wants to build a new road connecting two state highways. To do so, the county will have to obtain an easement from the Plymouth Railroad Company over a portion of Plymouth's railroad track and install an at-grade crossing of the track. If Plymouth refuses to grant the easement, then the County will need to exercise its eminent domain powers under state law and file a condemnation action in state court to force Plymouth to grant the easement. Plymouth contends that a condemnation action would be preempted by the Interstate Commerce Commission Termination Act (ICCTA), a federal statute that governs railroad operations. Examinees' task is to draft an objective memorandum analyzing whether a condemnation action to acquire the easement for the crossing of Plymouth's railroad track would be preempted under the ICCTA. The File contains the instructional memo from the supervising attorney, notes from a meeting between the supervising attorney and the county's senior civil engineer, and a memo summarizing the preliminary meeting between the supervising attorney and railroad representatives. The Library contains three cases involving federal preemption under the ICCTA.



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2011–2012**

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