

## 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](http://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.