

## 2011 MPT 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.

***In re Field Hogs, Inc.*** (July 2011, MPT-1) In this performance test, examinees are employed by the law firm that represents Field Hogs, Inc., a manufacturer of heavy lawn and field equipment for consumer use. The company has been sued four times on various products liability and tort theories; the firm successfully defended two of these cases, but two others resulted in substantial jury awards for the plaintiffs. Field Hogs wants to limit its costs and any unwanted publicity in future litigation. To address these concerns, Field Hogs has asked the law firm to draft an arbitration clause to be added to its sales contracts. Examinees' task is to draft an objective memorandum analyzing whether the proposed arbitration clause would cover tort claims against Field Hogs and whether the allocation of arbitration costs would affect the clause's enforceability. In addition, examinees are asked to draft an arbitration clause that is likely to be enforceable in court and that addresses the client's priorities. The File contains the instructional memorandum from the supervising attorney, a summary of the client interview, a memorandum summarizing Field Hogs's litigation history, a copy of the law firm's standard commercial arbitration clause, and the Consumer Procedures of the National Arbitration Organization. The Library contains two cases discussing the standards for enforceable arbitration clauses.

***In re Social Networking Inquiry*** (July 2011, MPT-2) Examinees' supervising partner is the chairman of the Franklin State Bar Association Professional Guidance Committee. The committee issues advisory opinions in response to inquiries from Franklin attorneys concerning the ethical propriety of contemplated actions under the Franklin Rules of Professional Conduct. The committee has received an inquiry from a Franklin attorney asking whether an investigation using the social networking pages (such as Facebook or MySpace) of a nonparty, unrepresented witness in a personal injury lawsuit would violate the Rules. The supervising partner has reviewed the matter and believes that the attorney's proposed course of conduct would be contrary to the Rules. Examinees' task is to prepare a memorandum analyzing the issue with the object of persuading the other committee members that the proposed course of conduct would violate the Rules. This is an issue of first impression in Franklin. Examinees must therefore discern the relevance of, and guidance to be derived from, the three differing applications of those Rules in other states and then apply those differing approaches to the proposed course of conduct. The File contains the instructional memorandum, the letter from the Franklin attorney making the inquiry to the committee, and notes of the committee meeting. The Library contains the applicable Rules of Professional Conduct (including commentary on the Rules) and two cases—one from Olympia and one from Columbia—bearing on the legal issues.