

Franklin Resale Royalties Legislation (February 2012, MPT-1) In this performance test, examinees are employed by the law firm that represents the Franklin Artists Coalition. The Coalition supports enactment of legislation which would require a five percent royalty to be paid to artists or their heirs on the resale of their visual artworks. To this end, the Coalition has asked the law firm to prepare a document which can be handed out to legislators and which will set forth the need for and benefits of the legislation, especially in light of the fact that similar legislation was introduced but not adopted in the neighboring state of Olympia. Examinees' task is to draft the "leave-behind"—a persuasive document that will convince legislators to vote in favor of the resale royalties legislation. In doing so, examinees must set out the arguments in favor of the legislation, respond to the objections to the legislation, and address the legal issue of whether the legislation is preempted by the 1976 federal Copyright Act. The File contains the instructional memorandum from the supervising attorney, a letter from the client, a template for the "leave-behind," and testimony by three witnesses before the Olympia State Senate regarding the similar legislation in that state. The Library contains the text of the proposed legislation, excerpts from the federal Copyright Act, and two cases bearing on the legal issue of preemption.

In re WPE Property Development, Inc. (February 2012, MPT-2) Examinees' law firm represents WPE Property Development, Inc., a developer of low-income housing properties in Franklin. WPE contracts with Trident Management Group to manage many of its properties in compliance with Internal Revenue Code provisions to ensure tax-exempt status. One of these properties has now lost its tax-exempt status as the result of Trident's mismanagement. WPE and Trident have a long-term business relationship that is valuable to both parties. Thus, while WPE appears to have a strong breach-of-contract claim against Trident (for tax liabilities and penalties resulting from Trident's failure to maintain the tax-exempt status), the client, WPE's CEO, is reluctant to file suit against Trident. He hopes that a settlement can resolve the matter short of litigation and thereby also avoid negative publicity for the housing project. However, despite many assurances from Trident's counsel that Trident is willing to reach a settlement and make WPE whole for its losses, no final agreement has been reached, and the statute of limitations on a claim against Trident will run in just 15 days. The senior partner must advise WPE's CEO of the legal consequences of not filing the complaint against Trident before the deadline. Examinees are asked to draft a letter to WPE's CEO for the senior partner's signature analyzing the potential legal consequences to WPE if it decides not to file its complaint against Trident and any possible theories under which WPE could recover against Trident after the limitations period has run. The File consists of the task memorandum from the senior partner, a memo to the file summarizing WPE's concerns, and several pages of correspondence between counsel for WPE and Trident discussing the proposed settlement of the breach-of-contract claim. The Library contains three cases on the statute-of-limitations issue.

State of Franklin v. Soper (July 2012, MPT-1) In this performance test, examinees are law clerks for the trial court judge assigned to the homicide prosecution of Daniel Soper, who is charged in the shooting death of Vincent Pike. The defense has filed a motion to exclude, on state law hearsay and federal constitutional grounds, statements made by Pike after the shooting during a 911 call and later at the hospital shortly before he died. Examinees' task is to draft a bench memorandum that will help prepare the judge for the evidentiary hearing. The File contains the judge's instructional memo, a "format memo," the defendant's Motion to Exclude Evidence, the 911 call transcript, and the police report. The Library contains excerpts from the Franklin Rules of Evidence (identical to the restyled Federal Rules of Evidence), a state case discussing the applicable hearsay exceptions, and a heavily edited version of *Michigan v. Bryant* (U.S. 2011) setting forth the test for determining whether statements are "testimonial" for purposes of the Confrontation Clause.

Ashton v. Indigo Construction Co. (July 2012, MPT-2) Examinees' law firm represents Margaret Ashton, a homeowner, in her dispute with Indigo Construction Co. A few months ago, Indigo bought a vacant lot behind Ashton's home and began storing dirt on the lot to use later in its construction and landscaping business. Although Indigo's use of the vacant lot is in compliance with the relevant zoning ordinances, its activities have negatively affected Mrs. Ashton—she is disturbed by noise from the trucks going to and from the vacant lot, and the huge dirt pile has caused substantial amounts of dust and mud to accumulate in her yard. Examinees are asked to draft the argument section of the brief in support of a preliminary injunction against Indigo. The File contains a memorandum from a firm partner asking the examinee to prepare the legal argument, a "format memo" that lays out the format for persuasive writing of trial briefs, two affidavits (from Margaret Ashton and from a firm investigator), and an article about the dirt pile from a local newspaper. The Library contains two cases from the Franklin Supreme Court: *Parker v. Blue Ridge Farms, Inc.* (dealing with the elements of the common law action of private nuisance) and *Timo Corp. v. Josie's Disco Inc.* (dealing with the standards for granting injunctive relief for a private nuisance).