



Multistate Performance Test

February 2022 MPT Summaries

Painter v. Painter (February 2022, MPT-1) This performance test requires the examinee to draft an objective memorandum addressing issues arising in a divorce action. The client, Denise Painter, is filing for a divorce from her husband, Robert Painter. The parties have been married for nine years and have an eight-year-old daughter, Emma. The examinee's memorandum should address whether a court is likely to grant joint legal custody of Emma to both Denise and Robert or sole legal custody to just Denise, taking into consideration the rebuttable presumption in the Franklin Family Code in favor of joint legal custody. In addition, the examinee should determine the proper classification under Franklin law of the couple's property and debt, including how a court would likely allocate the appreciation of the house in which the Painters lived during their marriage and where Denise and Emma continue to reside. The File contains the instructional memorandum, notes from the initial client consultation with Denise and from a conversation with Robert, and a list of the parties' assets and debts. The Library contains excerpted sections of the Franklin Family Code, including the Franklin Community Property Act, and two Franklin appellate cases.

State of Franklin v. Ford (February 2022, MPT-2) In this performance test, the client, Sylvia Ford, has been charged in a three-count indictment with the sale of cocaine, possession of marijuana with intent to sell, and being a felon in possession of a firearm based on a 2015 felony conviction. The alleged drug sales occurred six months apart, under very different circumstances: the cocaine sale occurred at an apartment, and the marijuana and weapons charges arise from a traffic stop. The state public defender is representing Ms. Ford. The examinee is tasked with preparing a persuasive argument in support of a motion to sever the three charges for trial so that Ms. Ford is not tried in a single trial for all three alleged offenses. In doing so, the examinee should make two arguments under the Franklin Rules of Criminal Procedure in support of severance: that the three counts are improperly joined under Rule 8 (Joinder of Offenses or Defendants), and that even if some of the offenses are properly joined, pursuant to Rule 14 (Relief from Prejudicial Joinder) Ms. Ford will be prejudiced by the lawful joinder. The File contains the instructional memorandum, the office guidelines for drafting persuasive briefs, a summary of the client interview, the indictment, two affidavits in support of the arrests, and the motion to sever. The Library contains excerpts from the Franklin Rules of Criminal Procedure and the Franklin Rules of Evidence, which are identical to the federal rules, as well as three appellate cases.

In re Marriages of Walter Hixon (July 2022, MPT-1) In this performance test, the client, Walter Hixon, seeks legal advice regarding his recent discovery that his first wife, whom he had not divorced, was still living when he married a second time. Hixon wants to annul the second marriage and to resolve claims to certain real property acquired during that second marriage. The examinee's task is to prepare an objective memorandum addressing whether Columbia or Franklin law governs the grounds for annulling the second marriage, the process for obtaining an annulment, whether a Franklin court would have jurisdiction to annul the marriage and to dispose of the parties' property, and where Hixon should file an action given that the couple's real property is located in Columbia. The File contains the task memorandum, a transcript of the client interview, and an investigator's memorandum. The Library contains an excerpt from Walker's Treatise on Domestic Relations, selected Columbia and Franklin statutes dealing with void and voidable marriages, sections of the Restatement (Second) of Conflict of Laws, and two Franklin appellate cases.

In re Nina Briotti (July 2022, MPT-2) This performance test requires the examinee to draft an objective memorandum that the supervising partner can use to advise attorney Nina Briotti, a sole practitioner, on the legal and ethical issues presented by her concern that one of her clients might commit a criminal act. Briotti fears that her client, a financial adviser, might invade a trust that he administers in order to cover investment losses in other accounts that he manages. As Briotti intends to telephone her client and counsel him that such a use of trust funds would be illegal, she wants to know whether recording the telephone call would be legal and ethical under applicable state law and the rules of professional conduct, as well as whether she must inform him that she is recording the call. The File contains the instructional memorandum from the supervising partner, a transcript of the client interview, and Briotti's notes of her last telephone conversation with her client. The Library contains excerpts from the Franklin and Olympia criminal codes dealing with recording of telephone conversations, excerpts from the American Bar Association's Model Rules of Professional Conduct, an opinion of the ABA Standing Committee on Ethics and Professional Responsibility, commentary of the Franklin State Bar Ethics Committee on Franklin Rule of Professional Conduct 8.4 (which is identical to the ABA Model Rule), and an Olympia District Court case addressing the legality of recording a telephone conversation with only one party's consent.