



Multistate Performance Test

February 2023 MPT Summaries

In re Hill (February 2023, MPT-1) In this performance test, the client, Jasmine Hill, purchased a motor boat from Reliant Boating, a local boat dealer, with the understanding that although the boat was used, it was in perfect working condition. After purchasing the boat, Hill discovered that the boat's motor had a cracked engine block and needed to be replaced because the damage was not repairable. She has now replaced the motor and would like to know what legal remedies she has against Reliant. The examinee's task is to draft an objective memorandum analyzing and evaluating whether Hill has one or more viable claims under the Franklin Deceptive Trade Practices Act (DTPA) and what specific relief she would be entitled to if she were to succeed in a DTPA action. The File contains the instructional memorandum from the supervising attorney, a client interview transcript, email correspondence between Hill and Reliant's owner, the boat's bill of sale, and a repair invoice. The Library consists of excerpts from the Franklin Business Code and two Franklin appellate cases.

B&B Inc. v. Happy Frocks Inc. (February 2023, MPT-2) The examinee's law firm has represented Happy Frocks Inc., a maker of children's clothing, in a lawsuit brought by B&B Inc. for trademark infringement. At a post-trial hearing, the court orally informed the parties of its conclusion that Happy Frocks was liable for trademark infringement and required the submission of briefs on the remedies plaintiff B&B was seeking. Those remedies include a permanent injunction, actual damages, and that portion of Happy Frocks's profits attributable to the trademark infringement. The examinee is tasked with preparing a persuasive brief arguing that no award of profits is justified in this case. The File contains the instructional memorandum, the firm's guidelines for persuasive briefs, excerpts from the trial transcript, and the transcript of the post-trial hearing in which the court orally announced its conclusion that Happy Frocks was liable for trademark infringement and asked for briefing on B&B's requested remedies. The Library contains excerpts from the United States Supreme Court decision in *Romag Fasteners, Inc. v. Fossil Group, Inc.*, holding that willfulness is not a prerequisite to an award of profits, and a Franklin federal district court decision in *Spindrift Automotive Accessories, Inc. v. Holt Enterprises, Ltd.*, setting forth the factors to be analyzed in determining if an award of profits is justified as a remedy for trademark infringement.