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Multistate Performance Test

# February 2026 MPT Summaries

***Otto v. Nolan*** **(February 2026, MPT-1)** The examinee's law firm in this performance test represents Kari Otto, who seeks assistance in obtaining a divorce from her husband, Eric Nolan. Ms. Otto's situation presents a question regarding when exactly the parties married—whether they created a common-law marriage in 2006 or whether they were not married until they had a ceremonial wedding in 2019 and then filed a marriage certificate with the county clerk. The examinee's task is to prepare an objective memorandum addressing when the parties likely became married under Franklin law. The memorandum should also discuss how the parties' assets would be characterized as either separate or marital property under the two possible marriage timelines. The File consists of the instructional memorandum from the supervising attorney, a file memorandum summarizing the client meeting, a transcript of a meeting with Eric Nolan, a "Happy Anniversary" card given to Kari by Eric, and a worksheet that lists the parties' various assets and debts. The Library contains selected excerpts from the Franklin Family Code and three Franklin appellate cases.

***In re Franklin Defenders of the Earth*** **(February 2026, MPT-2)** In this performance test, the examinee works in the City Attorney's Office for the City of Whitney. Recently, a not-for-profit organization, Franklin Defenders of the Earth (FDE), promoted a successful ballot initiative, which would require the City Council to adopt a local ordinance. Under the new ordinance, the City would have to fly the "Earth Flag" above the US flag on the center flagpole atop the City Hall building every year on Earth Day (April 22). The City Council has asked for an opinion from the City Attorney regarding whether it must adopt the new ordinance as described in the ballot initiative. The examinee is asked to draft a memorandum addressing whether the US Flag Code or Franklin state law would bar the flying of the Earth Flag above the US flag. In addition, the examinee is asked to determine whether the First Amendment to the US Constitution would require the City to permit FDE to fly the Earth Flag above the US flag on City Hall. The File contains the instructional memorandum, the regulations for events on City Hall Plaza, and the text of the ballot initiative. The Library contains excerpts from a treatise on statutory construction, selected provisions of the US Flag code, the Franklin state constitution, and Franklin statutes, as well as a Franklin Court of Appeal case, *Mastai v. Ross*, and excerpts from the US Supreme Court's 2022 opinion in *Shurtleff v. City of Boston*.



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# July 2026 MPT Summaries

***Matter of David Dawes*** **(July 2026, MPT-1)** In this performance test, the supervising partner has received a subpoena from the US Attorney seeking information regarding the partner's interactions with David Dawes, an army veteran who is now a defendant in a federal prosecution for defrauding the Department of Veterans Affairs (VA). Six years ago, the partner met with Dawes twice but ultimately declined to represent Dawes once it became clear that Dawes had no interest in resolving an outstanding warrant before applying for VA benefits. The examinee's task is to prepare an objective memorandum addressing whether the Franklin Rules of Professional Conduct prevent the partner from disclosing the materials in her files about her conversations with Dawes. In addition to this ethical issue, the examinee must analyze the application of the evidentiary privilege for attorney-client communications and whether that may provide grounds for resisting the subpoena or whether the communications with Dawes fall within the crime-fraud exception to the privilege. The File consists of the instructional memorandum from the supervising partner, the federal indictment against Dawes, a transcript of the first meeting with Dawes, a file memorandum detailing the advice given to Dawes, and a second file memorandum describing what Dawes's public defender has shared about the current federal charge. The Library contains selected excerpts from the Franklin Rules of Professional Conduct, which are identical to the ABA Model Rules, and two cases.

***Estates of Nguyen*** **(July 2026, MPT-2)** In this performance test, the examinee's law firm represents Melissa Nguyen-Stevenson, who has been appointed the administrator of her parents' estates. Melissa's parents, John and Linh Nguyen, were in an automobile collision; Linh died at the accident scene while John died almost 48 hours later at a hospital. In light of these facts, the supervising partner has instructed the examinee to analyze whether the Uniform Simultaneous Death Act of 1993 (USDA 1993) applies to the Nguyens' deaths. The core provision of the USDA 1993 stipulates that if an individual does not survive another by at least 120 hours, the individual is deemed to have predeceased the other for purposes of asset distribution. Then, regardless of the examinee's conclusion regarding the applicability of the USDA 1993, the examinee must determine how various assets in the Nguyens' estates would be distributed under that law. The File contains the instructional memorandum, the Nguyens' death certificates, the relevant provisions of their wills and life insurance policies, and the deed for the house that they owned as joint tenants. The Library contains an excerpt from *Walker's Treatise on Trusts and Estates*, selected provisions of the Franklin Probate Code, and one case, *In re Estates of Skow* (Fr. Ct. App. 2007).


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