

***Downey v. Achilles Medical Device Company (February 2020, MPT-1)*** The examinee's law firm, Betts & Flores, represents Achilles Medical Device Company (AMDC) in a products liability action alleging that AMDC negligently manufactured and sold defective walkers. There are currently five named plaintiffs; the trial court has yet to rule on the plaintiffs' motion for class certification. The examinee's task involves a professional responsibility issue regarding contacts with represented persons. An investigator employed by the plaintiffs' lawyers wants to question one former AMDC employee and four current employees about the facts surrounding the Downey litigation. The investigator has not asked for permission from AMDC's counsel to do so. The examinee must address whether this investigator can speak to AMDC's current and former employees without the advance permission or presence of Betts & Flores. Second, the examinee is to analyze whether Betts & Flores attorneys can speak to current or prospective members of the plaintiffs' proposed class without the prior permission of plaintiffs' counsel. The File contains the instructional memorandum from the supervising partner, a file memorandum describing the client's concerns, and a file memorandum that summarizes the interviews of the AMDC employees. The Library contains excerpts from the Franklin Rules of Professional Conduct (identical to the ABA Model Rules of Professional Conduct), an ethics opinion from the Franklin Board of Professional Conduct, and one Franklin Court of Appeal case.

***In re Eli Doran (February 2020, MPT-2)*** This performance test requires examinees to draft the written closing argument in support of two consolidated petitions: one to annul a marriage and one to set aside a will. The examinee's law firm represents Carol Richards, the niece and recently appointed legal guardian of Eli Doran, Carol's elderly uncle. For about two years, Eli, who has dementia, has been living in an assisted living facility operated by Paula Daws. A few months ago, Carol learned that Paula had secretly married Eli and then, almost nine months later, had prepared a will for Eli that left his entire estate to her. Although a court has determined that Eli is now legally incompetent, that determination does not address whether Eli had the capacity to consent to marry in January 2019 or whether he had testamentary capacity when he signed the will later that year. The examinee's task is to prepare a written closing argument persuading the court that the Doran-Daws marriage should be annulled based on Eli's lack of capacity to consent to marry and that the will should be set aside based on his lack of testamentary capacity at the time it was executed. The File contains the instructional memorandum, the office guidelines for drafting written closing arguments, and excerpts of the hearing testimony of Carol Richards, Paula Daws, and other witnesses. The Library contains two Franklin appellate cases, one discussing the legal capacity to consent to marry and one addressing the standard for testamentary capacity.

***In re Alice Lindgren (July 2020, MPT-1)*** In this performance test, the examinee works for Neighborhood Immigration Services, a nonprofit immigration law office, which is representing Alice Lindgren in her petition for a U visa. U visas are meant to encourage immigrant victims of crime, who might otherwise be afraid to interact with law enforcement, to report crime and assist in the investigation or prosecution of crime. Lindgren, a native and citizen of Sweden, came to Franklin as a graduate student in the University of Franklin’s architecture program. About six months ago, Lindgren was mugged late at night close to campus. She sustained some physical injuries during the assault and continues to suffer from post-traumatic stress disorder (PTSD). The perpetrator was apprehended and ultimately convicted. Lindgren assisted the prosecution and testified at trial. Her student visa has now lapsed, however, and the law firm has determined that she likely qualifies for a U visa. The examinee’s task is to prepare a persuasive cover letter to the United States Citizenship and Immigration Services on Lindgren’s behalf, making the argument that Lindgren meets all requirements for a U visa. The File contains the instructional memorandum from the supervising attorney, the office guidelines for cover letters to USCIS, Lindgren’s affidavit, a police report, a case-status memorandum, a letter from Lindgren’s psychologist, and a printout from the Crimmigration Experts listserv. The Library contains excerpts from the Immigration and Nationality Act § 101(a)(15)(U), Title 8 of the Code of Federal Regulations § 214.14, and excerpts from the Franklin Penal Code.

***Fun4Kids Terms of Service Agreement (July 2020, MPT-2)*** In this performance test, the examinee’s law firm represents Fun4Kids Inc., a client planning to start a commercial internet service designed to provide educational games for children ages 11 through 14. Because there are both federal and Franklin state laws and regulations governing websites aimed at children, the owner of Fun4Kids seeks legal advice regarding the appropriate “terms of service” agreement for the website. In particular, Fun4Kids must navigate regulations that set limits on what personal information may be obtained from children of certain ages, when and how parental consent must be obtained, and the circumstances under which a child’s personal information may be disclosed to third parties. The examinee’s task is to prepare a memorandum for the supervising attorney identifying the issues raised in the client interview and making recommendations as to how to address those issues. The File contains the instructional memorandum, the transcript of the client interview, and excerpts from a Federal Trade Commission press release concerning a fine levied on Persimmon Inc., an online service for children, to settle a complaint alleging violation of the law. The Library contains excerpts of the Children’s Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501 et seq.; excerpts of Federal Trade Commission regulations under COPPA; a Franklin Civil Code provision dealing with disaffirmance of contracts; excerpts of the Franklin Children’s Protection on the Internet Act dealing with prohibited online advertising for children; and a Franklin appellate case addressing the difference between “browsewrap” and “clickwrap” terms of service agreements.

***State of Franklin v. Daniels (September 2020, MPT-1)*** The examinee works for the Franklin Public Defender's Office, which is representing Quinn Daniels, a 19-year-old sophomore at Franklin State College. At a party on campus, Daniels swung a hockey stick and hit fellow student Anthony Otis, tripping Otis and causing him to fall down. Otis then fell down a flight of stairs and sustained serious injuries. The State has now charged Daniels with aggravated assault in connection with that incident. Daniels would like to be released from jail pending trial, but the State has indicated that it will argue for detention. Examinees' task is to prepare the argument section of the defendant's brief in support of pretrial release, making the case against Daniels's detention in light of the testimony given at the pretrial hearing and the applicable provisions of the Franklin Bail Reform Act. The File contains the instructional memorandum from the supervising attorney, a file memorandum summarizing an interview with Quinn Daniels, an email from the assistant district attorney, excerpts from the hearing transcript, and a certificate of completion of probation. The Library contains excerpts from the Franklin Bail Reform Act and two cases: *State v. Donegan* (Fr. Ct. App. 2002) and *State v. Ross* (Fr. Ct. App. 2009).

***Eastwood v. Eastwood (September 2020, MPT-2)*** In this performance test, the examinee's law firm represents Louisa Eastwood. Louisa and her husband, William Eastwood, have been married for 14 years, have two children together, and are now getting divorced. Before they married, they entered into a premarital agreement. Louisa has asked the firm to analyze the validity and enforceability of that agreement. In particular, Louisa is concerned about whether she has any right to the marital home or to receive spousal support. Examinees are asked to prepare an opinion letter to the client addressing the likelihood of successfully challenging the premarital agreement under the provisions of the Franklin Premarital Agreement Act of 1987. The File contains the instructional memorandum, the firm's guidelines on opinion letters, a summary of the client interview, an email from William Eastwood, and excerpts from the Eastwoods' premarital agreement. The Library contains excerpts from the Franklin Premarital Agreement Act and three Franklin Court of Appeal cases discussing the standards for finding a premarital agreement unenforceable on grounds of involuntariness, unconscionability, and/or substantial hardship.

***Klein v. State of Franklin (October 2020, MPT-1)*** The examinee's task is to draft an objective memorandum regarding sovereign immunity and notice requirements under the Franklin Tort Claims Act. The client, Janet Klein, wants to make a claim against the State of Franklin for the actions of a State employee with regard to injuries Klein sustained in a three-car collision in the parking lot of the Franklin State Fairgrounds. Klein suffered both physical injuries (a serious back injury and a broken wrist) and property damage to her car. The State of Franklin and governmental employees are protected from liability because of sovereign immunity unless one of the waiver provisions of the Franklin Tort Claims Act applies. The examinee is to analyze whether the State is protected from liability in this case by sovereign immunity and whether the State received sufficient notice as required by the Act. The File contains the instructional memorandum, a letter from Janet Klein to the State's Risk Management Division, the accident report, a memorandum from the law firm's investigator, and email correspondence between the investigator and Randall Small, a State parking supervisor. The Library contains excerpts from the Franklin Tort Claims Act and three Franklin cases interpreting the Act.

***Franklin Statehood Enabling Act (October 2020, MPT-2)*** In this performance test, the examinee works in the Office of the Counsel to the Governor of the State of Franklin. The governor has asked for a persuasive memorandum that will support his positions on three issues. The memorandum will be used to persuade legislators that the governor's positions are legally correct. First, the governor wishes to have the Franklin state constitution amended to reduce the number of members of the Assembly, the lower house of the Franklin state legislature. Second, the governor's opponents, in response, are calling for the eastern half of the state to be split off into a new state to be admitted to the Union. Third, the opposition party has called for a tax on the transportation on the Franklin River of timber that originates in the neighboring state of Olympia. The governor opposes both of the oppositions' proposals. The File contains the instructional memorandum, an almanac excerpt describing the political makeup of the state, a newspaper article about the governor's call for an amendment to the Franklin state constitution regarding the size of the Assembly, an article about the opposition party's call for creating a new state, and a news bulletin about the opposition party's call for a timber tax. The Library contains applicable provisions of the federal Constitution, excerpts from the Franklin Statehood Enabling Act, excerpts from a law review article on the Enabling Act, and excerpts from *Coyle v. Smith*, 221 U.S. 559 (1911).