NOTE: The information in this booklet is believed to be correct at the time of publication. Since rules and policies of jurisdictions change, examinees are advised to consult the jurisdictions directly for the most current information.
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NOTICE TO EXAMINEES

The following conduct is prohibited during the examination, as it undermines the integrity and fairness of the examination process:

- Bringing unauthorized devices (whether turned on or off) or unauthorized materials into the testing room, including, but not limited to, calculators, cameras, cell phones, pagers, personal digital assistants, text messaging devices, audio or video recording devices, scanners, language translators, and written materials;
- Bringing test materials, unauthorized devices, or unauthorized materials out of the testing room during any scheduled or unscheduled break or at the conclusion of the testing period;
- Copying answers from another examinee or sharing answers with another examinee; and
- Continuing to work after a supervisor has instructed examinees to stop writing.

Engaging in prohibited conduct during the examination could result in some or all of the following penalties:

- Civil liability;
- Criminal penalties;
- Cancellation of the examinee’s test scores;
- Denial of the examinee’s application to sit for future exams;
- Denial of the examinee’s bar application on character and fitness grounds; and
- Disciplinary action by a bar authority if the examinee is already admitted to practice law.
Introduction

The Multistate Performance Test

The Multistate Performance Test (MPT) is developed by the National Conference of Bar Examiners (NCBE) and is administered by participating jurisdictions on the Tuesday before the last Wednesday in February and July of each year. This booklet provides the examinee with a general description of the MPT, an outline of the skills tested, and summaries of previously administered tests.

Jurisdiction Information

Examinees should contact the jurisdiction to which they seek admission to ascertain whether the MPT is administered as part of the jurisdiction’s bar examination and to find out the relative weight given to the MPT and other scores. (Jurisdictions that administer the Uniform Bar Examination [UBE] weight the MPT component 20%.) To obtain information about bar admission requirements or to apply for admission to the bar, examinees should contact the appropriate jurisdiction. Contact information for jurisdictions can be found in the Bar Admission Offices directory at www.ncbex.org.

About the National Conference of Bar Examiners

NCBE is a not-for-profit corporation founded in 1931. The mission of the Conference is to work with other institutions to develop, maintain, and apply reasonable and uniform standards of education and character for eligibility for admission to the practice of law; and to assist bar admission authorities by providing standardized examinations of uniform and high quality for the testing of applicants for admission to the practice of law, disseminating relevant information concerning admission standards and practices, conducting educational programs for the members and staffs of such authorities, and providing other services such as character and fitness investigations and research.

Accommodations for Persons with Disabilities

An examinee with a documented disability may be eligible for auxiliary aids or services in order to complete the MPT. The standard version of the MPT is printed in 12-point Times New Roman font. The MPT is also routinely available in Braille, in large-print (18- and 24-point Helvetica font) versions, on audio CD, and as a Microsoft Word document on a data CD for use with screen-reading software. All decisions and arrangements for these or other accommodations are made by the jurisdictions, and each jurisdiction has its own formal application and approval process. Examinees seeking accommodations must apply separately to each jurisdiction in which they plan to take the MPT. Contact information for each jurisdiction’s bar admissions office can be found in the Bar Admission Offices directory at www.ncbex.org.

Test Preparation

NCBE publishes study aids for the MPT that include MPT items from previously administered tests and corresponding Point Sheets, which describe the factual and legal points encompassed within the lawyering tasks to be completed and outline the possible issues and points that might be addressed by an examinee. MPTs and Point Sheets may be purchased from NCBE by visiting www.ncbex.org to access the NCBE Online Store. MPTs and Point Sheets from older administrations are available at no cost on the NCBE website. Summaries of previously administered MPTs are available at no cost on the NCBE website and on pages 7–11 of this booklet.
NCBE offers two 90-minute MPT items per administration. A jurisdiction may select one or both items to include as part of its bar examination. (Jurisdictions that administer the Uniform Bar Examination [UBE] use two MPTs as part of their bar examinations.)

The MPT is designed to test an examinee’s ability to use fundamental lawyering skills in a realistic situation. Each test evaluates an examinee’s ability to complete a task that a beginning lawyer should be able to accomplish. The MPT is not a test of substantive knowledge. Rather, it is designed to examine six fundamental skills lawyers are expected to demonstrate regardless of the area of law in which the skills arise.

The materials for each MPT include a File and a Library. The File consists of source documents containing all the facts of the case. The specific assignment the examinee is to complete is described in a memorandum from a supervising attorney. The File might also include transcripts of interviews, depositions, hearings or trials, pleadings, correspondence, client documents, contracts, newspaper articles, medical records, police reports, or lawyer’s notes. Relevant as well as irrelevant facts are included. Facts are sometimes ambiguous, incomplete, or even conflicting. As in practice, a client’s or a supervising attorney’s version of events may be incomplete or unreliable. Examinees are expected to recognize when facts are inconsistent or missing and are expected to identify sources of additional facts.

The Library may contain cases, statutes, regulations, or rules, some of which may not be relevant to the assigned lawyering task. The examinee is expected to extract from the Library the legal principles necessary to analyze the problem and perform the task. The MPT is not a test of substantive law; the Library materials provide sufficient substantive information to complete the task.

The MPT requires examinees to (1) sort detailed factual materials and separate relevant from irrelevant facts; (2) analyze statutory, case, and administrative materials for applicable principles of law; (3) apply the relevant law to the relevant facts in a manner likely to resolve a client’s problem; (4) identify and resolve ethical dilemmas, when present; (5) communicate effectively in writing; and (6) complete a lawyering task within time constraints.

These skills are tested by requiring examinees to perform one or more of a variety of lawyering tasks. For example, examinees might be instructed to complete any of the following: a memorandum to a supervising attorney, a letter to a client, a persuasive memorandum or brief, a statement of facts, a contract provision, a will, a counseling plan, a proposal for settlement or agreement, a discovery plan, a witness examination plan, or a closing argument.
Instructions for Taking the Test

The back cover of each test booklet contains the following instructions:

You will be instructed when to begin and when to stop this test. Do not break the seal on this booklet until you are told to begin. This test is designed to evaluate your ability to handle a select number of legal authorities in the context of a factual problem involving a client.

The problem is set in the fictitious state of Franklin, in the fictitious Fifteenth Circuit of the United States. Columbia and Olympia are also fictitious states in the Fifteenth Circuit. In Franklin, the trial court of general jurisdiction is the District Court, the intermediate appellate court is the Court of Appeal, and the highest court is the Supreme Court.

You will have two kinds of materials with which to work: a File and a Library. The first document in the File is a memorandum containing the instructions for the task you are to complete. The other documents in the File contain factual information about your case and may include some facts that are not relevant.

The Library contains the legal authorities needed to complete the task and may also include some authorities that are not relevant. Any cases may be real, modified, or written solely for the purpose of this examination. If the cases appear familiar to you, do not assume that they are precisely the same as you have read before. Read them thoroughly, as if they all were new to you. You should assume that the cases were decided in the jurisdictions and on the dates shown. In citing cases from the Library, you may use abbreviations and omit page references.

Your response must be written in the answer book provided. If you are using a laptop computer to answer the questions, your jurisdiction will provide you with specific instructions. In answering this performance test, you should concentrate on the materials in the File and Library. What you have learned in law school and elsewhere provides the general background for analyzing the problem; the File and Library provide the specific materials with which you must work.

Although there are no restrictions on how you apportion your time, you should allocate approximately half your time to reading and digesting the materials and to organizing your answer before you begin writing it. You may make notes anywhere in the test materials; blank pages are provided at the end of the booklet. You may not tear pages from the question booklet.

This performance test will be graded on your responsiveness to the instructions regarding the task you are to complete, which are given to you in the first memorandum in the File, and on the content, thoroughness, and organization of your response.
Skills Tested

The Multistate Performance Test examines six fundamental lawyering skills that are required for the performance of many lawyering tasks. The following description of these skills is based in part on the “Statement of Fundamental Lawyering Skills” from Legal Education and Professional Development: An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, known as the MacCrate Report (ABA 1992).

1. **Problem solving.** The examinee should demonstrate the ability to develop and evaluate strategies for solving a problem or accomplishing an objective. Problem solving includes the ability to
   A. identify and diagnose the problem;
   B. generate alternative solutions and strategies;
   C. develop a plan of action;
   D. implement a plan of action; and
   E. keep the planning process open to new information and new ideas.

2. **Legal analysis and reasoning.** The examinee should demonstrate the ability to analyze and apply legal rules and principles. Legal analysis and reasoning includes the ability to
   A. identify and formulate legal issues;
   B. identify relevant legal rules within a given set of legal materials;
   C. formulate relevant legal theories;
   D. elaborate on legal theories;
   E. evaluate legal theories; and
   F. criticize and synthesize legal arguments.

3. **Factual analysis.** The examinee should demonstrate the ability to analyze and use facts and to plan and direct factual investigation. Factual analysis includes the ability to
   A. identify relevant facts within a given set of factual materials;
   B. determine the need for factual investigation;
   C. plan a factual investigation;
   D. memorialize and organize information in an accessible form;
   E. decide whether to conclude the process of fact gathering; and
   F. evaluate the information that has been gathered.

4. **Communication.** The examinee should demonstrate the ability to communicate effectively in writing. Communication includes the ability to
   A. assess the perspective of the recipient of the communication; and
   B. organize and express ideas with precision, clarity, logic, and economy.
5. **Organization and management of a legal task.** The examinee should demonstrate the ability to organize and manage a legal task. Organization and management includes the ability to
   A. allocate time, effort, and resources efficiently; and
   B. perform and complete tasks within time constraints.

6. **Recognizing and resolving ethical dilemmas.** The examinee should demonstrate the ability to represent a client consistently with applicable ethical standards. Ethical representation includes
   A. knowledge of the nature and sources of ethical standards;
   B. knowledge of the means by which ethical standards are enforced; and
   C. ability to recognize and resolve ethical dilemmas.

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**MPT Sample Tests**

The following are summaries of the February 2010 through February 2012 MPTs. Study aids containing previously administered MPTs and corresponding Point Sheets may be purchased from NCBE by visiting the NCBE Online Store at [www.ncbex.org](http://www.ncbex.org). MPTs and Point Sheets from older administrations, as well as summaries of previously administered MPTs, are available at no cost on the NCBE website.

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**February 2010 MPT Summaries**

**State of Franklin v. McLain** (February 2010, MPT-1)

The client, Brian McLain, has been charged with violating various sections of the Franklin Criminal Code dealing with methamphetamine, a controlled substance. The charges are based on evidence seized from McLain after police stopped him for investigatory purposes, acting on an anonymous tip that an individual matching McLain’s description had been seen purchasing items at a convenience store that, while entirely legal, are known ingredients of methamphetamine production. The officer searched his car, finding the goods described in the tip, together with a small plastic bag containing what appeared to be a marijuana cigarette. McLain was arrested and booked. After questioning, McLain directed the police to a “meth lab” where they found chemicals and equipment used to manufacture methamphetamine, as well as the drug itself. McLain was charged with possession of methamphetamine with intent to distribute, possession of laboratory equipment and supplies with the intent to manufacture methamphetamine, and manufacture of methamphetamine. He has moved to suppress all evidence seized by police on the ground that the officer lacked reasonable suspicion to stop him. He has also moved to dismiss the charge of possession of equipment with the intent to manufacture methamphetamine on the ground that it is a lesser-included offense of manufacture of methamphetamine. Examinees’ task is to draft the arguments in support of both motions. The File consists of a memorandum from the supervising attorney describing the assignment, the criminal complaint, the motion to suppress evidence and to dismiss Count 2, the transcript of the anonymous call to the crime hotline, and excerpts from the transcript of the evidentiary hearing. The Library contains the relevant Franklin statutes and three cases—two relating to investigatory stops and one dealing with lesser-included offenses.
**Logan v. Rios** (February 2010, MPT-2)

In this performance test, examinees are associates at a law firm. The client, Trina Rios, owner of a toy store called Trina’s Toys, has been sued by Karen Logan, who claims that she slipped in a puddle of water and fell while shopping in the toy store. As a result, Logan sued Rios, claiming that Rios violated her duties as a premises owner. Rios pled an affirmative defense of contributory negligence, which, if proven, would be a complete defense to Logan’s action. Local court rules require parties to attend an early dispute resolution (EDR) conference, at which a neutral evaluator (the EDR judge) attempts to facilitate settlement of the case. Examinees’ task is to prepare an initial draft of part of the EDR statement, which will be submitted to the EDR judge. The EDR statement is confidential and is not shared with any other party. Thus, examinees should candidly discuss the strengths and weaknesses of their client’s case. The File contains the instructional memo from the supervising attorney, the local rule and form concerning EDR conferences and statements, the complaint, an investigator’s report, and excerpts of the depositions of plaintiff Karen Logan and Nick Patel, a toy store employee. The Library includes a Franklin Supreme Court Approved Jury Instruction concerning the premises liability of property owners with commentary on the duty of property owners and on contributory negligence.

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**July 2010 MPT Summaries**

**In re Hammond** (July 2010, MPT-1)

In this performance test, examinees work for a law firm, which has received a request for guidance from another attorney, Carol Walker, related to her representation of William Hammond. A suspicious fire destroyed a building that Hammond owned and that housed his business. He has sought Walker’s advice about whether he has any criminal exposure related to the fire and whether he may file an insurance claim for the loss of the building. While Walker suspects that Hammond may have been involved in the fire, Hammond has not admitted or denied involvement and Walker has not explicitly asked. Walker wants to know whether she can successfully move to quash a subpoena duces tecum compelling her to appear before a grand jury convened to investigate the fire and to testify and produce materials relating to her communications with Hammond. Examinees’ task is to prepare the argument section of a brief in support of the motion to quash on the grounds that under the Franklin Rules of Professional Conduct and the Franklin Rules of Evidence, Walker may not be compelled to give the testimony or produce materials. The File contains the instructional memorandum from the supervising attorney, a memorandum on persuasive briefs, a letter from Walker to the firm, two memoranda from Hammond’s case file, a police report, the subpoena duces tecum, and the motion to quash. The Library contains provisions of the Franklin Rules of Professional Conduct, the Franklin Rules of Evidence, and the Franklin Criminal Code, and two cases from other jurisdictions bearing on a question, unresolved in Franklin, involving the attorney-client privilege and the crime-fraud exception.

**In re City of Ontario** (July 2010, MPT-2)

In this performance test, examinees work for the City Attorney for the City of Ontario, Franklin. The City Attorney has been reviewing the city ordinances and procedures that cover the Liquor Control Commission, the administrative agency composed of the mayor and the city council that is responsible for granting liquor licenses and enforcing the relevant city ordinances. The City Attorney is concerned that the current Commission procedures would not be given preclusive effect by the courts should a licensee appeal a decision. Examinees’ task is to draft an
objective memorandum analyzing whether the courts would be likely to grant preclusive effect to the Commission’s decisions and recommending what changes to the current procedures would make it more likely that the courts would do so. In addition, examinees should consider how any recommended changes would affect the City’s goal of having cost- and time-effective procedures for addressing violations of the Liquor Control Act. The File contains the instructional memorandum from the City Attorney, excerpts from the City of Ontario Liquor Control Ordinances, and the Notice of Liquor Control Violation form used by the City. The Library includes three cases.

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**February 2011 MPT Summaries**

**Butler v. Hill** *(February 2011, MPT-1)*

Examinees’ law firm represents Jennifer Butler in a divorce action against Robert Hill. Jennifer was 17 and pregnant when the marriage ceremony was performed in 2003, and Robert forged the required signatures on the parental consent form. Jennifer and Robert lived together as a married couple for over six years, and they have two children. When Jennifer learned that Robert had been having an affair, she decided to end the marriage. Shortly thereafter, she discovered that Robert had been married before, and that he and his first wife were divorced in 2008—that is, several years after Jennifer and Robert’s marriage ceremony. Examinees’ task is twofold. First, they are asked to draft a brief objective memorandum for the supervising partner analyzing whether the parties’ marriage ceremony in September 2003 had any legal effect under the Franklin Family Code. Second, examinees are to prepare a closing argument in which they persuasively set forth the case for why the court should conclude that Jennifer and Robert are married under Franklin law and that Jennifer should be awarded more than 50 percent of the marital property. The File consists of the task memorandum, the partner’s memorandum to the file, a transcript of an interview with a neighbor, the couple’s marriage certificate, the divorce judgment for Robert’s first marriage, the deed for the parties’ residence, and an invitation to their anniversary party. The Library contains the relevant sections of the Franklin Family Code and three cases relating to void marriages, common law marriages, and the division of marital property.

**In re Magnolia County** *(February 2011, MPT-2)*

In this performance test, examinees are employed by the Magnolia County Counsel’s Office. The county wants to build a new road connecting two state highways. To do so, the county will have to obtain an easement from the Plymouth Railroad Company over a portion of Plymouth’s railroad track and install an at-grade crossing of the track. If Plymouth refuses to grant the easement, then the County will need to exercise its eminent domain powers under state law and file a condemnation action in state court to force Plymouth to grant the easement. Plymouth contends that a condemnation action would be preempted by the Interstate Commerce Commission Termination Act (ICCTA), a federal statute that governs railroad operations. Examinees’ task is to draft an objective memorandum analyzing whether a condemnation action to acquire the easement for the crossing of Plymouth’s railroad track would be preempted under the ICCTA. The File contains the instructional memo from the supervising attorney, notes from a meeting between the supervising attorney and the county’s senior civil engineer, and a memo summarizing the preliminary meeting between the supervising attorney and railroad representatives. The Library contains three cases involving federal preemption under the ICCTA.
July 2011 MPT Summaries

In re Field Hogs, Inc. (July 2011, MPT-1)

In this performance test, examinees are employed by the law firm that represents Field Hogs, Inc., a manufacturer of heavy lawn and field equipment for consumer use. The company has been sued four times on various products liability and tort theories; the firm successfully defended two of these cases, but two others resulted in substantial jury awards for the plaintiffs. Field Hogs wants to limit its costs and any unwanted publicity in future litigation. To address these concerns, Field Hogs has asked the law firm to draft an arbitration clause to be added to its sales contracts. Examinees’ task is to draft an objective memorandum analyzing whether the proposed arbitration clause would cover tort claims against Field Hogs and whether the allocation of arbitration costs would affect the clause’s enforceability. In addition, examinees are asked to draft an arbitration clause that is likely to be enforceable in court and that addresses the client’s priorities. The File contains the instructional memorandum from the supervising attorney, a summary of the client interview, a memorandum summarizing Field’s litigation history, a copy of the law firm’s standard commercial arbitration clause, and the Consumer Procedures of the National Arbitration Organization. The Library contains two cases discussing the standards for enforceable arbitration clauses.

In re Social Networking Inquiry (July 2011, MPT-2)

Examinees’ supervising partner is the chairman of the Franklin State Bar Association Professional Guidance Committee. The committee issues advisory opinions in response to inquiries from Franklin attorneys concerning the ethical propriety of contemplated actions under the Franklin Rules of Professional Conduct. The committee has received an inquiry from a Franklin attorney asking whether an investigation using the social networking pages (such as Facebook or MySpace) of a nonparty, unrepresented witness in a personal injury lawsuit would violate the Rules. The supervising partner has reviewed the matter and believes that the attorney’s proposed course of conduct would be contrary to the Rules. Examinees’ task is to prepare a memorandum analyzing the issue with the object of persuading the other committee members that the proposed course of conduct would violate the Rules. This is an issue of first impression in Franklin. Examinees must therefore discern the relevance of, and guidance to be derived from, the three differing applications of those Rules in other states and then apply those differing approaches to the proposed course of conduct. The File contains the instructional memorandum, the letter from the Franklin attorney making the inquiry to the committee, and notes of the committee meeting. The Library contains the applicable Rules of Professional Conduct (including commentary on the Rules) and two cases—one from Olympia and one from Columbia—bearing on the legal issues.

February 2012 MPT Summaries

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.
National Conference of Bar Examiners
2012–2013

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