

## **MPT-1 (Question 1)**

State of Franklin v. Clegane

This performance test requires examinees to draft an argument in support of the reading of victim-impact statements and requests for restitution, as authorized under the Franklin Crime Victims' Rights Act (FCVRA), at the sentencing hearing for defendant Greg Clegane. The law firm's client is Sarah Karth, who wishes to make such statements on behalf of her sister, Valerie Karth, and on her own behalf. In the underlying criminal action, Clegane illegally sold dangerous fireworks to a minor who later ignited those fireworks at a party. The fireworks caused serious injuries to Valerie, as well as property damage. Clegane was convicted of a felony but has not yet been sentenced. Clegane has moved to exclude the sisters' victim-impact statements at the sentencing hearing and to deny their requests for restitution. Examinees' task is to draft the argument section of the brief opposing Clegane's motion and persuading the court that under the case law interpreting the FCVRA, Sarah and Valerie are both crime victims entitled to restitution and to make statements at the sentencing hearing. The File contains the instructional memorandum, the firm's guidelines for writing persuasive trial briefs, a newspaper article about the fireworks incident, excerpts from the client interview, and the defendant's motion. The Library contains excerpts from the FCVRA and three Franklin Court of Appeal cases.

## Question 2

Don drove Pat and Page to Atlanta, Georgia, where they spent the night gambling and drinking with potential clients introduced by Don. Winding down, Pat and Page suddenly realized that they were going to miss their 7:00 a.m. flight to Nashville, Tennessee. Anxious to make it to an unrelated business meeting there, they pressured Don to give them a ride. Don reluctantly agreed. Later, while traveling northward in northern Georgia, Don—hungover and struggling to keep his eyes open—fell asleep while driving. His beige Infiniti drifted along a quarter mile of straight highway; but then, just after crossing the Tennessee border, the car launched over a curve, smashing into a ditch. Everyone was injured.

Under diversity jurisdiction, Pat and Page sued Don in Tennessee federal district court, asserting claims for negligence. Pat and Page are lifelong residents of Alabama, and they solicit sales in Alabama, Georgia, and Tennessee. Don does business in Georgia. For years, Don has resided in a house in Lookout Mountain, Georgia, paying income taxes only to the federal government and to the State of Georgia. But due to recurring marital unpleasantness, for the last three months Don has resided with his dog in a detached garage apartment and sauna, which sit on his property just across the border in Tennessee. Don has started receiving his mail at the apartment, though most of his clothes remain at the house. He confided to a friend that he is unsure when (or if) he will feel like moving back in with his wife at the house. Don's neighbors gossip that this marital separation, like the last one, will be temporary. But as Don told one neighbor, he consoles himself with the thought that Tennessee residents pay no state income tax.

- A. Applying Tennessee law, in what state is Don domiciled? Explain your answer.
- B. Which state's laws substantively govern Pat and Page's negligence claims? Explain your answer. Assume for purposes of this question that the respective negligence laws of Alabama, Georgia, and Tennessee materially differ.

### Question 3

In 2005, seventy-year-old Addy visited a lawyer and executed a valid will leaving her property equally to her two minor grandchildren, Bob and Callie. Addy became physically infirm. Bob moved in next door. He bought groceries, scheduled doctors' appointments, and took her to church. Bob maintained her property and paid bills from her account. In 2008, when Bob turned 20 years old, Addy executed a valid power of attorney, naming him attorney in fact. Addy was alert, but became unable to drive and stopped leaving home without Bob. Over time, Bob limited visitors because he wanted Addy to maintain her strength and, he said, visits made her sad.

In 2010 after months of encouragement from Bob, Bob took Addy to a lawyer for a new will. Addy told the lawyer she was uncomfortable, but Bob took the meeting over and spoke for her. Bob reminded her about all that he did for her. He asked her who else would take care of her. He had taken control of her finances, and she wasn't sure where her checkbook was or what her account balance was. Finally, Addy agreed to sign a will that left Bob her home plus 75% of her other assets, leaving Callie the other 25%. Addy signed the will that was witnessed by two attesting witnesses, and Addy nodded that she understood what it said.

In 2012, Bob visited a lawyer alone on behalf of Addy and had a new will drafted. The will left all property to Bob. Using the power of attorney, Bob signed Addy's name to the attested will.

In 2014, Addy discovered Bob's 2012 will and was upset. She called a new lawyer who sent her a packet of information and a form called: "Information to Provide for Your Estate Planning Session." Addy filled out the printed form completely in her own handwriting. The form included her address, birthdate, and other identifying information. Addy wrote that she would leave her entire estate to Callie. Addy mailed the form to the lawyer to review before meeting with him. The lawyer prepared a typed will using what Addy had written. Addy died before the appointment to sign the typed will.

- A. Does the 2014 handwritten form constitute a holographic will under Tennessee law? Explain.
- B. Assume Addy died in 2013; was the 2012 will valid under Tennessee law? Explain.
- C. Assume Addy died in 2011; was the 2010 will valid under Tennessee law? Explain.

#### **Question 4**

In a calculated attempt to increase tourism revenue by attracting even more visitors to its Appalachian region and the bustling towns of Gatlinburg, Sevierville, and Pigeon Forge, the State of Tennessee recently enacted legislation providing that "No billboard of any kind shall be erected in the State advertising, endorsing, or otherwise promoting in any way any cities or towns located on or within five hundred (500) miles of the Great Smoky Mountains other than Gatlinburg, Sevierville, or Pigeon Forge, Tennessee."

The legislation further provides that a violation of the provision is punishable by "a fine not to exceed \$15,000 and/or 30 days in jail." Moreover, by its terms, the legislation applies retroactively to January 1 of the current calendar year.

On February 1, 2017, Adam erected a billboard on a piece of real property he owns along Interstate 40 in Shelby County, Tennessee, encouraging people to visit Cherokee, North Carolina and a Native American museum located in the town. Adam erected the billboard pursuant to existing contractual obligations he had with the museum which had desired a boost in the town's tourism due to the associated economic benefits to the museum. Cherokee, North Carolina is located less than thirty (30) miles from the Great Smoky Mountains and the Tennessee-North Carolina border.

On March 1, 2017, the billboard statute was signed into law by Tennessee's Governor. On April 1, 2017, Adam was issued a citation by law enforcement charging him with a violation of the billboard statute and imposing the maximum financial penalty applicable for a violation of the statute. Shaken from receiving the citation and not wanting any more trouble from law enforcement, Adam removed the billboard, causing the museum to balk on its lease obligations to Adam.

Following Adam's conviction, he has engaged you, a licensed Tennessee attorney, seeking your advice about whether or not the billboard statute is constitutional. Please explain in detail what advice you would give Adam.

## Question 5

Jimmy wants to set up an LLC named "Super Legit Life Coaching and Brews, LLC" through which he can operate his business as a life coach and brewmaster. His father, Rob, will provide financial backing for the enterprise, which Jimmy runs out of his apartment in his dad's basement. Jimmy comes to you and asks you to provide the necessary legal work to form the entity and establish the relationship between the two members. You and Jimmy enter into a written fee agreement which includes language that you are representing Jimmy with entity-formation and related matters. You begin work.

You forward an initial draft of the operating agreement to Jimmy. Rob calls you a few days later with questions about the operating agreement and its impact on him. You explain that, since you represent Jimmy's interests, you highly recommend that Rob get his own counsel. Rob asks if you can represent him as well.

After the entity is formed, you periodically perform work for Super Legit Life Coaching and Brews, LLC, and you also draw up a will for Rob. You eventually formally conclude your various representations and lose touch with Jimmy and Rob after they gain fame on the reality show, *The Real Super Legit Life Coaches and Brewmasters of Music City*.

Four years after your last communication with Jimmy, you get a call from a lawyer who represents a creditor of Super Legit, Jimmy, and Rob in an ongoing legal proceeding. She informs you that she plans to issue a subpoena to you for their files. You are served with the subpoena a few days later.

- A. Can you represent Rob in the formation of the LLC? Why or why not? If you can, what steps must you take?
- B. What are your obligations with respect to the subpoena?

## Question 6

Tom Jones, an inventor, has a lawsuit he wants to file in a Tennessee Circuit Court. He has invented special modifications to a farm tractor engine which allows a tractor to get six times the usual gas mileage. To test the modified engine, Tom Jones rents the modified farm tractor to Farmer Brown with the condition that no one examines or services the modified tractor except Tom Jones. Farmer Brown is so pleased with the gas mileage of the modified tractor that he wants his son, who lives in another state and who is a tractor mechanic, to come and look at what was done to this modified tractor so that Farmer Brown can modify his own tractors after the rental period is over.

The Farmer Brown's son is dating the daughter of Tom Jones and called her to tell her that he was coming for a visit with his dad, Farmer Brown, to look at some kind of fancy tractor that his dad has. He wants to line up some social visits with the daughter while he is visiting his dad. The daughter is excited about the visits from her boyfriend and tells her father, Tom Jones, all about the phone call and their plans and the reason for the visit.

Tom Jones demands his tractor back from Farmer Brown immediately, which is well before the end of the rental period, and Farmer Brown refuses pointing out that the rental contract does not allow for an early termination of the rental period.

- A. Identify what document(s) Tom Jones and his attorney must file to commence a lawsuit.
- B. Identify what document(s) the clerk of the court may prepare or require to be prepared when a lawsuit is commenced.
- C. Some of the information that must be alleged is highly sensitive and confidential information. Jones and his attorney tried filing for immediate possession and a Temporary Restraining Order without including the sensitive and confidential information, but the judge denied every method of immediate protection. Describe a procedural method and the document(s) to prepare to get the information alleged in the record while at the same time protecting the information from being viewed by the general public.
- D. Farmer Brown's defense attorney and Farmer Brown prepare a response to contest those facts alleged in the document(s) filed by Tom Jones, and a response to the lack of facts in the same document(s). Identify at least three different responses that Farmer Brown could make and explain the differences between the three.
- E. Farmer Brown's son arrived one week after the lawsuit was filed and one day after Farmer Brown was served. Tom Jones wants to include the son in the suit just in case he has looked at the modified tractor engine. Describe two ways to include the son and what documents need to be prepared, filed and who they must be served upon.
- F. List the discovery methods and for each method tell whether it would be reasonably useful in this case, and if so, briefly explain how, or if not useful, why not.

## Question 7

Andy is the host of "The Andy Show," a daily morning radio program in Knoxville, Tennessee. The Andy Show airs on WZZZ-FM, Knoxville's #1 station for news. The Andy Show features music, traffic reports, weather reports, news updates, skits, and most famously, telephone pranks. At least once per week, Andy places an on-air phone call to a listener and disguises his voice to prank the listener. This bit is so popular that some listeners contact the show to ask Andy to prank a friend or relative.

On November 6, 2017, Betty called The Andy Show and asked Andy to prank her neighbor Carl. As part of the call preparations, Betty told the show that Carl is easily startled, firmly believes in Martians, and is fearful that someday Martians will invade Earth.

On November 7, 2017, as part of the radio broadcast, Andy called Carl, pretending to be a representative of the fictional National Bureau for Martian Invasions. Andy begins the call by asking "Carl, is it OK if I speak with you for a few minutes?" Carl responded with "Yes, it is." Though briefly skeptical at first, Carl quickly became frantic and emotional as Andy told Carl that Martians were invading Earth and that Carl's home appeared to be the anticipated landing site. Carl started yelling, screaming, and crying out of concern for the potential harm that could come to his house and his family. Andy thought that Carl's reactions were so funny that they continued the prank past the allotted segment time and through the regularly-scheduled news, weather, and traffic break. The prank call lasted 25 minutes totals, and ended only because Carl passed out from stress and fear of the fictional invasion.

Had Andy ended the call on-time and gone to the regularly-scheduled weather and traffic break, he would have learned from the traffic reporter that there was a wreck on Kingston Pike in Knoxville because Debbie, who tunes in daily to hear the news and traffic report, had been so enthralled in the fake warnings from the broadcast of Andy's prank that she was watching the sky rather than the road. As a result, Debbie ran into Ed's car. Additionally, there was a car wreck on Chapman Highway in Knoxville because Fran, a regular show listener, became so fearful and emotionally stressed that she did a four-lane U-turn in the middle of the highway in her attempt to go back home. Fran hit three other cars in the process.

Providing sufficient explanation and reasoning, including applicable elements of potential torts and defenses, answer the following:

- A. Under Tennessee tort law, for what torts, if any, is Andy liable to Carl?
- B. Under Tennessee tort law, for what torts, if any, is Andy liable to Debbie?
- C. Under Tennessee tort law, for what torts, if any, is Andy liable to Ed?
- D. Under Tennessee tort law, for what torts, if any, is Fran liable?

## Question 8

Mike Sellers is a salesman at Farmers Supply. One morning Mike looked out from his office and saw Prentice Miller, a high school classmate, walking thru the warehouse. Sensing a sales opportunity, he struck up a conversation with Miller. Prentice told him he had expanded his farming operation so that in addition to the family farm he was renting seventeen hundred acres. He agreed to pay the landlord twenty-five percent (25%) of the proceeds of the sale of the crop grown on the land as annual rent. Prentice planned to grow soybeans.

Prentice told Mike that he had come in to buy bean seed but he was a little short of funds. He explained that he had a loan from Ag Lender to finance his farming operation for the year. He used some of the funds to buy two used grain trucks which he needed to deliver the beans to the grain elevator. He also bought two computers to keep track of his harvest. He had the computers installed in a CIH combine he recently purchased and an older combine he owned outright.

Mike offered to finance the purchase of the seed. He asked if Prentice had any equipment Ag Lender did not take as collateral. Prentice said they did not take the trucks or the computers. Prentice brought the titles to the grain trucks to Mike for him to keep. He signed a security agreement which listed the vehicle identification numbers and make and model of each truck, the computers, and "all crops which are or will be planted on land owned or rented by Prentice Miller in Dyer County, Tennessee, during the 2017 crop year". He filed a financing statement containing the same description in the Register's Office for Dyer County, Tennessee and with the Tennessee Secretary of State on May 15, 2017.

In December, 2017, the directors of Farmer Supply wanted a report from Mike on whether they would be able to collect what Prentice owed the business.

Mike found a financing statement filed by Ag Lender in the Register's Office for Dyer County and with the Tennessee Secretary of State, on March 1, 2017, in which Prentice Miller gave Ag Lender a security interest in all of his farm equipment, farm products, and all crops, whether owned now or after acquired, and all accessions, additions and replacements to any of the proceeds of the sale of any of the farm equipment, farm products or crops. He also found out that CIH had perfected purchase money security interest in a combine recorded on April 20, 2017.

A. What interest do Ag Lender, Farmers Supply and Prentice's landlord have in the soybean crop?

B. In what order should Ag Lender, Farmers Supply and the Landlord be paid when Prentice sells the soybean crop? Explain your answer.

C. What interest do Ag Lender and Farmers Supply have in the grain trucks?

D. What is the proper procedure for perfecting a security interest in a motor vehicle in Tennessee?

E. Would the computers which were installed in the combines be considered to be accessions under the UCC? Explain your response.

F. What interest do Ag Lender, Farmers Supply, and CIH have in the computers?

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**NOTES**

## Question 9

Dave and Ben are brothers. They are employed as part of a construction crew currently working on a project in Abbott, Tennessee. Their project consists of remodeling one older home in a historic district of Abbott. The historic district is made up of about 20 other vacant houses that are scheduled to be remodeled by each respective owner as well.

Dave and Ben are working late one evening and run short of supplies. Due to the encroaching project deadline, Dave and Ben do not want to wait until the following day to obtain more supplies from the local hardware store. Instead, Dave goes to the vacant house next door and enters the unlocked back door. While Dave is gathering some supplies from the vacant home, Ben hides on the back porch and watches for anyone passing by. Ben gets nervous when he hears a car drive by and yells to Dave to get out of the house. Dave drops all the items he has gathered and both men run back to the house they are working on. Dave and Ben agree they should have just waited until the next day to obtain more supplies from the store to finish the project and swear not to mention this incident to anyone.

A few days later, Carol, the owner of the vacant house next door, notices that various supplies in her home, such as paint cans and tools, are laying all around the floor. Carol was going to use the supplies to remodel her house. Even though none of the supplies seem to be missing, Carol calls the Abbott Police Department to make a report.

- A. If Dave is arrested as a result of this incident, then state what criminal offense(s) he could be charged with and an analysis of whether the legal elements of such offense(s) will be satisfied.
- B. If Ben is arrested as a result of this incident, then state what criminal offense(s) he could be charged with and provide an analysis of the legal basis/theory allowing such offense(s) to be charged against Ben.
- C. Assuming that Dave and Ben have both been found guilty of some criminal offense at trial, they each have filed a motion for post-conviction relief alleging that their attorneys at the trial were ineffective. State the legal standard that they must prove to be entitled to relief for ineffective assistance of counsel.

## Question 10

Wendy and Harry have been married for over 10 years and reside in Rhea County, Tennessee. While Wendy finds Harry dull, Wendy has no significant complaints about Harry. He is a hard-working man and a great father to their 5-year old son, Simon. Wendy never had any real interest in domestic life. Wendy always wanted to move to Peru to start a yoga studio. A husband and young son simply did not fit in Wendy's lifelong dream of teaching Yin Yoga in South America, so on September 1, 2015, Wendy boarded a plane headed to Cusco without saying goodbye to Harry or Simon. After arriving safely to Cusco, Wendy sent Harry a postcard that read, "Not coming home. Kiss Simon for me."

Unable to find a strong clientele base in Cusco, Wendy closed her yoga studio and returned to Rhea County, Tennessee on December 1, 2017. While Harry had not seen or talked to Wendy for over two years, Harry was excited to learn that Wendy was back in town and vowed to do everything he could to make his marriage to Wendy work. Wendy still had no interest in being married to Harry.

Wendy consults with you about starting divorce proceedings as soon as possible. Wendy advises that Harry did not want to get a divorce and wants to preserve their marriage. Given that Harry and Wendy haven't lived together for over two years, Wendy doesn't understand Harry's refusal to end the marriage. Wendy is not seeking alimony or custody and does not intend to fight for any of Harry's property or belongings. Wendy plans to move to St. Lucia within the next 60 days.

A. Please discuss the relevant statutory ground(s) for divorce based on the facts presented above and any potential issue(s), if any, with establishing such grounds. Please discuss whether Harry's refusal to divorce Wendy affects Wendy's ability to establish a statutory basis for divorce.

B. Wendy returned to Rhea County, Tennessee in December 2017. Please discuss issues, if any, regarding the residency requirements under Tennessee law in the event that Wendy files for divorce in Rhea County in February 2018.

C. After unsuccessfully trying to convince Wendy not to file for divorce, Harry has now decided that he would no longer put up a fight. If Harry agrees to the divorce, please discuss the procedure and required filings for the uncontested divorce, including whether the divorce may be finalized before she relocates to St. Lucia.