

February 2023 MPT-1 Item

In re Hill

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In re Hill

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Foss & Associates LLP
Attorneys at Law
3200 Lakefront Dr., Suite 700
Franklin City, Franklin 33012

MEMORANDUM

To: Examinee
From: Zoe Foss
Date: February 21, 2023
Re: Jasmine Hill matter

We represent Jasmine Hill in connection with her purchase of a boat with serious mechanical issues. Ms. Hill purchased the boat from Reliant Boating, a local boat shop, with the understanding that although the boat was used, it was in perfect working condition. After purchasing the boat, Ms. Hill discovered that the boat's motor had a cracked engine block and needed to be replaced. She has now replaced the motor and would like to know what legal remedies she has against Reliant.

I need you to draft a memorandum to me analyzing whether Ms. Hill has one or more claims against Reliant under the Franklin Deceptive Trade Practices Act (DTPA) (FR. BUS. CODE §§ 200 *et seq.*). Be sure to discuss what specific relief Ms. Hill would be entitled to if she were to succeed in a DTPA action.

Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your analysis. Focus only on Ms. Hill's potential DTPA claim or claims. Another associate will research other potential claims Ms. Hill may have against Reliant, including any claims based on breach of express or implied warranty.

Transcript of Interview with Jasmine Hill

February 20, 2023

Attorney: Jasmine, it's good to meet you. What can we help you with?

Hill: Thanks for meeting with me. I bought a boat from Reliant Boating, and now I feel like I've been taken advantage of.

Attorney: Why don't you tell me what happened.

Hill: It all started when I decided to buy a boat last year.

Attorney: Have you ever owned a boat before?

Hill: No. This is my first time. My family and I enjoy the outdoors. We like to go camping, hiking, and fishing at Lake Franklin. Over the summer, we rented a boat a few times and had a ball, which got me thinking about getting my own boat.

Attorney: How did you come to buy a boat from Reliant?

Hill: After researching new and used boats, I decided to buy a used boat because I didn't have enough money saved up for a new one. I did an internet search, and Reliant's name popped up. It's one of only a few boat stores in town that sells used boats. I called Reliant in August and spoke with the store's owner, Greg Stevens. I told him I was looking for a good-quality used boat.

Attorney: What did Mr. Stevens say?

Hill: He recommended that I consider buying a pontoon-style boat. You know, the kind that's flat and boxy, with a built-in sunshade over the top and comfortable seating along the sides. He said he had two used pontoon boats in stock: a 2017 18-foot Perth Envoy and a 2019 21-foot Wellington Mariner. He suggested I come down to the shop and take a look at them.

Attorney: And did you do that?

Hill: Yes, I went to the store, and Mr. Stevens showed me both boats. He encouraged me to buy the Envoy. He turned the engine on, and it sounded fine. I told him I needed to think about it and would get back to him. He gave me his email address and cell-phone number and told me to let him know if

I had any questions. That evening, I talked to my family, and we all agreed that the Envoy was our best option because it was significantly less expensive than the Mariner but still roomy enough to comfortably seat six to eight people. I was really excited about the Envoy but had some concerns, so I emailed Mr. Stevens. Here's a copy of my email exchange with him.

Attorney: Thanks! When did you buy the boat, and what did you pay for it?

Hill: I returned to the shop a few days after my initial visit. I paid \$7,500 for the boat, which is less than half of what a new 18-foot pontoon boat typically costs. The price included the boat, motor, and trailer. At the time, I thought I was getting a great deal. Mr. Stevens told me that the boat was a real gem and that it was in great condition. The bill of sale said that there were no defects. Here's a copy of it.

Attorney: Thank you. What happened after you bought the Envoy? Were you able to use it?

Hill: We trailered the boat to Lake Franklin, intending to stay the weekend and spend most of our time boating. About 15 minutes after we got out on the water, the motor died. I called Reliant immediately and told Mr. Stevens about the problem with the motor.

Attorney: What did he say?

Hill: He said there was no warranty on the boat, so I was responsible for any repairs. He started asking me questions about how I had operated the boat and suggested that I had done something wrong that caused the motor to die, which was infuriating. I was disappointed—our weekend getaway was ruined! The whole point of the trip was to spend as much time as possible on the lake enjoying our new boat. We didn't bring our hiking boots or our trail bikes. When the boat stopped working, there was no point in staying for the weekend, so we packed up our camping equipment and left.

Attorney: Were you able to find out what was wrong with the motor?

Hill: A boat mechanic inspected it and found that the engine block was cracked. The mechanic said that the motor couldn't be repaired and would have to

be replaced. I told him that before I bought the boat, Mr. Stevens ran the motor briefly and it seemed to work fine. The mechanic said that it's not uncommon for a motor with a cracked engine block to run for a few minutes under test conditions. But then when you try to use it in the water for an extended period, the motor starts leaking oil, overheats, and seizes up. He said he found epoxy glue in the cracks on the engine block, and he could tell that the glue had been recently applied. This told him that the engine block was damaged when I bought it.

Attorney: Did you have the motor replaced?

Hill: Yes, I did. And it cost me an arm and a leg! I brought a copy of the receipt. Having to replace the motor was stressful because it set me back financially. I think Reliant took advantage of me. The boat runs fine now, but I never would have bought it if I'd known it would need a new motor. I want to keep the boat now that it works, but I think Reliant should reimburse me for the replacement motor and all the hassle I've been put through.

Attorney: That's very understandable. I think you have some legal options against Reliant. I'll review the documents you provided and research a few issues and then get back to you early next week.

Hill: That sounds great. Thanks for helping me with this!

Jasmine Hill/Greg Stevens Email Correspondence [in chronological order]

August 10, 2022

From: Jasmine Hill<jhill@cmail.com>
To: Greg Stevens<gStevens@reliant-boat.com>
Subject: Pontoon Boat

Hi, Greg. Thanks so much for taking the time to show me the Perth Envoy and Wellington Mariner pontoon boats. I'm leaning toward the Envoy because it's the one you recommended and it's in my price range.

From: Greg Stevens<gStevens@reliant-boat.com>
To: Jasmine Hill<jhill@cmail.com>
Subject: Pontoon Boat

Jasmine, I think the Envoy is a real gem and would be a perfect fit for you because it has plenty of room for you and your family!

From: Jasmine Hill<jhill@cmail.com>
To: Greg Stevens<gStevens@reliant-boat.com>
Subject: Pontoon Boat

You mentioned that the Envoy is five years old. I'm a little concerned about its age. This is a big purchase for me. I don't want to buy a boat that's going to need repairs.

From: Greg Stevens<gStevens@reliant-boat.com>
To: Jasmine Hill<jhill@cmail.com>
Subject: Pontoon Boat

The Envoy is a few years old, but it's in excellent condition and runs just like new.

From: Jasmine Hill<jhill@cmail.com>
To: Greg Stevens<gStevens@reliant-boat.com>
Subject: Pontoon Boat

OK, let's do this! Can I come by the shop this weekend to complete the paperwork?

From: Greg Stevens<gStevens@reliant-boat.com>
To: Jasmine Hill<jhill@cmail.com>
Subject: Pontoon Boat

Sure! See you then!

Boat Bill of Sale

BE IT KNOWN that for payment in the sum of \$7,500, the full receipt of which is acknowledged, the undersigned Greg Stevens d/b/a Reliant Boating (Seller) hereby sells and transfers to Jasmine Hill (Buyer) the following boat, motor, and trailer (Boat):

Make: Perth

Model or series: Envoy

Year: 2017

Color: White

Hull ID No.: SSR 77070 173 06

Style: 18-foot pontoon

Odometer Reading (# hours): 275 hours

Title #: [omitted]

Motor: 9.9-horsepower Jupiter

Trailer: 20-foot standard boat trailer

The sale is subject to the following conditions and representations:

Seller acknowledges receipt of \$7,500 as full payment for the Boat, with title transfer to take place immediately.

* * *

Seller has no knowledge of any defects in and to the Boat.

Seller: Greg Stevens

Date: August 13, 2022

Buyer: Jasmine Hill

Date: August 13, 2022

In the presence of (Witness): Graham Taylor

Date: August 13, 2022

INVOICE NO. 3017
DATE: September 20, 2022

JB Boat Repairs

Proudly Serving Franklin Boaters Since 2012
1200 Marina Blvd.
Franklin City, FR 33015

TO:

Jasmine Hill
9361 Castle Lane
Franklin City, FR 33015

Diagnosis:

Examined broken Jupiter 9.9-horsepower motor in 2017 Perth Envoy pontoon boat and found that engine block was cracked. Found remnants of epoxy glue in cracked engine block, indicating engine block had been previously damaged.

Motor is not fixable and needs complete replacement.

<u>Work Performed</u>	<u>Cost</u>
Remove broken motor and install refurbished 9.9-horsepower Jupiter replacement motor. Fill oil tank. Test motor. Test propeller.	\$3,000

Total Cost \$3,000

THANK YOU FOR YOUR BUSINESS!

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Excerpts from Franklin Business Code, Chapter 200

§ 201. Short Title

This chapter may be cited as the Deceptive Trade Practices Act.

§ 202. Construction and Application

This chapter shall be liberally construed and applied to promote its underlying purpose, which is to protect consumers against false, misleading, and deceptive business practices.

§ 203. Definitions

As used in this chapter:

- (a) "Goods" means tangible items or real property purchased or leased for use.
- (b) "Services" means work, labor, or service purchased or leased for use
- (c) "Person" means an individual, partnership, corporation, association, or other group, however organized.
- (d) "Consumer" means an individual . . . who seeks or acquires any goods or services
- (e) "Trade" and "commerce" mean the . . . sale . . . of any good or service
- (f) "Economic damages" means compensatory damages for actual pecuniary loss, including costs of repair and replacement. The term does not include exemplary damages or damages for physical pain and mental anguish.
. . .
- (k) "Knowingly" means actual awareness, at the time of the act or practice complained of, of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

§ 204. Deceptive Trade Practices Unlawful

False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful, including but not limited to the following acts:

- . . .
- (d) representing that goods or services
 - i. have characteristics or uses they do not have, or
 - ii. are of a particular standard, quality, or grade if they are of another;

...

(f) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(g) failing to disclose information concerning goods or services that was known at the time of the transaction if such failure was intended to induce the consumer to enter into a transaction into which the consumer would not have entered had the information been disclosed;

§ 205. Relief

(a) A consumer may maintain an action against any person who engages in any one or more of the false, misleading, or deceptive acts or practices enumerated in Section 204 of this chapter, if such act or practice is a producing cause of the consumer's damages and the consumer relied upon such act or practice to the consumer's detriment.

(b) In a suit filed under this section, a consumer who prevails may obtain

(1) the amount of economic damages found by the trier of fact; or

(2) if the trier of fact finds that the conduct of the defendant was committed knowingly:

(i) exemplary damages of three times (treble) the amount of economic damages, and

(ii) damages for mental anguish.

(c) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorney's fees.

Gordon v. Valley Auto Repair, Inc.
Franklin Court of Appeal (2009)

Jack Gordon sued Valley Auto Repair (Valley) alleging Deceptive Trade Practices Act (DTPA) violations arising from repairs made to his truck by Valley. A jury awarded Gordon economic damages, exemplary damages, and attorney fees under the DTPA, FR. BUS. CODE § 201 *et seq.* Valley appeals. We affirm in part and reverse in part.

FACTS

Gordon purchased a used diesel pickup truck in Franklin in April 2007. Gordon bought the truck to use for his business hauling goods to locations in three states, including Franklin. The truck had few problems until October 2007, when Gordon noticed that the truck was using too much oil. He took the truck to Valley for repair. A Valley mechanic took two weeks to repair the engine, but the truck continued to leak oil. Gordon returned to Valley once more in November. Again, it took Valley two weeks to perform repairs; and after the second repair, the truck continued to leak oil and run poorly. Gordon had to pay Valley a total of \$4,000—\$2,000 for each of the two unsuccessful repairs. At that point, Gordon was "fed up" with Valley and had the truck repaired by another mechanic at a cost of \$2,000.

DTPA ANALYSIS

The DTPA prohibits "[f]alse, misleading, or deceptive acts or practices in the conduct of any trade or commerce." FR. BUS. CODE § 204. Section 204 contains a list of prohibited acts, including the specific acts alleged in Gordon's complaint (i.e., §§ 204(d) and (f)). Actionable representations may be oral or written. *Diaz v. Ellis* (Fr. Sup. Ct. 1998).

The elements of a DTPA claim are (1) the plaintiff is a consumer; (2) the defendant engaged in one or more of the false, misleading, or deceptive acts enumerated in § 204; (3) the act(s) constituted a producing cause of the plaintiff's damage; and (4) the plaintiff relied on the defendant's conduct to his or her detriment. *Diaz*; FR. BUS. CODE § 205(a). A "producing cause" is a substantial factor that brings about the injury, without which the injury would not have occurred. *Diaz*. The plaintiff consumer has the burden of proof as to each element. *Id.* If a violation is committed "knowingly," the plaintiff is entitled to receive three times his or her actual economic damages (treble damages), as well as damages for mental anguish. FR. BUS. CODE § 205(b)(2).

Gordon asked Valley's service department to perform repairs on his truck. This qualifies him as a "consumer" under the DTPA. His allegations focus on Valley's failure to

repair the truck on a timely basis and on misrepresentations by Valley employees about that work. Specifically, Gordon alleged that Valley's conduct violated the DTPA by (1) representing that goods and services are of a particular standard, quality, or grade when they are of another, FR. BUS. CODE § 204(d)(ii); and (2) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced, FR. BUS. CODE § 204(f).

A. DTPA Violations

Valley contends that there is no evidence that it committed the alleged DTPA violations. We review each alleged violation in turn.

(1) representations about standard, quality, or grade of services—§ 204(d)(ii)

Gordon testified that when he first took the truck to Valley, he stressed the need for quick repairs to ensure the success of his business. In response, Valley employees made several representations to him. Specifically, a mechanic assured Gordon personally, "We'll get it done, we'll get it fixed, we'll get it right back out on the road." When Gordon asked how long repairs usually took, he was told, "It depends on the problem, but normally one to three days" but that "you might have some problems that would take a little longer." Gordon testified that, based on these representations, he was led to believe that "Valley would get it in and get it out." Gordon contends that these were actionable misrepresentations because each repair effort took one to two weeks.

Valley contends that these representations were merely puffing and thus not actionable under the DTPA. Valley is correct that "mere puffing," that is, exaggerated "sales-speak" for promotional purposes, is not actionable under the DTPA. *Diaz*. Three factors determine whether a representation is "mere puffing":

(1) the specificity of the alleged misrepresentation: vague or indefinite representations, statements that compare one product to another and claim superiority, and mere opinions are not actionable misrepresentations under the DTPA;

(2) the comparative knowledge of the consumer and the seller or service provider: representations made by a service provider with greater knowledge and experience than the consumer are more likely to be actionable; and

(3) whether the representation relates to a past or current condition as opposed to a future event or condition: statements about past or current conditions are more likely to be actionable than statements about the future. *Id.*

Valley's representations about repair time were too general and indefinite to be actionable. None of the statements guaranteed a precise time frame for completion of repairs. Indeed, the last statement acknowledged that some repairs would take longer

than the "one to three days" "normally" required. This rendered the statements too indefinite to be actionable. See *Salas v. Carworld* (Fr. Ct. App. 2003) (dealership's description of vehicle as "luxurious" and "rugged" was mere opinion or puffery). *But cf. Chapman v. Acme Construction* (Fr. Ct. App. 2006) (affirming DTPA recovery where defendant "guaranteed" he would finish a construction project "no matter what" for a set price within a certain time period and the quality of the construction would be "great").

(2) representations that services were performed—§ 204(f)

Gordon contends that Valley completed alleged repairs twice but failed to repair the leak each time. The evidence shows that Valley's manager stated after the second unsuccessful repair, "We've got it fixed now." The evidence also shows that the truck leaked oil after each attempted repair. This evidence is sufficient to support a finding that Valley's representations about the performance of the repairs violated the DTPA.

B. Damages

A plaintiff may recover "economic damages" where the defendant's misconduct was a producing cause. FR. BUS. CODE § 205. The term "economic damages" has been construed to include "the total loss sustained by the consumer as a result of the deceptive trade practice," which includes related and reasonably necessary expenses. *Diaz*. The trial court found that Gordon's economic damages included (1) the repair costs he incurred (\$4,000 to Valley) and (2) lost net profits resulting from interruption in his business due to the truck's being in the shop for extended periods of time (\$1,500). Section 203(f) expressly includes "repair or replacement" costs in the definition of "economic damages." Gordon's evidence at trial supports the award of these amounts as economic damages.

C. Knowing Conduct as a Basis for Exemplary Damages

Valley contends that there is no evidence that it acted knowingly in its representations about its repairs. The DTPA defines "knowingly" to include "actual awareness" of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim. FR. BUS. CODE § 203(k). Knowledge may be inferred where objective manifestations indicate that a person acted with actual awareness. *Id.* As the court explained in *Diaz*, "actual awareness" does not mean merely that a person knows what he is doing. Rather, it means that a person knows that what he is doing is false, deceptive, or unfair. The person must think at some point, "Yes, I know this is false, deceptive, or unfair, but I'm going to do it anyway." *Diaz*.

Gordon claims that Valley acted knowingly because Valley "did not even attempt to fix the oil leak" on two separate occasions. But the record does not support this

characterization. Valley offered proof that its service department believed that the oil leak had been fixed each time it worked on the truck. Gordon offered no direct evidence to rebut this proof.

Accordingly, we conclude that the evidence supports only a finding that Valley represented that it had repaired the oil leak when in fact it had not. The evidence does not support a finding that Valley made a "knowing" misrepresentation. *Compare Berg v. RMS Roofing* (Fr. Ct. App. 2001) (knowing conduct found where contractor admitted work was not done properly but did not fix it despite continuing to bill plaintiff for balance owed). For this reason, we reverse the award of treble damages with instructions to the trial court to enter judgment in the amount of the actual economic damages without the multiplier.

D. Attorney's Fees

Valley also contests the award of Gordon's attorney's fees. "Each consumer who prevails *shall* be awarded court costs and reasonable and necessary attorney's fees." FR. BUS. CODE § 205(c) (emphasis added). The award of reasonable and necessary attorney's fees is mandatory for a prevailing DTPA plaintiff.

We have determined that Gordon is entitled to prevail on one of his DTPA allegations against Valley. His attorney testified to the amount of reasonable and necessary attorney's fees incurred. Accordingly, we affirm the attorney fee award.

Affirmed in part, reversed in part, and remanded for further proceedings.

Abrams v. Chesapeake Business College
Franklin Court of Appeal (2012)

Danielle Abrams brought this action against Chesapeake Business College (CBC) under the Deceptive Trade Practices Act (DTPA), FR. BUS. CODE §§ 201 *et seq.* The trial court entered judgment for Abrams and awarded \$22,000 in exemplary damages and damages for mental anguish, plus attorney's fees. We affirm.

Abrams enrolled in CBC seeking a business administration degree after seeing a newspaper ad and several television commercials and visiting CBC's campus. In August 2010, Abrams visited CBC's campus, signed an enrollment agreement, and made a deposit of \$1,000 toward the \$12,000 tuition. That evening she read the school catalogue aloud to her mother and became enthusiastic about her decision to pursue a business degree from CBC. Two weeks later, she started classes and paid an additional \$4,000 toward her outstanding tuition balance. However, she soon became disappointed in CBC and concluded that she had been misled by the catalogue. She eventually stopped attending CBC, did not pay the remainder of her tuition, and filed this action.

Abrams's claims under the DTPA focus on statements contained in CBC's catalogue and on information that CBC failed to disclose to her before she enrolled. The catalogue promised qualified teachers ("Our teachers are thoroughly trained subject-matter experts in their field"), modern equipment ("state of the art"), and a low student-teacher ratio ("No more than 10 students per teacher/classroom"). At trial, Abrams and several other witnesses testified that CBC in fact provided one unqualified teacher in a room with 42 students, all taking different courses, with only two 10-key adding machines. The evidence established the poor training of CBC's teachers, a high student-teacher ratio, outdated computers, and antiquated office equipment that frequently broke down. The jury found that CBC had violated DTPA §§ 204(d) (misrepresenting the characteristics, standard, or quality of services) and 204(g) (failing to disclose information). It awarded \$15,000, or three times the economic damages of \$5,000, in exemplary damages plus \$7,000 as damages for mental anguish. CBC appealed.

On appeal, CBC makes three arguments. First, it argues that the statements in its catalogue could not have been a producing cause of Abrams's damages because Abrams read the catalogue after she signed the contract. We disagree. The unrebutted proof shows that the catalogue contained representations that substantially contributed to Abrams's decision to enroll. Even though she read the catalogue after she signed the agreement, that agreement gave her a 72-hour period to cancel the agreement for a full

refund. Abrams proved that CBC's representations in its catalogue were false and misleading and that she relied upon these representations in deciding not to cancel the agreement and instead to pay additional tuition. The evidence is sufficient to support a finding that the representations in the catalogue were a producing cause of Abrams's loss.

Second, CBC argues that it cannot be held liable for a failure to disclose information when Abrams had actual notice of the same information. We disagree. Under the DTPA, the plaintiff must show that (1) the defendant failed to disclose information about goods or services (2) known by the defendant at the time of the transaction and (3) intended to induce the consumer to enter into a transaction (4) into which the consumer would not have entered had the information been disclosed. FR. BUS. CODE § 204(g). To be sure, a seller cannot be held liable for failing to disclose information about which the buyer has actual notice; such information could not be a producing cause of the buyer's loss. *Ling v. Thompson* (Fr. Ct. App. 2008). In this case, however, ample evidence shows that CBC knew that its catalogue contained misrepresentations and that Abrams relied on those statements when she enrolled and paid tuition. This is not a situation where statements were made without knowledge of their falsity or where information was withheld innocently. The evidence supports a finding of liability for a failure to disclose under § 204(g).

Finally, CBC also challenges the award of treble damages and damages for mental anguish. To justify an award of these categories of damages, the plaintiff must prove that the defendant's actions were taken "knowingly." FR. BUS. CODE § 205(b)(2). We note that the Act provides that it is to be liberally construed so as to promote the purpose of protecting consumers against false, misleading, or deceptive business practices. *Id.* § 202. Here the record establishes that CBC knew that its representations in the catalogue were false.

In particular, CBC claims that no evidence supported the award of damages for mental anguish. Again, we disagree. An award of damages for mental anguish "implies a relatively high degree of pain and distress beyond mere worry or anxiety, . . . and includes pain resulting from grief, severe disappointment, indignation, wounded pride" and similar emotions. *Oliver v. Elite Systems* (Fr. Sup. Ct. 1997). The proof at trial met this high standard. Abrams testified that she felt severe disappointment with CBC's academic program, indignation at its poor instruction, wounded pride at being "had," and such severe despair that she dropped out of CBC. This evidence is sufficient to support the award of damages for mental anguish under the Act.

Affirmed.

MULTISTATE PERFORMANCE TEST DIRECTIONS

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.

Do not include your actual name anywhere in the work product required by the task memorandum.

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.