July 2023
MPT-1
Item

Dobson v. Brooks Real Estate Agency

Dobson v. Brooks Real Estate Agency

FILE

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Burton & Mendel LLP
Attorneys at Law
2024 Kendall Avenue
Bristol, Franklin 33726

MEMORANDUM

To: Examinee
From: Samantha Burton
Date: July 25, 2023
Re: Dobson v. Brooks Real Estate Agency

Our firm is representing Peter Dobson in litigation against Brooks Real Estate Agency. Mr. Dobson slipped and fell on ice that the Brooks Agency failed to remove from the sidewalk in front of its building. He suffered a broken leg, a broken arm, and a concussion as a result of the fall, and ultimately missed three months' work.

The trial is in four weeks. I intend to file a motion *in limine,* that is, a pretrial motion seeking a ruling on the admissibility of certain evidence. As you know, the Franklin Rules of Evidence are identical to the Federal Rules of Evidence.

I need you to prepare the argument section of the brief in support of the motion *in limine*, setting forth our position regarding each of the following items of evidence:

(1) Anticipated trial testimony by Doris Gibbs describing an interaction she had with Mr. Dobson, her neighbor. We need to seek a pretrial ruling that her testimony is inadmissible.

(2) The deposition testimony of the emergency room physician who examined Mr. Dobson after his fall and gave deposition testimony in connection with a separate case arising out of the same injuries. The physician has since died. We need to seek a pretrial ruling that the deposition testimony is inadmissible in our case.

(3) The insurance policy on the property of the Brooks Real Estate Agency. In the course of discovery, Brooks has claimed that it does not control the sidewalk and therefore was not responsible for clearing it of ice. We want to introduce the insurance policy on the property showing that the agency is insured against liability resulting from conduct occurring on the sidewalk.

Be sure to follow the attached guidelines for writing persuasive briefs. Draft only the "legal argument" section; another associate will draft the statement of facts and caption.

Burton & Mendel LLP
Attorneys at Law

OFFICE MEMORANDUM

To: All Associates
From: Samantha Burton
Date: September 5, 2019
Re: Guidelines for Persuasive Briefs in Trial Courts

The following guidelines apply to briefs filed in support of motions in trial courts.

I. Captions [omitted]

II. Statement of Facts [omitted]

III. Legal Argument

Your legal argument should make your points clearly and succinctly, citing relevant authority for each legal proposition. Do not restate the facts as a whole at the beginning of your legal argument. Instead, integrate the facts into your legal argument in a way that makes the strongest case for our client.

Use headings to separate the sections of your argument. Your headings should not state abstract conclusions but should integrate the facts into legal propositions to make them more persuasive. An ineffective heading states only: "The court should not admit evidence of the victim's character." An effective heading states: "Evidence of the victim's character for violence should be excluded because the defendant has not raised a claim of self-defense."

In the body of your brief, analyze applicable legal authority and persuasively argue how both the facts and the law support our client's position. Supporting authority should be emphasized, but contrary authority should also be cited, addressed in the argument, and explained or distinguished.

Do not assume that we will have an opportunity to submit a reply brief. Be sure to anticipate and respond to opposing arguments in the body of your brief. Structure your argument in such a way as to highlight your case's strengths and minimize its weaknesses.

TRANSCRIPT OF INTERVIEW WITH PETER DOBSON
January 11, 2023

Att'y Burton: Hello, Mr. Dobson. I understand you would like to retain our firm to handle a negligence action for you.

Dobson: Yes, I suffered some pretty bad injuries. I was in the hospital for two days and out of work for three months.

Burton: What happened?

Dobson: I was here in Bristol. It was a snowy day, but the sidewalks looked clear. I must have slipped on some ice, and I fell. I broke my arm and my leg and had a concussion.

Burton: I am so sorry.

Dobson: It has been a long recovery and very painful.

Burton: When did your fall and injuries occur?

Dobson: Last winter, on February 18, 2022.

Burton: Could you give me a few more details?

Dobson: Sure. I was walking from my house on Maple Grove Way and going to the grocery store on Oaklawn. My route took me down Elm Street. There was some snow on the ground but not a lot of it. I was walking on the sidewalk. I was walking carefully since it was winter. All of a sudden, my legs shot out from under me, and I was on the ground. And I hurt—a lot! It turns out there was ice on the sidewalk, and I slipped and fell on it. Luckily another person saw me fall and called 911. The ambulance came and took me to the hospital. Now I am finally recovered and I need your help.

Burton: Before we talk more about your injuries, I understand this is not the only lawsuit you filed related to this incident.

Dobson: That is correct. The City of Bristol is my employer. I sued the City after it denied me more time away from work and other accommodations for my injuries. My lawyer in that case is Robert Chen. I can put you in touch with him.

Burton: Thank you. I assume that I have your permission to speak with attorney Chen.

Dobson: Of course.

Burton: And again, what were your injuries?

Dobson: I had a broken arm, a broken leg, and a concussion.

Burton: Do you know who owns the property adjacent to the sidewalk on which you fell?

Dobson: Yes, it is owned by the Brooks Real Estate Agency.

Burton: So we may be able to file a negligence action, alleging that Brooks Real Estate Agency breached its duty of care by not keeping the sidewalk clear of ice, and that as a result of its negligence, you sustained multiple injuries. We may be able to claim as damages the medical costs you incurred, your lost wages for the time you were off work, and your pain and suffering.

Dobson: That sounds great. Just let me know what you need from me.

Burton: We will be in touch soon.

Burton & Mendel LLP
Attorneys at Law

FILE MEMORANDUM

From: Samantha Burton
Date: January 13, 2023
Re: Dobson v. Brooks Real Estate Agency

Following my initial interview with Peter Dobson, and with his permission, I contacted Robert Chen, the attorney who represents Dobson in his suit against the City of Bristol. Here is what I learned from Attorney Chen: The suit against the City is a disability discrimination claim related to Dobson's employment by the City. After the accident (which is also the basis of our negligence claim against Brooks Real Estate Agency), Dobson believed that the City was not accommodating him appropriately. Dobson hired Chen, and Chen then filed suit on behalf of Dobson alleging discrimination under Franklin's Disability Act. Essentially, Dobson's claims against the City are that he was not given sufficient time away from the office and was not given other accommodations to which he was entitled given the severity of his injuries. The City has defended against the action, claiming that Dobson's injuries did not require the accommodations Dobson sought. The source and causation of Dobson's injuries are not at issue in that case, as they are in Dobson's claims against the Brooks Real Estate Agency. Discovery has been completed, and a trial date has been set.

Attorney Chen suggested I review Dr. Miller's deposition in *Dobson v. City of Bristol.* Dr. Miller treated Dobson when he was admitted to the hospital for his injuries. At the deposition, Dr. Miller testified about the extent of Dobson's injuries and the adequacy of the limited accommodations the City made for him. Chen made the strategic decision not to examine Dr. Miller about her opinion about the extent of the injuries because his focus at the deposition was on the level of accommodations given to Dobson. Chen, in an attempt to attack Dr. Miller's credibility, instead focused his examination of Dr. Miller on prior malpractice lawsuits against her. Dr. Miller died after the deposition but before trial.

Burton & Mendel LLP
Attorneys at Law

FILE MEMORANDUM

From: Roger Cole, Investigator
Date: January 25, 2023
Re: Conversation with Doris Gibbs, information about Dr. Miller, and information about Brooks Real Estate Agency

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At your request, I have investigated certain matters in the Peter Dobson case.

First, I had a conversation with Doris Gibbs. Ms. Gibbs was on the list of potential witnesses supplied by the Brooks Real Estate Agency's lawyer in the Dobson matter, so I wanted to find out what information she might have about the case.

Ms. Gibbs was more than happy to speak with me. She told me that she was a neighbor of Mr. Dobson. She brought food over to the Dobsons' home shortly after Mr. Dobson was released from the hospital. She also visited several times while Mr. Dobson was at home recovering from his injuries.

Soon after Mr. Dobson had regained the use of his arm and leg and was able to leave his home, he and his wife invited Ms. Gibbs and her wife out to dinner to thank Ms. Gibbs for her generosity during Mr. Dobson's recovery. Of course, the question of how Mr. Dobson was injured came up at that dinner.

During dinner, after they had each had a beer, Ms. Gibbs said to Mr. Dobson: "We have all been clumsy before. I bet that you were trying to get to the store quickly. And I would guess, like most of us, you were on your phone at the time." She said that she didn't say this in an accusatory way, but only as a statement of fact and of understanding. She told me that she had fallen several times when not looking where she was going or when distracted. According to Ms. Gibbs, Mr. Dobson failed to respond to the statement she made at the dinner. She said that she thought he was listening—he set his drink down and looked at her while she was speaking. She also said that there was the usual background sound of conversation in the restaurant. After she made the statement, no one said anything for about a minute. After that, the couples chatted about other things. The dinner concluded amicably.

Ms. Gibbs says she knows nothing else about Mr. Dobson's fall. She was not there when the accident occurred and has no personal knowledge about anything related to it.

Second, I confirmed that Dr. Lena Miller died of a heart attack on November 17, 2022. Her obituary was in the Centralia *Herald*, and I found her death certificate in the County Office of Vital Records. I put a copy of the death certificate in the client's file.

I reviewed the deed for the building on Elm Street occupied by Brooks Real Estate Agency and confirmed that it is owned by Brooks Real Estate Agency. And, finally, I reviewed the insurance policy for the building. The property insurance on the building explicitly covers sidewalks adjacent to the property.

DEPOSITION OF DR. LENA MILLER

Taken on September 22, 2022, in the case of PETER DOBSON v. CITY OF BRISTOL

Plaintiff Peter Dobson is represented by attorney Robert Chen. Defendant City of Bristol is represented by city attorney Tanya Lopez.

* * * * *

Att'y Lopez: Dr. Miller, did you examine Mr. Dobson at the hospital on the day of the accident and were you able to review his medical records in preparation for this deposition?

Dr. Miller: Yes. I'm not his regular doctor, but I was on call at the emergency room when he was admitted.

Lopez: What was your diagnosis at the time you examined him?

Miller: Based on the X-rays and MRI imaging, I determined that Mr. Dobson had broken his arm and his leg. But they were both hairline fractures.

Lopez: What does that mean?

Miller: It means that he should not have been incapacitated for very long. He should have been able to walk on the leg after a couple of weeks with a walking cast. His arm might have been in a sling but for no more than six weeks. Depending on his job, he would have needed to be off work for no more than six weeks.

Lopez: What about the concussion?

Miller: It didn't look that serious. He should have been fully recovered in less than a week.

Lopez: What about pain and suffering?

Miller: My observation is that he was not in that much pain. He should have been fine with some ibuprofen and rest.

Lopez: Do you think he is asking for more time away from work than he really needs?

Miller: In my opinion, yes.

[Direct examination on adequacy of accommodations omitted.]

Lopez: I have no further questions. Any cross-examination?

Att'y Chen: Dr. Miller, you have been sued for malpractice on five occasions, is that not true?

Dr. Miller: Yes—I settled all of them only because my insurance company told me to.

[Cross-examination by Att'y Chen on adequacy of accommodations omitted.]

Att'y Chen: Thank you, Dr. Miller. I will ask the rest of my questions at trial.

FRANKLIN RULES OF EVIDENCE

Rule 403: Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Rule 411: Liability Insurance

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

ADVISORY COMMITTEE NOTES TO FRANKLIN RULE OF EVIDENCE 411

The courts have with substantial unanimity rejected evidence of liability insurance for the purpose of proving fault, and absence of liability insurance as proof of lack of fault. At best the inference of fault from the fact of insurance coverage is a tenuous one, as is its converse. More important, no doubt, has been the feeling that knowledge of the presence or absence of liability insurance would induce juries to decide cases on improper grounds.

The second sentence points out the limits of the rule, using well established illustrations to the general exclusion. Those are only illustrations. If relevant, evidence of insurance may be admitted to prove any fact other than fault or lack of fault. A court may admit evidence if offered for a permissible purpose. It remains the case that if offered for an impermissible purpose, it must be excluded, and if offered for a purpose not barred by the Rule, its admissibility remains governed by the general principles of Rules 402 and 403.

Rule 801: Definitions; Exclusions from Hearsay

(a) Statement. "Statement" means a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) Declarant. "Declarant" means the person who made the statement.

(c) Hearsay. "Hearsay" means a statement that:

(1) the declarant does not make while testifying at the current trial or hearing; and

(2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) Statements That Are Not Hearsay. A statement that meets the following conditions is not hearsay:

. . .

(2) ***An Opposing Party's Statement*****.** The statement is offered against an opposing party and:

(A) was made by the party in an individual or representative capacity;

(B) is one the party manifested that it adopted or believed to be true;

(C) was made by a person whom the party authorized to make a statement on the subject;

(D) was made by the party's agent or employee on a matter within the scope of that relationship and while it existed; or

(E) was made by the party's coconspirator during and in furtherance of the conspiracy.

Rule 804: Hearsay Exceptions; Declarant Unavailable

(a) Criteria for Being Unavailable. A declarant is considered to be unavailable as a witness if the declarant:

. . .

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; . . .

(b) The Exceptions. The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

(1) ***Former Testimony*****.** Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had—or, in a civil case, whose predecessor in interest had—an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

Reed v. Lakeview Advisers LLC
Franklin Court of Appeal (2015)

Margaret Reed sued her former employer, Lakeview Advisers LLC, alleging age discrimination under the Franklin Age Discrimination Act. Reed prevailed at trial. At that trial, the court had sustained Reed's objection to the admissibility of a purported admission by silence that Lakeview sought to introduce. We hold that the trial court abused its discretion in excluding the testimony.

Reed was 60 years old and had been employed by Lakeview for 20 years as a marketing analyst. On May 1, 2010, she received a notice that her employment was being terminated. She was told to report to the Human Resources Department (HR) to learn the specifics of the termination. Reed went to HR and spoke with its director, Beth Adler. Adler told Reed that she was being fired for failing to meet the requirements of her employment, specifically, that she was often late to work and did not complete projects on time. Adler concluded by saying to Reed: "You know that you weren't doing your job competently." When Adler made these statements to Reed, Reed did not respond.

Franklin Rule of Evidence 801(d)(2) – Hearsay and acquiescence by silence

This case turns on a provision of Franklin Rule of Evidence 801(d)(2), which excludes from the definition of hearsay any statement made by a party and offered by an opposing party. Included within the definition of a statement made by a party is a statement that "the party manifested that it adopted or believed to be true." Courts reviewing this language have included within its ambit statements that were "admitted by silence." In other words if, through silence, a party acquiesces in a statement made by another, that statement may be introduced against the party. For example, in *Hill v. Hill* (Fr. Sup. Ct. 2010), a wife and her husband were having a serious conversation about their marriage. In the course of that conversation, the wife said to the husband: "You are having an affair." The husband failed to respond to that statement. The trial court, as well as our Supreme Court, determined that the husband had acquiesced by silence in the statement. Once a party acquiesces by silence in a statement, that statement can be introduced against that party by any opposing party as if it were a statement made directly by the party.

Four preconditions must be met for a statement to be acquiesced by silence: (1) the party must have heard the statement, (2) the party must have understood the statement, (3) the circumstances must be such that a person in the party's position would

likely have responded if the statement were not true, and (4) the party must not have responded.

Context is exceedingly important in determining whether a party acquiesced to a statement by silence. The court should consider carefully the circumstances surrounding the statement. Thus in *State v. Patel* (Fr. Ct. App. 2010), this court considered whether a statement made to the defendant was acquiesced to by silence. The court ruled that the statement would not be deemed admitted because it was unclear whether the defendant had heard and understood the statement, which was made at a loud party attended by over 100 people. More importantly, at a loud social event with many persons present, someone in the defendant's position would not necessarily be expected to respond.

By contrast, the statements here were made during a serious conversation. Reed heard Adler's statements, and we have every reason to believe that Reed understood them. The statements were made in an office setting, where serious matters were discussed. Indeed, Reed could expect that the reason for her termination would be discussed. One in Reed's situation, who felt that she had been terminated unlawfully, would have responded to the statements made by Adler—that Reed was being terminated for failing to meet the requirements of her employment, that Reed was often late to work and did not complete projects on time, and that Reed knew that she was not performing her job competently. Consequently, we determine that these statements are admissible as non-hearsay. Adler's statements were admissible through silence against Reed. Accordingly, the trial court erred in excluding them from evidence.

Franklin Rule of Evidence 403—Balancing unfair prejudice vs. probative value

In the alternative, Reed argues that the statements should be excluded under Franklin Rule of Evidence 403, which allows a judge to exclude evidence if the danger of unfair prejudice substantially outweighs the probative value of that evidence. Rule 403 applies to every piece of evidence proffered at trial, except those to which some other balancing test applies. "Probative value" is defined as the ability of a piece of evidence to make a relevant disputed point more or less likely to be true. Reed's claim is that the admission by silence will be unfairly prejudicial to her case. Every piece of evidence may be prejudicial to the party against whom it is admitted. Rule 403 allows the judge to prohibit only the use of evidence that is *unfairly* prejudicial, that is, evidence that allows or encourages the jury to reach a verdict based on an impermissible ground or to make an

impermissible inference. The Advisory Committee Note to Rule 403 states: "Exclusion for risk of unfair prejudice, confusion of issues, misleading the jury, or waste of time, all find ample support in the authorities. 'Unfair prejudice' within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." (In this jurisdiction, courts may rely on the Advisory Committee Notes in analyzing the Rules of Evidence. *Smith v. State* (Fr. Sup. Ct. 2000)). In this case, allowing the admission by silence into evidence had a tendency to weaken Reed's case. But that is not the type of prejudice with which Rule 403 is concerned. Moreover, given the circumstances under which the statement was made, the probative value of the interaction between Reed and the HR director is relatively high. The trial court abused its discretion in excluding the evidence.

Reversed.

Thomas v. WellSpring Pharmaceutical Co.
Franklin Court of Appeal (2017)

In 2011, Lynn Thomas sued WellSpring Pharmaceutical Co., claiming that she had been harmed by an over-the-counter cold remedy it produced called ExitCold. Thomas was one of about 100 persons who used ExitCold, experienced severe side effects, and thereafter sued WellSpring. Several of the "ExitCold cases" have gone to trial. In the case at bar, WellSpring filed a motion *in limine* seeking to admit the testimony of Dr. Todd Shaw from a trial in one of the other ExitCold cases. The plaintiff in that case was Jason Murphy. The trial court granted WellSpring's motion *in limine*. The jury found in WellSpring's favor, and Thomas appealed. We affirm.

To admit former testimony under Franklin Rule of Evidence 804(b)(1), the proponent must satisfy three requirements of the rule: (1) the witness must be currently unavailable; (2) the former testimony was given as a witness at a trial, hearing, or lawful deposition; and (3) the testimony is being offered against a party who had—or in a civil case, whose predecessor in interest had—a similar motive and opportunity to develop the challenged testimony at the earlier proceeding. *State v. Holmes* (Fr. Sup. Ct. 2009). Here, there is no dispute that Dr. Shaw, now deceased, is unavailable. Likewise, there is no dispute that Dr. Shaw's testimony was given at a trial, hearing, or lawful deposition.

Obviously, if the party against whom the evidence is now being admitted is the *same* party against whom the evidence was previously introduced, the only question is whether the party had the same opportunity and motive to develop the testimony.

Here, however, the party against whom the testimony is being introduced (Thomas) is *not* the same party against whom the testimony was previously introduced (Murphy). WellSpring and Thomas vigorously dispute whether Murphy, who is not a participant in the *Thomas v. WellSpring* lawsuit, is properly considered a "predecessor in interest" who had a "similar motive to develop" Dr. Shaw's testimony in the prior proceeding. Thomas argues that Murphy was not a "predecessor in interest" to her and that there was no agency relationship between the two plaintiffs. Thomas also argues that Murphy did not have a similar motive when his case was tried to fully develop facts relating to Thomas's injuries when Dr. Shaw testified.

A. Predecessor in interest

No Franklin court has explicitly taken the position that an agency relationship is a prerequisite to qualifying as a "predecessor in interest" for purposes of Rule 804(b)(1). However, there must be some similarity of interest between the party in the instant case against whom the testimony is sought to be introduced and the party against whom the testimony was introduced in the prior matter. Any other interpretation would nullify the language of Rule 804(b)(1) requiring that there be a "predecessor in interest." *Jacobs v. Klein* (Fr. Sup. Ct. 2002). Franklin courts have not limited the relationship between the parties to the literal meaning of "predecessor in interest" but have required there to be a similarity of interest. Here the parties (Thomas and Murphy) are both suing WellSpring over the side effects caused by ExitCold. The claims for relief are identical. We therefore hold that the introduction of Dr. Shaw's testimony meets the "predecessor in interest" requirement of 804(b)(1).

B. Similar opportunity and motive to develop testimony

Regardless of whether the party against whom the testimony is now being introduced is the same or a different party, the party against whom the evidence was previously introduced must have had "a similar, not necessarily an identical, motive to develop the adverse testimony in the prior proceeding." *Jacobs*. In assessing "similar motive," the court applies a two-part test: "whether the questioner is on the same side of the same issue at both proceedings, and whether the questioner had a substantially similar interest in asserting that side of the issue." *Id.*

As to opportunity, the question is whether the party in the earlier case had the opportunity to develop the testimony—not whether the party did indeed develop the testimony. Indeed, in *State v. Williams* (Fr. Sup. Ct. 2013), a criminal case, the Franklin Supreme Court allowed the admission of the deposition testimony of an unavailable witness from a related civil case. The same counsel represented the defendant in both the criminal and civil cases. The court held that there was no indication that the defendant was denied the opportunity to attempt to undermine the witness or his testimony by asking any questions defense counsel saw fit to ask during the deposition. As to whether the deposition testimony was developed with a similar motive, the court found that, even if the primary motive of a discovery deposition is to obtain a preview of a witness's testimony, this does not exclude the need to understand how the witness's story and credibility might be attacked, that a prudent attorney would explore such avenues, and that the defense

counsel did just that by spending considerable time impeaching the witness and exploring his motive. Further, the defendant did not explain how he was prevented from fully pursuing lines of questioning or how they would have been pursued any differently at trial.

This is a much easier case than *Williams* because the former testimony occurred at a trial, not a deposition. Dr. Shaw's testimony related to the side effects of ExitCold. The testimony was general—it was not directed at the side effects experienced by any particular individual. Murphy, the plaintiff in that proceeding, had the opportunity and similar motive to cross-examine Dr. Shaw, as the issue in the litigation was the same as plaintiff Thomas has here: whether ExitCold caused debilitating side effects. Indeed, in the previous trial, Murphy's attorney engaged in a robust cross-examination of Dr. Shaw on that issue.

C. Rule 403

The plaintiff further argues that, even if the evidence is admissible under Rule 804(b)(1), the trial court should have excluded it under Franklin Rule of Evidence 403 because the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. We believe that the probative value of Dr. Shaw's testimony is extremely high and that there is very little danger of unfair prejudice in this case.

For these reasons we conclude that the trial court did not abuse its discretion in granting the motion *in limine* and allowing the admission of Dr. Shaw's prior testimony.

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.