MARYLAND STATE BOARD OF LAW EXAMINERS
Representative Good Answers for the July 2013 Multistate Performance Test

The MPT Question administered by the State Board of Law Examiners as a part of the July 2013 Maryland General Bar Examination was ***Monroe v. Franklin Flags Amusement Park.*** Two representative good answers selected by the Board are included here, beginning at page 2. **The representative good answers are formatted with uniform tabs and line spacing for ease of reading, but are not edited for content, grammar or spelling.**

The National Conference of Bar Examiners (NCBE) publishes the MPT Question and the "Point Sheet" describing the issues and the discussion expected in a successful response to the MPT Question. The "Point Sheet" is analogous to the Board's Analysis prepared by the State Board of Law Examiners for each of its essay questions. The NCBE does not permit the Board to publish the MPT Question or the "point sheet" on the Board's website. However, the NCBE does offer the MPT Question and "point sheet" for sale on its website (www.ncbex2.org/catalog/).

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REPRESENTATIVE GOOD ANSWER 1

Teasdale, Gottlieb & Lasparri, P.C.

To: Rick lasparri
From: [APPLICANT]
Date: July 30, 2013
Re: Monroe v. Franklin Flags Amusement Park

- **I. Caption**
- **II. Statement of Facts**
- **III. Legal Argument**

The court should grant the defendant's motion for summary judgment when there is no genuine dispute of material fact and the defendant is entitled to judgment as a matter of law. *Larson v. Franklin High Boosters Club, Inc.,* at 11. In order to make out a claim for negligence the plaintiff must make out allege that the defendant (1) owed a duty to the plaintiff (2) breached that duty (3) this breach of the defendant's duty caused the plaintiff harm and (4) the plaintiff has suffered damages as a result. The defendant's owe a duty to the plaintiff to act reasonably under the circumstances. The defendant Franklin Flags Amusement Park is entitled to summary judgment in this case because the plaintiff has failed to raise a dispute of material fact showing that the defendant failed to meet its duty.

(A) The defendant did not breach a duty of care when the plaintiff broke her nose because the plaintiff had the anticipation of being startled and reacted in a bizarre and unpredictable way when she ran around the room and bumped into a wall and the defendant provided personnel and supervision who were authorized and prepared to offer assistance.

This Court appropriately recognized in *Larson* that "Patrons at an event which is destined to be frightening are expected to be surprised." *Larson* at 12. The plaintiff here "accepted the rules of the game" when she attended the haunted house. *Larson* at 13. A plaintiff's claim that a proprietor was negligent purely in admitting the plaintiff into an establishment such as a haunted house must fail. *Larson* at 13. Although assumption of the risk is not a valid defense in Franklin, "a plaintiff's knowledge and conduct may be considered in determining whether, under the particular circumstances at issue, the defendant breached a duty to the plaintiff." *Larson* at footnote 1. In the context of a haunted house, patrons are expected to be surprised by the exhibits. Thus, an operator does not have a duty to guard against patrons reacting in a bizarre and unpredictable way. She was in a haunted house and therefore had the expectation that

individuals would try to scare her. Naturally, she was frightened when a zombie jumped out at her in the last room. However, the plaintiff reacted to this in a bizarre way when, instead of moving towards the illuminated "exit" sign, she "ran like crazy" into a wall. Monroe Deposition at 3-4.

The defendant does owe a duty to invitees to ensure that it has used reasonable care in inspecting and maintaining the premises and equipment and they are reasonably safe for the purposes intended. In addition, operators have an obligation to provide adequate personnel and supervision for their establishment. *Larson* at 13. In *Costello v. Shadowland Amusements*, and amusement park was liable for injuries caused to a plaintiff who tripped over a bench that was haphazardly placed in the middle of the room. This case is distinguishable from *Costello* because there was no hazardous condition. See *Costello* at 15. There is no dispute of fact that the defendant adequately maintained the premises and provided adequate supervision. The plaintiff admits that there was an illuminated exit sign in the room and does not allege that she was injured by any strange or misplaced equipment --- rather, she was injured by running into a wall. Monroe deposition at 3. Unlike *Costello,* the defendants actions here are consistent with the defendants actions in *Parker v. Muir*, in which the court found that the mere presence of rocks in a path (like the presence of walls in a room here) could not meet the standard for imposing liability. In addition, the defendant provided for several individuals to be stationed throughout the attraction to assist patrons and have a doctor present at all times. Matson Deposition at 7-8. There was such personnel in the room where the plaintiff was injured, when the personnel tried to offer assistance, the plaintiff instead chose to run out.

A proprietor cannot be n absolute guarantor for a patron's safety. To render the defendant liable under these circumstances would be to hold the defendant absolutely liable for injuries that take place on its premises. This is not the legal standard in franklin. Because the plaintiff had an expectation of what she would encounter in the haunted house and reacted in a bizarre and unpredictable way despite the defendants maintaining a room free of obstacles with proper supervision, there is not dispute of fact that the defendant met its duty of care to the plaintiff.

(B) <u>The defendant did not breach its duty of care when the plaintiff slipped on the muddy graveyard path because the plaintiff had knowledge of the ground's wet condition and the defendant took precautions to prevent injury by lighting the graveyard path.</u>

The defendant has a duty to invitees to maintain its premises and prevent unreasonably safe conditions. The plaintiff admits that there were lights along the pathway in the graveyard that she was aware of. Monroe Deposition at 6. In addition, the plaintiff admitted that it had been raining for three days preceding her trip to the haunted house. There is no dispute that the defendant took steps to ensure that the conditions of the graveyard were reasonably safe. In

Parker v. Muir, the court held that a proprietor is not liable for natural conditions, such as rocks on a path, that should not cause injury to a prudent person under the circumstances. This is especially applicable when, as in *Parker,* the plaintiff knew the condition of the land. As in *Parker,* a reasonable person would expect that the ground outside would be wet after three days of rain. As in *Parker*, the plaintiff admitted knowledge of the wet condition. Monroe Deposition at 6. Unlike *Costello*, there was no additional hazardous condition placed in the graveyard by the defendant that caused the plaintiff's injuries. Rather, the defendant placed lights on the path as a precautionary safeguard. Because the plaintiff was aware of the natural conditions that posed a hazard and a reasonable person would use ordinary care to walk carefully on such a path, there is no dispute that the defendant met its duty of care and is not responsible for the plaintiffs fall in the graveyard.

(C) The defendant did not breach its duty of care to the plaintiff when the plaintiff fell in the parking lot because the plaintiff voluntarily entered a haunted attraction with the expectation of being surprised and startled.

While a defendant may be liable for surprising a plaintiff under unexpected circumstances, "on Halloween, the circumstances are different." *Larson* at 13. The duty that a defendant owes to the plaintiff is determined by the particular circumstances at issue. *Larson* at 12. As stated in *Larson* "Patrons at an event which is designated to be frightening are expected to be surprised, startled, and scared by the exhibits." Though the plaintiff's injury in the parking lot happened outside of the haunted house, the plaintiff was still on the premises of the haunted attraction on Halloween and therefore had an ongoing expectation of being frightened. The defendant extended precautionary measures in the parking lot by providing personnel to assist the plaintiff, and, as was the dispute of fact in *Larson*, these personnel were instructed on how to help injured patrons. While the defendant also has a duty to ensure adequate personnel and supervision, and therefore may have breached its duty if it knew it was dealing with a patron who had been injured, in this case the plaintiff did not ask for help or alert the proprietor.

The defendant is entitled to summary judgment as a matter of law because there is no dispute of fact that the plaintiff was aware of the circumstances of being frightened and the defendant did not fail to provide appropriate safety precautions.

REPRESENTATIVE ANSWER 2

I. Caption
[omitted]

II. Statement of Facts
[omitted]

III. Legal Argument

A. Introduction

A court will grant a motion for summary judgment when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. A material fact is a fact that would influence the outcome of the controversy (*Larson v. Franklin High Boosters Club, Inc*., Fr. Sup. Ct (2002)). In this case, the claims alleged by Ms. Monroe do not present a genuine dispute of material fact, which would influence the outcome of the controversy and, therefore, the Court should grant out this motion for summary judgment in favor of the defendant, Franklin Flags.

B. Because Franklin Flags had no duty not to frighten Ms. Monroe and took adequate measures to ensure that the haunted house had not only adequate physical facilities, but also adequate personnel and supervision for patrons entering the establishment, Ms. Monroe does not have a valid claim for negligence regarding the incident of running into the wall and breaking her nose.

Whether Ms. Monroe has a valid claim of negligence against Franklin Flags for her injuries which resulted from running into a wall inside the haunted house depend on whether she can establish all of the elements required for a negligence claim in this jurisdiction, In Franklin, a valid claim of negligence requires that the plaintiff prove (1) that there is a specific duty imposed on the defendant under the particular circumstances at issue, (2) that there was a breach of that duty that resulted in injury or loss, and that (3) that the risk which resulted in the injury or loss was encompassed within the scope of the protection extended by the imposition of that duty. (*Larson v. Franklin*) The Court in *Larson* explained that attendees of a haunted house "must realize that the very purpose of the attraction is to cause them to react in bizarre, frightened, or unpredictable ways." (*Larson*, citing *Dozer*) It explained that in other circumstances there may be a duty not to frighten others, but in the circumstances of a haunted house this is not the case. Therefore, Franklin Flags had no duty not to scare Ms. Monroe. The injuries in this claim arose when Ms. Monroe was frightened by a haunted house employee and "took four or five steps, running like crazy, ran into the wall face-first, and knocked [herself] silly]." This incident was not the product of poor conditions in the haunted house, but rather the very type of "bizarre, frightened, and unpredictable " response discussed in *Larson*.

The Court in *Larson* also stated that there is duty in operating a haunted house to ensure that there are not only adequate physical facilities but also adequate personnel and supervision for patrons entering the establishment. This requires that the "role-playing individuals be adequately instructed should some unfortunate event occur which injured a patron." In *Larson*, the Court held that the employees were not adequately instructed, but that is not the case with Franklin Flags employees. Here, as stated by Ms. Brewster in her deposition, the employees were instructed that if a patron needed help of any sort they were to "call the doctor on duty in the main office." In the case of her running into the wall in the last room of the haunted house, where Ms. Monroe alleges her injuries are the result of being frightened by the employees, the employees were adequately instructed and met their duty under *Larson*. In face, she offered assistance, but before she could be of assistance, Ms. Monroe and her husband ran away. Ms. Monroe admitted in her deposition that she did not ask for help. Ms. Brewster did not act "unreasonably under the circumstances vis-à-vis the plaintiff."

In addition, the physical conditions in the haunted house were not a breach of the defendant's duty towards Ms. Monroe. In *Costello v. Shadowland Amusements, Inc*., Fr. Sup. Ct (2007), the Court held that a different amusement park did not act reasonably when it was obviously aware of the dim lighting, placement of a bench on which the plaintiff tripped, and the hazard that it might present. The Court in Costello, citing *Parker v. Muir* (Fr. Sup. Ct. 2005) said that the factors to be considered are the past accident history of the condition in question and the degree to which the danger may be observed by a potential victim. Here, Ms. Monroe ran into a wall. Although the room was dimly lit, that is the case with any haunted house and a wall is not a hazardous condition. In addition, the fact that Ms. Monroe took 4-5 steps before hitting the wall shows that there pathway was not too narrow for a reasonably prudent patron to react to the frightening scenes without causing injury to herself. Additionally, there is no indication that there had been any reported incidents of patrons running into that wall in the past. Since it was not a dangerous condition, it does not constitute a breach of Franklin Flags' duty.

C. since the graveyard was lit and Ms. Monroe was aware that it had been raining, she has no claim for negligence against Franklin Flags resulting from her injuries after tripping in a mud puddle.

Whether M. Monroe has a claim against Franklin Flags in regards to her tripping in a mud puddle in the mock graveyard also depends on whether she can satisfy the elements of negligence set out in *Larson*. Here, since there was no employee involved in frightening Ms. Monroe, the only questions involved are whether there was an "unreasonably dangerous condition" and whether there is adequate personnel and supervision for patrons entering the establishment.

As mentioned above, an unreasonably dangerous condition will be determined by such factors as whether there is past accident history of the condition in question and the degree to which the danger may be observed by a potential victim. In addition, the condition must be of

such a nature as to constitute a danger that would reasonably be expected to cause injury to a prudent person using ordinary care under the circumstances. (Parker) Ms. Monroe admitted in her deposition that she was aware that it had been raining a lot and that there were little lights along the pathway. In addition, there were no role-playing employees in the graveyard for the purpose of frightening patrons. Since there was no one to frighten her and she was aware that it would be wet outside, Ms. Monroe's injuries were not a result of any negligence by Franklin flags. A reasonably prudent person in the plaintiff's shoes would probably not have slipped on the mud puddle with the knowledge that it had been raining and with the lighting illuminating the pathway so that she could see where she was going. For this reason, Ms. Monroe's injury to her ankle from slipping in the mud puddle was not a result of any negligence by Franklin Flags.

Although Franklin Flags did not have an employee present to assist with patrons who might be injured in this area, there was no reason to believe that one was needed. Mr. Matson explained in his deposition that there was not employee stationed at the graveyard because there's "nothing going on there except that patrons are walking through it." Although *Larson* requires that employees be adequately trained to assist patrons who may need assistance, Franklin Flags acted reasonably in not having an employee stationed in the graveyard. Since no role-playing employees were there to frighten the patrons, this part of the attraction (the graveyard) was no different than any other part of the park outside the haunted house and Franklin Flags is not required to have employees stationed throughout the park for any injury that may occur when a patron is walking through.

Since Franklin Flags did not breach any duty that it owed to Ms. Monroe, the Court should grant the motion for summary judgment in favor of the defendant in regards to Ms. Monroe's second claim of negligence dealing with the injuries she sustained after slipping in the graveyard.

D. Because the parking lot was lighted and the employee stationed there was instructed to assist if a patron needed help, Franklin Flags has not breached any duty owed to Ms. Monroe in regards to her claim or negligence regarding her broken wrist from falling in the parking lot.

Similar to the first two claims, in order to succeed on a claim of negligence against Franklin Flags for the injuries that she sustained in the parking lot at Franklin Flags, Ms. Monroe must show that the defendant breached a duty owed to her. Again, as provided in *Larson,* an amusement park does not owe a patron a duty not to frighten, but does owe a duty to act reasonably vis-à-vis the patron, have staff on hand to aid a patron who may need assistance, and protect against unreasonable dangerous conditions.

In this case, Ms. Monroe stated herself that the parking lot was "lit by lamp posts" and that she could "see okay". She did not assert any claims that there were any physically

dangerous conditions outside leading her to fall, only that as a result of being frightened, she fell and injured herself. While and amusement park does not have a duty not to frighten when a patron willingly participates in a haunted house, Ms. Monroe may assert that the parking lot was not part of the haunted house. This argument lacks merit, however, because the purpose of a haunted house is to catch the patrons off-guard and frighten them. In order to complete that intended effect, Franklin Flags placed an employee in the parking lot. Ms. Monroe cannot, therefore, claim that there was a duty not to frighten her in the parking lot.

In addition, as stated in Mr. Matson's deposition, the employee stationed in the parking lot was also instructed to assist in helping patrons who may need help and to call the doctor in the main office if his assistance was needed. Ms. Monroe admitted that the employee in the parking lot was coming over to her and her husband but that they told him to go away and immediately left the amusement park. Since the employee was adequately instructed and acting as eh was instructed by coming over to them to offer assistance, Franklin Flags has not breached the duty laid out in *Larson* requiring it to have adequate personnel and supervision for patrons entering the establishment.

Therefore, since there was not dangerous condition present, there was no duty not to frighten Ms. Monroe, and the employee stationed in the parking lot was adequately instructed to assist patrons needing help, Franklin Flags has not breached any duty owed to Ms. Monroe regarding her falling and breaking her wrist in the parking lot of the amusement park.

E. Conclusion

Since Ms. Monroe has not satisfied the elements of negligence on any of the three claims of negligence she asserts against Franklin Flags, the Court should grant this motion for summary judgment in favor of the defendant, Franklin flags because there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law