

# What is the MPT and Why Does it Matter?

<p><b>FIRST MPT 1.5 HOURS</b></p> <p><b>SECOND MPT 1.5 HOURS</b></p> <p><b><u>20%</u></b></p>	<p>0 – 100 Questions <b><u>25%</u></b></p> <p>1- EVIDENCE 2- REAL PROPERTY 3- CRIMINAL LAW AND PROCEDURE 4- CONSTITUTIONAL LAW 5- CIVIL PROCEDURE 6- TORTS 7- CONTRACTS</p>
<p><b>MEE – 6 ESSAYS <b><u>30%</u></b></b></p> <p><b>The seven subjects of the MBE plus:</b></p> <p>AGENCY AND PARTNERSHIPS TRUST WILLS AND ESTATES CORPORATIONS FAMILY LAW CONFLICT OF LAWS SECURED TRANSACTION</p>	<p>100 – 200 Questions <b><u>25%</u></b></p> <p>1- EVIDENCE 2- REAL PROPERTY 3- CRIMINAL LAW AND PROCEDURE 4- CONSTITUTIONAL LAW 5- CIVIL PROCEDURE 6- TORTS 7- CONTRACTS</p>

# PARTS OF THE MPT

1. MPT Instructions

2. File

- “TASK MEMO”
  - Most important part of the MPT which is sometimes followed by a “FORMAT MEMO” that gives instructions on how to draft a document.
  - Other facts and law, some of which are irrelevant.

3. Library

- Contains the legal authorities which may be real, modified or written solely for the MPT.

# KEYS TO SUCCESS ON THE MPT

## 1. Know the Frequently Tested Documents

1. Memo to Senior Attorney

2. Brief

3. Opinion Letter to Client

4. Letter to Opposing Counsel

5. Also recently tested:

Closing Arguments and Complaint, Drafting Legislation, Revising a Contract, Bench Memo, Re-drafting Will Provisions

# KEYS TO SUCCESS ON THE MPT Cont'd

## 2. Know the Principal Skills Tested

a. Legal Analysis: identify legal rules and apply them to a set of facts.

Legal principles are usually very straightforward. The real task is to review the LIBRARY to identify the elements of claim/defense, and then review the FILE to determine what facts are relevant to those elements.

b. Factual Analysis: distinguish between relevant and irrelevant facts and determine whether additional facts are necessary.

### **Two Types of Factual Analysis**

1. **Fact Sorting**: identify facts in FILE needed to establish claim or defense. LIBRARY provides the information you need to compile a list of the elements or factors of a claim.
2. **Fact Gathering**: tests ability to see what further investigation is needed to find evidence in support of particular theories or claims and the possible sources of that information. People, documents, or physical evidence.

# KEYS TO SUCCESS, CONT'D

## 3. Prepare a Well-Organized Document


a. Follow Task Memo and Format Memo (a/k/a follow directions!)

b. IRAC/CIRAC/CRAC

c. Use signals: headings, subheadings, topic sentences and focused sentences.

## 4. Manage Your Time!

90 minutes total: allow 45 minutes to review materials and organize answer and 45 minutes to draft it.



# SUGGESTED FORMAT FOR A LEGAL ANALYSIS: IRAC/CIRAC/CRACC

**Issue/Conclusion:** State your conclusion or state the issue.

\* If you are writing a brief, your subheading is your conclusion.

\* If you are preparing an objective memo, you may state the conclusion or state the issue.

**Rule:** State controlling principles of law in 1-2 sentences. Cite to and, if appropriate, discuss the sources in the Library.

**Application**

**Case Comparisons**

**Conclude**



# SIGNALING THE STRUCTURE OF THE ANALYSIS TO THE GRADER

**Conclusion:** Daniel's Statement that Price's timing belt was going to fail was fraudulent.

**Rule:** In *Franklin*, a defendant is liable for fraud when . . . .

**Elaboration of the Rule:** For example, in *Smith v. Jones*, the court held that the defendant was liable for fraud when . . . .

**Application:** HERE or *Applying this rule to our case* OR *The other elements of fraud are* OR *Furthermore* . . .

**Case Comparison:** *Unlike (Like) the defendant in the Jones case* . . . .

**Conclusion:** *Therefore* . . . . .



# STRATEGIES FOR PREPARING & TAKING THE MPT

- A. Tone and Audience
  - A. Lawyer vs. Layman
  - B. Objective vs. Persuasive
- B. Suggested Strategy for Success on the MPT
  - A. Preparing for the MPT
    - A. Instructions
    - B. FORMAT MEMOS
    - C. Grader's Point Sheets:  
<http://www.ncbex.org/exams/mpt/preparing/>
    - d. Practice, Practice, Practice



# Taking the MPT: A Six-Step Strategy

**Step 1:** (1 minute) Skim Instructions

**Step 2:** (app. 4-5 mins) Carefully review the TASK MEMO

\* Ask yourself:

- What exactly is my assignment, *i.e.*, what specifically have I been asked to do?
- What skills does this MPT test?
- **How do they want me to organize the assignment?**

\* Do the following:

- Underline the part of the TASK MEMO that tells you what the senior attorney wants you to do. Itemize discreet tasks given.
- If possible, begin to outline the document you have been asked to prepare.

# Six-Step Strategy Cont'd

**Step 3:** (app. 20-25 mins) Extract the Pertinent Legal Principles from the LIBRARY

- A. What's in the library? Cases, statutes, etc.
- B. Why am I reading it?
- C. Is this case relevant or are they testing my ability to discard irrelevant material?
- D. If it is relevant, what do you need from the case?
  - \* elements of a claim
  - \* facts and holding

→ *Usually, there are no subtle issues on the MPT. Resist analyzing non-issues.*

# Six-Step Strategy Cont'd

**Step 4:** (20-25 mins) Identify the Relevant Facts in the Client FILE, Matching Each Fact to the Relevant Element

- \* The FILE is likely to contain superfluous information. Get good at sorting through it.
- \* Match your elements.
- \* Figure out what information is missing and the sources that may lead you to that information.

**Step 5:** (2-3 mins) Review the TASK Memo and make sure your document responds to it.

**Step 6:** (40-45 mins) Prepare the Document.

# In re Nina Briotti

## WHAT DOES THE FORMAT MEMO TELL US TO WRITE?:

- Objective Memo

- Statement of Facts

- Do not prepare one but incorporate relevant facts into your analysis.

- Analysis Section

- Break analysis into its major components offering advice on **three questions** presented in task memo.

- Body of each question presented should analyze applicable legal authority, incorporate relevant facts, and state your conclusion.



# In re Nina Briotti – 3 Questions Presented/Issues

- 1. Under applicable state law, may Briotti lawfully record her telephone conversation with X without informing X that she is doing so?
- 2. Assuming that Briotti could make such a recording lawfully under state law, would doing so without the client's knowledge violate the Rules of Professional Conduct? Please analyze the ethical considerations involved.
- 3. Further assuming that state law would allow Briotti to make such a recording and that doing so would not violate the Rules of Professional Conduct, must she inform X that she is doing so if he asks?

# In re Nina Briotti Library:

- ▶ Franklin Criminal Code §200 (interception) (one-party consent)
- ▶ Olympia Criminal Code §500.4 (interception) (all parties consent)
- ▶ ABA Model Rules of Professional Conduct
  - ▶ Rules 1.6 (Confidentiality) and 8.4 (Misconduct)
- ▶ ABA Standing Committee on Ethics and Professional Responsibility – 01-422, June 24, 2001
- ▶ Excerpts from Franklin Rules of Professional Conduct – Rule 8.4
- ▶ *Shannon v. Spindrift, Inc.*, Olympia District Court (2018) (interceptions/recordings occur where made and . . . .)



# In re Nina Briotti Relevant Facts:

- ▶ Nina Briotti is a lawyer admitted to practice in both Franklin and Olympia and she has consulted our firm for advice.
- ▶ Her office is in Franklin.
- ▶ She is concerned a client of hers might undertake an illegal and criminal action and she wants to record a conversation without his consent or approval as she intends to counsel the client against his possible planned course of action.
- ▶ The client lives in the neighboring state of Olympia and he would speak to Briotti from there.

# In re Nina Briotti Analysis: Possible Headings/Rules – Point 1

## ► 1. May Briotti lawfully record her conversation with X without informing X that the conversation is being recorded?

- \* Olympia Criminal Code (OCC) § 500.4, the “prior consent exception” requires consent from all parties to a communication before it can be recorded lawfully.
- In *Shannon v. Spindrift* (2018), the Olympia District Court held that OCC § 500.4 does not apply when the act of interception takes place outside of Olympia and instead notes that “interceptions and recordings occur where made,” regardless of where each party to the conversation is located.
- Franklin, however, is a “single party consent” state because its applicable criminal statute requires only one party to the communication to provide prior consent to the interception of the conversation. Franklin Criminal Code (FCC) § 200(1)(a).
- Finally, as to which law prevails, in *Shannon*, the court settled the conflict between a “single party consent” state and an “all party consent state” by dismissing the action that was based on Olympia’s “all party consent law” because the defendant recorded the plaintiff during a telephone communication from within the defendant’s “single party consent” state.



# In re Nina Briotti Analysis: Possible Headings/Rules – Point 2

- 2. Even if the recording is legally permitted would recording the call without the client's knowledge or permission violate the Rules of Professional Conduct?
  - \* ABA Opinion 01-422 is instructive as it abandons the previous ABA position that all nonconsensual recordings are inherently deceitful.
  - \* Rule 1.6 generally requires that client information be kept confidential, except in circumstances where a lawyer "reasonably believes [it] necessary" to reveal information. There are two relevant exceptions to this situation . . . .
    - Rule 8.4 of the ABA Model Rules states that it is misconduct to "commit a criminal act that reflects adversely on the lawyer's honesty" or "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." . . . .
      - *a. Briotti's Duty of Loyalty and Confidentiality*
      - *b. Other Methods for Briotti to Memorialize Her Conversations with X*

# In re Nina Briotti Analysis: Possible Headings/Rules – Point 3

- 3. If Briotti were to record the conversation must she inform X of the recording if he inquires?
- In Formal Opinion 01-422, the ABA stated that just because a lawyer may record a conversation with another person without that person's knowledge and consent "does not mean that a lawyer may state falsely that the conversation is not being recorded." This, in turn, may also lead to a violation under Rule 8.4 of the Rules, as noted above, which prohibits conduct involving dishonesty and misrepresentation.

# In re Nina Briotti Analysis: Possible Headings/Rules – Conclusion

- Global Conclusions are great if you have time!!