



# MPT GUIDE - SAMPLE

**NOTE: THIS IS AN EXCERPT OF OUR MPT GUIDE.  
IT CONTAINS THE TABLE OF CONTENTS AS WELL AS AN EXAMPLE OF A BABY MPT.**



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## INTRODUCTION TO THE GUIDE

Our Guide is divided into the following sections:

### **I. GET FAMILIAR WITH THE BASICS**

First, we walk you through the basics. You must familiarize yourself with what the Multistate Performance Test (MPT) is and how to approach different types of tasks; understand what the MPT tests so you can write high-scoring answers; and learn why you should take the MPT seriously.

### **II. Learn How to Format MPT Answers and How to Answer Each Type of MPT Task**

Next, we describe the general structure you should follow in writing persuasive briefs, objective memoranda, letters, and “wildcard” tasks. Learning how to format an MPT answer will increase your MPT score as it will make it readily apparent to the grader that you know what you are doing. It will also increase your confidence on the MPT day. In this section, we also provide you with tips for writing answers to each type of MPT task.

### **III. PRACTICE BABY MPTs**

In this section, we help you put what you have learned about formatting and writing MPT answers into practice. Here, we have four (4) “baby MPTs” that use the same background information but give you different tasks to complete. These “baby MPTs” are shorter than real MPTs. Thus, they give you exposure to the different types of MPT tasks—as well as tips and tricks for completing each type of MPT task—but do not require you to spend 90 minutes per MPT.

### **IV. HOW TO MAKE THE MOST OF YOUR MPT PRACTICE**

Here, we tell you how to practice intelligently and efficiently. This section explains how long you should study for the MPT, how to self-grade MPTs, and how to use point sheets and student answers to achieve a high score.

### **V. BOOST YOUR SCORE**

In this section, we review some last-minute tips for MPTs and also provide you with other resources you can use to increase your MPT score.



## VI. APPENDIX

Here, we describe additional MPT resources that we offer. We also have “fillable” MPT one-sheets for you to practice your formatting.



### III. PRACTICE BABY MPTs

#### A. WHAT IS A BABY MPT?

A “baby MPT” is shorter than a traditional MPT. The file, library, and model answer are all shorter than an actual MPT. Typically, you have 90 minutes to complete an MPT task. A baby MPT task should take half as long. However, there is no need to time yourself as you practice baby MPTs.

We invented the term “baby MPT” as well as the baby MPT tasks below.

A baby MPT has many purposes. The primary goal is to teach you how to do MPTs in a short amount of time so that you are studying as efficiently as possible.

The specific goals of this baby MPT are as follows:

- To get you comfortable with MPTs
- To get you used to the four most common types of MPT tasks
- To help you learn the basics of how to format each task
- To help you learn other important tips for each type of MPT—including how to use the proper tone and how to write for your audience, among others
- To save you time and help you study efficiently for the MPT portion of the exam

Setup of Baby MPT: Below you will find a file and a library to a mock MPT, *Morales v. Elliot*. Then, you will have four (4) different task memos corresponding to the four (4) most common tasks on the MPT (persuasive brief, objective memorandum, demand letter, opinion letter).

Directions: Read the file and the library. Then, read the task memos below. Each task memo will set forth a different task. Try jotting down an answer to the MPT tasks, and then check your answer against the model answer.

Note: We feature “tips” in **blue font** throughout the baby MPT file, library, and MPT answers. We recommend you complete the tasks, check your answers, and then try some real MPTs to see how you do!



## THE BASIC SETUP OF AN MPT—THE FILE (WITH THE TASK MEMO) AND THE LIBRARY

*Morales v. Elliot*

### FILE:

The first set of documents in your MPT is the file. This contains the task memo as well as different documents that evidence the facts of the case.

**Task Memo:** The first document in the file is a task memo, which will tell you exactly what to do. This is an abbreviated task memo. You will see different types of task memos below.

To: Examinee  
From: Partner  
Date: July 24, 2018  
Re: Morales v. Elliot

John Elliot hired a person named Miguel Morales to work on his farm. Mr. Morales worked on Mr. Elliot's farm in Franklin, took care of the garden, and did other tasks. He was hired and paid as an independent contractor. Recently, he was chopping down trees (with appropriate safety gear) when a tree fell on him and rendered him disabled. Here, the issue is whether Mr. Morales was an independent contractor or employee.... **(Then the task memo will tell you what to do. Examples are below!)**

### Sample time sheet with hours

Monday: 10:00 AM - 4:00 PM  
Tuesday: 10:00 AM - 4:00 PM  
Wednesday: 10:00 AM - 4:00 PM  
Thursday: 10:00 AM - 4:00 PM  
Total hours: 24

### Client interview

Questions were posed by an associate attorney. Mr. Elliot provided answers.

Q: How long has Mr. Morales worked for you?

A: Two years.

Q: What kinds of tasks does he do?

A: He does odd jobs around the farm. He gardens, keeps up the yard, landscapes. Recently, he started cutting down trees, and that is how he was injured.

Q: Do you assign him tasks?



- A: His job generally is to keep up the farm. I usually tell him what to do and when it should be done by. Occasionally he has ideas of his own.
- Q: Who chooses the hours?
- A: He does.
- Q: Do you have a contract?
- A: Nothing in writing. We just agreed to the pay, and I told him he could expect about 20 hours a week. So far, he works about 20-24 hours a week.
- Q: How was he paid?
- A: He was paid in cash on a biweekly basis.
- Q: Did you hire him as an employee or independent contractor?
- A: We both agreed he would be an independent contractor.
- Q: Does he work anywhere else?
- A: Not that I know of. I know that he frequently puts up ads on Craigslist and other places. However, since he works for me most days and because he is the primary caretaker for his children and cannot work after school hours, I don't believe he gets any jobs that way.
- Q: Does he bring his own materials to the job site or do you provide him with equipment?
- A: He brings much of the tools and equipment to the job site. He has a tractor, toolbox, and safety gear. I do not believe we have provided him with any tools.

### **LIBRARY:**

**The library contains the law. It will be composed of cases, statutes, or a combination of cases and statutes. Occasionally, the library will contain secondary resources as well such as journal articles.**

### **Franklin Workers' Compensation Act**

#### **Article 3 § 14**

- (a) Five factors to determine if someone is an employee or independent contractor are as follows:
- (1) whether the employer or worker supplies the tools;
  - (2) the length of time for which the person is employed;
  - (3) control exercised by the employer;
  - (4) whether the worker regularly works for others or solely works for the employer; and
  - (5) whether the worker was hired as an employee or independent contractor.

**(Note: The following cases are bare-bones excerpts—normally, a case would take up a few pages.)**

#### ***Smith v. Workers' Compensation Appeal Board***

Franklin Court of Appeal (2015)



Smith worked part-time on a regular basis for his employer, JD Construction, when he was injured while he was lifting heavy boxes. At the time of the injury, Smith had worked for one year for JD Construction. Here, we find that Smith was an independent contractor rather than an employee when we balance the five factors set forth in Article 3 § 14(a):

**(1) Whether the employer or worker supplies the tools**

If an employer supplies the tools, it is more likely that the worker is an employee. Here, Smith supplied the tools. This weighs in favor of him being an independent contractor.

**(2) The length of time for which the person is employed**

Smith worked for his employer for a year. This weighs in favor of him being an employee.

**(3) Control exercised by the employer**

The employer controlled the manner in which the work was done and the times that Smith worked. Smith followed the directions of the employer and completed tasks as assigned by the employer. Smith occasionally had ideas of his own about how a task should be completed, but the employer had the ultimate approval. This weighs in favor of him being an employee.

**(4) Whether the worker regularly works for others or solely works for the employer**

Smith did not regularly work for others. This weighs in favor of him being an employee.

**(5) Whether the worker was hired as an employee or independent contractor**

It was unclear how Smith was hired as there was no written agreement and testimony differs, but he was paid as an independent contractor and chose his own hours. Thus, this factor weighs in favor of him being an independent contractor.

The Franklin Supreme Court stated that the factors in Article 3 § 14 are simply five (5) factors that should be considered, but a court may consider any other factor that it deems relevant. *See Tishel v. Workers' Compensation Appeal Board* (Fr. Sup. Ct. 1991). Indeed, the statute does not state that the list of factors is exhaustive. Here, Smith was advertising his services to the general public via online advertisements. We find this to be another factor that is relevant to the outcome and tends to show that Smith was an independent contractor.

**Marcus v. Workers' Compensation Appeal Board**

Franklin Court of Appeal (2015)

Marcus worked for his employer, Fixer-Uppers Corporation, for about 30 hours per week. He did not work for any other employer. However, he did advertise his services to others. The Franklin Supreme Court has made clear that not all factors have to be weighed evenly when



evaluating the factors in Article 3 § 14. *See Ross v. Workers' Compensation Appeal Board* (Fr. Sup. Ct. 2001). Indeed, some cases have held that whether the worker regularly works for others or works solely for the employer is weighed heavier than some other factors—*e.g.*, whether he advertises services to others. *See Roster v. Workers Compensation Appeal Board* (Fr. Ct. App. 2011). If a worker solely works for one employer, he is more likely to be considered an employee than an independent contractor regardless of whether he advertises services to others.

B. OBJECTIVE MEMORANDUM BABY MPT — *MORALES V. ELLIOT*

**Task Memo:** The first document in the file is a task memo, which states exactly what to do. Please use the file and library above to complete the task.

*Smith & Smith Law Firm*

To: Examinee  
From: Partner  
Date: July 24, 2018  
Re: Morales v. Elliot

John Elliot hired a person named Miguel Morales to work on his farm. Mr. Morales worked on Mr. Elliot's farm in Franklin, took care of the garden, and did other tasks. He was hired and paid as an independent contractor. Recently, he was chopping down trees (with appropriate safety gear) when a tree fell on him and rendered him disabled. Mr. Elliot has come to us because he is worried that Mr. Morales may file a workers' compensation claim. He is wondering whether he would have to pay Mr. Morales workers' compensation benefits as well as potential penalties for not having the appropriate insurance coverage. The answer to this question will hinge on whether Mr. Morales was an employee or independent contractor at the time of his injury.

Please prepare an objective memorandum analyzing that question. (This tells you exactly what you want to do—analyze the issues in an objective tone rather than arguing one way or the other.) Do not draft a separate statement of facts. Do not discuss any penalties or the amount that he may have to pay Mr. Morales if, in fact, Mr. Morales is found to be an employee. (This section tells you what *not* to do! Pay attention to it because you do not want to waste valuable time writing something you will not get points for, or even worse—something that will reduce your score based on an inability to follow directions. Maximize your score by sticking to what the memo asks you to do!)

## HOW TO DISSECT THIS MPT:

**First, identify the task. Never lose sight of the task memo.**

Here, the task memo is telling you to “Please prepare an objective memorandum analyzing that question.” This tells you exactly what to zero in on. It also states, “Do not draft a separate statement of facts.” This means that you should not repeat any facts in your introduction (though you should, of course, analyze them in your objective memorandum).

**Second, read the library.**

We recommend, as a general rule that you examine the library next. This way, when you read the facts, you can even start drafting your MPT. We also recommend that you try to work while you read, as oftentimes the MPT takes most examinees the complete allotted time to finish the task.

**(Tip: Pay attention to what jurisdiction the case is in and what level of court decided the case.)** Here, we have two appellate cases from Franklin. But sometimes cases will come from other state courts (like Olympia or a different jurisdiction), and you must recognize that they are only persuasive, rather than binding, authority. **(Tip: If you have cases and statutes, it is a good idea to first read the cases, and then read the statutes.)**

**Third, review the statement of facts, and start drafting your answer using the appropriate format. The format for the objective memorandum is as follows:**

- **Caption** (to/from/date/matter)
- **Introduction**
- **Discussion** (with headings to discuss each issue. Headings need not be complete sentences. Follow Rule/Analysis/Conclusion after each heading.)
- **Conclusion** (summarize discussion)

**Last, start writing your answer. We have drafted a shortened version of what your answer may look like below. However, if you draft a brief memorandum of your own prior to reading the memorandum we have written, you will get a lot more out of this task!**

BABY MPT ANSWER:

MEMORANDUM

**(Remember to write out your caption here and fill out the relevant information.)**

To: Partner

From: Examinee

Date: July 24, 2018

Re: Morales v. Elliot

**I. INTRODUCTION**

**(This is your introduction paragraph. It should explain the purpose of the memorandum and state the issue, when applicable.)**

This memorandum identifies whether Mr. Miguel Morales was an employee or independent contractor at the time he was injured. For the reasons below, the factors tend to show that it is more likely that he would be considered an independent contractor for purposes of Franklin law.



However, this is by no means a clear-cut case as the factors are close to being evenly divided, and I think we should develop some of the facts—specifically, the facts regarding control—prior to advising Mr. Elliot.

## I. DISCUSSION

(Next is the discussion portion. In this section, you should use bolded headings to separate the issues. Oftentimes, if there are factors present, each factor will receive its own heading.)

There are five (5) factors listed in Article 3 § 14 of the Franklin Workers Compensation Act. Here, we list the factors as well as some other important factors that a Franklin court may consider in determining if Mr. Morales is an employee or independent contractor.

### Article 3 § 14 Factors:

#### **Factor #1: Tools**

(For each point, use IRAC. That is, state the law, apply the law to the facts, and arrive at a conclusion. Do not write “Rule” “Analysis” and “Conclusion” in your actual memorandum.)

**Rule:** Article 3 § 14(1) looks at whether the employer or worker supplies the tools. Pursuant to *Smith*, if the employer supplies the tools, it is more likely that the worker is an employee. In the *Smith* case, Smith supplied the tools. This weighed in favor of him being an independent contractor. **Note:** In your MPT answer, you are welcome to use brief citations to a case. You are not expected to write full citations. A simple reference to the case is sufficient.

**Analysis:** Here, the employer stated that Mr. Morales brings the tools and equipment to the job site, including a tractor, a toolbox, and safety gear.

**Conclusion:** This weighs in favor of Mr. Morales being an independent contractor rather than an employee.

#### **Factor #2: Length of Time Employed**

Article 3 § 14(2) examines the length of time for which the person is employed. Here, Mr. Morales was employed for two years. In *Smith*, the claimant worked for his employer for over a year, and the court found that such a period of time weighed in favor of Smith being an employee. In this case, Mr. Morales worked for Mr. Elliot for two (2) years. This weighs in favor of Mr. Morales being an employee rather than an independent contractor.

#### **Factor #3: Control**

Article 3 § 14(3) examines the control by the employee. In *Smith*, the court stated, “The employer controlled the manner in which the work was done and the times that Smith worked.



Smith followed directions of the employer and completed tasks as assigned by the employer.”  
*Smith* stated, “This weighs in favor of him being an employee.”

Here, we are unable to tell the exact amount of control exercised by the employee versus the employer so it would be helpful to develop this more. In his interview, Mr. Elliot stated: “His job generally is to keep up the farm. I usually tell him what to do and when it should be done by. Occasionally he has ideas of his own.”

In some ways, this is similar to *Smith* where the facts stated that “Smith occasionally had ideas of his own about how a task should be completed but the employer had the ultimate approval.” The *Smith* court held that this weighed in favor of him being an employee. In other ways, it is not completely clear what Mr. Elliot means when he says he “usually” tells Mr. Morales what to do and when it should be done by.

Further, in *Smith*, the employer controlled when Smith worked. On the contrary, Mr. Elliot testified that Mr. Morales chose his own hours. We should discuss this factor with Mr. Elliot more prior to advising him as this factor will make a difference in the outcome of the case given that the other factors are fairly evenly divided.

**Factor #4: Whether the worker regularly works for others.**

Article 3 § 14(4) states that whether the worker regularly works for others or solely works for the employer is a salient factor. Further, the Franklin Supreme Court has made clear that not all factors have to be weighed evenly. *Ross*. And some cases have held this factor should be weighed heavier than others. *Roster*. Thus, a Franklin court may very well look at this factor more heavily than the others in making its decision. Here, Mr. Morales works solely for Mr. Elliot—at least that Mr. Elliot knows of. According to *Smith*, this makes it more likely that Mr. Morales is an employee. This weighs in favor of the finding that Mr. Morales is an employee.

**Factor #5: Whether the worker was hired as an employee or independent contractor.**

Article 3 § 14(5) examines the agreement between the worker and the employer. If the worker was hired as an independent contractor, it is more likely that the court will find that the worker is an independent contractor. Here, Mr. Elliot stated that the parties did not have a written contract but that they both agreed that Mr. Morales would be an independent contractor. Further, Mr. Morales was paid as an independent contractor. This weighs in favor of him being an independent contractor.

**Additional factor not listed in the statute:**

**Advertising:**



*Smith v. Workers' Compensation Appeal Board* stated that a court may consider any other factor that it deems relevant. In that case, it deemed the fact that the worker was advertising its services to the general public to be a factor. Here, the client interview states that Mr. Morales frequently puts up advertisements on Craigslist and other places. Thus, this factor weighs in favor of him being an independent contractor rather than an employee.

## II. CONCLUSION

**(Next, include a conclusion paragraph, which should sum up your findings in an objective tone.)**

Here, based on the above, it appears as though Mr. Morales would be considered an independent contractor rather than an employee under Franklin law for workers' compensation purposes.

Three (3) factors weigh in favor of Mr. Morales being an independent contractor, and two (2) weigh in favor of finding that Mr. Morales is an employee. While some cases have held that whether the worker regularly works for others should be weighed more heavily, on the whole, the majority of factors support that Mr. Morales is an independent contractor rather than an employee. The one factor we will surely want to examine more prior to advising Mr. Elliot is the extent of the control that Mr. Elliot exercised. This factor could go either way. And, given that the factors are close to being evenly divided, we should develop these facts prior to advising him.

**(Note: Even a brief conclusion is fine. If your conclusion is just a few sentences and shorter than this one, you can still get full credit!)**

Please let me know if you would like me to give Mr. Elliot a call to ask him a few questions about the control exercised and examine additional cases on this matter.

**(Note: It is okay if you arrived at a different conclusion so long as your conclusion was well-supported. If you received a full-size library and file, you would likely have more to work with!)**