



MITCHELL | HAMLINE
School of Law

NextGen-Style MPT Assignment*

This assignment is a NextGen-style assessment built from an existing released NCBE MPT. The MPT used is *In re Peterson Engineering Consultants* originally administered during the February 2014 Bar Exam. The assignment was created by taking the MPT materials and breaking them apart into smaller portions of facts with accompanying NextGen-style questions, drafted using the NextGen Content Scope Outline list of Foundational Skills for guidance. The assignment was built directly into Canvas with each task as a separate component that would have to be completed before the next task would open. Students were graded complete/incomplete on Task 1-4 and their actual assignment score was based on their drafted answer in Task 5 with up to 3 points for “thoughtful completion of Tasks 1-4.”

*This assignment was developed by Maggie Eilertson, Director of Academic Excellence and teaching professor at Mitchell Hamline School of Law.

MASTER DOCUMENT WITH ANSWERS

Task 1: Issue-Spotting & Fact Investigation

- **Facts Provided to Students During Task 1:**
 - Our client, Peterson Engineering Consultants (PEC), seeks our advice regarding issues related to its employees' use of technology. PEC, all of its employees, and all of its business is located in the state of Franklin.
- **Questions Asked in Task 1:**
 - A. What facts would be most helpful in exploring the potential issues identified in Task 1?
 - B. List three avenues you would pursue to gather other evidence related to the potential issues identified in Task 1.
- **Sample Effective Answers for Task 1:**
 - A. How do PEC employees use technology? What kind of technology do PEC employees use? Are employees allowed to take technology equipment home with them? Does PEC have policies related to technology use? Etc.
 - B. Employee manual, memos related to use of technology, interview leadership and sample of employees, etc.

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Task Two: Issue-Spotting and Analysis, Investigation and Evaluation

- **New Facts Provided to Students During Task 2:**

- PEC is a privately owned, non-union engineering consulting firm. Most of its employees work outside PEC's office for over half of each workday. Employees need to be able to communicate with one another, the home office, and clients while they are working outside of PEC's office. In addition, whenever working—inside or outside of PEC's office—PEC employees need access to the Internet in order to be able to retrieve needed information, documents, and reports. PEC issues its employees internet-connected computers and other devices (such as smartphones and tablets), all for business purposes and not for personal use. After reading the results of a national survey about computer use in the workplace, the president of PEC became concerned about two things: (1) the risk of liability for misuse of company-owned technology and (2) the potential loss of productivity stemming from employee use of technology for personal purposes during work. While the president knows that, despite PEC's policies, its employees use the company's equipment for personal purposes, the survey alerted her to problems that she had not considered.

- **Question Asked in Task 2:**

A. What additional information would you need to gather in order to provide legal advice to PEC related to the issues you identified in Task 1?

- **Sample Effective Answer for Task 2:**

A. Additional information I would need to gather in order to provide legal advice to PEC includes:

- Does PEC discipline employees or have a discipline plan for misuse of company-owned technology?
- What kind of employment duties do PEC employees need to use internet-connected technology for?
- How has PEC communicated its ownership of and intent to monitor use of internet-connected technology to employees?

Task Three: Client Counseling and Advising, Client Relationship and Management, and Initial Legal Research

- **New Facts Provided to Students During Task 3:**

- The president wants to know what revisions to the company's employee manual will provide the greatest possible protection for the company. After discussing the issue with the president, we understand that her goals in revising the manual are (1) to clarify ownership and monitoring of technology, (2) to ensure that the company's technology is used only for business purposes, and (3) to make the policies reflected in the manual effective and enforceable.

- **Documents Provided in Task 3:**

- A summary of the results from the National Personnel Association Survey Concerning Computer Use at Work.
- Excerpt from Employee Manual

- **Questions to Ask in Task 3:**

- A. (Client-Counseling Question:) Which of PEC's stated objectives would you recommend as the top priority? Why?
- B. (Research Question:) What research strategies, including appropriate search terms, would be likely to uncover relevant binding sources in this case?

- **Sample Effective Answer for Task 3:**

- A. Client-Counseling Question: The objective I would recommend as the top priority is the third objective: to make policies in the manual effective and enforceable. The reason I would recommend prioritizing this objective is because, in effect, all three of the client's objectives turn, at least in part, on the completion of this objective. In other words, the first two client objectives seems to require the drafting or redrafting of company policies; any new or revised policies will be useless—because they will potentially remain ineffective and unenforceable—unless this top-priority objective is first satisfied.
- B. Research Question:
 - a. I would begin my research by locating a secondary source on employer liability for employee use of technology. I would use that secondary source to find primary sources, such as cases or

relevant statutes, and to develop an expanded list of search terms I could use to find additional authority. After limiting my search to the jurisdiction of Franklin, I would use the following search terms to find additional, primary authority:

- i. Natural language search: employer liability for employee misuse of technology
 - ii. Boolean search: employer /2 liabil! and employee! /s misuse! /s (technology or computer or phone)
- b. Another area for research could be employer invasion of employee privacy or employee expectation of privacy.

Task Four: Legal Research

- **Documents Provided to students in Task 4:**

- A. MPT Library

- *Hogan v. East Shore School*
 - *Fines v. Heartland, Inc.*
 - *Lucas v. Sumner Group, Inc.*

- **Questions to Ask in Task 4:**

- A. Using the cases provided, which words or elements seem legally significant and/or potentially ambiguous?
 - B. Using the cases provided, identify the roles and differing characteristics of the cases, including their authoritative weight.
 - C. Using the cases provided, identify other sources, search terms, and/or research strategies that might be used to update sources or find additional sources.
 - D. Using the cases provided, identify which sources are relevant to or dispositive of PEC's potential liability for its employees' use or misuse of Internet-connected (or any similar) technology.

- **Sample Effective Answer for Task 4:**

- A. Legally Significant Words/Elements

- *Fines v. Heartland*
 - Ratify
 - Ratification
 - Respondeat Superior
 - Scope of Employment
 - Substantially Deviates
 - *Hogan v. East Shore School*
 - Invasion of Privacy
 - Expectation of Privacy
 - *Lucas v. Sumner Group, Inc*
 - Custom and Practice
 - Progressive Discipline

- B. Authoritative Weight & Roles of Cases

- *Fines v. Heartland*

- This is a 2011 case from the Franklin Court of Appeal. Anything in this case that conflicts with either of the other two later cases would not be binding.
- This case is included to teach about employer liability for employee misuse of technology by ratification. The case presents facts for comparison that were held NOT to be employer ratification.
- *Hogan v. East Shore School*
 - This is a 2013 case from the Franklin Court of Appeal. This is the most recent case in the group so it would be the most binding.
 - This case is included to teach about invasion of employee privacy and employee expectation of privacy. The case presents facts for comparison that were held NOT to establish an expectation of privacy and thus there was no invasion of privacy.
- *Lucas v. Sumner Group, Inc.*
 - This is a 2012 case from the Franklin Court of Appeal. This case would be more binding than the *Fines* case but not as binding as the *Hogan* case.
 - The role of this case is to give guidance on how to draft clear and unambiguous language in employee manuals.

C. Additional Research

- I would research all of the “legally significant words/elements” identified in 4A.
- *Fines v. Heartland*
 - References *White v. Mascoutah Printing Co.* (Fr. Ct. App. 2010) and RESTATEMENT (THIRD) OF AGENCY § 2.04.
- *Hogan v. East Shore School*
 - References *City of Ontario v. Quon*, 560 U.S. 746 (2010)
- *Lucas v. Sumner Group, Inc.*

- References *Catts v. Unemployment Compensation Board* (Fr. Ct. App. 2011)

D. Case Relevance to PEC

- *Fines v. Heartland, Inc.*, is relevant to the issue of PEC's liability for employee misuse of technology under a theory of ratification or respondeat superior.
- *Lucas v. Sumner Group, Inc.*, is relevant to the issue of drafting clear and unambiguous policies in PEC's employee manual.
- *Hogan v. East Shore School* is relevant to the theory of invasion of employee privacy, which is a claim PEC employees could bring against PEC if it monitors their use of technology.

Task Five: The MPT Task

- **Questions to Ask in Task 5:**

- Please prepare a memorandum addressing these issues that our firm can use when meeting with the president of PEC. Your memorandum should do the following:
 - Explain the legal bases under which PEC could be held liable for its employees' use or misuse of internet-connected (or any similar) technology.
 - Recommend changes and additions to the employee manual to minimize liability and exposure. Base your recommendations on the attached materials and the president's stated goals. Explain the reasons for your recommendations but do not redraft the manual's language.

- **Sample Effective Answer for Task 5:**

- See *In re Peterson Engineering Consultants* MPT Point Sheet.