

MPT- ~~3~~ 1

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Question: 1  
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1)

CALVETTI, LAWRENCE & MASTERSON

Attorneys at Law

84 Richmond Avenue, Suite 1300

Lafayette, Franklin 33526

MEMORANDUM

To: David Lawrence  
From: Examinee  
Date: February 23, 2016  
Re: Workers' Compensation Claim

The issue here is whether Rick Greer (G) would be considered an employee of Nicole Anderson (A) under the Franklin Labor Code (FLC) Section 200 and case law and thus be liable for Greer's injuries sustained while he was working on A's property. Article 7 of FLC is the Worker's Compensation Proceedings, and Section 705 states there are affirmative defenses, and the burden of proof rests on the employer to establish the injured person was an independent contractor.

Employee Status

FRC 251 defines employee as 'every person in the service of an employer under any appointment or contract of hire, whether express or implied, oral or written...'

### Independent Contractor Status

FRC 253 defines independent contractor as a person that renders service for a certain amount for a specified result, and the principal only controls the result of the work, not the means.

There is case law to support each of these types of status. Doyle sets forth a Right of Control test consisting of eight factors that are not applied mechanically as separate tests, but looks to the particular combination of the factors to distinguish an employee from independent contractor. Robbins These factors are secondary factors to FRC 253, so the analysis begins with FRC 253.

Here, G has been working with A on and off for two and a half years, since June 2013 as a handyman. There is no written agreement, but that does not make a difference per FRC 251 in the determination of a person having employee status. Per A's conversation, G generally gets to make decisions, but when it comes to paint color or specific fixtures, A has occasionally picked those items out. Otherwise, G makes the decisions regarding how to perform tasks, such as fixing a leaking toilet.

The Doyle factors use to determine if a person is an independent contractor or

employee are:

1. Whether the worker is engaged in a distinct occupation or independently established business;
2. Who supplies the tools used in the work, other than the type employees normally supply;
3. If the worker is paid by time or by the job;
4. If the work is part of the regular business of the principal;
5. If the worker has a substantial investment in his business other than personal services;
6. If the worker hires employees to help;
7. If the parties believe they are creating an employee-employer relationship
8. The degree of permanence of the relationship.

First, G had an advertisement in the online Yellow Pages to solicit business, and A saw his ad and checked references, therefore G had an independently established business. Many of the tasks G performs requires specific skills, such as remodels, with little supervision and A merely checks the work after it is done to ensure it is to her satisfaction, and this meets the first factor.

Second, Handymen provide a variety of services, and A only supplied specific fixtures and paint, to ensure the correct color. G provides the other tools of the trade, such as power drills, big saws, wrenches and screwdrivers, and A believes G has other tools to perform the bigger projects because A does not supply them. Therefore,

the second factor is met.

Third, generally G works on A's properties an average of 10 hours per month.

Sometimes A pays G hourly, other times there are flat rates for specific projects that A and G negotiate. A also pays G a minimum of \$250 per month, which would appear to be an employee type relationship with a guaranteed minimum monthly amount.

Although A does pay this guaranteed amount, this should not negate the overwhelming evidence satisfying the other Doyle factors.

Fourth, A's business is the rental of properties. In contrast to Doyle, where the workers were deemed employees, because the work they did as harvesters was a permanent part of the agricultural process, and workers returned seasonally, taking on the functions of employees, here, G performs routine maintenance on rental properties, which is not an integral part of the rental property business. Similar to Robbins, where it was held that the gardener was not an employee because the function of gardening is not integral to the function of diner, the court should find that G is not an integral part of property rental business.

As previously mentioned, G has a substantial investment in tools of the trade such as power saws and drills, and this satisfies the fifth factor.

Similar to Robbins, the fact that G does not hire other employees is not dispositive when the other factors are taken in to consideration. The amount of work done is

sometime less than 10 hours per month, therefore there would be little need to hire additional employees.

A did not believe that she and G were entering in to an employee-employer relationship because she never paid taxes for him, thought he took care of his own taxes and insurance, and this satisfies the seventh factor.

The eighth factor is the degree of the permanency of the relationship, which could get tricky because A pays G the minimum \$250 to make sure he is available to work for her. However, the overwhelming evidence satisfying the majority of the other factors should be enough to satisfy the Doyle test.

The analysis of these factors is similar to Robbins, where a gardener did work for a diner, and court held Robbins was an independent contractor based on the totality of the circumstances. Similarly, it is likely a court would find G to be an independent contractor based on the totality of the circumstances and not liable for Worker's Compensation Insurance.

In Harris, the caddie was provided with a uniform, a place to change, and a specific code of conduct. Here, G was told what tasks needed to be performed, and left alone to figure out how best to complete the task, outside of specific paint colors and fixtures. Unlike Harris, where the Club failed to meet its burden of proving independent contractor status under FLC 705(a), here, A can show that G is an

independent contractor using the right to control test and the secondary Doyle factor tests, and should prevail.

**END OF EXAM**

MPT-2

**ID:** 095  
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2)

Stuart, Parks & Howard LLC  
Attorneys at Law  
1500 Clark Street  
Franklin City, Franklin 33007

February 23, 2016

Mr. Saul Leffler  
123 Main Street  
Franklin City, Franklin 33007

Dear Mr. Leffler,

Please be advised that Katie Miller is our client, and we will be representing her in the civil assault and battery claims against your client, Steve Trapp. The purpose of this letter is to inform you that we intend to seek both compensatory and punitive damages for the assault and battery of Ms. Miller.

Katie Miller, the author of the blog RockNation, attended the Revengers concert on Tuesday, February 9. Ms. Miller had a press pass and was waiting backstage to interview your client, Steve Trapp, the guitarist and vocalist, after the show, around

11:00 pm. Mr. Trapp was annoyed by a magazine photographer, Nina Pender, and Mr. Trapp punched Ms. Pender in the face and then slammed her camera on the ground. Mr. Trapp then stormed through the crowd of paparazzi and journalists, looked at Ms. Miller, yelled, 'Get out of my way, you little punk, or I'll beat the hell out of you.' and then raised his arm. Ms. Miller feared Mr. Trapp would hit her, but, he grabbed her phone out of her hand with enough force to dislocate Ms. Miller's shoulder.

Snatching an object from another's hand constitutes battery when done in an offensive manner in Franklin. Here, Mr. Trapp grabbed Ms. Miller's phone and wrenched it from her hand after threatening to beat her, therefore Mr. Trapp committed battery. While it may be true that Ms. Miller consented to some amount of jostling by being backstage after a rock concert with paparazzi and other journalists, Ms. Miller did not consent to the offensive contact from Mr. Trapp. Ms. Miller was injured by Mr. Trapp, not the paparazzi or journalists. There are multiple photos showing Mr. Trapp punching Ms. Pender, and an amateur video of the encounter is on YouTube. There may be other videos that surface since Ms. Miller mentioned the incident on her blog one week ago.

The amount we are demanding for damages is:

Compensatory \$ \_\_\_\_\_

Punitive \$ \_\_\_\_\_

Total Damages \$ \_\_\_\_\_

You have until Tuesday, March 1, 2016, to comply with this demand. Failure to do so will result in litigation for the damages requested.

Sincerely,

Timothy Howard

Stuart, Parks & Howard LLC

OFFICE MEMORANDUM

To: Timothy Howard, Partner  
From: Examinee  
Date: February 23, 2016  
Re: Katie Miller case-- damages

For an intentional tort, such as assault or batter, there are two kinds of damages: compensatory and punitive. Compensatory damages include medical expenses, lost wages, along with pain and suffering. Pain and suffering includes physical pain, along with mental suffering such as hurt feelings, insult and indignity, and fright caused by the battery. Horton.

Ms. Miller experienced a great deal of pain and suffering immediately after the incident while she waited to have the doctor pop her shoulder back in place.

Medical expenses            \$5,000

Ms. Miller's actual current medical expenses are \$5,000, so that is the best amount to

ask for, unless Ms. Miller anticipates future expenses for ongoing care. Dislocated shoulders usually don't need additional care, so the amount of \$5,000 should be sufficient.

Pain and Suffering        \$40,000

Ms. Miller was humiliated and there may be video of the incident circulating on the internet. Similar to Little, where a mascot dislocated an attendee's shoulder in front of a stadium full of onlookers, and prevailed for an amount of \$40,000, this incident was also fairly public, due to the photos, videos, and article in the online magazine Reeling Rock. Ms. Miller suffered considerably because she had to wait 4 hours to get her shoulder fixed, and missed a week's worth of work.

Punitive                \$135,000

Punitive damages are left to the trier of fact, and generally, awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process. *State Farm v Campbell*. In Little, a case similar to this, plaintiff asked for punitive damages that were almost 4 times the amount of compensatory damages and was denied. Other claims at higher rates for more severe injuries that have been awarded are rates that are 4 and 5 times the amount of compensatory damages. However, those injuries were more severe, and a court would likely deny a request for 4 or 5 times the damages. In Cook, there was an issue with an employee that had a

tendency to be violent, and the employer was aware, and the punitives awarded were 5 times the compensatory. In Alma, the plaintiff was attacked and stabbed while leaving her own home, which is even more frightful than being at a rock concert, and those punitives were 4 times the amount of compensatory damages.

Therefore, I am recommending a request for punitive damages that are 3 times the amount of the compensatory damages. Total of \$180,000 for Ms. Miller should be requested. Please let me know if you need additional information.

**END OF EXAM**