MPT – July 2013 – Selected Answer 1

III. Argument

Summary judgment should be granted in this case because plaintiff, Vera Monroe, has failed to produce a genuine issue of material fact on each of her three claims of negligence against Franklin Flags Amusement Park. A summary judgment can be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Larson v. Franklin High. A "material fact" for summary judgment is a fact that would influence the outcome of the controversy. None of the plaintiff's three negligence claims asserts a material fact that would influence the outcome of the controversy. Therefore, Franklin Flags is entitled to summary judgment.

A. Because an operator of an amusement park does not have a duty to guard against patrons acting in bizarre, frightened, or unpredictable ways, Franklin Flags Amusement Park cannot be held liable for the damages caused when plaintiff ran into a wall when she was frightened.

Franklin Flags is not liable for the injuries suffered by plaintiff when she ran into a wall after being frightened by a staff member dressed as a zombie. Under Franklin law, when a plaintiff asserts a negligence cause of action the court must analyze four elements: (1) whether there was a duty; (2) once duty has been established, analyze what duty was imposed on defendant under the particular circumstances at issue; (3) whether there was a breach of that duty that resulted in injury or loss; and (4) whether the risk which resulted in the injury or loss was encompassed within the scope of the protection extended by the imposition of that duty.

In this case, Franklin Flags had a duty to "act reasonably under the circumstances and not put others in positions of risk." Larson v. Franklin. However, the operator of an amusement park that is designed to frightened individuals does not have "a duty to guard against patrons reacting in bizarre, frightened, or unpredictable ways. For example, in Larson, an elderly man went to a "Horror House" with his two grandchildren and was injured when an actor pretending to be a vampire scared him, causing him to fall and break his arm. The court held that because the grandfather "accepted the rules of the game" and knew he was going to the "Horror House" to be frightened, the operator of the "Horror House" did not breach its duty to act reasonably. The Larson case is directly analyzed to the once presented here. Plaintiff went to Franklin Flags on Halloween and expected to be frightened. Plaintiff's Deposition. Therefore, plaintiff "accepted the rules of the game" and cannot hold Franklin Flags liable for doing the very thing that plaintiff expected Franklin Flags to do. When plaintiff was frightened, she acted in a frightened and unpredictable way by running into a wall. There are cases in which individuals have been held liable when they know the plaintiff has a particular sensitivity and the negligent act relates to that sensitivity. Dozer v. Swift (placing spiders on an individual known to have arachnophobia). However, there is no evidence that the operator of Franklin Flags was aware of any particular sensitivity possessed by the plaintiff. Thus, Franklin Flags did not breach a duty to the plaintiff.

Additionally, Franklin Flags cannot incur any liability based on its duty to invitees. Under Franklin law, an additional duty is owed to a party that invites a patron for business purposes - such as visiting a haunted house. The operator impliedly represents that he has used all reasonable care in inspecting and maintaining the premises and the equipment furnished by him, and that the personnel have been adequately trained and supervised. In this case, Franklin Flags used all reasonable care in inspecting and maintaining the premises. While the room in which plaintiff ran into a wall was dimly lit, with a couple of light bulbs and an illuminated "exit" sign, it was still a safe environment. The dim lighting was important for increasing the effect of the haunted house, which plaintiff desired to experience. There is some case

law that supports the argument that dim lighting in a horror house can form the basis of a negligence cause of action. In Costello v. Shadowland, the Franklin Supreme Court held that the operator was liable because it had a dimly light room, and the plaintiff was injured when she was startled and backed into a bench in the middle of the room. The key fact is distinguishing Costello from the present case is that in Castello, the operator had purposely placed a bench in the middle of a dark room. The court noted that the "dim lighting combined with the bench placement was a dangerous condition," rather than just one of those things being sufficient for liability independently. (emphasis added). It could be entirely expected for an individual to be frightened and run into an object in the middle of a room. Here, however, there were no objects placed in a dangerous position of the room. Instead, the plaintiff became frightened and ran into a wall, and conceivably, every patron of a haunted house should assume that some of the rooms that they enter have walls enclosing them. Because the operator of Franklin Flags did not place any objects in the room that endangered the plaintiff, it was not negligent in inspecting and maintaining the premises.

Franklin Flags also cannot be liable based on its failure to supervise or train its employees. In Larson, the court said that failure to adequately supervise personnel and provide instructions can form the basis to a negligence claim against a business owner. Here, however, there were instructions provided to the employees. In his deposition, Mr. Matson, the operator of Franklin Flags, stated that he specifically had individuals assigned to rooms to monitor and provide safety to patrons. Moreover, they were instructed on how to handle the situation if an individual was injured by calling a doctor, who was present on the park at all times. Additionally, the actor who played the zombie in the room where plaintiff ran into a wall had been given instructions to help if a patron was injured. Thus, there are ample evidence in the records that the operator of Franklin Flags supervised and provided instructions for his employees. Hence, Franklin Flags cannot be liable for negligence on plaintiff's first claim.

B. Because an owner of an amusement park does not owe a duty to protect against dangerous condition that the plaintiff knowingly encounters, Franklin Flags cannot be held liable for plaintiff slipping on the mud as she left the amusement park.

Plaintiff also cannot prevail on her second claim for her injuries suffered as she left the amusement park and slipped on the mud. An operator of an amusement park is liable for damage caused by a dangerous condition only upon a showing that the owner "knew (or in exercise of reasonable care, should have known) of the dangerous condition, that the damage could have been prevented in the exercise of reasonable care, and that the owner failed to exercise such reasonable care.

However, relevant factors to consider in these actions include the past accident history of the condition in question and the degree to which the danger may be observed by a potential victim. This must also constitute a danger that a reasonable person would be injured by while exercising ordinary care under the circumstances. It is important note that this is not an assumption of the risk argument, which Franklin courts have abolished, but a duty and a breach of duty under a negligence analysis. In this case, there is no evidence that the operator of Franklin Flags was aware of a prior accident history associated with the mud in the graveyard portion of the amusement park.

Furthermore, he states that he expects patrons to "walk through the graveyard amusement." Thus, one of the critical factors in analyzing this form of negligence is missing. Additionally, there is evidence that plaintiff could have been aware of the dangerous condition once she left the haunted house. She admits in her deposition that the weather in the days preceding up Halloween "had really been raining a lot,

without letup for the previous three days." A reasonable person in plaintiff's circumstances would have left the haunted house and, once realizing they were outside and that it had been raining constantly for three days, used extra precaution. Plaintiff, in contrast, brisk fully went out of the haunted house, still in a frightened state was not using ordinary care. This case is analogous to Parker v. Muir, in which the patron knew about the presence of rocks on a path and a maze when she encountered them. Plaintiff, similarly, was aware of the rain leading up to her visit to the amusement park and should have used adequate precaution. Thus, Franklin Flags cannot be liable.

C. Because an operator of an amusement park does not have a duty to guard against patrons acting in bizarre, frightened, or unpredictable ways, Franklin Flags Amusement Park cannot be held liable for the damages caused when plaintiff was frightened in the parking lot.

The same analysis dealt with in the claim in which plaintiff ran into a wall applies here equally. The operator of an amusement park should not be liable for a frightened and unexpected reaction, which occurred when plaintiff and her husband were frightened by an actor with a chainsaw. Plaintiff will likely counter that when she was in the parking lot, she was no longer in the exhibit and those rules no longer apply. In Larson, the court used a hypothetical of an actor dressed as a vampire scaring patrons in a shopping wall on a normal weekday. The court said this would likely violate a duty and expose the individual to negligence. In this case, however, the parking lot can still be considered part of the haunted house because it is presumably owned by Franklin Flags. Also, rather than some random day of the year, this was Halloween and patrons should anticipate being frightened. Thus, Franklin Flags cannot be held liable.

MPT – July 2013 – Selected Answer 2

To: Rick Lasparri From: Examinee
Date: July 30, 2013
Re: Monroe v. Franklin Flags Amusement Park
I. Caption
[omitted]
II. Statement of Facts
[omitted]
III. Legal Argument

The plaintiff's claims for negligence regarding a duty not to scare should be dismissed because she voluntarily entered a place she knew was intended to scare her and thus accepted the possibility of being frightened.

There are three major elements in every negligence case. First, all persons have a duty to act reasonably under the circumstances and not put others in positions of risk. (Larson). This duty depends on the particular circumstances of the case. Second, there must be a breach of that duty that results in injury or loss. And third, the risk resulting in the injury or loss must be within the scope of the protection extended by the imposition of that duty. Whether a person has a duty is not based upon the subjective awareness of others, but upon whether the defendant acted unreasonably under the circumstances vis-a-vis the injured party. (Larson). In Larson, the court determined that the defendant did not violate its general duty not to scare others because the plaintiff voluntarily entered an exhibit that was designed to

frighten and surprise patrons. The Larson court found that an operator does not have a duty to guard against patrons reacting in unpredictable or bizarre manners because those patrons obviously know they may be startled. According to the Larson court, other circumstances may warrant a breach of duty not to scare others if the circumstances were different; however, where a plaintiff voluntarily enters a place where he is fully aware that being frightened is the purpose of entering, that plaintiff cannot claim there was a breach of duty not to scare by the defendant. As in Larson, where the court found that the plaintiff's voluntary entrance into a place called a "Haunted House" shows the plaintiff "accepted the rules of the game" and the claim of breach of duty fails, the same should be found in this case. Here, the plaintiff voluntarily entered into a Haunted house attraction at an amusement park and was thus aware that she might be frightened and accepted that fate.

Motion for Summary Judgment should be granted because not only did the defendant fail to breach its general duty of care, but also the defendant did not breach its duty to invitees as the owner of a premise not to create unreasonably dangerous conditions.

A court will grant a motion for summary judgment if there are no genuine issues of material fact in dispute. For the purposes of summary judgment, a material fact is one that would influence the controversy's outcome. (Larson). Though the Larson court found that there was no negligence via a breach of duty not to scare, it did not allow for summary judgment because a proper analysis requires more than just that determination. According to the Larson court, a court must also ask what additional duties a business proprietor owes to a patron who is an invitee. An operator is not required to protect patrons from all possible dangers, but must protect patrons from unreasonably dangerous conditions. This includes the duty to ensure adequate facilities and personnel for patrons on site. There is also an implied representation that the premises and equipment are reasonably safe for their intended purposes and have been reasonably inspected. (Larson). In Franklin, the owner of property may be liable for injuries caused by dangerous conditions on the property, but only if it is shown that the owner knew or should have known of the dangerous condition, the exercise of reasonable care could have prevented the damage, and the owner failed to exercise reasonable care. (Costello). According to the Costello court the fact that an accident occurred due to a dangerous condition does not necessarily mean that condition is unreasonably dangerous. Relevant factors in making this determination include past accident history and the ability of a potential victim to observe the dangerous condition. In Costello, the court found the defendants negligent due to the fact that the combination of dim lighting and a hidden bench created a dangerous condition of which patrons were not aware. Unlike in Costello, the plaintiff here was aware of any and all dangerous conditions created by the defendant. Thus, she should not be able to claim that such conditions were unreasonably dangerous. Furthermore, according to depositions, the plaintiff here was the only person to have an accident throughout Halloween. This situation is similar to the situation in Parker, where the plaintiff's claim for negligence was denied because she knew of the danger of her actions and was the only person of the season to report an accident. This supports the conclusion that the conditions on the premises, even if dangerous, were not unreasonably dangerous.

Motion for Summary Judgment should be granted for the plaintiff's first claim because the defendant did not breach its general duty of care or its duty to the plaintiff as an invitee and there are no genuine issues of material fact.

The plaintiff's first claim is that she was injured because a staff member in costume frightened her in one of the rooms of the attraction, causing her to run into a wall.

This claim should certainly be dismissed upon motion for summary judgment because the plaintiff clearly was aware of the possibility of being frightened and there were no unreasonably unsafe conditions on the premises. The defendant did not owe the plaintiff a general duty of care not to frighten her because she was aware she was entering a haunted house in which the purpose was to be frightened. Furthermore, the defendant, as owner of the premises, did not violate its duty of care to the plaintiff as an invitee because no conditions in the room were unreasonably safe. There were no hidden items in the room for the plaintiff to trip over, like in Costello. The defendant had a person in the room available to help any injured plaintiffs who was prepared in first aid, and the only actions of that staff member was to simply frighten patrons. The staff member in this room treated the plaintiff in the same manner as all other patrons; however, the plaintiff reacted in an unreasonable manner by getting overly frightened unlike all other patrons. The plaintiff should have expected to be frightened in the haunted house she entered and cannot claim that the existence of a person in costume frightening people was an unreasonably dangerous condition. Furthermore, the staff member in costume attempted to offer help to the plaintiff when she freaked out and ran into the wall, but the plaintiff immediately exited. The only possible issue the plaintiff could dispute is that the staff member was not adequately trained. However, simple basic first aid training (which the staff member had) and an on-site doctor should be deemed adequate training and help available for any injured patrons. Under these facts, summary judgment to should be granted for the plaintiffs first claim.

Motion for Summary Judgment should be granted for the plaintiff's second claim because the defendant did not breach its general duty of care or its duty to the plaintiff as an invitee and there are no genuine issues of material fact.

The plaintiff's second claim is that she was injured because she slipped in a muddy path in the graveyard. This graveyard was part of the haunted house attraction according to depositions. Also according to depositions, it had been raining for three days prior to this incident. While defendants have a duty to protect against unreasonably safe conditions and to do reasonable inspections, this duty is to exercise reasonable care. The defendant is not capable of preventing rain and preventing dirt from becoming muddy due to natural conditions. Furthermore, a second aspect of whether a condition is unreasonably dangerous is whether the plaintiff has the ability to see the danger of the condition herself. In this case, the plaintiff would have clearly been able to see that the area was muddy and that she should exercise caution if she was not in a panic at the time. Any reasonable person would have noticed the mud and taken precautions to prevent themselves from falling in the mud. While no personnel was available in the graveyard, the defendant did not have a duty to have personnel in every location on site, especially when nothing was happening in that location and plenty of other personnel were available in all other locations on site.

Motion for Summary Judgment should be granted for the plaintiff's third claim because the defendant did not breach its general duty of care or its duty to the plaintiff as an invitee and there are no genuine issues of material fact.

The plaintiffs third claim is that she was frightened by a staff member in costume when exiting which caused her to injure herself. Again, this aspect of the experience was all part of the Haunted House experience that the park had created for its patrons. Thus, the plaintiff voluntarily accepted the possibility of being frightened at this point. When entering the Haunted House, the plaintiff was not told that when going into the graveyard her experience would be over. It is reasonable for a person to believe that there might be one last scare at the end of a haunted house. This situation is unlike Dozier where the plaintiff was fragile and had no idea the defendant was playing a prank on her that played on

her sensibilities. Here, the plaintiff voluntarily went into the haunted house and should have been aware that at the end there might be an additional person to scare her. Additionally, this person was in line with all of the other scares that were part of the haunted house by being in costume and "acting" scary so the plaintiff should have known that it was all part of the act. Thus, not only did the defendant fail to breach its general duty of care not to scare, but the defendant did not breach its duty of care as the owner of the premises to prevent unreasonably unsafe conditions for invitees. Furthermore, the defendant had personnel (the staff member) available to help any injured plaintiffs. The plaintiff, however, was in a frenzy and panic, and did not act as other reasonable patrons would. The defendant cannot be held responsible for plaintiff's unreasonable reactions though. Thus, summary judgment should be granted for the plaintiff's third claim in favor of the defendant as well.

MPT – July 2013 – Selected Answer 3

TO: Rick Lasparri
FROM: Examinee
DATE: July 30, 2013
RE: Monroe v. Franklin Flags Amusement Park

I. Caption
II. Statement of Facts
III. Legal Argument
Under Franklin law, 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. Larson v. Franklin High Boosters Club, Inc. A "material fact" for summary judgment purposes is a fact that would influence the outcome of the controversy. Larson.

A. Franklin Flags Amusement Park is entitled to judgment as a matter of law with respect to Mrs. Monroe's first claim for injury resulting from fright by a staff member in costume because an operator of an amusement park does not have a duty to guard against patrons reacting in bizarre, frightened, or unpredictable ways, and Franklin Flags used reasonable care in inspecting and maintaining the premises and equipment furnished, and the premises were reasonably safe for the purposes intended.

Franklin Flags is entitled to summary judgment with respect to Mrs. Monroe's first claim for injury resulting from fright by a staff member. The Franklin Supreme Court has held that in all tort cases the first question is whether there was a duty. Larson. The duty is to act reasonably under the circumstances and not to put others in positions of risk. Id. Once the court has determined that there is a duty, it must next determine (1) what duty was imposed on the defendant under the particular circumstances at issue, (2) whether there was a breach of that duty that resulted in injury or loss, and (3) whether the risk which resulted in the injury or loss was encompassed within the scope of the protection extended by the imposition of that duty. Id.

1. Franklin Flags does not owe a duty to Mrs. Monroe as an operator of a haunted house.

Patrons at an event which is designed to be frightening are expected to be surprised, startled, and scared by the exhibits; the operator does not have a duty to guard against patrons reacting in bizarre, frightened, or unpredictable ways. Larson. It is important to note, however, that assumption of the risk is no longer a valid defense under Franklin law; however, the plaintiff's knowledge and conduct may be

considered in determining whether, under the particular circumstances at issue, the defendant beached a duty to the plaintiff. Id.

Here, Franklin Flags owed no duty to Mrs. Monroe to guard against her reacting in a bizarre and unpredictable manner. Mrs. Monroe expected to be frightened as she admitted in her deposition; therefore, Franklin Flags cannot be held liable for admitting Mrs. Monroe into the haunted house.

2. Franklin Flags also did not breach the additional duty to maintain the premises safely.

The operator additionally represents that he used reasonable care in inspecting and maintaining the premises and equipment furnished by him, and that they are reasonably safe for the purposes intended. Larson. The operator is not bound to protect patrons from every conceivable danger, only from unreasonably dangerous conditions. Id. More specifically, such proprietors and operators have an obligation to ensure that there are not only adequate physical facilities but also adequate personnel and supervision for patrons entering the establishment. Id.

Here, Franklin Flags met this duty because it had several individuals stationed around the various points of the attraction to keep an eye on everyone. There was at least one member in every room of the house and a doctor was also present on the premises. In the room in which Mrs. Monroe was injured, a staff person was positioned to help her. The staff person was instructed to hold them and knew basic first aid. She also knew to call the doctor in the case of an emergency. This situation is different than Larson where there was a question whether adequate personnel and supervision existed. There is no question here. Furthermore, this is not the same situation as Costello v. Shadowland Amusements, where in a dimly lit room the frightened plaintiff tripped over a bench in the middle of the room. Here, there were no benches, and Mrs. Monroe simply ran into a wall, which she was obviously aware existed and for which Franklin Flags could take no precautions against.

Also, any argument that Mrs. Monroe makes that there was not adequate personnel because the personnel was dressed as a zombie should fail. Ms. Brewster attempted to help Mrs. Monroe, but Mrs. Monroe refused her help in her unpredictable fright. Therefore, there is no genuine dispute as to material fact because Franklin Flags provided adequate personnel and supervision in the haunted house; thus, Mrs. Monroe's first negligence claim for her injuries in the haunted house should be dismissed pursuant to this motion for summary judgment.

B. Franklin Flags is also entitled to judgment as a matter of law with respect to Mrs. Monroe's second claim for negligence resulting from her slipping while going through the mock graveyard because Franklin Flags did not fail to exercise reasonable care.

Under Franklin law, the owner or custodian of property is answerable for damage occasioned by its dangerous condition, but only upon showing that the owner knew (or, in the exercise of reasonable care; should have known) of the dangerous condition, that the damage could have been prevented by the exercise of reasonable care, and that the owner failed to exercise such reasonable care. Parker v. Muir. The fact that an accident occurred as a result of a dangerous condition does not elevate the condition to one that is unreasonably dangerous. Parker. The past accident history of the condition in question and the degree to which the danger may be observed by a potential victim are factors to be taken into consideration in the determinate of whether a condition is unreasonably dangerous. Parker. Further, 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. Id. In Parker,

the Franklin Supreme Court concluded that the mere presence of rocks on a path through a cornfield did not meet the standard for imposing liability.

Here, Franklin Flags did not breach this duty because although Franklin Flags should have at least been aware of the muddy pathway, a muddy pathway is not an unreasonably dangerous condition, and the fact that an accident occurred on the muddy pathway does not elevate it to an unreasonably dangerous condition. Also, no other accidents had occurred on the muddy pathway, and this danger could have been easily observed by Mrs. Monroe. It had been raining for several days, and she would have known that there was a muddy pathway and could have easily observed this because the pathway was lighted. Also, a prudent person exercising reasonable care could have prevented slipping on the muddy pathway. Furthermore, Mrs. Monroe had been at Franklin Flags numerous times before and should have been aware of the conditions. The court in Parker stressed that a reasonable person would not be surprised to find rocks in a dirt path. The same is true in this case. A reasonable person should not be surprised that a path was muddy when it had been raining the past several days. The court also stressed the fact that there was an unblemished safety record, and here too, this is the only accident that occurred at Franklin Flags. Therefore, there is no genuine dispute as to material fact as to whether Franklin Flags breached a duty, and Franklin Flags is entitled to judgment as a matter of law on the second negligence claim.

C. Franklin Flags is also entitled to judgment as a matter of law with respect to Mrs. Monroe's third claim for injury resulting after exiting the graveyard because Franklin Flags did not owe a duty to Mrs. Monroe as operator of the haunted house and further did not breach the additional duty to provide adequate personnel.

The same rules apply here as in the first negligence claim. Patrons at an event which is designed to be frightening are expected to be surprised, startled, and scared by the exhibits; the operator does not have a duty to guard against patrons reacting in bizarre, frightened, or unpredictable ways. Larson. Also, the operator additionally represents that he used reasonable care in inspecting and maintaining the premises and equipment furnished by him, and that they are reasonably safe for the purposes intended. Id. The operator is not bound to protect patrons from every conceivable danger, only from unreasonably dangerous conditions. Id. More specifically, such proprietors and operators have an obligation to ensure that there are not only adequate physical facilities but also adequate personnel and supervision for patrons entering the establishment.

Here, exiting the graveyard and being scared by the man with the chain saw was still part of the attraction. It is irrelevant that Mrs. Monroe believed that the attraction was over because it was not. Therefore, any reliance based on Dozer would be misguided. The point of the haunted house was to scare people, and scaring people involves scaring them when they feel safe. Also, exiting the graveyard was not so far removed from the attraction to be unreasonable. It occurred right after the exit. Therefore, Franklin Flags owed no duty to prevent Mrs. Monroe from reacting in a bizarre, frightened or unpredictable way. Furthermore. the employee with the fake chain saw was responsible for providing support and supervision; therefore, Franklin Flags did not breach its duty to provide adequate personnel and supervision for patrons entering the establishment. Thus, Franklin Flags is entitled to judgment as a matter of law on the third negligence claim because there is no genuine dispute as to material fact on whether Franklin Flags breached any duties.