THE SUPREME COURT OF THE STATE OF OHIO

February 2026

Ohio Bar Examination

Multistate Essay Examination
Questions & Selected Answers

Multistate Performance Test
Summaries & Selected Answers

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THE SUPREME COURT OF THE STATE OF OHIO

OHIO BAR EXAMINATION

The February 2026 Ohio Bar Examination contained 6 Multistate Essay Examination (MEE) questions. Applicants were given three hours to answer a set of 6 essay questions. These essays were prepared by the National Conference of Bar Examiners (NCBE).

The exam also contained two Multistate Performance Test (MPT) items. These items were prepared by the NCBE. Applicants were given three hours to answer both MPT items.

The following pages contain the NCBE's summary of the MEE questions given during the February 2026 bar exam, along with the NCBE's summary of the MPT items given on the exam. This booklet also contains actual applicant answers to the essay and MPT questions.

The MEE and MPT answers published in this booklet merely illustrate above average performance by their authors and, therefore, are not necessarily complete or correct in every respect. They were written by applicants who passed the exam and have consented to the publication of their answers. See Gov. Bar R. I, Sec. 5(C). The answers selected for publication have been transcribed as written by the applicants. To facilitate review of the answers, the bar examiners may have made minor changes in spelling, punctuation, and grammar to some of the answers.

Copies of the complete February 2026 MPT and its corresponding point sheet are available from the NCBE. Please check the NCBE's web site at www.ncbex.org for information about ordering.

THE SUPREME COURT OF THE STATE OF OHIO

Question 1

QUESTION

In 2022, a mother conveyed by deed a house she owned to her three children, Alonzo, Barbara, and Carla, "as joint tenants with right of survivorship and not as tenants in common."

In 2023, without either Alonzo's or Barbara's knowledge or consent, Carla validly leased the house as a residence for a two-year term to a tenant for monthly rent of $1,200. The lease began on January 1, 2023.

On December 10, 2023, the tenant emailed Carla: "I need to relocate to another city for work. I will move out of the house at the end of this month and won't ever return." Carla immediately replied, "Thank you for letting me know. To confirm our arrangement, however, you still owe me rent for the remaining 12 months of our two-year lease." The tenant did not reply to Carla's email and vacated the house three weeks later, on December 31, 2023.

The day after the tenant vacated the house, Carla advertised it for rent for $1,200 monthly. Within a week she had received rental applications from three qualified potential tenants. After reviewing the applications, Carla decided that she no longer wanted the burden of being a landlord, and so she told the potential tenants that the house was off the market. The house then sat vacant for the one year remaining of the tenant's lease term. During that one-year period, Carla entered the house only to inspect and clean it.

Immediately after the tenant's term ended on December 31, 2024, Carla moved into the house. During the time of Carla's possession, the fair rental value of the house was $1,500 per month.

Last month, Carla died. In her will she devised her interest in the house to her son.

Ignore any statute of limitations issues.

1. With respect to the two-year lease between Carla and the tenant:
    a. Was Carla entitled to receive 12 months of unpaid rent from the tenant at the end of the lease term? Explain.
    b. Were Alonzo and Barbara entitled to a share of the rental income payable to Carla under the lease? Explain.
2. Were Alonzo and Barbara entitled to any of the house's fair rental value from Carla during the time of her possession of the house after the tenant's two-year lease expired? Explain.
3. What effect, if any, did Carla's leasing the house to the tenant have on the ownership interests in the house following her death? Explain.

ANSWER

1.)

a.) The issue is whether Carla was entitled to receive 12 months of unpaid rent from the tenant and whether her siblings are entitled to those monies.

When there is a valid lease agreement, the tenant owes a duty to the landlord to pay rent. If a tenant informs a landlord that they are surrendering the property, the landlord can either accept their surrender and waive the tenant's remaining obligation to pay rent, or they can deny the tenant's surrender and proceed as if the property had been abandoned. Abandoning property in the middle of an ongoing lease constitutes a breach by the tenant. Under these circumstances, depending on whether the state follows the minority or majority rule, a landlord may or may not have a duty to mitigate damages.

If this is a state that follows the majority rule regarding mitigating damages, the landlord has a duty to mitigate their damages and treat the abandoned property as one of its vacant lots. If this is the case, they must make a good faith effort to re-lease the property.

If this state follows the minority rule regarding mitigation of damages, the landlord has no duty to mitigate damages and can pursue damages amounting to the total remaining value of the lease. In this case, that would be $14,400.

Here, it appears that the property had effectively been abandoned by virtue of the fact that Carla (the landlord) specifically informed the tenant that they were still expecting the remaining 12 months' worth of rent. Despite this warning, the tenant left the property, which effectively acts as abandonment and thus breach of the lease agreement.

However, the issue here is that within 1 week of the tenant vacating the property and Carla advertising the property as vacant, Carla had 3 qualified prospective tenants offer to enter into a lease agreement, which she denied for reasons not relating to their qualifications. Instead, she decided that she no longer wanted to be landlord.

Therefore, if this is a state that follows the minority rule that doesn't require mitigation, it is likely that Carla could pursue damages against the tenant for breach of the lease agreement.

However, if this is a state that follows the majority rule, it is unlikely Carla could recover 12 months' worth of rent from the tenant, since she had 3 potential tenants offer to lease the abandoned property.

b.) Are her siblings entitled to a share of the rental profits from a third-party tenant?

As a general matter, when co-tenants owe an equal share of property, they are each entitled to an equal share of profits extracted from said property. Here, because they all have a coequal share of the property, all the siblings would be entitled to a share of the rental profits generated from Carla's lease agreement with the tenant.

2.) The issue is whether Carla is obligated to pay Alonzo and Barbara rent.

Generally, co-tenants with ownership interest are not obligated to pay other tenants the fair rental value of property when it is not being actively leased. Instead, they primarily owe a duty to assist in the paying of taxes and general maintenance of the property. Therefore, because the property was not actively being leased to a third party, Carla was not obligated to pay her siblings the fair rental value of the property.

3.) The issue is whether Carla's leasing the property ended the Joint Title with Right of Survivorship (JTROS).

A JTROS is a co-ownership arrangement in property in which when one party dies, the other remaining JTROS tenants assume their decedent's ownership share. Depending on whether the state is a lien theory or title theory state, a lease has the effect of ending the leasor's JTROS and transferring it into a Tenancy in Common (TIC). A TIC lacks a right of survivorship. However, if there are at least two remaining JTROS holders who have an interest in the property, their JTROS interest will remain.

For an ownership interest to qualify as a JTROS, the "Four Unities" must be satisfied, which are as follows:

a. the interest was created at the same "time";

b. the co-tenants have the same kind of "title";

c. the co-tenants have equal "interest" in the property;

d. the co-tenants all have an undivided "right to possess" the whole property.

Here, it appears the interest was created at the same time, as reflected by the interest being the result of the 2022 deed. It also appears that the parties each had an equal "interest" in the property, based on the fact the words of conveyance explicitly state that the siblings were to own the property as "joint tenants."

However, as it relates to the elements of property and title, it appears the lease may have disrupted the JTROS.

If the property is in a lien theory state, a lease halts the JTROS and converts it into a TIC. However, upon the termination of the lease, the interest reverts into a JTROS. Reason being, when a JTROS leases their share in property, it disrupts the "unity of right to possess the whole," a component of a JTROS.

In a title theory state, a lease has the effect of entirely ending that person's JTROS share and permanently converts it into a TIC.

a.) Alonzo, Barbara, and Carla's Son.

With respect to Alonzo and Barbara, because they constitute at least 2 co-tenants, they still retain their JTROS.

If the state in which they live is a lien theory state, the fact the property was not being actively leased at the time of Carla's death would result in Alonzo and Barbara absorbing Carla's JTROS.

If the state in which they live is a title theory state, then the property would descend to Carla's son, and he would own a TIC.

Question 2

QUESTION

Angie developed an application ("app") for cell phones for herself and her friends to organize their large wardrobes better than any currently available commercial app.

In March, while discussing her app with her best friend, Basra, Angie wondered aloud whether she could earn money with her app by hiring a software developer to refine it so that she could make it available to the general public. Although Angie said nothing about starting a business at that time, Basra told her that he thought her idea was great, that he believed it would make a lot of money, and that he would be willing to invest $5,000 if Angie started a business. Basra also offered to introduce Angie to Clyde, a software developer Basra had known for some time.

On April 1, Angie started a new business, which she called XYZ, to license and market her app, thinking that in a couple of months she would incorporate the business. On April 10, Basra put Angie in contact with Clyde. Angie, in the name of XYZ, and Clyde entered into a written agreement under which Clyde would make the app usable by the general public and XYZ would pay Clyde $10,000 upon the signing of the agreement and $15,000 when he completed and delivered the app. As soon as they signed the agreement, Angie paid Clyde $10,000.

In June, Angie completed the paperwork to form a corporation to market the app and filed the paperwork with the appropriate state agency. The articles of incorporation named Angie as the sole initial director of the corporation. Acting as the director, Angie approved the corporation's issuance of 10,000 shares of stock to herself in exchange for her contribution to the corporation of all her intellectual property rights in the app. She also approached Basra, reminding him of their earlier conversation and offering him 2,500 shares for an investment of $5,000 in the corporation. Basra agreed, and the corporation properly issued Basra 2,500 shares of stock in exchange for $5,000.

In July, Angie realized that she would not be able to raise the additional capital necessary to refine the app for public use. She immediately told Clyde to stop work. Clyde responded that he had completed the work. He then sent her a bill for $15,000 and delivered the fully usable app to her.

The corporation never took any formal action with respect to the agreement with Clyde.

Assume that the contract with Clyde was valid and that Clyde fully performed all his obligations.

1. May Clyde recover the unpaid contract price from Angie? Explain.
2. May Clyde recover the unpaid contract price from Basra,
    a. on the theory that Basra is a partner of Angie? Explain.
    b. on the theory that Basra is a shareholder of the corporation? Explain.
3. May Clyde recover the unpaid contract price from the corporation, on the theory that it adopted the contract? Explain.

ANSWER

1. The issue is whether Clyde can recover the unpaid contract price from Angie.

A contract is a binding agreement between individuals when there is an offer, acceptance, and consideration (or a bargained-for exchange). An offer is the manifestation of willingness to enter a bargained-for exchange with the offeree which places the power of acceptance in the offeree. An acceptance is the manifestation of a willingness to be bound by the contract per its terms. Consideration is a return promise, a performance or a legal detriment to the offeree which demonstrates that important bargained-for exchange piece of the transaction. Once a contract is formed, if one party fails to perform, that party is likely liable for damages to the aggrieved party.

Here, on April 1, Angie, a sole proprietor who is always liable for their own contracting actions, manifested her willingness to enter into a contract with Clyde by offering to pay him $10,000 that day and $15,000 later – specifically, when the app she needed him to develop was finished and available to the public. In exchange for that payment, Clyde agreed to develop that app and render those services to Angie in exchange for that money paid. Because there was this bargained-for exchange of services, there was a valid common law contract between Angie and Clyde that ensued on April 1.

Under common law, a material breach is one that robs the aggrieved party of their bargain in the deal. Here, Angie agreed to pay Clyde when his performance of the application was finished. He finished the app in July, but she has since failed to hold up her end of the bargain which is robbing him of essentially more than half of the contract price owed to him. This means that Clyde can surely seek to recover the unpaid contract price from Angie individually as she was personally bound by the terms of their contract.

2a. The issue is whether Clyde can recover the unpaid contract price from Basra on the theory that Basra is a partner of Angie.

A partnership is an agreement between two or more persons that agree to run a for-profit business as co-owners. There need not be a formal, written agreement to form a partnership. Instead, the court generally assesses whether there was a splitting of profits between two people or a splitting of the control over the partnership's management. This is relevant to the issue at hand because a partner's actions when conducted in the ordinary course and scope of the partnership act as an agent for a partnership and binds it.

Here, in March, Basra offered to invest $5,000 to help Angie start up a company. If she decided to start a business, he offered to put her in contact with someone he knew that developed software to help her create the application. At this point, no partnership had been formed yet because there was no agreement to run this business as co-owners and no business had yet been formed. It was just an offer from Basra to help Angie in the future if she voluntarily decided to start a business.

On April 1, Angie, alone, started a new business called XYZ. She did not have the agreement of Basra to co-own this company with her, he did not invest in the company, and he was not sharing any control over her company, so at this point he was not a partner. On April 10, Basra put Angie in contact with Clyde as a way to help her get in contact with people that could help her achieve her objectives in the business. However, this was a gratuitous effort, not one of a partner because on April 10, Basra was still not a co-owner of XYZ as he did not agree to share in its profits or its business management. On this day, Angie entered into a contract with Clyde. Basra's name did not appear in the contract at all. This means that even if Basra was found to be a partner or involved in the business at any point after the day of contracting, he would still not be liable to Clyde on the contract for the remaining $15,000 because he was not a partner at the time the liability for the contract arose– the day of contract signing.

It wasn't until June that Angie (not Basra) filed the paperwork to make XYZ an official corporation, and it wasn't until June that she asked Basra for his contribution to the company in exchange for shares, making him, at that point, a shareholder of the corporation. A shareholder is not liable for the owner's pre-corporation agreements, and they are not personally liable for the debt of the corporation itself.

Therefore, Clyde cannot recover from Basra on the unpaid contract price on a theory of partnership.

2b. The issue is whether Clyde can recover the unpaid contract price from Basra on the theory that Basra is a shareholder of the corporation.

As discussed in the response above, generally a shareholder is not personally liable for the corporation's obligations, which is one of the most significant advantages to a corporate business structure. There are rare instances where a debtor can pierce the corporate veil to seek personal assets of a shareholder in rare, narrow instances where the corporation is mostly a sham, lacking corporate formalities, and hiding behind the alter ego of a sole proprietor or non-corporate entity just to enjoy corporate protections. That is not relevant here because XYZ as of June became a valid corporation and there is no evidence to support a piercing of the corporate veil on the part of shareholders like Basra who merely invested money into the company in exchange for stocks as shareholders often do. Therefore, the general shareholder protections from liability should be extended to Basra here. A shareholder is not personally liable for the debts of the corporation, and therefore, Clyde should not recover based on this theory.

3. The issue is whether Clyde can recover the unpaid contract price from the corporation on the theory that it adopted the contract.

Generally, a corporation is not liable on contracts entered into prior to the date of formal incorporation. That is because corporations are considered "people, too" and as such, they must be in existence to be liable for a transaction entered into on their behalf or by a person with apparent or actual authority to enter into them. If, however, a corporation was not yet formed and then later adopts the contract, by taking action to ratify and show its intent to be bound by the terms of a contract, then estoppel comes into play for equity purposes and the corporation might be on the hook for the obligation of the contract since it was showing assent to its terms and likely receiving a material benefit in some way.

Here, Clyde is hoping to recover the unpaid contract price from XYZ Corp itself on the theory it adopted the contract. However, there is no evidence in the facts demonstrating adoption or ratification of the application contract with Clyde. In fact, the facts state expressly that "the corporation never took any formal action with respect to the agreement with Clyde". The fact remains that the agreement between Angie and Clyde, in which Angie signed in the name of her sole proprietorship XYZ, was just that—a contract between two individuals that was made two months before the corporation was even formed. If Angie had held herself out as a corporation and signed fraudulently in the name of "XYZ Inc." or something to that extent, then Clyde might have an argument that she should be estopped from denying that the corporation is liable. But there are no facts to support that contention, and there are no facts that it would be reasonable for Clyde to believe he was working with a corporation at that time. Thus, the corporation should not be liable now for the contract obligation entered into by Angie on April 1.

THE SUPREME COURT OF THE STATE OF OHIO

Question 3

QUESTION

A state prosecutor has charged James, age 35, with theft of comic books, in violation of the following State A statute:

> A person commits the offense of theft by unlawfully taking and carrying away, or appropriating, any property of another person with the intent to permanently deprive the other person of the property.

The charges are based on the following facts:

> James and his two sons, ages 10 and 13, collect comic books. They frequently visit their favorite comic book store. As a result of the frequent visits and the amount spent monthly in the store, James and his sons are all on a first-name basis with the store owner.
>
> On January 2, James and his sons were browsing in the store. After half an hour, James went to the counter to pay for several comic books while the boys continued looking through the shelves. James completed his purchase and told the boys that he was ready to leave. They all politely said "Thank you" and "Good-bye" to the store owner, who cheerfully responded, "See you soon."
>
> Two weeks later, police officers arrested James as he was leaving work. The officers told him that the prosecutor was charging him with theft from the comic book store. More specifically, the store owner had watched a surveillance video recording of the store from January 2, and in the video, he had seen one of James's sons, who was holding James's briefcase, place five comic books in the briefcase while the trio was browsing in the store. Before they left the store, James paid for the three comic books that he was holding in his hand. He did not pay for the five comic books in the briefcase that he carried out of the store.

During their investigation, the police located an incident report indicating that 15 years earlier James had been arrested at a local grocery store and accused of theft. James had eaten a handful of grapes, claiming that he was tasting them before he ultimately decided not to purchase any grapes. Although arrested, he was never charged with a crime regarding the grapes.

State A has adopted rules of evidence that are identical to the Federal Rules of Evidence. At trial, during the state's case-in-chief, the state asks the court to admit evidence that James was once accused of theft of grapes. Defense counsel objects on three independent grounds: (1) the evidence is irrelevant, (2) the evidence is improper character evidence, and (3) the evidence is improper evidence of other acts.

How would the court likely rule on each ground? Explain. Do not address any notice requirements.

ANSWER

1. The issue is how the court is likely to rule on an objection on the grounds of irrelevance.

Under the Federal Rules of Evidence (FRE), evidence is relevant if its presence tends to make a material fact somewhat more or less likely to be true than the fact would be without the evidence. This is a low bar.

In this case, James is charged with theft of comic books. More specifically, stealing comic books from a comic book store by removing them from the store without paying for them. Whether or not James removed the comic books from the store without paying for them is a material fact, as it is what the entire charge hinges on. The evidence at issue is evidence that James was once previously accused of stealing grapes from a grocery store by eating them without paying for them. Evidence that James has committed such an act in the past makes it somewhat more likely that he would commit such an act again. If he failed to pay for something at a store once, a fact finder may find that he would be more likely to do it again than he would be if he had never done it before. Thus, the low bar of relevance is met. This evidence is relevant.

Therefore, the court is likely to overrule the objection on the grounds of relevance.

2. The issue is how the court is likely to rule on an objection on the grounds of improper character evidence.

Under the FRE, character evidence is improper and inadmissible if its sole purpose is for propensity (to prove that someone acted in accordance with that character trait at a given time). Character evidence can be admissible for other reasons, such as impeachment of a witness.

In this case, the prosecution presumably wants to introduce evidence that James was once accused of theft of grapes to demonstrate that because he was accused of theft before, he is more likely to have been guilty of theft on this occasion. This is propensity evidence. Furthermore, because the prosecution is attempting to offer this evidence during their case-in-chief, which takes place before the defendant's case-in-chief, James has not even had the opportunity to testify in his own defense yet. Because he has not testified, he cannot be a witness for whose impeachment this evidence could be used. Thus, this evidence is character evidence used for propensity and is improper.

Therefore, the court is likely to sustain the objection on the grounds of improper character evidence.

3. The issue is how the court is likely to rule on an objection on the grounds of improper evidence of other acts.

Under the FRE, evidence of other acts is admissible to prove something other than propensity, such as establishing identity, plan, lack of accident, or absence of mistake.

In this case, the comic book theft occurred when James's son took James's briefcase and placed five comic books inside while browsing the store. James then paid for the three comic books in his hand, but not for the ones in the briefcase. The grape theft occurred when James ate a handful of grapes at the grocery store, claiming that he was tasting them and then had decided not to buy any. The facts of these incidents are dissimilar. In one, James had his sons with him. In another, he was alone. One involves comic books, another produce. Allowing a fact finder to compare the two would not establish, for instance, a common plan that James used to steal both comic books and grapes, or that he was less likely to have accidentally removed the comic books because he intentionally ate grapes previously. It thus seems that this evidence does not fall into any of the acceptable uses of evidence of other acts and is inadmissible.

Therefore, the court is likely to sustain the objection on the grounds of improper evidence of other acts.

Question 4

QUESTION

Husband properly executed a will that included the following bequests:

a. Any automobile I own at the time of my death to my brother if he survives me;

b. The house I own at 211 Pearson Drive, City, State Y, which I purchased as an investment, to my mother; and

c. The residue of my estate to Wife if she survives me.

The will contained no other provisions relating to the disposition of Husband's estate. At the time Husband executed his will, he did not own an automobile.

Six months after Husband executed his will, he sold the house at 211 Pearson Drive and reinvested the proceeds in another house, located at 500 South Street, City, State Y. At no time did Husband or Wife live in the house at 211 Pearson Drive or the subsequently acquired house on South Street.

One year after Husband executed his will, he and Wife had a child named Sam.

Two years after executing his will, Husband had a nonmarital child with his neighbor. This child is named Doris.

Three years after Husband executed his will, his brother died.

Husband died in State Y five years after executing his will, having never revised it. He is survived by Wife; his two children, Sam and Doris; his mother; and his brother's adopted child, Fred. Husband's estate is valued at $3,325,000. It consists of an automobile (valued at $25,000) that he acquired two months before he died, the house at 500 South Street (valued at $300,000), and $3 million in cash. His estate has no debts and no expenses.

State Y has adopted the Uniform Probate Code.

1. Does the bequest of the automobile to Husband's brother lapse and pass as part of the residue, or does it pass to the brother's adopted child, Fred? Explain.

2. Is Husband's mother entitled to the house at 500 South Street as a substitute for the house specifically bequeathed to her, or did that bequest adeem resulting in the house at 500 South Street passing to the takers of the residue under Husband's will? Explain.

3. To whom should the residuary estate be distributed? Explain.

4. Is Doris entitled to take a share of Husband's estate as an omitted child? Explain.

5. Is Sam entitled to take a share of Husband's estate as an omitted child? Explain.

ANSWER

1. The issue is whether the bequest of the automobile to Husband's brother lapses and passes as part of the residue or passes to Fred.

Under traditional rules of wills, when a condition precedent to a devise was not met or a devisee predeceased the testator, the devise could not be made and instead lapsed, going into the residuary estate and passing accordingly. However, the modern trend is to adopt anti-lapse statutes. Anti-lapse statutes typically provide for devisees who are close family members of the testator, passing the property of a predeceasing devisee to the devisee's heirs. Finally, under the UPC, an adopted child takes in the same manner as a biological child.

In this case, Husband devised any automobile he owned at the time of his death to his brother, if he survived Husband. The provision that the brother survive Husband created a condition precedent to the devise. In fact, brother did not survive Husband. Traditionally then, this devise would have become part of the residuary estate. However, if this jurisdiction has adopted an anti-lapse statute covering such a situation, as it is likely given that brother was a close family member of Husband, the automobile may pass to the brother's heirs. The fact that Fred is adopted and not biologically the brother's son makes no difference as to his ability to take on the brother's behalf.

Therefore, the automobile will likely pass to Fred.

2. The issue is whether Husband's mother is entitled to the South Street house as a substitute or whether her bequest adeemed and the South Street house passes as part of the residue.

Under the UPC, a specific devise is a devise of particularly identified property. When the subject of a specific devise is no longer present in the estate at the time of the testator's death, the devise is said to adeem. However, in certain instances, where the testator's intent seems to clearly support it, a court may substitute an asset of the estate for the adeemed asset.

In this case, Husband devised his house at 211 Pearson Drive, City, State Y, to his mother. This is a particular house and is thus a specific devise. At the time Husband died, the Pearson Drive house was no longer part of his estate. He had sold it and purchased the South Street house. Traditionally then, this devise would adeem. However, Husband included in the devise the description of the Pearson Drive house as that "which [he] purchased as an investment." The facts indicate that Husband reinvested the proceeds from the Pearson Drive house into the South Street house, and that he and Wife used the South Street house likewise as an investment, as they never lived there, just as they had never lived at Pearson Drive. Thus, the Court could find that the South Street house served Husband's intent of the devise (i.e., to give his mother the house he owned as an investment) and substitute the South Street house for the Pearson Drive one.

Therefore, the mother may be entitled to the South Street house.

3. The issue is to whom the residuary estate should be distributed.

Under the UPC, the provisions of a valid will are to be honored, and distribution is to be made accordingly.

In this case, Husband's valid will devised the residue of his estate to Wife, if she survived him. When Husband died, Wife was still living. Thus, she survived him and is entitled to the residue of his estate.

Therefore, the residuary estate should be distributed to Wife.

4. The issue is whether Doris is entitled to take a share of Husband's estate as an omitted child.

Under the UPC, an omitted child may be entitled to take a share of a decedent's estate even in light of a valid will that does not provide for the child, unless it seems the omission was intentional, the decedent provided for the child outside of the will in a manner that was meant to take the place of a devise by will, or the decedent left a significant portion of his assets to the other parent of the child. Additionally, there is no distinction made between marital and nonmarital children in matters of inheritance.

In this case, Doris was born two years after Husband executed his will. Although he never revised the will after her birth, the timing makes it unlikely that the omission was intentional. Additionally, there is no evidence that Husband provided for Doris at all, or that he did so in a way outside his will that was meant to take the place of a devise. Finally, Husband did not leave anything in his will to Doris's other parent. Thus, none of the options for prohibiting an omitted child from taking are present here. Also, because Doris was Husband's child, the fact that she was nonmarital child does not prohibit her from taking.

Therefore, Doris is likely entitled to take a share of Husband's estate as an omitted child.

5. The issue is whether Sam is entitled to take a share of Husband's estate as an omitted child.

Under the UPC, the rules for an omitted child are the same as listed above.

In this case, Sam, like Doris, was born after Husband executed his will. Although Husband never revised his will in the four years after Sam was born, it seems unlikely that Sam's omission from the will was intentional. Additionally, there is no evidence that Husband otherwise provided for Sam in a way that was meant to take the place of a devise. However, Husband did leave a significant portion of his estate to Sam's mother, Wife, in his will. As the residuary devisee, Wife is entitled to at least $3 million in cash that was not otherwise disposed of by Husband's will. Sam is only four years old and presumably remains in his mother's care. Thus, this devise serves to provide for him as well.

Therefore, Sam is not likely entitled to take a share of Husband's will as an omitted child.

Question 5

QUESTION

Harmony Corporation sells musical instruments to both professional and amateur musicians. Harmony finances its business pursuant to a signed agreement with Bank, under which Bank has loaned money to Harmony and will continue to do so from time to time, and pursuant to which Harmony has granted Bank a security interest in all of Harmony's present and future inventory to secure its obligation to repay the loans. Bank has filed a properly completed financing statement reflecting this transaction in the appropriate filing office. The financing statement lists Harmony Corporation as the debtor and Bank as the secured party and indicates that the collateral is "inventory."

Harmony sells musical instruments to some of its customers on credit. In a credit sale, Harmony requires the customer to sign an agreement indicating that Harmony retains title to the instrument until the customer finishes paying for it.

Six months ago, Walter, a professional flutist, went to Harmony's showroom, where Walter saw a flute that he liked and thought would be perfect for his professional performances. Walter could not, however, afford to pay the $1,500 price of the flute. Harmony agreed to sell Walter the flute on credit. As memorialized in a "credit sales agreement" signed by Walter, he paid $300 in cash and promised to make payments of $100 on the first day of each of the next 12 months, and until the last payment was made, Harmony retained title to the flute. At the time of the transaction between Walter and Harmony, Walter was unaware of the financing arrangement between Harmony and Bank.

One month ago, Walter, who had not finished paying Harmony the purchase price of the flute (which he had used exclusively for professional purposes), sold it to Joan, another professional flutist, for $900 in cash. Joan had no knowledge of any interest of Bank or Harmony in the flute. After selling the flute to Joan, Walter stopped making installment payments to Harmony.

One week ago, Harmony defaulted on its obligations to Bank.

Both Bank and Harmony have discovered that Joan now has the flute, and each has demanded that she surrender the flute on the grounds that it is collateral for obligations owed to them.

1. Does Bank have a security interest in the flute that is enforceable against Joan? Explain.
2. Does Harmony have a security interest in the flute that is enforceable against Joan? Explain.
3. Assume that the financing statement filed by Bank is the only relevant financing statement filed and that all parties acted in good faith at all times.

ANSWER

1. The issue is whether Bank has a security interest in the flute that is enforceable against Joan.

Article 9 of the UCC governs security interests in personal property by contract. A security interest is enforceable once it is attached. Attachment requires the secured party to give value, the debtor to have rights in the collateral, and the debtor authenticated a security agreement that describes the collateral (or possession pursuant to an oral security agreement). A security agreement may be perfected by filing a financing statement, possession, control, or, in some cases, perfection is automatic. A financing statement must include the names of the debtor and secured party and must indicate the collateral. A security agreement may state that it applies to after-acquired property. Inventory includes property that is held for sale or lease. A retention or reservation of title is limited in effect to a security interest.

Here, Bank has a security interest in the flute as inventory of Harmony. There was a security agreement because Harmony signed an agreement with bank. The agreement was signed and reasonably identified the collateral as "inventory." This also included inventory then owned and after-acquired. The flute is inventory because it is held for sale by Harmony, and Harmony has rights in its inventory. Thus, the security interest attached to the flute.

Further, Harmony filed a financing statement that properly lists Harmony as the debtor, Banks as the secured party, and indicates the collateral is inventory. This is sufficient for a financing statement, and it was filed appropriately. Thus, the security interest in the flute is perfected.

Generally, a transferee takes subject to a security interest, unless authorized free and clear by the secured party. A buyer in the ordinary course of business takes free of a security interest by the buyer's seller if the buyer pays value for the item from a merchant, in the ordinary course of the merchant's business, in good faith and without knowledge that it violates the rights of a secured party.

Here, Walter is a buyer in the ordinary course. Walter purchased from Harmony, who is in the business of selling musical instruments to professional and amateur musicians. Walter bought the flute for $1,500 (not a gift). And Walter was in good faith and was unaware of the financing arrangement between Harmony and Bank. Thus, Walter took free of the security interest created by Harmony to Bank.

A buyer in the ordinary course can sell to another person free of the security interest, so long as it is not a gift.

Here, Walter, a buyer in the ordinary course, sold to Joan for $900 in cash. Joan also had no knowledge of any security interest. Because Joan gave value, she can also take free of the security interest.

Therefore, Bank does not have a security interest in the flute that is enforceable against Joan.

2. The issue is whether Harmony has a security interest in the flute that is enforceable against Joan.

A security interest is enforceable once it is attached. Attachment requires the secured party to give value, the debtor to have rights in the collateral, and the debtor authenticated a security agreement that describes the collateral (or possession pursuant to an oral security agreement). A security agreement may be perfected by filing a financing statement, possession, control, or, in some cases, perfection is automatic. A financing statement must include the names of the debtor and secured party and must indicate the collateral. A security agreement may state that it applies to after acquired property. Inventory includes property that is held for sale or lease. A retention or reservation of title is limited in effect to a security interest. Equipment is a catch-all for goods that are not inventory, farm products, or consumer goods; usually goods used by a business. Consumer goods are used primarily for household, personal, or family uses. The characterization is based on the use by the debtor at the time the security interest attaches.

A purchase money security interest occurs when a seller sells an item on credit, or a lender provides a loan that enables a debtor to purchase a specific item and the money is used to purchase that item. A perfected PMSI has super priority over other secured interests.

Attachment: Here, Harmony had an enforceable security interest in the flute against Walter. Harmony gave value by providing the flute on a credit sale for $1,500 where $300 was in cash and the remaining in payments of $100 each month for 12 months. Walter had rights in the flute he bought. Walter's purchase was memorialized in a credit sales agreement that he signed. Harmony's retention of title is limited in effect to a security interest. Further, this is a purchase money security interest as it was from Harmony as a seller for an item bought on credit. Also, this was equipment because Walter used it for professional performances, not for personal uses. Although a PMSI in consumer goods is automatically perfected, this is not automatically perfected because it is equipment. And no financing statement was filed, thus it is an unperfected security interest.

Buyer in the Ordinary Course: A buyer in the ordinary course of business takes free of a security interest by the buyer's seller if the buyer pays value for the item from a merchant, in the ordinary course of the merchant's business, without knowledge that it violates the rights of a secured party.

Here, Joan will not take free as a buyer in the ordinary course of business because Walter is not a merchant selling in the ordinary course.

Therefore, the buyer in the ordinary course exception does not apply.

Garage Sale Exception: Under the garage sale exception, a consumer buyer of consumer goods takes free of a security interest unless it is perfected by filing. The buyer must buy an item for personal, household, or family purposes from someone who used it for personal, household, or family purposes, and who did not have knowledge of the security interest.

Here, the garage sale exception does not apply because both Walter and Joan are professional musicians. And Walter, and most likely Joan, are not using the flute as a consumer good.

Buyer of Unperfected Interest: However, a buyer takes free of an unperfected security interest so long as they give value and do not have knowledge of the security interest.

Here, because Harmony's security interest in unperfected, and Joan has no knowledge of it and paid $900 to Walter, Joan will still take free of the security interest.

Therefore, Harmony does not have a security interest in the flute enforceable against Joan.

THE SUPREME COURT OF THE STATE OF OHIO

Question 6

QUESTION

A corporation is incorporated in and has its headquarters in State A. The corporation provides wealth management services to high-net-worth individuals through its offices in States A, B, and C. The corporation is registered to do business in State C, pursuant to a state statute providing that any corporation that registers to do business in the state agrees that the state's courts may exercise "general personal jurisdiction" over the corporation and that the registered corporation "shall be subject to the same liabilities and duties" as corporations incorporated in State C.

Two years ago, Penny, a woman who lived in State B, visited the corporation's branch office in State B and there entered into a contract with the corporation to manage her assets. The corporation assigned Dan, one of its wealth managers at that branch office, to manage Penny's assets. Without Penny's authorization, Dan made extremely risky investments, resulting in the loss of almost all of Penny's assets. When the corporation learned of Dan's behavior, it fired him. Dan then left State B and moved into his parents' home in State C.

After terminating her relationship with the corporation, Penny also moved to State C. She hired an attorney there to represent her regarding possible claims against Dan and the corporation. For several months, the attorney unsuccessfully attempted to negotiate a settlement of Penny's potential claims against the corporation.

Penny's attorney learned that Dan was living with his parents in State C. The attorney tried to contact Dan at his parents' home to discuss settlement, but Dan never responded. The attorney learned that Dan was frequently away from home for weeks traveling throughout the United States.

One week before expiration of the statute of limitations on Penny's claims, her attorney, at Penny's direction, brought two separate actions in the US District Court for the District of State C: one action against Dan and one action against the corporation, both raising claims under a federal law designed to protect investors.

In the action against Dan, Penny's attorney mailed a request for waiver of service of process to the home of Dan's parents. Dan never replied to the request for waiver of service of process.

After receiving no reply to the request for waiver of service of process, Penny's attorney attempted to serve process on Dan. The law of State C allows service of process in its courts of general jurisdiction by sending the summons and complaint by first-class mail to a defendant's place of residence. Consistent with this law, Penny's attorney sent an envelope containing the summons and complaint by first-class mail to the home of Dan's parents.

The envelope had no markings indicating the nature of its contents, and Dan's parents placed the envelope with the rest of his mail, which they were collecting and saving for him until he returned from his travels.

When Dan failed to respond to the summons and complaint, Penny's attorney moved for a default judgment, which the court granted.

Two months later, Dan returned and opened his mail, discovering the summons and complaint. He contacted an attorney, who learned of the default judgment and promptly filed a motion in the federal court to set it aside based on insufficient service of process.

In Penny's separate action against the corporation, her attorney requested, and the corporation executed, a waiver of service of process. The corporation then filed a timely motion to dismiss for lack of personal jurisdiction over it.

Penny has done no business with the corporation's office in State C, and none of its employees in State C had anything to do with managing her assets.

Assume that the federal district court has federal-question jurisdiction over Penny's claims against Dan and the corporation.

1. Was service of process on Dan sufficient? Explain.
2. Does the district court have personal jurisdiction over the corporation? Explain.

ANSWER

1. The Issue Is Whether Service of Process on Dan was Consistent with the Constitutional Requirements of *Mullane*.

Under FRCP, a plaintiff may properly effectuate service of process on a defendant by (1) serving both the summons and the complaint; (2) within 90 days; and (3) on the defendant. Regarding the third element, the FRCP enumerates numerous ways to effectuate service of process on the defendant. The FRCP authorizes the service of process in accordance with the state law; on the defendant personally; or by having a process server leave a copy of the summons and complaint, with a person of suitable age at the defendant's usual place of residence. Regardless of the specific method used in accordance with the FRCP, the chosen method must be consistent with the constitutional requirements of due process. Under *Mullane*, the Supreme Court held that the means of service of process must be reasonably calculated under the circumstances to (1) apprise the defendant of the pendency of the action; and (2) afford the defendant an opportunity to appear and defend the action.

Here, although Penny's attorney followed the state law rules which allowed for mailing by first-class mail to a defendant's place of residence, the chosen method is likely unconstitutional under *Mullane*. The facts show that the attorney knew that Dan was living with his parents. However, Dan was a fully-grown adult who had recently lost his job and was frequently away from home for weeks traveling through the U.S. When Penny's attorney mailed the summons and complaint, he included no markings indicating that the mail pertained to an action filed in federal court. Further, it would have been reasonable to assume that the parents of a grown child would not open said child's mail. Furthermore, reasonable means were available to the attorney—he could have hired a process server to personally deliver the summons and complaint to the parent's home while Dan was away.

Thus, because the attorney's method of serving process was not reasonably calculated under *Mullane*, service of process was likely insufficient.

2. The Issue is Whether the Federal Court in State C Has Personal Jurisdiction Over the Corporation.

Personal jurisdiction refers to the authority of a court to force a defendant to appear within the reach of its jurisdiction to defend an action. Under FRCP 4(K)(1)(A)—the federal long arm statute—a federal court can ordinarily only exercise personal jurisdiction to the extent that a State Court sitting in the federal court's geographic region could. There are limited exceptions to FRCP 4(K)(1)(A), i.e., the 100 mile bulge rule, foreign defendants, and specific federal statutes, none of which apply here. Personal jurisdiction can be obtained by a state court in numerous ways; tag jurisdiction, consent, specific personal jurisdiction (See *International Shoe*), general jurisdiction (see *Dailmer*) and in rem jurisdiction. Specific personal jurisdiction occurs when a defendant purposefully avails itself on the benefits of conducting activities in a particular forum, the plaintiff's claims arise out of those contacts, and exercise of personal jurisdiction would be consistent with traditional notions of fair play and substantial justice. General personal jurisdiction exists over a corporation's place of incorporation and their nerve center (headquarters).

Further, a state can force a business to consent to its general jurisdiction. General jurisdiction allows the court to exercise all claims against a defendant, regardless of contacts.

Although the Federal Court in State C does not have specific personal jurisdiction over the corporation—Penny's claims do not arise out of the corporation's contacts therein, the court does have general personal jurisdiction over the corporation. Here, the corporation has consented to State C's personal jurisdiction by statute in doing business therein. Thus, the Federal Court in State C, pursuant to FRCP 4(K)(1)(A), has general jurisdiction over any claims brought by Penny because any court in state C has general personal jurisdiction pursuant to its "consent to do business" statute.

Thus, the Federal Court in State C has personal jurisdiction over the corporation.

THE SUPREME COURT OF THE STATE OF OHIO

MPT 1

OTTO V. NOLAN (FEBRUARY 2026, MPT-1)

The examinee's law firm in this performance test represents Kari Otto, who seeks assistance in obtaining a divorce from her husband, Eric Nolan. Ms. Otto's situation presents a question regarding when exactly the parties married – whether they created a common-law marriage in 2006 or whether they were not married until they had a ceremonial wedding in 2019 and then filed a marriage certificate with the county clerk. The examinee's task is to prepare an objective memorandum addressing when the parties likely became married under Franklin law. The memorandum should also discuss how the parties' assets would be characterized as either separate or marital property under the two possible marriage timelines. The File consists of the instructional memorandum from the supervising attorney, a file memorandum summarizing the client meeting, a transcript of a meeting with Eric Nolan, a "Happy Anniversary" card given to Kari by Eric, and a worksheet that lists the parties' various assets and debts. The Library contains selected excerpts from the Franklin Family Code and three Franklin appellate cases.

ANSWER

MEMORANDUM

To: Beverly Garcia

From: Examinee

Date: February 24, 2026

Re: Kari Otto matter

I. Introduction

This memorandum discusses our client, Kari Otto, divorce proceedings and marriage dispute between her and her husband Eric Nolan. This memorandum discusses three issues. First, whether Kari and Eric were married in 2006 or in 2019. Second, if the parties were married in 2006, what property would be considered marital property and what property would be considered separate property of Eric's or Kari's? Third, if the parties were married in 2019, what effect, if any, would that have on the characterization of property?

II. Statement of Facts

[omitted]

III. Discussion

A. Whether Eric and Kari marriage was created in 2006 or 2019.

Pursuant to 211(a) of the Franklin Family Code, "[a] common-law marriage shall be recognized as a valid marriage in this state." A common-law marriage may be established by clear and convincing evidence showing the mutual agreement of the couple to enter the legal and social institution of marriage, followed by conduct manifesting that mutual agreement, often referred as "holding out." *Schwartz v. Darrow; Howard v. Howard*. Furthermore, the burden of proving such a marriage lies with the person claiming its existence. However, the key question is whether the parties mutually intended to enter into a marital relationship, which depends on the totality of the circumstances. *Darrow*. In making this determination the court can consider several factors, including, but not limited to: (1) cohabitation; (2) reputation in the community as spouses; (3) joint bank accounts; (4) joint ownership of property; (5) filling joint tax returns; (6) shared financial responsibilities; (7) symbols of commitment like ceremonies; anniversaries, cards, gifts; and (8) couples reference or labels for one another. *Darrow*.

Here, Kari will have to show that she and Eric intended to share a life together as spouses in a committed, intimate relationship of mutual support and mutual obligations. *Darrow*. First, Kari and Eric met in 2004 and then in 2005 they began to live together, which is evidence of cohabitation, and a factor in support of there being a common-law marriage. Second, in 2006, Eric gave Kari a diamond ring and asked her to marry him, which she said yes to. However, Eric believes this was just a promise ring, but Kari is of the belief that it was an engagement ring. Nevertheless, "a ring could be evidence of the couples' express agreement to marry even without a formal ceremony or the presence of some of the other supporting factors." *Darrow*. Moreover, Eric admitted that he asked Kari to get married, because "we were in love." This ring and the admission of both couples is evidence of a mutual agreement. Third, even after the initial receipt of the first marriage license that was not completed and filed with the state, Eric and Kari still continued to hold each other out as a married couple, as Eric would often call Kari, his Wife. Even though the marriage license and ceremony were not followed through with, they informed friends and family that they had gotten married and were referred to as a married couple. This goes to evidence of reputation in the community as spouses, which supports a common-law marriage.

In addition, the couple opened a Bank account together in 2006, and both contributed funds to pay the necessary expenses and bills, including mortgage payments on the home. Eric and Kari also had several symbols of commitment including the anniversary card Eric wrote to Kari in 2007. They also sent Christmas cards to others that included the phrase from, "Mr. and Mrs. Nolan." The couple also had shared financial responsibilities, considering that the mortgage was taken out in Eric's name and governed specifically towards the property he purchased from his landlord. However, the mortgage payments have been paid for by the joint bank account that both have contributed to. Eric and Kari also have evidence of their relationship given the fact that Eric's grandmother cross-stitched a wall hanger that included the words "Eric, Kari, United in Love," and the date of September 19, 2006. Moreover, the couple have filed joint taxes together.

Eric will likely argue that he did not have the intent because they did not have a marriage ceremony after he asked Kari to marry her because he was nervous about making a lifelong commitment. However, given the determination of whether a common-law marriage existed depends on the totality of the circumstances and given such factors as explained above, it is likely that Kari and Eric were in a common-law marriage in 2006.

B. If the parties' marriage was created in 2006, which property is marital property, and which is Eric's or Kari's separate property?

Pursuant to 200(c) of the Franklin Family Code, marital property is defined as all property that is acquired by either or both spouses during the marriage unless it is considered separate property. Separate property is defined as: (1) property acquired before the marriage or by bequest, devise, descent, or gift from a party other than the spouse; (2) compensation for personal injuries; (3) increases in value of separate property, except to the extent that such appreciation is due in part to contributions or efforts of the other spouse; and (4) property described as separate property by written agreement. 200(d)(1)-(4).

Frankfurt Acres

Before Kari ever met Eric, she grew flowers on an acre of land that she owns located 20 miles outside of Franklin City. Given that this property was owned prior to the marriage, this would be considered separate property, which would entitle Kari to take. In addition, during 2022, Kari made significant improvements to the land, which could possibly be subject to marital property. However, those improvements were made with funds she had received as a gift from her mother, which she hired a local contractor to build a large gardening shed so she could store equipment. Eric believes that he should be entitled to a share of the shed on that property. However, those improvements resulted from separate property as it was a gift from her mother and did not result in any appreciation in the value of the separate property that was due to any contribution from Eric, thus it will remain separate property. *Jones v. Cardiff.* This was not a result of Eric efforts and will remain Kari's.

House at 1505 Clark Street

Eric was renting the house prior to the marriage with Kari, but in 2008 Eric purchased the home for $400,000. This was acquired during the marriage and should be considered marital property. However, the money he used to purchase or place a downpayment on the house resulted from his earnings as a photographer, which Eric made a 20% down payment on the house. Even though Eric used his own separate earnings from his photographic job, the house was purchased during the marriage and falls within the statutory definition of marital property. See *Bower v. Bower.* Furthermore, the house is valued at $800,000 currently and the growth occurred through Kari's mutual efforts, during which her funds in the joint bank account were used to pay bills and the mortgage on the home. *Bower v. Bower.* Thus, the house is likely to be marital property.

Mortgage

Furthermore, Eric also obtained a mortgage on the house and given that the mortgage was paid for by both the couples' money in the bank account, the court would likely find that this mortgage debt of $50,000 would be considered marital debt. That is because the mortgage was taken out when Eric purchased the home from the landlord, which was in 2008. Furthermore, even though he used funds to purchase the home from his work as a photographer, those funds were likely part of the assets acquired during the 2006 time-period and onward of the marriage.

Photographic Equipment

Prior to the marriage, Eric was a photographer and purchased equipment in 2005 for $50,000. This would be considered separate property because it was acquired before 2006. However, since the marriage, he has acquired another $150,000 in photography equipment. Given that some of the equipment was purchased during the marriage, it is likely that the court will find the additional equipment as marital property, but the 2005 equipment would be considered separate property.

Vehicles

In 2024, the couple purchased a 2024 Toyota Tundra, which was considered Kari's car, and is paid off. Furthermore, a few months prior, the couple purchased a 2024 Nissan Altima sedan which was considered Eric's car. Given that both were acquired during the marriage, through marital funds, these would be considered marital property.

Bank Account

In 2006, the couple created a joint bank account that was named as "First Bank joint checking account in the name of Kari Otto-Nolan and Eric Nolan." This is marital property because both contributed to the account to pay bills and other reasonable necessities. Thus, the bank account would be considered marital property.

C. If the parties' marriage was created in 2019, what effects, if any, would that have on the characterization of property?

As explained above, marital property is defined as all property that is acquired by either or both spouses during the marriage unless it is considered separate property. Separate property is defined as: (1) property acquired before the marriage or by bequest, devise, descent, or gift from a party other than the spouse; (2) compensation for personal injuries; (3) increases in value of separate property, except to the extent that such appreciation is due in part to contributions or efforts of the other spouse; and (4) property described as separate property by written agreement. 200(d)(1)-(4).

House at 1505 Clark Street

If the parties were married in 2019, rather than in 2006, the house located at Clark Street would likely be considered separate property of Eric given that it was acquired in 2008. However, given that during the marriage Kari contributed to the mortgage and paying the bills on the home, she would likely be able to take a portion of the increase value of the current cost, given that her marital efforts were used to contribute to the home. See *Jones & Bower; Litman* (explaining that a spouse is entitled to appreciation of the other spouse's separate property assets even if those spouse's contributions were indirect). Here, Kari's contributions of using funds to help pay the mortgage thus likely will still entitle her to some of the house on Clark Street.

Furthermore, given that the mortgage was taken out prior to the marriage, it would start out as being separate property, but the debt would then become marital property to the extent it was incurred or appreciated during the marriage.

Frankfurt Acre

This asset given that it was acquired prior to the marriage would still be considered separate property of Kari, and the improvements as explained above would remain Kari's separate property, given that it was separate property that was used to make such improvements. Thus, this would remain separate property.

Photographic Equipment

The initial equipment purchased in 2005 and up to 2019 would remain Eric's separate property. However, Kari would likely be able to obtain a portion of the assets and equipment acquired during the marriage, provided that her marital efforts were used to purchase such equipment. Thus, a portion of the equipment would likely be considered marital property, which would be much less if the marriage was later.

Vehicles

Given that the vehicles were acquired in 2024, these assets would not change and would remain marital property as they were acquired in 2024, thus during the marriage.

Bank Account

Given the bank account was created in 2006, this could have an effect on whether it would be considered marital or separate property, however, given that both contributed to the fund for the duration of the marriage, the bank account would likely remain marital property to the extent the funds contributed during the marriage were marital assets, and funds contributed prior to the marriage would then be separate property.

IV. Conclusion

In conclusion, Kari and Eric were likely married in 2006, given the totality of the circumstances of evidence of a mutual intended agreement to enter into a marital relationship. Furthermore, if the couple were married in 2006, the Frankfurt Avenue property would be considered Kari's separate property, the House at 1505 Clark Street would be considered marital property, along with the mortgage payment being marital debt, the photographic equipment purchased in 2005 would be Eric's separate property, but the equipment purchased during the marriage would be marital property. Moreover, the vehicles and bank accounts would also be marital property. However, if the couple were married in 2019, the house at 1505 would likely be separate property, provided the contribution during the marriage and increase in value would be marital property, the majority of the photographic equipment would be separate property, provided the assets purchased during the marriage would be marital property if they are purchased with Kari's marital efforts. Lastly, the vehicles will remain marital property, and the bank account would likely be considered separate property to the extent it would become marital property when contributions are made from 2019 and forward.

THE SUPREME COURT OF THE STATE OF OHIO

MPT 2

IN RE FRANKLIN DEFENDERS OF THE EARTH (FEBRUARY 2026, MPT-2)

In this performance test, the examinee works in the City Attorney's Office for the City of Whitney. Recently, a not-for-profit organization, Franklin Defenders of the Earth (FDE), promoted a successful ballot initiative, which would require the City Council to adopt a local ordinance. Under the new ordinance, the City would have to fly the "Earth Flag" above the US flag on the center flagpole atop the City Hall building every year on Earth Day (April 22). The City Council has asked for an opinion from the City Attorney regarding whether it must adopt the new ordinance as described in the ballot initiative. The examinee is asked to draft a memorandum addressing whether the US Flag Code or Franklin state law would bar the flying of the Earth Flag above the US flag. In addition, the examinee is asked to determine whether the First Amendment to the US Constitution would require the City to permit FDE to fly the Earth Flag above the US flag on City Hall. The File contains the instructional memorandum, the regulations for events on City Hall Plaza, and the text of the ballot initiative. The Library contains excerpts from a treatise on statutory construction, selected provisions of the US Flag code, the Franklin state constitution, and Franklin statutes, as well as a Franklin Court of Appeal case, *Mastai v. Ross*, and excerpts from the US Supreme Court's 2022 opinion in *Shurtleff v. City of Boston.*

ANSWER

MEMORANDUM

To: Maria Delatorre, City Attorney

From: Examinee

Date: February 24, 2026

Re: Measure 15

I. Introduction

II. Facts

[Omitted]

III. Analysis

1. The United States Flag Code does bar the flying of the Earth Flag above the United States Flag because the language is permissive in nature.

The United States flag code states, "[n]o such flag or pennant may be placed above the flag of the United States or to the United States flags' right." 4 U.S.C. 7(f). The code states further that the United States flag should always be at the peak when the United States flag is flown on the same rope or line as another flag. *Id.* Furthermore, Section 7 of the code is consistent that the United States flag should always be to the right or be at the highest peak. *Id.* However, the language in the code uses the terms "should" or "may." Under the principles of statutory interpretation, "should" and "may" are permissive, not mandatory. Walker's Treatise on Legislation Section 201 (h). Mandatory language is evidenced by the use of "shall" or "must."

Here, the United States Flag Code does not bar the flying of the Earth Flag above the United States("U.S.") flag because the language is permissive in nature. The code uses "should" and "may" throughout the code describing that the United States flag should be at the highest peak on a flagpole or should be positioned on the left of all other flags when flown in a display. Though the code states that the U.S. flag should be the highest flag, the language is permissive. Since the language is permissive, it does not make it mandatory that the U.S. flag be higher than another flag or pennant. Therefore, under the U.S. Flag Code, the U.S. flag does not have to be the tallest flag flown. Since the language is permissive, it does not bar the Earth Flag from being flown about the U.S. flag.

2. The Franklin state law bars the flying of the Earth Flag above the United States Flag and Measure 15 is unenforceable under state law.

Local ordinances are preempted by state law if "the subject matter has been so fully covered by general law as to clearly indicate that it has become exclusively a matter of state concern." *Mastai v. Ross* (Fr. Ct. App. 2004), citing *In re Hubbell* (Fr. Sup. Ct. 1964). Furthermore, if the subject matter has been partially covered by the general law couched in terms as to indicate a paramount state concern that will not tolerate further local action, then the local ordinance is also preempted. *Mastai v. Ross* (Fr. Ct. App. 2004), citing *Jefferson School Board v. County of Jefferson* (Fr. Sup. Ct. 1980). The State Government Code established that the legislature intended to preempt all local regulations of eligibility when a similar statute has been enacted to regulate such conduct. *Mastai v. Ross* (Fr. Ct. App. 2004). It does not matter if a city or a county passed a law, as local regulations will be preempted by the State Government code. *Id.* Cities are creatures of the state; therefore, voters must pass local ordinances within the legal framework established by the constitution of the state and the laws enacted by the legislature. *Id.*, citing *Mancini v. City of Greenwich* (Fr. Sup. Ct. 1965). Local governments do not possess even federal constitutional rights against the state that created them. *Id.*, citing *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907). Regardless of whether the local ordinance was passed by a ballot initiative, the source of the local regulation cannot be contrary to the laws adopted by the state legislature. *Id.*

The Franklin State Government Code Section 617 states, "No other flag or pennant shall be placed above, or if on the same level, to the right of, the flag of the United States of America, except during church services, when the church flag may be flown." In Section 436, the code states that the national flag shall be above the state flag and the state flag shall be hung in such a manner as not to interfere with any part of the national flag, and at all times the national flag shall be placed in the position of first honor.

In *Mastai v. Ross* (Fr. Ct. App. 2004), there was a challenge to a local city's ordinance that limited the terms of council members. The appellate court affirmed the district court's determination that the local ordinance was preempted by state law. *Id.* The appellate court determined that the State Government Code of provisions fully occupied the field or so fully covered it as to indicate a paramount state concern, that the state law preempted the local law. *Id.* There were numerous Franklin State Government Code provisions affecting the eligibility of local officers in cities. *Id.* The appellate court determined that the State Government Code intended to preempt all local regulation because of its numerous codes affecting the eligibility of the city council member.

Here, the Franklin Government Code (the "Code") likely preempts Measure 15. There are several provisions in the Code affecting the position of the U.S. flag. All of the provisions determine that the U.S. flag should be the highest flag or that it should not be interfered with by other flag, and no other flags can be larger than the U.S. flag. The Code requires that the U.S. flag shall be placed in the position of first honor. The issue is similar to *Mastai*, because there were numerous code sections that effected certain legal conduct, and the appellate court determined that the Code preempted local law, even if the local law was a ballot initiative. The *Mastai* court gave no weight to the fact that the voters passed a ballot initiative, as all laws must pass the legal frameworks of the state and federal constitution. Furthermore, it has no bearing that city voters passed this ballot initiative because a city is a creature of the state. Therefore, the provisions in the Code demonstrate the legislature intended to occupy the field when regulating where the U.S. flag should be flown. They have occupied the entire space as their regulations determine whether the U.S. flag should be the tallest flag, the position that the U.S. flag should be in, and regulates that no other flag should interfere with the U.S. flag. Furthermore, unlike the U.S. Flag Code, the Code uses mandatory language, like "shall." The Code requires that the U.S. flag be flown in the first position, that the U.S. flag shall be above a state flag, and that no other flag or pennant shall be placed above the U.S. flag. The Code has occupied the entire space. Therefore, the ballot initiative is preempted by State law and is invalid.

3. The First Amendment to the United States Constitution does not require the FDE flag to fly the Earth Flag above the United States Flag.

When a government speaks for itself, the First Amendment does not demand airtime for all views. *Shurtleff v. City of Boston*, 596 U.S. 243 (2022). However, if a government encourages diverse expression, by creating a forum for debate, the First Amendment prevents it from discriminating against speakers based on their viewpoint. *Id.* The first determination is to determine whether the government is speaking. When a government invites people to participate in a program, the lines are blurred. *Id.* The Supreme Court has set out a test to determine whether the government is speaking or if it is creating a forum for expression of private persons. A court should look to the history of the expression at issue, the public's likely perception as to who is speaking, and the extent to which the government has actively shaped or controlled the expression. *Id.*

In *Pleasant Grove City v. Summum*, the Supreme Court held that the message of the permanent monuments in a public park constituted government speech, even when the monuments were privately funded and donated. Furthermore, in *Walker v. Texas Div., Sone of Confederate Veterans, Inc.,* the Supreme Court also held that the government was speaking regarding license plate designs because the State that issued the plates maintained direct control over the messages conveyed by actively reviewing designs and rejecting over a dozen proposals. *Id.*

In *Shurtleff v. City of Boston,* 596 U.S. 243 (2022), the Supreme Court held that the City of Boston was not engaging in government speech. The Court looked at all of the above factors. They determined that Boston has allowed groups to hold ceremonies on their Plaza for many years, and during the ceremonies they allowed the groups to hoist a flag of their own choosing in place of the city flag. The Court looked at the history of the expression and determined that it was not always the case that flying flags at the Plaza represented the nation, state, or city. Next, the court looked at the public perception. The Court determined that the flag issue would not be perceived as a government speech as it would be associated with the group hoisting the flag. And the Court looked at the control exercised by the city and found that the city lacked any control over the expression. The Court concluded that Boston was not speaking for itself in allowing private flags to be flown, and therefore, it could not exclude speech based on its religious viewpoint, as it constituted impermissible viewpoint discrimination.

Here, the facts are different from the *Shurtleff.* And as the Supreme Court said in *Shurtleff v. City of Boston*, 596 U.S. 243 (2022), the case's context rather than the rote application of rigid factors determines whether the government is engaging in speech. The City of Whitney (the "City") maintains three flagpoles on the City Hall building, not in a Plaza out front like *Shurtleff.* The city has allowed organizations to use City Hall Plaza as it is a public place. The city has routinely allowed such events. There are some standard regulations and safety and security measures, but the City generally freely grants permits to use the Plaza. However, there is no indication that the city has ever allow organizations that have used City Hall Plaza to raise their own flag on the flag poles or have allowed other flags to fly higher than the U.S. flag. Whereas in *Shurtleff,* the City of Boston freely allowed organizations to hoist their own flag in the City Plaza. Here, the flag poles are attached to the City Hall Building, not on the ground in front of the building like in *Shurtleff.* Furthermore, there is no indication that City ever allowed other organizations to raise their flag on City's flag poles. They have exercised complete control in which flags are flown on the poles attached to City Hall, this is similar to the control exercised in *Walker*, where the court determined that the government was speaking because of their direct and continuous control over license plate displays. Furthermore, the public perception would also weigh in City's favor because it would likely be seen as the city speaking because they never allowed other organizations to raise their flag on the city flag poles. Finally, the history of expression would also weigh in the City's favor because the flags flying on the poles have always represented the nation, state, and city. There is no indication that the city has ever allowed other flags to be flown on the poles except for the national flag, the state flag, and the city flag.

Therefore, a court would likely conclude that the government is expressing speech because they have exercised complete control of which flags are flown, they have never allowed other flags to be flown, and the public perception would be that the government is speaking.

4. Advice to Council.

Overall, I would advise City Council that they do not have to adopt the ordinance. Even though the U.S. Flag Code is permissive in nature, the Franklin State Government Code preempts the ordinance. It has fully occupied the space, and even a ballot initiative does not trump State Law. The State Law requires the U.S. flag to be flown in primary position. It also regulates only flags around the U.S. flag. The numerous regulations demonstrate that the Code has preempted the local ordinance because it's occupying the entire field. Furthermore, City Council is not violating FDE's first amendment because the city is regulating government speech. The city would not be committing viewpoint discrimination because the city itself is speaking. It has never allowed other flags to be flown; it controls which flags are flown, the history points to government speech, and public perception also points to government speech. Therefore, there is no viewpoint of discrimination because the government is engaging in its own speech. On all of these conclusions, I would advise City council that it does not have to adopt the ordinance and can maintain its current position of not allowing the Earth Flag to be flown higher than the U.S. flag.

IV. Conclusion

In conclusion, the U.S. Flag code does not bar flying the Earth Flag higher than the U.S. flag because its language is permissive in nature and is not mandatory. However, the Franklin State government code has preempted the local ballot initiative because there are numerous codes regulating where and how the U.S. flag should be flown. Finally, the city is not discriminating against the FOE because flying the flags on city hall is government speech.

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