MPT-1 — Sample Answer 1

MEMORANDUM

To: Beverly Garcia

From: Examinee

Date: February 24, 2026

Re: Kari Otto Property Characterization

Introduction

Our client, Kari Otto, seeks an amicable divorce from her husband, Eric Nolan. You asked me to assess whether Kari and Eric married in 2006 or 2019 and how Franklin law would characterize their property for purposes of equitable distribution upon divorce in either case. As discussed further below, Franklin law would likely recognize the beginning of their marriage in 2006 and characterize property accordingly. As you requested, the end of the memo also addresses property characterization in the event their marriage in fact began in 2019.

1. Kari and Eric likely married in 2006.

A. Legal Standard

Franklin recognizes common law marriages, Fr. Fam. Code § 211, which are marriages entered into without a formal ceremony, *see Schwartz v. Darrow* (discussing putative "couple's express agreement to marry even without a formal ceremony").

Common law marriage in Franklin has two elements. *Id.* The first is "mutual agreement of the couple to enter the legal and social institution of marriage." *Id.* The second is "conduct manifesting that mutual agreement, often referred to as 'holding out." Id. (quoting *Howard v. Howard*).

Whether a common law marriage exists "depends on the totality of the circumstances." *Id.* Conduct tending to show the existence of a common law marriage includes (1) "cohabitation", (2) "reputation in the community as spouses," (3) "maintenance of joint banking and credit accounts," (4) "purchase and joint ownership of property," (5) "filing of joint tax returns," (6) "evidence of shared financial responsibility," (7) "evidence of joint estate planning," (8) "symbols of commitment, such as ceremonies, anniversaries, cards, and gifts," and (9) "the couple's references to or labels for one another." *Id.*

When the incidents of marriage exist as a convenience, that tends to show now bona fide common law marriage exists. *See id.* (citing *Ridley v. Brooks*). And when one putative spouse has

stated his intent to others never to marry, that also tends to show that no common law marriage exists (because it undermines the credibility that he *intended* to be married). See *id.* (citing *Ridley*).

The party claiming a common law marriage exists bears the burden to establish it by clear and convincing evidence. *Id.* (citing *Howard*).

B. Mutual Assent Marry

Here, the parties both agreed to enter the institution of marriage. Eric gave Kari a diamond ring (a symbol of commitment) and asked her to marry him. She accepted the ring and gave her assent to marry him in August and September 2006. Further evidence that they mutually assented to marriage includes that they obtained a marriage license and gathered with close friends to celebrate the occasion (even though they did not have a formal marriage ceremony). Indeed, in Eric's interview, he concedes that he asked Kari to marry him and that she agreed in late 2006.

It is true that Eric now claims this was only a promise to marry later, not a then-existing assent to be married. But he referred to himself as her husband as early as 2007 in an anniversary card for their first anniversary, all of which indicates that he did, in fact, agree to marry her in 2006. He also admits that he began referring to Kari as his wife as early as 2006, which shows that he had agreed to marry her in 2006. The strong weight of the evidence is therefore likely enough to overcome Eric's claims that the ring was just a promise ring and that they did not in fact marry until 2019, even with the heightened bar of clear and convincing evidence.

C. Holding Out

The parties also held themselves out as spouses. Most of the factors for determining the existence of a common law marriage exist here.

The parties had a reputation with others as married. Kari said friends and family believed them to be married. Indeed, Kari's family was unhappy that they were not able to be there to celebrate the new marriage with the couple in 2006. Eric's own grandmother made a commemorative cross-stitch of their marriage from around that time. Their friends began referring to them as married around that time too. All of that supports a finding of a common law marriage.

They have long sent out joint Christmas cards with their photos in which they referred to themselves to the recipients as spouses, which shows they held themselves out.

The parties maintained joint bank and credit accounts, including the joint bank account they opened in December 2006, which they both used to add money and pay expenses.

They also jointly bought property together (the bungalow whose mortgage they paid with joint funds) and filed joint taxes together.

They had their celebratory dinner after obtaining their marriage license and later held another ceremony to celebrate their marriage, which tends to show the existence of a marriage relationship.

Although the record does not reflect any joint estate planning, the totality of the circumstances weighs heavily in favor of finding that a common law marriage exists here from the parties' holding themselves out as such.

2. Property Characterization for 2006 Marriage

A. Legal Standard

Franklin employs a system of equitable distribution of property among spouses upon their divorce. *See* Fr. Fam. Code § 215(a)(2) (discussing equitable distribution of marital property). The before a court determines how to distribute the property, it must first characterize the spouses' assets as either separate or marital. See Fr. Fam. Code §§ 200(c)(d), 215(a)(1)(2). A spouse's separate property is not subject to distribution. See Fr. Fam. Code § 215(a)(1) ("Separate property shall remain as such."). By contrast, marital property is subject to distribution. See Fr. Fam. Code § 215(a)(2) ("Marital property shall be distributed equitably between the parties . . . ."). This different treatment makes the characterization question very important because it is the difference between a spouse's keeping an asset and its value entirely and her having it subject to distribution with her spouse.

In general, marital property is "all property acquired by either or both spouses during the marriage." Fr. Fam. Code § 200(c). By contrast, separate property is "property acquired before marriage or property acquired" through succession or nonintraspousal gift. Fr. Fam. Code § 200(d)(1).

Whether an increase in value of property is characterized as marital or separate depends on whether both spouses in some way contributed to that appreciation. See *Jones v. Cardiff* (citing *Price v. Price*); see also Fr. Fam. Code § 200(d)(3) (discussing appreciation in value of even separate property as subject to equitable distribution). Contributions subjecting appreciation in value of otherwise separate property to distribution as marital property may be direct or indirect, financial or nonfinancial. *Id.* (citing *Price*) (recognizing direct, nonfinancial contribution to appreciation in separate property as marital); *Bower v. Bower* (citing *Litman v. Litman* (recognizing marital treatment of indirect spousal contribution to appreciation in separate property)). Indirect support includes "pledging . . . personal credit for . . . debts" as well as providing support in the home as a homemaker and parent. *See id.*

Furthermore, the mere fact that property acquired during the marriage is of the same kind as property one spouse held before marriage does not mean that later-acquired property is necessarily separate rather than marital. See *id*.; Fr. Fam. Code § 200(c).

B. 2006 Characterization – Application

The following characterization will apply if the parties' marriage became effective in 2006.

i. House at 1505 Clark Street

The house is marital property. The parties bought the house during the marriage (2008) and paid for it with joint funds from a joint account. The fact that Eric rented the Bungalow is of no consequence; the statute concerns itself with when one or both of the spouses acquired ownership. Nor is the fact that he negotiated the transaction.

He may contend that the initial 20% down payment was his separate property he earned as a photographer and that therefore that amount and the share of that amount that appreciated should remain separate property. That will be difficult to contend because there was intermingling of the funds in the parties' joint account beginning immediately after the marriage (December 2006) and well before this purchase in 2008. But that would be a closer call.

Otherwise, the appreciation in value occurred during the marriage and on a marital asset, so the appreciation is also marital.

Debts are also subject to characterization, and the mortgage will be a marital debt for the same reasons as stated above.

ii. Tract of Land in Frankfurt Acres

This land was Kari's separate property because she owned it since before they met and before they married.

The issue is whether any of the appreciation on this separate property is marital. It arose primarily from the efforts of Kari and using money that was separate property since it came as a gift to he alone. All that points to the appreciation's being separate.

Nothing suggests Eric contributed directly in a financial or nonfinancial way to the appreciation. He may contend that he contributed indirectly by supporting her at home and by providing his own income to other areas of their married life, which freed her to spend that money and energy and time on the tract of land. That may enough, but unlike in Bower, there is no sign that he pledged his credit for any debts related to this or engaged in any parenting or homemaking responsibilities. So the possibility that this will be enough for this property potentially to be subject to marital distribution is low.

iii. Photography Equipment

The initial photography equipment was separate property because he owned it before the marriage. But the equipment obtained to augment and replace is marital property even though it is of the same kind as what he is replacing. *See Bower.*

iv. Cars

The cars were acquired during the marriage with marital funds and are thus marital property.

v. Joint Checking Account

The joint checking account contains intermingled marital funds and is thus marital property.

C. Property Characterization for 2019 Marriage

i. House at 1505 Clark Street

Kari would be entitled to only the amount of the appreciation since 2019 because the house and mortgage is in his name alone. The amount she contributed to principal and that the property appreciated since then (from payments from their joint account) would be marital and subject to distribution.

ii. Tract of Land in Frankfurt Acres

The analysis of this issue would be the same as above because the only contested issue is over the extent of increase in value from the efforts that took place in 2022, after even the 2019 marriage would have taken place.

iii. Photography Equipment

Analysis of this issue would differ in that all the cameras, not only the ones obtained before the 2006 "marriage" would be separate property.

iv. Cars

Analysis of the cars would be the same. They are marital property.

v. Joint Checking Account

Analysis of this would be the same. The joint checking account is marital property.

MPT-1 — Sample Answer 2

MEMORANDUM

To: Beverly Garcia

From: Examinee

Date: February 24, 2026

Re: Kari Otto matter

I. INTRODUCTION

Our client Kari Otto ("Kari") is seeking a divorce from her husband, Eric Nolan ("Eric"). At issue is whether the parties were married in 2006 and obtained a common-law marriage or in 2019 when they had a wedding ceremony and filed a marriage certificate with the county clerk. Also at issue is what property is marital property and which property is separate property, and if the date of the parties' marriage has any effect on the characterization of property. Please see below for an analysis of those questions.

II. ANALYSIS

1. The question is whether the parties' marriage was created in 2006 or 2019.

Common law marriage is recognized as a valid marriage in this state. FR. FAMILY CODE §211. 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 to as "holding out." *Howard v. Howard*. The burden of proving common-law marriage lies with the person claiming its existence. *Id*. The key question is whether the parties mutually intended to enter into a *marital* relationship - that is, to share a life together as spouses in a committed, intimate relationship of mutual support and mutual obligation. *Id*. Ultimately, a common-law marriage finding depends on the totality of the circumstances. *Schwartz v. Darrow*. Relevant conduct includes, but is not limited to, cohabitation; reputation in the community as spouses; maintenance of joint banking and credit accounts; purchase and joint ownership of property; filing of joint tax returns; evidence of shared financial responsibility, such as leases in both parties' names, joint bills, or other payment records; evidence of joint estate planning, including wills, powers of attorney, and beneficiary designations; symbols of commitment, such as ceremonies, anniversaries, cards, and gifts; and the couple's references to or labels for one another. *Id*.

In *Ridley v. Brooks*, the court held there was no common-law marriage even though the parties lived together, shared living expenses, and indicated that they were husband and wife on a health insurance form and their apartment lease, because the evidence established that the health

insurance designation was done as a convenience to save money on premiums, and one of the parties often stated to friends that she had no intention to marry. Thus, the court in Schwartz v. Darrow held that courts must determine whether the parties in fact agreed to be married. The court in *Schwartz v. Darrow* held that the party asking the other party to be his wife, which she accepted, and that he provided her with a ring can be evidence of the couple's express agreement to marry even without a formal ceremony or the presence of some of the other supporting factors. *Id*. However, although a couple's decision to maintain separate finances remains relevant, it is not necessarily indicative of the lack of the parties' intent to be married. *Id*.

Here, although Eric and Kari did not have a wedding ceremony before the marriage license expired, nor did they file a marriage certificate with the county clerk's office in 2006, Eric and Kari mutually intended to enter into a marital relationship and in fact agreed to be married in 2006. In August of 2006, Eric gave Kari a diamond ring and asked her to marry him, to which Kari said yes. On September 19, 2006, Eric and Kari obtained a marriage license, and shortly thereafter, Eric started referring to Kari as his "wife". They told their friends they had gotten married, and their friends started referring to them as a married couple. Moreover, Eric gave Kari an anniversary card on September 19, 2007, where he referred to himself as her "husband" and celebrated their "first anniversary" together as a married couple, as they had already been dating together for several years. Lastly, Eric stated that he was intending to officially marry Kari in September of 2006 and began calling Kari his wife after that date. Although Kari had never used Eric's last name and only began to use "Otto-Nolan" as her last name after the 2019 wedding ceremony, there are enough facts in favor of their intention to enter into a marriage in 2006. Thus, Eric and Kari did mutually intend to enter into a marital relationship and agree to be married in 2006.

Moreover, other relevant conduct also would help a court find that Eric and Kari were married in 2006 from the totality of the circumstances. Their friends started referring to them as a married couple after September of 2006, Eric's grandmother has a cross-stitch wall hanging bearing the names "Eric" and "Kari" and includes the words "United in Love" and the date "September 19, 2006", with the woman wearing a wedding gown and veil and holding a bouquet of flowers and the man dressed formally. Kari stated that Eric's mother and grandmother were upset because they felt that Kari and Eric had deprived them of being there for the wedding in 2006. Kari and Eric have a joint bank account that they opened in December 2006, to which they both have contributed funds and from which they have paid their bills since 2006. They filed joint tax returns every year starting in 2007, and they send annual Christmas cards signed "Love, Mr. and Mrs. Nolan."

Thus, the facts show that Kari and Eric mutually intended to enter into a marriage in September of 2006 and the totality of the circumstances also show that they entered into a marriage in September of 2006.

2. **The question is which property is marital property and which property is Eric's or Kari's separate property.**

Except when the parties have a valid prenuptial or postnuptial agreement, the court shall determine the respective rights of the parties in their separate or marital property. FR. FAMILY CODE §215. Under FR. FAMILY CODE §200, the term "marital property" means all property acquired by either or both spouses during the marriage. The term "separate property" means: (1) property acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse; (2) compensation for personal injuries; (3) property acquired in exchange for or the increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse; or (4) property described as separate property by written agreement.

When looking at property acquired in exchange for or in the increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse under FR. FAMILY CODE §200(d)(3), any appreciation in the value of separate property due to the contributions or efforts of the nontitled spouse will be considered marital property. *Price v. Price*. This includes any direct contributions to the appreciation, such as when the nontitled spouse makes financial contributions to the property, as well as when the nontitled spouse makes direct nonfinancial contributions, such as by personally maintaining, making improvements to, or renovating a marital residence. *Id*. Moreover, the court in *Bower v. Bower* has held that there is a presumption that property acquired under this category would be roughly equivalent in value at the time between the premarital property and that which was acquired in exchange. However, the court in *Bower v. Bower* held that because premarital property was *replaced* with property greater in quantity and value that was largely produced or paid for through the activities of the marital economic partnership, such as the wife's direct and indirect contributions, the premarital property was not acquired in exchange for or the increase in value of separate property under §200(d)(3), but marital property within its statutory definition. Lastly, the court in *Litman v. Litman* held that the spouse was entitled to appreciation of other spouse's separate property asset even if spouse's contributions were indirect.

a. Which property is marital property and separate property if the parties' marriage was created in 2006?

Here, Kari and Eric have several assets that must be categorized as marital property and separate property. First, if the parties' marriage was created in 2006, then the following will constitute marital property as they were acquired by either or both spouses during the marriage according to the statutory definition of "marital property" under FR. FAMILY CODE §200: (1) the house at 1505 Clark Street, which was bought by Eric in February 2008, (2) the 2024 Toyota Tundra pickup truck, acquired in May 2024, (3) the 2024 Nissan Altima sedan, acquired in January 2024, (4) the First Bank joint checking account acquired in December of 2006, (5) the balance on mortgage for 1505 Clark Street, and (6) the additional photography equipment acquired in October of 2006.

However, the photography equipment acquired in December 2005 by Eric is separate property as it was bought before their marriage in September of 2006. Moreover, the tract of land in Frankfurt Acres, acquired in September of 2001 by Kari, is separate property. Although the tract of land appreciated significantly from $70,000 in 2001 to $150,000 in 2026, Kari herself made

significant improvements to the land in Frankfurt Acres with funds she has received as a gift from her mother in 2022. Lastly, there are no facts to suggest that Eric made any financial contributions or direct nonfinancial contributions to the property, such as by personally maintaining, making improvements to, or renovating the property, or indirectly contributing through his services as a homemaker or husband. The land in Frankfurt Acres was not their marital home, and both Eric and Kari were working and contributing to the finances of their joint account. Thus, because Kari purchased the land before their marriage and only contributed to the improvements herself through inherited funds, this is separate property.

b. Which property is marital property and separate property if the parties' marriage was created in 2019?

If the parties married in 2019, then the following would be marital property: the 2024 Toyota Tundra and the 2024 Nissan Altima. However, as stated above, the tract of land in Frankfurt Acres would continue to be separate property for Kari, and the photography equipment and additional photography equipment would be separate property for Eric, as there are no facts to show that Kari contributed directly or indirectly to the appreciation or depreciation of those properties.

However, the house at 1505 Clark Street purchased by Eric in 2008 and the balance on the mortgage would be marital property. Although only Eric's name is on the mortgage and he made a 20% down payment on the house using his own money that he earned as a photographer, Kari also financially contributed to the house by helping pay the mortgage on the house. Moreover, the house appreciated significantly in value, from $400,000 in 2008 when it was premarital property to $800,000 in 2026 when it was premarital property, and Kari helped pay the mortgage on the house and it was their marital residence. Thus, like the court in *Jones v. Cardiff*, who held that although the parties contributed different amounts toward the improvement of the property, any appreciation due to the effort of both spouses will be considered marital property. Thus, because both Kari and Eric contributed to the appreciation of the house by paying off its mortgage, the house at 1505 Clark Street is marital property.

Lastly, the joint checking account will also be marital property as both Kari and Eric contributed financially to the account since 2006.

III. CONCLUSION

In conclusion, Eric and Kari intended to and held themselves out to be married since September in 2006. The analysis of whether their assets are marital or separate property does change depending on whether their marriage was created in 2006 or 2019, as analyzed above. Most notably, if the parties married in 2019, the house at 1505 Clark Street would still be considered marital property even if the house was bought by Eric in 2008. Please let me know if you have any questions.

MPT-1 — Sample Answer 3

Law Offices of Stapleton & Garcia LLP

MEMORANDUM

To: Beverly Garcia

From: Examinee

Re: Kari Otto Matter

Introduction

Please see below a memorandum addressing the following issues: (1) whether the parties marriage was created in 2006 or 2019; (2) if the parties' marriage was created in 2006, which property is marital property and which is Eric's or Kari's separate property; and (3) if the parties' marriage was created in 2019, what effect, if any, would that have on the characterization of property? Per your instructions a separate statement of facts has been omitted.

Were Kari Otto and Eric Nolan married in 2006 or 2019?

Franklin recognizes common law marriages. FR. FAM. CODE Section 211(a). "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 to as 'holding out.'" Schwartz v. Darrow (Fr. Ct. App. 2022)(quoting Howard v. Howard (Fr. Sup. Ct. 2015)). To determine whether a common-law marriage exists "[t]he key question is whether the parties mutually intend to enter a marital relationship." Id. The burden of proving common-law marriage lies with the person claiming its existence. Id. Accordingly, in the matter Kari Otto will bear the burden of proving, by clear and convincing evidence, the existence of a common-law marriage in 2006.

Court's apply a totality of the circumstances test to determine whether the parties intend to enter into a marital relationship. *Id*. Some of the factors court consider in Franklin include: cohabitation, reputation to the community as spouses, maintenance of joint banking and credit accounts, joint ownership of property, jointly paying bills, evidence of joint estate planning, beneficiary designations, symbols of commitment (i.e., anniversary cards); and references to labels for one another. *Id*.

Kari can likely prove by clear and convincing evidence that Kari and Eric intended to enter into a martial relationship and that a common-law marriage existed in 2006. Kari will be able to show that the parties intended to be marry in 2006 because Eric asked Kari to marry him, gave her a diamond ring, and they even obtained a marriage license and went to celebrate afterwards. Eric

will attempt to rebut that there was a marriage in 2006 (as he made clear in his prior statement) by arguing that the ring was just a promise ring and that he was nervous about actually marrying Kari. However, this statement can be rebutted because on Feb. 19, 2026, Eric testified "[y]eah, I intended to marry her." Eric's arguments can also further be rebutted by the first anniversary card, in which Eric states "I have learned to be a good husband to you." Accordingly, there is more than enough evidence to show that Kari and Eric intend to marry in 2006.

There are also substantial factors that evidence a common-law marriage under Franklin law. Unlike in *Schwartz v. Darrow*, Eric and Kari have filed their tax returns together since 2006, which weighs tremendously in favor a finding a common law marriage. *Id*. Even though Eric and Kari did not have a marriage ceremony, Eric and Kari have also cohabited together, held themselves out to friends and family as married, and opened a joint bank account together in 2006. Others also believed that Eric and Kari were married in 2006.

Accordingly, considering all pertinent factors, Kari will likely be able to prove by clear and convincing evidence that her and Eric intend to marry in 2006 and have had a valid common-law marriage since 2006.

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

The below section discusses whether Eric and Kari's property would be considered marital or non-marital property, if a court finds that a marriage existed in 2006. Franklin Family Code Section 200, generally defines "marital property" as "all property acquired by either or both spouses during the marriage" unless the property constitutes "separate property" as defined under Section 200(d). FR. FAM. CODE Section 200(d). Section 200(d) defines separate property as "(1) property acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse . . . (3) property acquired in exchange for or the increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse." FR. FAM. CODE Section 200(d).

Real-Property & Improvements

Real Property acquired before marriage is non-marital property. FR. FAM. CODE Section 200(d)(1). The natural appreciation of the value of that property is considered non-marital property so long as the appreciation is not due to the contributions or efforts of the other spouse. FR. FAM. CODE Section 200(d)(3); *see also Jones v. Cardiff* (Fr. Sup. Ct. 2023). A contribution by a spouse can be either monetary or non-monetary (i.e., physically making improvements via renovations). See *Jones v. Cardiff* (Fr. Sup. Ct. 2023)(citing Price v. Price (Fr. Sup. Ct. 2001).

Land in Frankfurt Acres & Shed on Land in Frankfurt Acres $70,000.00 (now worth $150,000.00)

The Land in Frankfurt Acres was acquired by Kari prior to the marriage, thus constitutes "nonmarital" property. Additionally, the improvements to the land and natural appreciation in

the value of the Property are also likely considered non-marital property because there is no evidence that Eric personally (shed was installed by a contractor) or his finances contributed to the appreciation in value of the Property. Eric May attempt to argue that shed placed on the land during the marriage improved the value of the Property. However, this shed was installed using funds that Kari received as a gift from her mother, which is considered non-marital property under Franklin Code. See FR. FAM. CODE Section 200(d)(1) (separate property means "property acquired by bequest, devise, descent, or **gift** from a party other than the spouse")(emphasis added). Accordingly, the full value of the property at Frankfurt Acres is likely non-marital property.

Bungalow at 1505 Clark Street (Purchase Prince 400,000.00; now worth $800,000.00 with mortgage balance of $50,000.00)

Because the home was purchased in 2008 using money that was likely acquired during the marriage, the home and any increases in value would be considered marital property as well as the mortgage balance.

Photography Equipment Purchased in 2005 & Other Photography Equipment Purchased in 2006

In *Bower v. Bower* (Fr. Ct. App. 2014), the court of appeals held that a heard of cows could be equitably distributed in considered what was marital vs. non-marital property. The court is likely to do the same here.

The photography equipment was purchased prior to 2006, thus it will be considered non-marital property under Franklin Code. Further, the property appreciated in value only natural – there was no activity that caused the increase in value. Thus, the photography equipment purchased in 2005 and appreciation are considered non-marital property.

Because property acquired during marriage is considered marital property under Franklin, the photography equipment purchased in 2006 and the increase in value (which is solely to due natural appreciation) will be considered marital property. FR. FAM. CODE Section 200.

2024 Toyota Tundra (Kari's Vehicle) & 2024 Nissan Altima (Eric's Vehicle)

Regardless of title, property acquired during marriage is considered marital property under Franklin, thus both vehicles and any depreciation or appreciation associated with them will be considered marital property. FR. FAM. CODE Section 200.

Joint Bank Account w/$120,000.00

Here the joint bank account is owned jointly and both spouses have contributed to it since it was created in 2006. Thus, it would be considered marital property. FR. FAM. CODE Section 200.

<u>If the parties' marriage was created in 2019, what effect, if any, would that have on the characterization of property?</u>

The below section discusses whether Eric and Kari's property would be considered marital or non-marital property, if a court finds that a marriage did not exist until 2019. If would be no change in the categorization of the property, I indicate so briefly below.

Land in Frankfurt Acres $70,000.00 (now worth $150,000.00) & *Shed on Land in Frankfurt Acres*

No change in categorization because property was considered non-marital even in 2006.

Bungalow at 1505 Clark Street (Purchase Prince 400,000.00; now worth $800,000.00 with mortgage balance of $50,000.00)

If there was no marriage until 2019, the bungalow would not be considered marital property. However, to the extent that Kari contributed to the increase in value of the house since 2019 (i.e., making payments with money earned during the marriage or making physical improvements (either by monetary contribution of physically), that appreciation would be considered marital property.

Photography Equipment Purchased in 2005 & Other Photography Equipment Purchased in 2006

If there was not a marriage until 2019, then the photography equipment (all acquired marriage and all increases in value due to natural appreciation) would be considered non-marital property.

2024 Toyota Tundra (Kari's Vehicle) & 2024 Nissan Altima (Eric's Vehicle)

No change because both were acquired after 2019 with marital funds.

Joint Bank Account w/$120,000.00

Likely, no change here. Unless it was clear that there were funds in the account (which were never spent) that pre-existed the marriage.

MPT-2 — Sample Answer 1

MEMORANDUM

To: Maria Delatorre, City Attorney

From: Examinee

Date: February 24, 2026

Re: Measure 15

Introduction

This memorandum analyzes issues of the City's initial denial of Franklin Defenders of the Earth's (FDE) permission to fly the Earth Day flag above the United States flag during FDE's otherwise authorized demonstration in City Hall Plaza. It addresses (1) issues arising under the U.S. Flag Code (4 U.S.C. § 1 et seq.), (2) issues arising under Franklin law (including the effect, if any, of a responsive ballot initiative FDE launched), and (3) issues of free speech arising under the First Amendment to the U.S. Constitution.

After analyzing these issues, the memorandum concludes and provides advice to the City about whether it must adopt the initiative.

1. Flag Code

The first issue is whether the U.S. Flag Code bars the flying of the Earth Flag above the U.S. flag.

The flag code contains various provisions addressed to how to treat the U.S. flag in relation to other flags and pennants. 4 U.S.C. § 7. Several of the flag code provisions discuss how one "should" treat the flag, 4 U.S.C. §§ 7, 7(c), (e)(f), which shows the provisions are permissive rather than mandatory, *Walker's Treatise on Legislation* § 201(h). Among these permissive provisions are that the U.S. flag be displayed at the center of a group, 4 U.S.C. § 7, at the center and highest of a group of flags including states, localities, or societies, 4 U.S.C. § 7(c), and that, with such flags, the U.S. flag should be "hoisted first and lowered last," 4 U.S.C. § 7(f). All of this suggests that these display provisions are not mandatory and therefore not a bar to flying the Earth Day flag above the U.S. flag as FDE notified the City it intended to do.

Nonetheless, the final sentence of one subsection addressing the display of the U.S. flag is mandatory rather than permissive. Referring to “flags of States, cities, or localities, or pennants of societies,” that provisions states that “[n]o such flag may be placed above the flag of the United states.” 4 U.S.C. § 7(f) (emphasis added). This categorical negative “[n]o," combined with

the permissive "may," indicates that it is absolutely not permissible for the "pennants of societies" to be "placed above the flag of the United States."

The balance of other authority in the flag code suggests that these provisions are not meant to be mandatory. And indeed, non-mandatory sections apply to similar subject matter as the seemingly mandatory provision identified above, which undermines the notion that any of these provisions are meant to bind anyone rather than provide guidance. For all those reasons, the most well-grounded interpretation of the Flag Code is that it does not prohibit the FDE from flying the Earth Day flag above the U.S. flag, though it does discourage it.

2. Franklin Law on the Flag and Measure 15

The next issue is (A) whether the law of the State of Franklin bars the flying of the Earth Day flag above the U.S. flag and (B) whether Measure 15 is enforceable.

A. Franklin Law on Flags

Franklin statutes provide that "[a]t all times the national flag shall be placed in the position of first honor," Fr. State Gov't Code § 436, and that "[n]o other flag or pennant shall be placed above … the flag of the United States of America," Fr. Military & Veterans' Code § 617. These provisions are mandatory, not permissive. *Walker's* § 201(h).

Here, because the FDE seeks to fly the Earth Day flag "above the United States flag on the center flagpole atop the City Hall building itself," the plain language of the statutes prohibit what FDE seeks to do.

B. Enforceability of Measure 15

The people of the City passed a ballot initiative that purports to require the City Council to adopt an ordinance that makes it "the official policy and practice of the City of Whitney on Earth Day (April 22) to fly the Earth Flag at the top of the tallest city-owned flagpole on City Hall, above" all other flags, including the U.S. flag.

State law adopted by the Franklin Legislature may preempt local law of a city or county, even if the local law originated with a ballot initiative. *Mastai v. Ross* (citing *Mancini*). This is because the Legislature has the full legislative power. Fr. Const. art. 4, § 1; *Mancini*.

Preemption applies only when the Legislature has "either fully occupied the field or so fully covered it as to indicate a paramount state concern" when it comes to a particular issue. *Id.* (first citing In *re Hubbell*; and then citing *Jefferson School Bd*.).

Here, the Legislature has completely occupied the field on the issue of the display of the U.S. flag relative to other flags because it has a statute that directly unambiguously speaks to the precise

question at issue. Therefore, state law preempts this ballot initiative and any local ordinance that similarly contradicts the clear mandate of Franklin law as enacted by the Legislature.

3. The First Amendment and FDE

The next issue is whether the First Amendment to the U.S. Constitution requires that FDE be permitted to fly the Earth Flag in a superior place of honor and position than the U.S. flag. The key distinction here is whether FDE's attempt to fly the Earth Flag from City Hall itself would constitute government speech (and thus not warrant First Amendment protection) or private speech (and thus enjoy First Amendment protection). *Shurtleff v. City of Boston.*

The First Amendment's free speech protections "do[ ] not prevent the government from declining to express a view." *Id.* But when the government provides a forum for public speech, the First Amendment's protections may come in and prevent the government from "discriminating against speakers based on their viewpoint." *Id*. Apprehending the line between government speech and private speech in a government-provided public forum is not a "mechanical" undertaking. *Id.* Rather, it looks to factors such as "the history of the expression at issue; the public's likely perception as to who (the government or the private person) is speaking, and the extent to which the government has actively shaped or controlled the expression." *Id.* For example in Shurtleff, the Supreme Court said that the fact that the City of Boston permitted demonstrators to raise their own flags on the Plaza flag poles tended to show that that act "would not be perceived as government speech." *Id*. In those circumstances, the Court noted, the city had not actively controlled the flag raisings at all. *Id.*

Here, raising the flag on the flagpole on City Hall (not the City Hall Plaza) would be government speech not subject to any First Amendment protection. The flagpole that FDE wants to use (and that it addressed in the initiative and related proposed ordinance) seeks to put the Earth Flag on the high flagpole on city hall itself, not on the flagpole in the plaza. The City Hall flagpole is not part of the designated public forum where FDE (or anyone else) has or may obtain a permit to demonstrate. Unlike in Shurtleff, the City here exercises complete control over this flagpole as a matter of policy and practice, and similarly there is no history of demonstrators' using this particular flagpole for their own purposes. The City here maintains total control over the display on that flagpole, which means the history of this expression and the perception of permitting the Earth Flag there would be government, not private, speech.

For all those reasons, the First Amendment does not require that FDE be permitted to raise the Earth Flag there.

Conclusions and Recommendations

In conclusion, both state and federal law show that the City need not adopt the ordinance included in Measure 15.

Federal law is favorable that the U.S. flag should take a place a preeminence contrary to what the proposed ordinance would achieve. But most (though arguably not all) the provisions in the relevant federal law are permissive rather than mandatory.

State law is directly on point that the proposed ordinance would contravene state law. And hierarchy of authority is equally clear: in this contest, state law wins and prohibits the ordinance from being enforced.

Finally, nothing in the First Amendment requires a different result. The display on City Hall itself that FDE seeks would be government speech, not private speech. For that reason, the First Amendment does not apply, and the City may decline to hoist the Earth Flag over the U.S. flag without concern of running afoul of the Bill of Rights. In short, the City is perfectly within bounds to continue to control the flagpole on its own building as it does routinely and as a matter of policy.

I recommend that the City clarify its regulations to make clear that even flagpoles on the plaza (not on City Hall itself) are full and completely controlled by the City and thus anything to be put on them would be government speech subject to its control without First Amendment protection. I would also recommend that the City adopt its own provisions requiring display on City-controlled flagpoles of flags in accordance with the U.S. Flag Code, which would eliminate the issue of any Flag Code permissiveness.

MPT-2 — Sample Answer 2

Memorandum

To: Maria Delatorre, City Attorney

From: Examinee

Date: February 24, 2026

Re: Measure 15

Does the United State Flag Code bar the flying of the Earth Flag above the United States flag?

The first issue is whether the United States Flag Code bars the flying of the Earth flag above the United States flag. Under Section 7 of the United States Flag code, sections (c) and (e) state that at (c), “no other flag should be placed above.....the flag of the USA, except during church services.....” and at section (e), "the flag of the United States should be at the center and highest point of the group of number of flags of States or localities or penants of socities, and continues at (f) “that no flag should be placed above the United States flag.”

Therefore, the issue becomes whether the Flag Code by its terms bars the flying of the Earth Flag above the United States Flag despite the ballot measure. Under Walker's principles of statutory intrepretation the subissue becomes whether the flag code bars such a flying of a higher flag using the term “shall or must” as mandatory or “should or may” as precatory or not mandatory. Here, as stated in the subsections of Section 7 above, the Flag Code at all times uses the terms should or may (permissive) rather than the precatory terms of “must or shall” As such, while the City of Whitney would be requested to not allow a flag to fly above the USA flag, that request is permissive according to Walker’s treatsie, and not mandatory. In other words, another flag could fly above the USA flag under the Flag Code and the Flag Code does not explicitly bar the FDE flag from flying above the USA flag.

In short, the ballot measure states the FDE flag should be flown “above the United States flag.” However, while it appears the Measure 15 violates the provisions of the Flag Code, the language used in the Flag Code is precatory to bar the flying of the FDE flag above the United States flag. Therefore, the Flag Code does not explicitly bar the flying of the FDE flag above the US flag, as the language included in the flag code is "should or may" and simply a request rather than mandatory requirement of federal law. Therefore, under the US Flag Code, the City of Whitney City Council would likely have to adopt the ordinace and the Flag Code would not bar the flying of the Earth Flag above the USA Flag.

Does Franklin state law bar the flying of the Earth Flag above the United States flag? Is Measure 15 enforceable under Franklin State law?

The second issue is whether Franklin State law bars the flying of the Earth Flag above the United States flag. Here, different from the US Flag code the requests appears to mandatory. Again following the terms of Walkers Treastie for Statutory intrepreation set forth above, the question terms on the use of mandatory or permissive words. Here, the Franklin Code sections at 436 and 617 states that at 436 "the national flag shall be placed in the position of first honor" and at 617 "no other flag shall be placed above the flag of the USA." Therefore, here, different than the analsysis above, the use of the word shall in the Franklin state law makes the law mandatory. In other words, any flag going above the USA flag would be in direct violation of Franklin State laws mandatory requirements (as opposed to permissive requests in the Flag Code per Walker's Treasties defitnions). Therefore, Franklin State law bars the flying of the Earth Flag above the USA Flag.

The next issue then becomes if the ballot measure passed by the city of Whitney's voters is validly preempted by the state law of Franklin mandating no flag be above the US flag as set forth above. Under the Franklin State Constitution Article 4, Section 1, the legislative power of the state is vested in the general assembly, but the people reserved the right to initiate and referendum. Therefore, the next issue becomes whether the ballot measure by the voters of the City of Whitney is a valid initiative or referendum to overrule the Franklin assemblies mandatory flag rules set forth in Section 436 and 617. Under Mastai, the voters of a city may not preempt the laws of the state as a whole. Therefore, as the this was a initiative of a county as in Mastai citing Macinie, the city or local regualtion itself can not be in direct contradict or contary to the laws of the state legistature. Here, that is exactly the case, and such Franklin state law prempts and validly bars the flying of the FDE flag above the USA flag.

Does the First Amendment of the United States Constitution require that FDE be allowed to fly the Earth Flag above the United States flag?

The third issue is whether the First Amendment of the United States Constitution requires that FDE be allowed to fly the Earth Flag above the United States flag. The threshold issue to this larger issue of the First Amendment follows the analysis of Shurtleff v City of Boston. In Shurtleff, the Court stated that First Amendment Free Speech Clause does not prevent the government from declining to express a view (i.e., the first issue is to determine whether the speech at issue is governmental speech or private speech to determine the limitations or rights of the speaker under the First Amendment. The court continued that while the line can blur when the government invites people to speak in a program (as it becomes unclear who whether the speech is that of the government or of private speakers expressions in a public forum), the Court must analyze the context of the case including the history of the expression at issue, the public perceptions as to who would be speaking (government or private person), and the extent to which the government actively shaped or controlled the expression.

In Shurtleff, the Court found considering the factors set forth above, and the fact that the city of Boston had frequently allowed groups to hold ceremonies on the plaza, which they hoisted their flag, the flags flying on the plaza were not always governemental based flags, that public perception could not be assumed to deem that the hoisting of the flag would be governmental

speech, but rather associated with the group then hosting an event at the plaza. In short, the past behavior of the City of Boston in allowing other flags to be raised presented the case that Boston was not using the flags to soley speak for itself, and thus the flag raising program could not be governemntal speech. Therefore, Boston's refusal to allow the Shurtleff group to raise its flag, violated the First Amendment's Free Speech Clause.

Here, the facts of the FDE flag and the City of Whitney greatly resemble the Court's facts and likely analysis in Shurtleff. The first issue will be to determine whether the speech at issue can be classified as governemental speech or private speech to determine the First Amendment's rights and potential limitations.

In short, here, Whitney as also frequently treated the plaza as a public forum for events like Shurtleff, flies flags above its city hall like Boston in Shurtleff initially seem to resemble the decison in Shurtleff that the flag raising was public speech on private grounds in the city plaza of Boston (as opposed to Whitney here).

However, unlike Shurtleff, there is no evidence that the City of Whitney frequently allowed other groups to raise the flags when hosting public events. Of note, the key in Shurtleff according to the Court was that the Boston had let other groups raises flag, and thus would lead the public to know that not all flags flying represent a message of the government, or governmental speech. Alternatively, here, it appears, that only the governmental flags fly over city hall at any point. Moreover, while the City of Whitney allows groups to hold events in the plaza, they have to comingle the flags above city hall by allowing any group to do so (or in other words forfeit the government's right to speak for itself via its flags). Therefore, according to the factors set forth in Shurtleff, it appears that the City of Whitney can present the history of the expression at issue (flag raising) and past control of the expression at issue to point towards the government speaking for itself. Additionally, as no other flags have even flown above City Hall in Whitney other than governmental flags as mentioned above, it is likely that the public could perceive that a new flag would be the governments speech (much different from the facts of Shurtleff when many flags were raised to represent all sorts of messages according to the Court).

Moreover, the City of Whitney allowed all its events subject to the “standard regulations and safety measures.” Specifically, one of those standard regulations set forth in the City Services of Administration regulations 4.2 sets forth that City Hall Plaza is open for these sorts of events (however, that City Hall, where the flags are raised, is not a part of the plaza where the events are allowed. Therefore, it appears that all groups who have used the Whitney plaza to speak, have been subject to this regulation, and as such the government may have even clearly expressed its desire to speak for itself via its flags in doing so and stated that the hall itself is not a part of the events. Again, the City of Whitney could point to the past control of the expression at issue and the history thereof to point toward the government speaking for itself under the Shurtleff factors.

Along the same lines, the City of Whitney would be able to support its analysis by its statutes setting forth the requirements of the USA flag as compared to other flags resembels the

govermental speech that was found in Walker vs Tex Div Sons of Conferderates at it is the City of Whitney exercising direct control over the messages conveyed on its flag poles.

Additionally, the ballot measure itself appears to classify the flag raising as governmental speech stating that it will be the Official policy and practice of the City of Whitney to fly the FDE flag above the USA flag. Therefore, those words of the ballot measure would clearly point to governmental speech via official policy and practice rather than the private speech of FDE itself in a public forum like in Shurtleff.

Therefore, when applying the analysis of Shurtleff to the facts of the City of Whitney and FDE here, it appears that the City of Whitney has not yet forfeited its "right to speak for itself" via the flags raised above City Hall, and can classify the flags above city hall as governmental speech as the history of the expression at issue, the public perception that it would be the government speaking, and the governments active control of the expression in the past all point to the flags above Whitney's city hall being governmental speech. As such, according to Shhurtleff, the government has a right to decline to speak, and the First Amendment does not gurantee equal time for all views. Therefore, the Freedom of Speech Clause of the First Amendment likely does not require that FDE be allowed to fly its flag over city hall (and above the american flag), and therefore the City Council will not be in violation of the First Amendment by refusing to adopt Measure 15 requiring it do so.

Overall Conclusion

In short, when considering the analysis in the three grammatical paragraphs above, while the United States Flag Code merely request that it is not allowed a flag to be flown above the United States, it is likely the Ballot Measure 15 is be validly premepted under state law (which mandates no flag to go above the USA flag) according Franklin Governmental Code and Mastai, and that the First Amendment Freedom of Speech is not violated by the City of Whitney's refusal to allow the FDE flag to be raised followng Shurteff, as the City of Whitney has classified the flags as governmental speech, the City Council will not be required to adopt the ordinance known as Measure 15 requiring it to allow the FDE to go above the USA flag.

MPT-2 — Sample Answer 3

Memorandum

To: Maria. Delatorre, City Attorney

From: Examine

Re: Measure 15

Date: February 24, 2026

Introduction

This memorandum will address whether the City of Whitney must comply with the Measure 15 ballot initiative that Franklin Defenders of the Earth (FDE) proposed to the city council to adopt an ordinance requiring that the Earth Flag to be flown above the United States Flag every April 22 for Earth Day. Furthermore, the memorandum will also address if the United State Code or the Franklin State Law bar the flying of the flag, and if so will doing so violate the first amendment of the constitution.

Discussion

I. The United State Flag Code 4 USC 1, does not bar the flying of the earth flag above the United States Flag.

Under the United States Flag Code (4 USC 1), states that no other flag or pennant should be placed above or, if on the same level, to the right of the flag of the United States of America, with some exceptions including church services. Furthermore, the US Flag Code states that the flag of the United States of America should be at the center and at the highest point of the group when a number of flags of states or pennants of societies are grouped together. In addition, when other flags of pennants of societies are flown on the same halyard as the flag of the United States, the US flag should always be at the peak. The US flag should be hoisted first and lowered last, with no other flag may be placed above the United States Flag. However, under the Walker's Treaties of Legislation, words such as “should” or “may” makes the legislation permissive, but not mandatory.

Here, the FDE is attempting to pass an ordinance that allows for the flying of the Earth Flag to be above the United States Flag. Utilizing the Walker Treaty, the words “may” and “should” are sprinkled throughout the Flag Code. As the treaty states these words “should” or “may” could mean that the legislation of the City of Whitney allows for the FDE to fly the Earth Flag over the United States flag because it does not give a mandatory requirements that words such as “shall” and “must” would utilize. Therefore, due to the language listed in the code, the United States

Flag Code does not bar the flying of other flags above the United States Flags, but it does give legislation the discretion of whether or not they are allowed to.

II. Franklin State Law Bars the Flying of the Earth Flag above the United States Flag, and Measure 15 is most likely preempted by Franklin State Law.

A. It is mandatory under Franklin State Law that no flag is flown higher than Flag of the United States of America Under the Franklin State Government code (436), the code states that where the national and state flags are displayed, they shall be the same size, and the national flag shall be above the state flag, and the state flag shall be hung in such a manner to not interfere with any part of the national flag. It also states that at all times the flag must be placed in the position of first honor. Furthermore, code 617 of the Franklin state government code states that 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 except for church services.

Here, FDE is attempting to showcase mandatory language in which no other flag may be flown over the United States Flag. Under the Walker, Treaties, words such as “shall” and “must” showcases that the actions set forth in the legislation is mandatory for those to follow. Therefore, there is a definiteness to the government code in which they do not want any thing to be flown over the United States Flag, because if they wanted variation in the law they would have added words such as “should” and “may”, and we do not see that in the language of the code.

B. Measure 15 is preempted by the Franklin State Constitution because it seems as though Franklin Law is attempting to occupy the field of flag placements within the State of Franklin.

The court in *Hubbell*, held “that 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”, or as in *Jefferson School Board* states, “it the subject matter has been partially covered by general law couched in such terms to indicate a paramount state concern that will not tolerate further local action.” The court in Mastai held that whether the state law attempted to either fully occupy the field or fully cover the field to indicate a state concern is sufficient enough to showcase preemption on the state government on local ordinances.

Here, it could be showcased that the Franklin government intended to fully occupy how flags should be flown when in conjunction with the United States flag because there is no language that states otherwise in the Franklin State Code. In Mastai v. Ross, the defendant appealed that an ordinance should be held valid arguing that the city is an distinct, individual entity and not a political subdivision of the state. However, the court in Mastai, states that no matter the source of the local regulation, whether by initiative in a city or county, it cannot be contrary to the laws adopted by the state legislature. Because the City of Whitney is inferior to the rules of the State of Franklin code the new ordinance would most likely be shut down and the Earth Flag would not be allowed to fly above the United States Flag.

FDE may try to argue that since they got a vote of in favor of the Earth Flag being above the United States flag being 55% to 45%, that the ordinance should be passed because the state constitution, states that the legislative power of the state is vested in the Franklin Legislature, which consists of the Senate and Assembly, but the people reserve the right of powers of initiative and referendum. However, this would most likely fail because as stated above, no local ordinances cannot be contrary to the laws of the state legislation and this would be attempting to preempt the state and that is not allowed under the Franklin rules of law.

III. The First Amendment does not require that the City of Whiney must allow the FDE to fly the earth flag over the United States Flag.

Under the constitution, the first amendment prevents the government from discriminating against speakers based on their viewpoint, except in circumstances in which the government wants to speak for itself, then the first amendment does not allow airtime for all views. The Supreme court, conducted a holistic inquiry to determine whether the government intends to speak for itself or regulate private expression, by looking at whether there is a history of expression at issue, the public's likely perception as to who (the government or a private person) is speaking, and to what extent to which the government has actively shaped or controlled the expression.

In *Pleasant Grove City*, the court has held that messages of permanent monuments in public parks constituted government speech, even if privately funded. Even, items designed by private groups can also amount to public speech when the state that issues the space “maintains direct control over the message conveyed” by actively reviewing and rejecting over dozens of proposals. (Walker). However, in *Shurtleff*, where the history of expression includes that flags hanging are not permanent and others have been allowed to hang their flag, it will not be noted as governmental speech especially when perceived by the public. The court further explain that the defendant city did not actively control the flag raising and messages being sent because if they wanted to control it they could have made it clear by not allowing other flags to be represented.

Here, the court would look at whether or not the City Hall where the flags are located are a public forum in which other societies have hung there flag and whether or not the City of Whitney is attempting to relay government speech and the history of that speech that has been conveyed. The City Service Administration states that "no event shall occur on or in City Hall itself and that City hall is not a party of the City Hall Plaza There court will most likely reason that since the city hall is not open for public events that it is restrictive on the kinds of flags that are flown above it and would be protected government speech. While, we have no history on whether they allowed others to fly their flags above city hall FDE would bare the burden of proving otherwise. Therefore, the City of Whitney will not violate the first amendment by not allowing FDE to fly their flag.

FDE might try to argue that under the establishment clause they should be allowed to but there are no facts that indicate they are a religious organization therefore that will most likely fail.

Conclusion

In conclusion under the United States Flag Law, the FDE would argue that they are allowed to fly their flag under this provision, but this will most likely fail because it grants permissive not mandatory intake, and the Franklin State Constitution prohibits the flying the flag above the United States Flag. Measure 15 is preempted by State Law and not allowing the flag to fly does not violate the first amendment, so the City of Whitney can decline the ordinance.