February 2026 MEE Questions

MEE Question 1

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.

MEE Question 2

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.

MEE Question 3

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.

MEE Question 4

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.

MEE Question 5

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.

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.

MEE Question 6

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.

February 2026
MPT-1 Item

Otto v. Nolan

Otto v. Nolan

FILE

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Law Offices of Stapleton & Garcia LLP
400 Central Avenue, Suite 505
Frankfurt City, Franklin 33122

MEMORANDUM

To: Examinee
From: Beverly Garcia
Date: February 24, 2026
Re: Kari Otto matter

Our client Kari Otto wants to obtain a divorce from her husband, Eric Nolan. The parties' separation has been amicable, and they want to work together to reach a fair outcome in their divorce. I met with Kari last week. Eric, who intends to proceed pro se, consented to meet with me a few days after that. Kari and Eric are hoping to reach an agreement regarding their property before they initiate divorce proceedings. The parties do not have children.

The pivotal issue in this divorce is the question of when the parties were married. Kari believes that they were married in 2006. Eric believes that they were not married until 2019.

I would like you to prepare a memorandum to me analyzing the following:

1. Was the parties' marriage 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?
3. If the parties' marriage was created in 2019, what effect, if any, would that have on the characterization of property?

For each issue, be sure to explain your analysis, cite the relevant legal authority, and state your conclusion. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your analysis.

Do not address what percentage of the marital property should be awarded to Eric and what percentage of the marital property should be awarded to Kari. Also do not discuss any business interests of the parties.

Law Offices of Stapleton & Garcia LLP

FILE MEMORANDUM

From: Beverly Garcia
Date: February 16, 2026
Re: Kari Otto file—client interview notes

Today I met with client Kari Otto, who wants to divorce her husband, Eric Nolan.

Kari and Eric met in 2004 at a farmers' market. Kari was selling flowers at one booth, and Eric was selling his photographs at a neighboring booth. At that time, Eric was a burgeoning photographer who sold his photographs at farmers' markets, art fairs, and local galleries. Since before they met, Kari has been growing flowers on an acre of land that she owns located 20 miles outside Frankfurt City in Frankfurt Acres. On weekends, she sells her flowers at farmers' markets and to local grocery stores. During the week, she is an employee at a plant nursery.

Kari and Eric dated for about a year and then, in January 2005, began living together in the bungalow that Eric was renting at 1505 Clark Street in a vibrant part of Frankfurt City. Kari and Eric were content with their relationship. They regularly socialized with a small group of friends who got together for potluck dinners, parties, and hiking outings. Kari continued working at the plant nursery and selling flowers while Eric's photography career took off. Well-known magazines started commissioning Eric's work. His earnings greatly increased, and he bought $50,000 worth of photography equipment in December 2005.

In August 2006, Eric gave Kari a diamond ring and asked her to marry him. Kari was very excited and said yes. On September 19, 2006, Eric and Kari obtained a marriage license. That night, they went out to a formal dinner with a few close friends to celebrate obtaining the marriage license. Shortly thereafter, Eric started referring to Kari as his "wife." While both Eric and Kari were excited about the marriage license, they did not have a wedding ceremony before the marriage license expired, nor did they file a marriage certificate with the county clerk's office. Nevertheless, Eric and Kari told their friends that they had gotten married, and their friends started referring to them as a married couple.

On September 19, 2007, Eric gave Kari an anniversary card, a copy of which is attached to this memorandum.

In January 2008, the landlord told Eric that he was going to put the bungalow on the market. Eric asked the landlord to sell the bungalow to him, and after negotiating a price of $400,000, purchased it in February 2008. Using money that he had earned as a photographer, Eric made a 20% down payment on the house. He took out a 15-year mortgage in his name alone for the remaining purchase price.

In late May 2019, Kari told Eric that she was disappointed that they had not had a wedding ceremony back in 2006. As a result, they went to the county clerk's office and obtained a new marriage license. They then had a small wedding ceremony with a few close friends on June 8, 2019, on Kari's land in Frankfurt Acres. Kari wore a wedding gown, and Eric wore a tuxedo. A wedding photographer took pictures at the ceremony. The day after the wedding, Kari and Eric filed a marriage certificate with the county clerk.

In 2022, Kari made significant improvements to the land in Frankfurt Acres. With funds she had received as a gift from her mother, Kari hired a local contractor to build a large gardening shed so that she could store equipment.

Kari and Eric have grown apart and have decided to divorce. She says that she believes that they became married in 2006. Kari is upset that Eric is alleging that they were not married until 2019. She describes the ring that Eric gave her as an "engagement ring."

Kari reports that friends and family also believe that they were married in 2006. She showed me a cross-stitch wall hanging that Eric's grandmother had hand-stitched and given to her. The cross-stitch depicts a man and a woman, bears the names "Eric" and "Kari," and includes the words "United in Love" and the date "September 19, 2006." The woman depicted is wearing a wedding gown and veil and is holding a bouquet of flowers. The man is formally dressed. Kari said 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 still 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,

including the mortgage on the bungalow, since 2006. They filed joint tax returns every year starting in 2007. They also sent annual Christmas cards with their photos that were signed "Love, Mr. and Mrs. Nolan."

Kari describes the wedding ceremony on June 8, 2019, as a renewal of vows and an opportunity for her to finally wear a wedding dress. However, apart from the Christmas cards, she has never used Eric's last name and only began using "Otto-Nolan" as her last name after the 2019 wedding ceremony.

Transcript of Meeting with Eric Nolan
February 19, 2026

Att'y Garcia: Thanks for agreeing to meet with me today. Just to confirm, I am representing Kari Otto-Nolan in this matter. I am not your attorney, and it is my understanding that you are currently unrepresented and are agreeing to meet with me without an attorney present.

Eric Nolan: That's right. Kari and I want to resolve this as peacefully and easily as we can.

Garcia: Great. We are trying to figure out when you and Kari got married, so I'm going to ask you some questions about that. Did you ask Kari to marry you in September 2006?

Nolan: I did. We were in love, and it seemed like the right thing to do.

Garcia: And what did she say when you asked her to marry you?

Nolan: She said yes. I was thrilled.

Garcia: And did you give her a ring in September 2006?

Nolan: Yeah, but it was just a promise ring. It wasn't an engagement ring or anything.

Garcia: So why didn't you and Kari have a marriage ceremony after you asked her to marry you?

Nolan: I guess I was nervous about making a lifelong commitment.

Garcia: Were you intending to officially marry Kari in September 2006 when you asked her to marry you?

Nolan: Yeah, I intended to marry her, but we just didn't get around to it until 2019. We were already living together, so there wasn't a lot of pressure for us to get married.

Garcia: But did you begin calling Kari your wife after September 2006?

Nolan: Yes, I did that. But only once in a while.

Garcia: So why did you end up having the marriage ceremony in June 2019?

Nolan: We had been going through some problems. Kari always wanted a wedding ceremony—a white dress and all that. I thought that having a ceremony would make the relationship stronger.

. . .

Garcia: What property are you hoping to keep in the divorce?

Nolan: Well, of course I want to keep the house. I also want to keep all my photography equipment. Kari can keep her acreage, but she should pay me for my share of the shed on that property.

Garcia: What kind of camera equipment do you have?

Nolan: I have a lot of it. I bought about 10 cameras the year we moved in together—probably worth about $50,000. I've probably acquired another $150,000 in photography equipment since then. Some of it has depreciated in value.

* * *

Happy Anniversary to My Love

Dear Kari,

Happy First Anniversary! This has been such a wonderful year together. Thanks for all your patience with me as I have learned to be a good husband to you. To many more happy times.

Love,

Eric

Assets and Debts Worksheet

Asset	Date Acquired	Value
House at 1505 Clark Street	2/2008	$400,000 (in 2008) $800,000 (in 2026)
Tract of land in Frankfurt Acres	9/2001	$ 70,000 (in 2001) $150,000 (in 2026)
Photography equipment Additional photography equipment (reflecting depreciation from initial purchase price of $150,000)	12/2005 10/2006–2025	$ 50,000 (in 2005) $120,000 (in 2026)
2024 Toyota Tundra pickup truck (Kari's vehicle; paid off)	5/2024	$ 40,000 (in 2024) $ 32,000 (in 2026)
2024 Nissan Altima sedan (Eric's vehicle; paid off)	1/2024	$ 30,000 (in 2024) $ 22,000 (in 2026)
Bank Accounts		
First Bank joint checking account in the name of Kari Otto-Nolan and Eric Nolan	12/2006	$120,000 (in 2026)

Debts & Liabilities

Credit card debt: none

Balance on mortgage for 1505 Clark Street: $50,000

Retirement Accounts or Pension Plans

None

Excerpts from Franklin Family Code

§ 200 Definitions

. . .

(c) The term "marital property" shall mean all property acquired by either or both spouses during the marriage except as specified in subsection (d) . . . .

(d) The term "separate property" shall mean

(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;

(4) property described as separate property by written agreement.

§ 211 Common-law marriage

(a) A common-law marriage shall be recognized as a valid marriage in this state. . . .

. . .

§ 215 Disposition of property in divorce actions

(a) Except when the parties have a valid prenuptial or postnuptial agreement resolving all issues related to the parties, the court shall determine the respective rights of the parties in their separate or marital property.

(1) Separate property shall remain such.

(2) Marital property shall be distributed equitably between the parties, considering the circumstances of the case and of the respective parties.

(3) In determining an equitable disposition of property under paragraph (2), the court shall consider [factors omitted].

Schwartz v. Darrow
Franklin Court of Appeal (2022)

When Robert Cohn died intestate, his ex-wife, Susan Schwartz, was appointed personal representative of his estate. Teresa Darrow sought Schwartz's removal, asserting that she (Darrow) should have had priority for that appointment as Cohn's common-law wife. A probate court magistrate found that although Cohn and Darrow cohabited for eight years and held themselves out to their community as married, other factors weighed against a finding of common-law marriage, including the facts that the couple did not file joint tax returns, own joint property or accounts, or share a last name. Darrow appealed.

At a hearing to determine whether a common-law marriage existed between Cohn and Darrow, Darrow testified that six years before his death, Cohn presented her with a wedding ring and told her they could be husband and wife if she agreed; that she did agree; and that after that day she wore the ring and the couple held themselves out as married. The magistrate also considered testimony from Schwartz and from many of Darrow's and Cohn's family members, friends, acquaintances, neighbors, and coworkers. Except for Cohn's father and Schwartz, all witnesses stated that they thought Cohn and Darrow were spouses, and some said that they were surprised by this litigation. Some witnesses testified that the couple wore what the witnesses assumed were wedding rings.

The magistrate found that "Cohn and Darrow agreed to and did hold themselves out to be married to the community of their coworkers, friends, and neighbors. However, their family members knew they were not ceremonially married." The magistrate concluded that the evidence weighed against a finding that a common-law marriage existed. For example, although the couple paid bills jointly, they maintained separate bank accounts. There was no evidence that the couple had joint ownership of any vehicles, real estate, or credit accounts. Notably, the magistrate "gave tremendous weight" to the fact that Cohn and Darrow had filed their taxes separately in every year of their purported common-law marriage, despite the fact that the Internal Revenue Service permits common-law spouses to file jointly. Ultimately, the magistrate concluded that Darrow had not proven that a common-law marriage existed.

We review the magistrate's factual findings for clear error and his common-law marriage finding for an abuse of discretion.

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* (Fr. Sup. Ct. 2015). 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 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. 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.

Thus, in *Ridley v. Brooks* (Fr. Ct. App. 2008) 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. The evidence established that the health insurance designation was done as a convenience to save money on premiums, and Brooks, who had been through an acrimonious divorce years before, often stated to friends that she had no intention to remarry.

Here, based on the hearing testimony, the magistrate found that Cohn and Darrow "*agreed to and did hold themselves out to be married* to the community of their coworkers, friends, and neighbors. However, their family members knew they were not ceremonially married." (Emphasis added.) It is unclear from this phrasing whether the magistrate separately concluded that Cohn and Darrow agreed to *be* married. On remand, the district court must determine whether Cohn and Darrow in fact agreed to be married.

Darrow's testimony that Cohn asked her to be his wife, that she accepted, and that he provided her with a ring could 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. 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.

We vacate the order appointing Schwartz as the personal representative and remand to the probate court with instructions to reconsider whether a common-law marriage existed.

Jones v. Cardiff
Franklin Supreme Court (2023)

Samuel Cardiff and Megan Jones were married in May 2018 and have one child. When they married, both spouses were working attorneys. Megan stopped working outside the home when their son was three years old. Samuel was an associate at a law firm from 2012 until 2018 and has been a partner at that law firm since 2018.

Prior to the marriage, Samuel acquired a house situated on 20 acres of land in Cottonwood, Franklin. During the marriage, the parties spent approximately $500,000 to renovate and improve the property. While Samuel played a larger role in these improvements, Megan also participated in some of the project's details.

In March 2021, Megan filed for divorce. A trial ensued on the issues of equitable distribution, maintenance, and child support. The district court recognized that the Cottonwood property was Samuel's separate property but held that funds spent on renovations were marital property subject to equitable distribution. The court awarded 50% of the appreciation of the Cottonwood estate to Megan. The Franklin Court of Appeal modified the judgment on both the law and the facts by, among other things, reducing Megan's share of the enhanced value of the Cottonwood property to 25%.

Separate property is defined to include an 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. *See* Fr. Fam. Code § 200(d)(3). Thus, 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* (Fr. Sup. Ct. 2001). 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*.

Here, the district court properly held that the improvements were marital property because the increase in the property's value was a result of both parties' efforts. We find that the court of appeal did not abuse its discretion in reducing the award to Megan from 50% to 25% of the property appreciation. Samuel's income was the sole source of the funds expended on the property, and his involvement in the renovations was far more extensive than Megan's.

Affirmed.

Bower v. Bower
Franklin Court of Appeal (2014)

The parties were married on May 16, 1998. Soon after the marriage, they purchased and moved to Happy Dairy Farm. The husband brought 32 head of cattle and farming equipment to Happy Dairy Farm from Fairdale Dairy, a dairy farm that he had been operating but sold right before the marriage. For the first two years of the marriage, the wife actively assisted on the Happy Dairy Farm but thereafter was devoted almost exclusively to raising the parties' children and household responsibilities. In 2013, the wife filed for divorce.

Following a bench trial, the district court found that the farm was marital property subject to equitable distribution. The parties stipulated that the total value of the marital property, including marital property not at issue on appeal, was $2 million. Of this amount, the court awarded $800,000 to the wife, representing 40% of the parties' marital property. The court found that the husband's separate property included 107 head of cattle valued at $80,000 and related equipment worth $500,000. The wife appealed.

We conclude that several errors were committed in the district court's disposition of the parties' property. First, the record was insufficient to support the finding that the value of the present 107 head of cattle and farm equipment constituted the husband's separate property. Undeniably, the cattle and equipment in question were either produced or purchased *during* the marriage, and thus fell squarely within the statutory definition of marital property. *See* Fr. Family Code § 200(c). Moreover, since the cattle and equipment did not predate the marriage and were not acquired by gift or inheritance, they could not be excluded from equitable distribution under the statutory definition of separate property in § 200(d). Rather, the court determined that the cattle and equipment were the husband's separate property because they were "an outgrowth of the cattle and equipment owned by the husband before the marriage" and therefore were covered by the statutory definition of separate property as "property acquired in exchange for or the increase in value of separate property" under § 200(d)(3).

However, we note that the husband testified that the productive life and marketable value of the 32 cattle he brought to the marriage in 1998 had been totally dissipated within a relatively short period of time, coinciding with the period of the wife's active participation in the farming operations. Likewise, the equipment owned by the husband before marriage

had worn out and had been replaced by other equipment, paid for with postmarital profits or loans that the wife cosigned. The size of the present herd demonstrates that the farm experienced a manifold expansion beyond the initial cattle and equipment. These facts render inappropriate any equating of the entire current herd and equipment with "property acquired in exchange for or the increase in value of" the comparatively modest assets the husband brought to the marriage.

Defining separate property to include acquisitions during the marriage in *exchange* for the premarital or gift property of one of the spouses or an *appreciation* in the value of such property would generally presume some rough equivalency in value at the time between the premarital property and that which was acquired in exchange. That is not the situation presented here, where depreciated premarital property (i.e., the original 32 head of cattle and related equipment) was *replaced* by property greater in quantity and value (i.e., the current, larger herd of cattle and equipment) that was largely produced or paid for through the activities of the marital economic partnership. Nor could the district court properly exclude the wife from sharing in the current herd and equipment by deeming these items merely an increase in value of the husband's original separate property. The significant expansion in the farming operation here was not due to unrelated market factors or inflation. Instead, prosperity and growth occurred through the parties' mutual marital efforts, during which the wife initially directly benefited the business, pledged her personal credit for its debts, and contributed indirectly to its success through her services as a homemaker and mother. Certainly, if the parties' dairy farm had been started *after* the parties married and the wife only indirectly contributed to it, she still would have been entitled to some share of the appreciation of the dairy farm's value. *See Litman v. Litman* (Fr. Ct. App. 2010) (spouse entitled to appreciation of other spouse's separate property asset even if spouse's contributions were indirect).

While it was improper for the district court to have excluded the total value of the present herd and equipment from equitable distribution, we think the husband is entitled to be credited with the value of his initial contribution of his premarital cattle and equipment. A further determination must be made of the value of the original 32 head of cattle and equipment when the parties married in 1998.

Reversed and remanded.

February 2026 MPT-2 Item

In re Franklin Defenders of the Earth

In re Franklin Defenders of the Earth

FILE

LIBRARY

CITY OF WHITNEY

OFFICE OF THE CITY ATTORNEY
Municipal Building Annex
130 W. Fifth Street
Whitney, Franklin 33875

MEMORANDUM

To: Examinee
From: Maria Delatorre, City Attorney
Date: February 24, 2026
Re: Measure 15

The City Council has requested our opinion as to whether it must adopt a new city ordinance that was approved by a ballot initiative.

As you know, the City of Whitney maintains three flagpoles on the City Hall building itself; the flagpole in the center is 30 feet high, and the two on either side of it are 20 feet high. The flag of the United States is always flown on the center (highest) flagpole. The flags of the State of Franklin and of the City of Whitney are flown on the lower flagpoles.

Franklin Defenders of the Earth (FDE) is a not-for-profit organization that is devoted to ecology and the well-being of the planet. Last year, they submitted an application for a permit to hold an event on City Hall Plaza on the upcoming April 22, "Earth Day," celebrating the day. City Hall Plaza is an open space in front of the City Hall building that the City makes available to the public for events. The City routinely allows such events, treating the Plaza as a public forum, subject to standard regulations and safety and security measures. The permit was granted.

FDE then notified the City that, as part of its event, it would hoist the "Earth Flag," symbolizing Earth Day and FDE's political viewpoint, above the United States flag on the center flagpole atop the City Hall building itself. The City Services Administration, the agency that grants such permits, informed FDE that it would not allow any flag to be flown above the United States flag.

FDE then launched a ballot initiative ("Measure 15") by which the City's electorate would be asked to vote to approve its request and require the City Council to adopt a local

ordinance requiring the City to fly the Earth Flag above the national flag; the initiative met all local requirements. The City's voters approved Measure 15 by a vote of 55% to 45%.

Given the passage of Measure 15, the City Council has now requested our opinion as to whether it must adopt the ordinance as described in the ballot initiative.

Please prepare a memorandum for me separately analyzing the issues noted below, even if you believe that one or more is dispositive. For each issue, state and explain your conclusion as to that specific issue. After you have analyzed each issue separately, state and explain your overall conclusion of what advice to give to the City Council as to whether it must adopt the ordinance. Note that the relevant governmental action by the City to be considered in your analysis is its initial denial of FDE's request.

(1) Does the United States Flag Code bar the flying of the Earth Flag above the United States flag?

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

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

Do not include a restatement of the facts in your memorandum, but you should refer to relevant facts in presenting your analysis.

CITY SERVICES ADMINISTRATION

CITY OF WHITNEY

Rules and Regulations – Events on City Hall Plaza

[Rules regarding permissible events, permit requirements, security and safety issues, etc., omitted]

4.0 Displays

4.1 Permit holders may temporarily erect kiosks and displays, including posters, statues, product demonstrations, and the like, on City Hall Plaza for the duration of the event, subject to conformity with the City fire code and safety and security concerns.

4.2 No event activities shall occur on or in City Hall itself. . . . City Hall is not part of City Hall Plaza.

FULL TEXT OF MEASURE 15

Purpose of Measure 15
The voters of the City of Whitney require that the Whitney City Council enact an ordinance stating that it shall be 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 the flag of the United States of America, the Franklin flag, the City flag, and any other flags that the City may choose to display.

The reasons for the proposed action are as follows:

Logic and Symbolism
The American flag flies at the top of the highest flagpole on the City Hall building. But isn't the well-being of the entire Earth more important than merely national considerations? Flying the Earth Flag above all others—including the United States flag—will recognize the importance of our planet's health above all other considerations. We should at least do so on the one day a year when the primacy of the Earth is celebrated—Earth Day.

Patriotism
It is not unpatriotic to fly the Earth Flag above the United States flag. After all, our country is part of the iconic image reproduced on the Earth Flag—the "Blue Marble" photograph of the Earth taken December 7, 1972, by the Apollo 17 spacecraft crew. And taking this action will show how our country values the well-being of the Earth.

Priorities
Our world is threatened by challenges such as climate change and nuclear war. Our focus should be shifted from narrow national interests to the safety and health of the entire planet. Flying the Earth Flag above all others will demonstrate our commitment to meeting these challenges.

Stabilizing the climate and advancing peace require that we meet in good faith with other nations and develop a positive plan of action. We can proudly negotiate as Americans, but we must prioritize the overall well-being of our planet and be willing to make political and economic concessions.

Ordinance to be Adopted by the City Council

The people of the City of Whitney do ordain as follows:

> On every Earth Day (April 22), it shall be the official policy and practice of the City of Whitney to fly the Earth Flag at the top of the tallest city-owned flagpole on City Hall, above the flag of the United States of America and any other flags that the City may choose to display.

For the purpose of this measure, the Earth Flag shall be defined as the flag featuring the "Blue Marble" image of Earth, photographed from the Apollo 17 spacecraft in 1972.

WALKER'S TREATISE ON LEGISLATION

§ 201 Principles of Statutory Interpretation

. . .

(h) The use of terms such as "shall" or "must," and similar terms, make the action set forth in the legislation mandatory. The use of terms such as "should" or "may," and similar terms, sometimes called "precatory" terms, make the action set forth in the legislation permissive, but not mandatory.

UNITED STATES FLAG CODE

4 U.S.C. § 1 *et seq*.

§ 7 Position and manner of display

The flag, when carried in a procession with another flag or flags, should be either on the marching right; that is, the flag's own right, or, if there is a line of other flags, in front of the center of that line.

. . .

(c) 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, except during church services conducted by naval chaplains at sea, when the church pennant may be flown above the flag during church services for the personnel of the Navy. . . .

. . .

(e) 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 localities or pennants of societies are grouped and displayed from staffs.

(f) When flags of States, cities, or localities, or pennants of societies are flown on the same halyard [*] with the flag of the United States, the latter should always be at the peak. When the flags are flown from adjacent staffs, the flag of the United States should be hoisted first and lowered last. No such flag or pennant may be placed above the flag of the United States or to the United States flag's right.

[* Halyard: a rope or line for hoisting and lowering something (such as a sail or flag)].

FRANKLIN STATE GOVERNMENT CODE

TITLE 1 - GENERAL
DIVISION 2 - STATE SEAL, FLAG, AND EMBLEMS
CHAPTER 3 - Display of Flags

. . .

§ 436 Where the national and state flags are displayed, they shall be of the same size. If only one flagpole is used, the national flag shall be above the state flag and the state flag shall be hung in such manner as not to interfere with any part of the national flag. At all times the national flag shall be placed in the position of first honor.

FRANKLIN MILITARY AND VETERANS' CODE

. . .

§ 617 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.

FRANKLIN STATE CONSTITUTION

. . .

Article 4, section 1. The legislative power of this State is vested in the Franklin Legislature, which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum.

Mastai v. Ross
Franklin Court of Appeal (2004)

In 2003, defendant and appellee Emily Ross won reelection to a third consecutive term on the Lakeville City Council. A city ordinance limits council members to two consecutive terms. Plaintiff and appellant Warren Mastai contested the election, seeking declaratory and injunctive relief to invalidate Ross's election. The trial court ruled that the ordinance was invalid as preempted by state law. Mastai appeals. We affirm.

DISCUSSION

A local ordinance is 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," *In re Hubbell* (Fr. Sup. Ct. 1964), or if "the subject matter has been partially covered by general law couched in such terms as to indicate a paramount state concern [that] will not tolerate further . . . local action." *Jefferson School Board v. County of Jefferson* (Fr. Sup. Ct. 1980).

Lakeville's local ordinance limits a person's eligibility for city council to two successive terms. The city's voters adopted the ordinance by ballot initiative after several years of debate over the efficacy of term limits. We note, however, that numerous Franklin State Government Code provisions also affect eligibility for local offices in a city such as Lakeville. For example, Franklin state law provides that a person is not eligible to hold office as council member unless he or she is an elector at the time of assuming office and was a registered voter of the city at the time nomination papers were issued to the candidate. [Citation omitted.] We must determine whether, by adopting these State Government Code provisions, the State Legislature has either fully occupied the field or so fully covered it as to indicate a paramount state concern. *In re Hubbell, supra; Jefferson School Board, supra.*

A similar statute relating to eligibility of county elected officers has been held to constitute evidence of the Legislature's intent to exercise *statewide* control over the qualifications of elected county officers. *Elder v. Board of Supervisors* (Fr. Sup. Ct. 1979). To support his argument that the ordinance is not preempted by state law, Mastai attempts to distinguish *Elder* on the ground that the local governmental entity in *Elder* was a county

and Lakeville is a city. This distinction is not pertinent in this case. The State Government Code establishes that the Legislature intends to preempt *all* local regulation of eligibility for election to local governing bodies, whether they are counties or cities.

Mastai also contends that the city is a distinct, individual entity and is not a political subdivision of the state. He is incorrect. "Cities are simply creatures of the state and as such are parts of the machinery by which the state conducts its governmental affairs. . . . [Voters] have the right to pass upon the composition of their local government *only within the legal framework established by the constitution of the state and the laws enacted by the Legislature.*" *Mancini v. City of Greenwich* (Fr. Sup. Ct. 1965) (emphasis added). Indeed, local governments do not possess even federal constitutional rights against the state that created them. *E.g., Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907).

Finally, Mastai argues that the local ordinance must prevail, as it was adopted by ballot initiative as referenced in Article 4, section 1 of the Franklin State Constitution. But, as *Mancini* teaches, 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.

The trial court correctly found that the city ordinance was preempted by state law. Affirmed.

Shurtleff v. City of Boston
596 U.S. 243 (2022)

[Just outside the entrance to Boston City Hall, on City Hall Plaza, stand three flagpoles. Boston flies the United States flag from the flagpole on the right (on the left as an observer regards them), the Massachusetts state flag on the second, and, usually, the Boston city flag on the third. In 2017, Harold Shurtleff, the director of an organization known as Camp Constitution, asked to hold an event at which the "Christian" flag (a blue field with a red cross) would be hoisted. The city, concerned that this would violate the Establishment Clause of the First Amendment to the Constitution, refused to give permission. This litigation ensued.]

Justice Breyer delivered the opinion of the Court.

When the government encourages diverse expression—say, by creating a forum for debate—the First Amendment prevents it from discriminating against speakers based on their viewpoint. [Citation omitted.] But when the government speaks for itself, the First Amendment does not demand airtime for all views.

. . .

Boston makes City Hall Plaza available to the public for events. Boston acknowledges that this means the plaza is a "public forum." For years, since at least 2005, the city has allowed groups to hold their flag-raising ceremonies on the plaza. . . . Boston has no record of refusing a request to [hoist a flag] before the events that gave rise to this case.

. . .

The first and basic question we must answer is whether Boston's flag-raising program constitutes government speech. If so, Boston may refuse flags based on viewpoint.

The First Amendment's Free Speech Clause does not prevent the government from declining to express a view. [Citation omitted.] When the government wishes to state an opinion, to speak for the community, to formulate policies, or to implement programs, it naturally chooses what to say and what not to say. [Citation omitted.] That must be true for the government to work.

The boundary between government speech and private expression can blur when, as here, a government invites the people to participate in a program. In those situations,

when does government-public engagement transmit the government's own message? And when does it instead create a forum for the expression of private speakers' views?

In answering these questions, we conduct a holistic inquiry designed to determine whether the government intends to speak for itself or to regulate private expression. Our review is not mechanical; it is driven by a case's context rather than the rote application of rigid factors. Our past cases have looked to several types of evidence to guide the analysis, including the history of the expression at issue; the public's likely perception as to who (the government or a private person) is speaking; and the extent to which the government has actively shaped or controlled the expression. [Citation omitted.]

Considering these indicia in *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009), we held that the messages of permanent monuments in a public park constituted government speech, even when the monuments were privately funded and donated. In *Walker v. Texas Div.*, *Sons of Confederate Veterans*, *Inc.*, 576 U.S. 200 (2015), we explained that license plate designs proposed by private groups also amounted to government speech because, among other reasons, the State that issued the plates "maintain[ed] direct control over the messages conveyed" by actively reviewing designs and rejecting over a dozen proposals.

[Applying these factors to the case at hand, the Court noted that for many years, Boston has allowed groups to hold ceremonies on the Plaza, during which they hoisted a flag of their own choosing in place of the city flag. The Court stated that, as far as the history of the expression at issue is concerned, while the flags flying on the Plaza usually represent the nation, state, and city, this is not always the case. Thus, as far as the public perception is concerned, the flag at issue would not be perceived as a government speech, as it would be associated with Shurtleff's group. And, as to the extent the city actively controlled the flag raisings and the messages the flags sent, the answer is not at all. The Court concluded that Boston was not speaking for itself in allowing private flags to be flown, noting that it could have made clear that it wished to speak for itself. As to the Establishment Clause argument,] [w]hen a government does not speak for itself, it may not exclude speech based on "religious viewpoint"; doing so "constitutes impermissible viewpoint discrimination." [Citation omitted.]

For the foregoing reasons, we conclude that Boston's flag-raising program does not express government speech. As a result, the city's refusal to let Shurtleff and Camp Constitution fly their flag based on its religious viewpoint violated the Free Speech Clause of the First Amendment.

[Concurring opinions omitted.]

February 2026

New York State
Bar Examination

Sample Essay Answers

FEBRUARY 2026 NEW YORK STATE BAR EXAMINATION

SAMPLE ESSAY ANSWERS

The following are sample candidate answers that received scores superior to the average scale score awarded for the relevant essay. They have been reprinted without change, except for minor editing. These essays should not be viewed as "model" answers, and they do not, in all respects, accurately reflect New York State law and/or its application to the facts. These answers are intended to demonstrate the general length and quality of responses that earned above average scores on the indicated administration of the bar examination. These answers are not intended to be used as a means of learning the law tested on the examination, and their use for such a purpose is strongly discouraged.

ANSWER TO MEE 1

I. Question 1

(a) Carla Cannot Recover 12 Months of Unpaid Rent.

The issue is whether Carla was entitled to receive 12 months of unpaid rent from the tenant at the end of the lease term.

As a general rule, when a tenant breaches their contract with a landlord, relief depends on whether the tenant remains in possession or vacates. When a tenant vacates, the landlord has three options: (1) accept the tenant's termination and release the property, (2) re-lease the property to a different tenant and sue the first tenant for damages, and (3) do nothing, wait until the lease terminates, and sue the tenant for the entire term. The third option is a minority rule and most states will not permit it, finding it a failure to mitigate damages.

Here, Carla had a valid 2-year term of years lease with the tenant. The tenant remained in possession for one year (January 1, 2023 - December 31, 2023). At this point, the tenant breached because she had a year left on the lease. Carla ultimately went with the third option, in which she did nothing and sued for damages at the end of the term, recognized by only a minority of jurisdictions.

In most jurisdictions, Carla will not be entitled to receive 12 months' rent because she failed to release to another person. The facts here indicate that Carla had three offers for rent at $1,200 per month. However, in the minority of jurisdictions that recognize the landlord's ability to do nothing, and sue for rent, she will recover.

Thus, the majority rule is that Carla cannot recover 12 months' rent from tenant.

(b) Alonzo and Barbara Are Entitled to Rental Income Paid to Carla.

The issue is whether Alonzo and Barbara, as joint tenants, are entitled to rental income paid to Carla.

As a general rule, co-owners of property are entitled to recover income derived from the property, including rental income.

Here, Alonzo, Barbara, and Carla are joint tenants. As a result, they each have an undivided interest in the land, and an equal right to use the whole. During the time of the lease, their co-ownership remained intact, entitling Alonzo and Barbara to share in the proceeds made by the use of the land from Carla.

Thus, Alonzo and Barbara are entitled to rental income paid to Carla because they are co-owners.

II. Question 2

The issue is whether Alonzo and Barbara were 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.

As a general rule, absent ouster, tenants are not liable to each other for rent for their use of the premises. Joint tenants have an undivided, equal right to possess the whole. Ouster occurs when co-owners are wrongfully refused use of the property.

Here, none of the facts indicate that Carla ousted Alonzo or Barbara. Nor do the facts suggest that Carla prevented them from using the home in any other way. Instead, it appears Alonzo and Barbara voluntarily chose not to use the home. The home sat vacant for the one-year period in which Carla did not have a tenant. Accordingly, Carla is not liable to them for the rental value of the land during the time it was used solely by her.

Thus, Alonzo and Barbara may not recover the house fair market value during Carla's use.

III. Question 3

The issue is, what effect, if any, did Carla leasing the house to tenant have on the ownership interests in the house following her death.

A joint tenancy is destroyed by (1) partition, (2) severance, (3) death, or (4) encumbering the property in a title mortgage jurisdiction. Severance will occur if one of the parties sells the property to another person and will destroy the joint tenancy with respect to that party's interest. This is because in order for there to be a joint tenancy, all parties must (i) take at the same time, (ii) by the same instrument, (iii) the same undivided interest, and (iv) have equal rights to possession of the whole. Upon death, the deceased party's interest is absorbed by the other joint tenants and is therefore not descendible or devisable. Moreover, partition may be caused by the court either selling the property or physically dividing the property.

The facts here provide that Carla, Alonzo and Barbara owned the land as joint tenants with rights of survivorship. None of the events that terminate a joint tenancy occurred. Leasing of the land is not an event of termination for a joint tenancy. Since Carla did not transfer her legal interest to the party, she did not destroy the joint tenancy by severance.

Here, while the facts do indicate that the property was leased without the knowledge or consent of Alonzo or Barbara, as discussed above, Alonzo and Barbara were not ousted from the property. While they might have been able to terminate the lease or sue Carla for an accounting to receive income, her leasing the property did not work to sever the joint tenancy.

Instead, the joint tenancy lasted until Carla died and Alonzo and Barbara absorbed her share.

Accordingly, Carla leasing the home did not affect the ownership interests in the house.

ANSWER TO MEE 1

Question 1(a):

Issue: The issue is whether Carla accepted the tenant's surrender (and in doing so, extinguished the tenant's obligation to pay rent).

Rule: A tenancy for years is a lease that expires upon a certain date (i.e., it has a fixed term). If a tenant expressly communicates that they will abandon the leased premises, the landlord has two main options. First, the landlord may treat the abandonment as a surrender, terminate the lease and in doing so, extinguish the tenant's obligation to pay rent. Second, the landlord may refuse the surrender. In a majority of jurisdictions, a landlord must use reasonable efforts to re- let the premises. However, in a minority of jurisdictions, the landlord may do nothing and seek damages from the tenant for the remainder of the rent through to expiry of the lease. If the remaining lease term exceeds a year, the agreement between the tenant to surrender and abandon must be in writing, and it will fall subject to the Statute of Frauds.

Application: Here, the lease from Carla to the tenant commenced on January 1, 2023, and was for a two-year term, meaning that this was a tenancy for years. The tenant made the offer of surrender in writing on December 10, 2023. The tenant said, "I won't ever return". This is sufficiently clear for the purposes of an abandonment, especially since the tenant did in fact abandon on December 31, 2023. It is unclear whether Carla's statement "Thank you for letting me know" was an acceptance. Although her email response was in writing, it could be construed as an acknowledgment of the tenant vacating rather than an express acceptance.

Conclusion: While Carla did entertain three different offers from potential tenants, she ultimately elected to leave the premises vacant. Assuming this jurisdiction follows the majority rule, Carla failed to use reasonable efforts to mitigate her damages and so her recovery from the tenant (provided that a court finds her email reply on December 10, 2023, did not constitute acceptance of a surrender) for the remainder of the 12 months' rent will be reduced accordingly.

Question 1(b):

Issue: The issue is whether joint tenants have a duty to account to each other for rental payments derived from one of the joint tenants leasing their interest to a third party.

Rule: Joint tenants have a duty to account to the other from rental payments received from a third party through leasing the premises.

Application: Here, Carla is a joint tenant with Alonzo and Barbara. Carla received rental income from the tenant (i.e., a third party) by leasing the premises.

Conclusion: Accordingly, Alonzo and Barbara would be entitled to a share of the rental income received from the tenant.

Question 2:

Issue: The issue is whether a joint tenant may seek contribution from another when the other occupies the property.

Rule: When a joint tenant occupies the premises and the other joint tenants do not, such other joint tenants generally do not have a right to recover the fair market value of rental payments that the occupying joint tenant would have otherwise paid. The key exception to this rule is where there has been an ouster. An ouster is when a joint tenant wrongfully excludes another joint tenant from occupation of the premises.

Application: The facts do not provide any evidence of an ouster. Carla simply occupied the premises. She did not take any acts or omissions that would constitute an ouster.

Conclusion: Accordingly, Alonzo and Barbara would not be entitled to 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.

Question 3:

Issue: The issue is whether leasing a joint tenant interest severs a joint tenancy (and whether such an interest can be devised in a will to another).

Rule: A joint tenancy will only be severed in certain ways. The two main ways are an inter vivos conveyance and execution of a mortgage in a title theory state. The devise of a joint tenant's interest has no impact. The right of survivorship means that upon the death of a joint tenant, the remaining joint tenants take that interest in equal shares.

Application: Here, Carla only leased the premises for a certain defined term. This does not sever the joint tenancy. Carla attempted to leave her joint tenancy interest to her son by devise in her will. However, this had no impact. The fact that her interest was a joint tenant interest means that her share passed to Alonzo and Barbara.

Conclusion: Accordingly, Carla's leasing of the house to the premises did not have any impact. Her share passed in equal shares to Alonzo and Barbara.

ANSWER TO MEE 2

1. Whether Clyde can recover the unpaid contract price from Angie.

As a general matter, a corporation is formed upon the filing proper articles of incorporation with the applicable state agency. Prior to that date, the corporation cannot contract in its own name and an individual contracting on the corporation's behalf is known as a promoter. A promoter will be liable for any contracts entered into on behalf of the corporation unless, following incorporation, the corporation, the promoter and the counterparty to the contract enter into an agreement to release the promoter from personal liability.

Here, Angie started a new business on her own called XYZ to license and market her app thinking that she would incorporate the business. However, she did not incorporate the business until June when she filed the appropriate paperwork with the appropriate state agency. Prior to that point, in April, Angie entered into a contract with Clyde to make the app usable by the general public with payment due in part at signing and in part when the app was delivered.

Angie entered the contract in the name of XYZ and immediately paid Clyde $10,000. The issue is that at that point, Angie had not yet formed XYZ since the articles of incorporation had not yet been filed. Therefore, Angie was acting as a promoter of XYZ entering into contracts on behalf of a not yet formed corporation. This means that Angie is personally liable for the contract with Clyde and Clyde can recover the unpaid contract price from her. We have no evidence that, following XYZ's incorporation, the corporation took any formal action with respect to the agreement with Clyde and, therefore, Angie cannot argue her liability was released. Angie also cannot argue that she is protected by de facto corporation or corporation by estoppel. De facto corporation, in some jurisdictions that do not follow the RMBCA, will protect a person acting on behalf of a not yet formed corporation if there was a defective but good faith attempt at incorporating. Here, we have no evidence of any attempt by Angie to incorporate prior to the contract. Corporation by estoppel will prevent a third party from arguing that an individual is personally liable when they contracted with the individual as if they were a formed corporation. Here, while Angie entered into the contract in the name of XYZ, there is no indication of outward expressions to Clyde that XYZ was a corporation with limited liability (i.e., Inc., etc.).

Therefore, Angie will be personally liable, and Clyde can recover the unpaid contract price from Angie.

2(a). Whether Clyde can recover the unpaid contract price from Basra on the theory that Basra is a partner.

A partnership is formed when two or more people associate to carry out a for profit business as co-owners. No intent to form a partnership needs to be found, only the intent to carry out a for profit business as co-owners. A rebuttable presumption of a partnership arises when the partners share profits. Partners in a general partnership are personally liable for the debts and obligations of a partnership.

Here, in their conversation in March, Basra told Angie that her idea would be great, that he believed it would make money, that he would invest $5,000 and that he would introduce Angie to Clyde, a software developer he had known. While this shows that Basra was excited about Angie's idea, it was not enough to form a partnership. This is because Angie said nothing about starting a business at that time and Basra's actions could be seen as support of his best friend's idea rather than an intention to carry on a for-profit business as co-owners. There is no evidence that, following that conversation, Basra received a share of any profits that Angie made, participated in the management of Angie's new business or did anything other than introduce her to Clyde. Rather, Angie started XYZ on her own to license and market her app without Basra involved and did not reach out to him about the investment until after a corporation had been formed. As Angie was acting alone in operating XYZ as a for- profit business, there can be no partnership as there is no association of two or more people.

Therefore, since no partnership was formed, Clyde may not recover the unpaid contract price from Basra on the theory that he is a partner.

2(b). Whether Clyde can recover the unpaid contract price from Basra on the theory that Basra is a shareholder of the corporation.

A hallmark attribute of a de jure corporation is that the corporation's shareholders enjoy limited liability and are not liable for the debts and obligations of the corporation absent piercing of the veil. A de jure corporation is formed upon the filing of its Articles of Incorporation with the appropriate state agency.

Here, XYZ became a de jure corporation when Angie completed the paperwork to form a corporation and filed such paperwork with the appropriate state agency in June. Following the formation of the corporation, Angie approached Basra about making an investment in the corporation and Basra contributed $5,000 to the corporation in exchange for 2,500 shares of stock. Only at that point did Basra become a shareholder in the corporation. Since Basra only became a shareholder in the corporation after it was properly incorporated as such, Basra enjoys limited liability and will not be personally liable for any of the debts and obligations of the corporation. This is true unless the veil is

pierced and we have no facts (i.e., ignoring corporate formalities, fraud, undercapitalization, etc.) to indicate that it would be in this instance.

Therefore, as a shareholder in a properly formed corporation, Basra is insulted from personal liability and Clyde may not recover the unpaid contract price from him.

3. Whether Clyde can recover the unpaid contract price from the corporation, on the theory that it adopted the contract.

If a promoter acting on behalf of a corporation that has not yet been incorporated enters into a contract on behalf of that corporation, the corporation itself can become liable for the obligation, once formed, if the corporation, the promoter and the third party expressly enter into a novation agreement pursuant to which the corporation is substituted into the place of the promoter as the counterparty. Absent such formal action, the corporation itself will not become liable for debts and obligations incurred prior to the formation of the incorporation.

In this instance, Angie entered into the contract with Clyde on April 1. While Angie entered into the contract in the name of XYZ, XYZ was not incorporated at that point. Additionally, use of the name XYZ did not indicate to Clyde that Angie was acting on behalf of a corporation since it lacked the typical required indicators such as "Inc.", "Corporation", etc. Following incorporation, XYZ took no formal action with respect to the agreement. This means that it did not ever formally enter into a novation that released Angie from personal liability and substituted itself into the contract as Clyde's counterparty. Additionally, the corporation did not accept the benefits of the contract since Angie told Clyde to immediately stop work before he ever delivered the work shortly after the corporation was formed. In the absence of such formal agreement or acceptance, there is no evidence that the corporation adopted a contract to which it was not a party.

Therefore, Clyde may not recover the unpaid contract price from the corporation for a contract entered into before its existence since the corporation never adopted the contract.

ANSWER TO MEE 2

1. The issue is whether a promoter of a corporation is personally liable for the contracts entered into on behalf of the not yet formed corporation.

To create a valid corporation, there must be a valid filing of articles of incorporation with the state agency. The creation of a corporation generally shields the shareholders and directors from personal liability for the corporations' debts. Promoters are people who enter into contracts with third parties on behalf of a corporation before the corporation is finalized and certified by the state agency. Promoters are generally personally liable for the contracts entered into, even after adoption by the corporation absent a novation. A novation exists when the corporations and the third party enter into another agreement to adopt the contract and absolve the promoter.

Here, Angie entered into an agreement with Clyde on behalf of XYZ corporation, before incorporation of XYZ occurred. This agreement caused Angie to be a promoter of the corporation. The agreement stated that Clyde would be entitled to 15K at completion and delivery of the app. The facts later state that Angie approved the contract after incorporation, but there are no facts to indicate a novation had occurred. There has not been another agreement entered into by XYZ and Clyde. Therefore, Angie will be personally liable on the contract to Clyde.

Angie will be personally liable on the contract to Clyde because she was a promoter of the corporation and there was no novation after incorporation.

2A. The issue is whether a partnership existed between Angie and Basra at the time the contract with Clyde existed.

Partners are each personally liable jointly and severally for the debts of the partnership. A partnership is created when two or more people enter into a business as co-owners for profit. A rebuttable presumption of a partnership is when the parties split profits. Other factors to consider is loss sharing and management rights. Parties do not have to intend or agree to create a partnership. A partnership is created as soon as the stated elements are met.

Here, it is unlikely that a partnership would be found to have formed at the time Angie entered into the contract with Clyde. Basra told Angie that she would be willing to invest $5,000 IF Angie started a business. Furthermore, Basra provided the contact of Clyde, but took no actions herself to enter into an agreement. There is nothing to suggest profit sharing or loss sharing.

Additionally, there is nothing to suggest management rights. Basra merely provided a contact and took no steps towards the management of the business. Additionally, Basra did not pay the $5,000 to Angie until after incorporation. There is nothing to suggest that Basra was a "co- owner" of a business with Angie at the time of the agreement with Clyde.

Basra will not be held personally liable on a theory that a partnership existed at the time of the contract with Clyde.

2B. The issue is whether a shareholder of a corporation can be held personally liable for the debts of the corporation.

Shareholders, generally, are not liable for corporate debts. Shareholders have limited liability and can only lose the amount of contribution they put into the corporation (stocks). An exception to shareholder liability can arise when courts decide to pierce the corporate veil. Courts will pierce the corporate veils and impose personal liability on a shareholder when there is a finding of the corporation as the shareholders "alter ego" or an undercapitalization of the cooperation.

Alter ego arises when there is a commingling of shareholders and corporate assets, to a point where the two can fairly be treated as a single entity. Undercapitalization occurs when the shareholder creates and maintains a corporation at a value lower than its liabilities, for the purposes of protecting assets.

Here, Basra has $2,500 shares of XYZ Corp. stock. Basra was a minority shareholder, to Angie’s 10,000 shares. There is nothing to indicate that Basra makes any financial decisions for the corporation that would lead a court to believe she used the corporation as her alter ego. Basra did not commingle with the corporation or have the authority to capitalize it.

Basra will not be held liable as a shareholder for the corporate debts because there is nothing to indicate a court would pierce the corporate veil in this situation.

3. The issue is whether a corporation can be held liable for contracts entered into on its behalf by promoters before it came into existence.

Corporations can adopt previous contracts created on its behalf before they came into existence. Corporations can adopt by accepting the goods or services, paying the bills on the contract or expressly accepting the terms of the agreement. Corporations come into existence at the time the articles of incorporation are filed with the correct state agency. An agreement by the corporation will cause liability by the corporation for the contract, however the promoter will continue to be personally liable as well, absent a novation (see

above). The corporation must take affirmative steps in adopting a contract created by a promoter. An agreement entered into before the corporation exists will not be binding absent an adoption.

Here, the contract between Angie and Clyde stated the Angie was signing "in the name of XYZ". However, XYZ was not incorporated until 2 months after the agreement. Additionally, the agreement provided an initial payment of 10,000 dollars and a future payment of 15,000 dollars. The initial payment was paid by Angie, also before the corporation's existence. And there is nothing in the facts to indicate that the corporation took any steps to adopt this contract. XYZ did not accept the product, pay the balance, or affirm the terms of the agreement. However, if XYZ accepts delivery they will be bound by the agreement.

XYZ is not bound by the agreement with Clyde because they took no steps to adopt the contract after incorporation.

ANSWER TO MEE 3

1. Relevance

The first issue is whether the evidence that James was once accused of the theft of grapes is relevant. Evidence is relevant if it makes a fact of consequence more or less likely. Relevance has a relatively low bar and is generally easy to overcome. A fact of consequence includes material facts relevant to the charged offense's elements or defenses. Relevant evidence is subject to Rule 403 - meaning that the probative value of the evidence is substantially outweighed by the fact it is misleading, prejudical, confusing to the jury, etc, but it is a separate objection.

Here, James is charged with the theft of comic books, which is the unlawful taking and carrying away or appropriating of property with intent to permanently deprive the other person of that property. The stealing of grapes accusation is based on James tasting grapes at a local grocery store without purchasing any. While James was arrested, but not charged for the crime, such evidence can go to show that James potentially stole or deprived others of property in the past. It may be argued, albeit difficult to argue, that James steals and taught his sons how to steal, or that they observed him committing such acts regularly - hence placing the books in his brief case to take home. Despite such evidence likely being more prejudicial than probative in a case where James is being charged for the theft of comic books (and was not charged for the theft of grapes), this evidence is nonetheless relevant because it makes the fact of consequence - that James might have stolen - marginally more likely.

Therefore, while the evidence might be ultimately excluded on 403 grounds, and others described below, the grape theft evidence is ultimately relevant and the court would overrule a relevance objection.

2. Character Evidence

The next issue is whether the evidence of James being accused of grape theft is improper character evidence. Character evidence is generally not permissible unless the defendant's character is at issue. Exceptions to impermissible character evidence are if it is used to show motive, intent, lack of mistake, identity, or to show other factors of a crime aside from propensity - meaning that simply because the defendant acted in such a way once, they will act that way again. Character evidence based on the defendant's reputation or the opinion of a witness may also be used to impeach a witness, but specific bad acts cannot be used.

Additionally, evidence of the defendant's habit is permissible and requires showing that an actor repeatedly behaves in a particular way under specific circumstances.

Here, James was accused of stealing grapes once, arrested, and not charged with a related crime. There is no evidence indicating that the stealing of the grapes created a reputation for James in the community as a thief, or that this was an act he habitually committed. It may be argued, however, that it demonstrates lack of mistake because James claimed to have been testing the grapes prior to purchase, arguably similar to how he was browsing books and did not purchase the ones in his bag. However, this is a weak argument and would likely be considered propensity by a court because by entering such evidence, the prosecutor will more likely use the evidence to show that James has been accused of theft before and probably, therefore, acted as a thief again.

Thus, the court is likely to sustain an objection for improper character evidence.

3. Improper Evidence of Other Acts

The next issue is whether the evidence is improper evidence of other acts. Evidence of wrongs, crimes, or other bad acts of a defendant may be admitted for impeachment purposes and to attack credibility. Such evidence may also be used to show motive, intent, lack of mistake, identity, or to show other factors of a crime aside from propensity Evidence of a bad act that did not result in a conviction is subject to a reverse 403 balancing test, meaning that the probative value of the act substantially outweighs prejudicial value.

Here, the grape theft accusation did not amount to a charge or conviction. James is being accused for theft based on evidence that his sons placed books in his briefcase when he was not looking and he carried them out of the store. Arguably, the elements of the statute cannot be proven with such evidence. The evidence that James allegedly stole grapes would not be more probative than prejudicial, as it would make James look like a petty thief. Additionally, given the disparate value in a handful of grapes that James was previously accused of stealing and five comic books - the court, or a jury, is unlikely to find any correlation between the two acts, making the evidence inadmissible. Thus, the evidence of the bad act is unlikely to pass the reverse 403 balancing test, as well as the regular 403 balancing test for being substantially more prejudicial than probative.

As a result, the court would likely sustain an objection to improper evidence to other bad acts, unless it is to be used for impeachment.

ANSWER TO MEE 3

Relevancy of the Evidence

The first issue is whether the evidence is relevant to the case at hand.

Under FRE 401, evidence is relevant if it has any tendency to make a fact of consequence to the determination of the action more or less probable than it would be without the evidence. Still, even if certain evidence is relevant, the court has the power under FRE 403 to exclude relevant evidence if its probative value is substantially outweighed by unfair prejudice, waste of time, undue delay, or other conflicting factors.

Here, the fact that James was once accused of theft of grapes would make it more likely that he would steal other items. The fact that an individual once stole an item from a store would make a jury more inclined to believe that the individual would not hesitate to do it again. Regardless of whether the court would serve in its gatekeeping role to exclude the evidence of the prior grape theft under a 403-balancing inquiry, there is no denying that the fact that James was once accused of stealing grapes is relevant to a case in which he is accused of stealing comic books. The other evidence is material (since it is exactly the same unlawful conduct) and it is probative (since a jury could conclude that he would be more likely to steal again.

Thus, defense counsel would be unsuccessful in challenging the admission of the evidence of James' prior grape theft on the basis that it is irrelevant.

Improper Character Evidence

At issue is whether a specific act can be offered into evidence as character evidence during the prosecutor's case in chief.

Character evidence is generally inadmissible if offered to demonstrate that the defendant has a certain propensity to commit a crime. In a criminal case, a defendant may put their character in question by offering reputation or opinion evidence of the pertinent trait. For example, in a theft case, a defendant would be able to call a witness to testify that the defendant has a reputation in the community as someone who is honest and would never steal. In rebuttal, a prosecutor can then offer the testimony of another witness as to defendant's bad character trait for that relevant characteristic or ask, in good faith, "did you know" or "have you heard" questions to cross- examine the defendant's witness. However, neither the prosecutor nor the defendant can offer specific evidence of a defendant's prior act that relates to a pertinent trait.

Here, the prosecutor is attempting to offer evidence of a specific act as propensity character evidence in its case in chief. The prosecutor would only be allowed to inquire

into the grape stealing incident on cross examination of James' character witness if James' witness put the pertinent trait into question. Again, such questioning would have to come in the form of "did you know that James was once accused of stealing grapes" in order to impeach James' hypothetical character witness' testimony of James' good reputation for the pertinent trait of honesty.

In addition, conviction evidence of a crime bearing on truthfulness or another conviction may come in to impeach a defendant. However, as explained in the facts, James was never charged with a crime regarding the grapes. Thus, the evidence would not be admissible under this theory either.

Character evidence of a specific act in this form is inadmissible during the prosecutor's case in chief - especially since James, the defendant, has not put his character in issue. In addition, there was never a conviction for James' grape stealing; so conviction impeachment evidence would not be admissible either. Defense counsel's objection should be sustained.

Improper Evidence of Other Acts

At issue is whether the prior grape stealing could come in under an alternative purpose theory under FRE 404(b).

While a specific other act may not be admissible for propensity purposes, evidence of another act may be admissible under FRE 404(b) for an alternative purpose such as motive, intent, lack of mistake, identity, part of greater scheme. Again, the judge may weigh such an act, even if admissible under 404(b), through a 403 balancing test to analyze whether the other act's probative value would be substantially outweighed by unfair prejudice to the defendant.

Here, it is not immediately clear what other FRE 404(b) purpose the other act of stealing grapes could possibly be offered for. The prosecution may try to make the argument that such evidence demonstrates an intent to steal where James' malicious intent; however, stealing grapes and stealing comic books are quite different from one another. In addition, identity would probably not work as a justification either. If, hypothetically, James stole the grapes in the same manner in which he stole the comic books, evidence of how he previously stole the grapes could be admissible under 404(b) under a theory that it demonstrates a modus operandi. However, James is charged with stealing comic books by instructing his son to place the comic books in a briefcase; on the other hand, James was accused of stealing the grapes by falsely claiming that he was merely tasting them.

Thus, it would be highly unlikely for the evidence to come in under any theory under FRE 404(b). Defense counsel's objection should again be sustained.

ANSWER TO MEE 4

1. Disposition of Automobile

The bequest of the automobile will not lapse and therefore apply to the brother's adopted child, Fred. The issue is whether the anti-lapse statute applies to the will, which would save the automobile gift.

When a testator provides a gift to a beneficiary who predeceases the testator, it is said that such a gift lapse or in other words fails. However, many jurisdictions will save a gift that otherwise lapses by application of an anti-lapse statute. In such case, an anti-lapse statute saves the gift of the predeceased beneficiary and will be passed along to the beneficiary's successors. The anti-lapse statute applies when the predeceased beneficiary in question is related to the testator and unlike some jurisdictions has more general applicability in which predeceased beneficiaries will fall under anti-lapse purview, in that grandparents, adopted, and stepchildren also apply as qualifying beneficiaries. Moreover, anti-lapse statutes may not necessarily apply in situations where it is clear that the testator intended for the beneficiary to survive them in order to take. However, under the UPC, mere words of survivorship will not render an anti-lapse statute inapplicable.

Here, the will gifted the automobile to the brother "if he survives me." Since this is a UPC state, the anti-lapse statute applies since mere words of survivorship alone are insufficient to render the anti-lapse statute inapplicable. Since the brother is a qualified beneficiary with his adopted- son as his successor, Fred will be able to take the automobile.

2. Disposition of 500 South Street House

The mother is entitled to the house at 500 South Street as substitute for the 211 Pearson Drive. The issue is whether the gift of property is adeemed as the testator did not intend for the new house to be provided to the mother.

When a testator makes a gift in a will and such gift is no longer in existence or in possession by the Testator's estate, that gift is considered adeemed and as such, the beneficiary will not take anything. However, there are certain situations where a beneficiary may be able to take a substitute. Where the adeemed property in question was then sold and whose proceeds were then used to buy another similar property, a court may allow the beneficiary to then take that property as a substitute. Moreover, the court will more likely allow a substitute in ademption situations where it is clear that the testator intended the new property to be a replacement of the old property in question and is identical for all intents and purposes.

Here, the testator gifted to his mother an investment property. However, before his death, the Testator then sold that house at 211 Pearson and purchased another property on South Street, which was also purportedly to be used as investment property since the husband and wife did not live in the new house either. Thus, it appears that it was intended to be a replacement and since the proceeds of the original property was used to buy the new property on South Street, a court will likely allow for the mother to take the South Street property as a substitute.

3. Doris's Share as an Omitted Child

Doris will be entitled to the Husband's share. The question is whether as a pretermitted child Doris is entitled to take as a nonmarital child.

The UPC does provide exceptions for situations such as omitted children where a share will be provided to them notwithstanding a validly executed will that does not provide for them. Usually if a child is omitted, a court will not provide a share for them in situations where a majority of the estate goes to the spouse of the testator who is also the parent of the child. However, in the event that a child is not provided for and their parent is not named in the will, then an omitted child may take as a pretermitted child. However, if it is clear that the Testator clearly did not intend for that child to take, such as naming their siblings in the will, then the child may not take as an omitted child. In such case, a child would be entitled to the same share as other siblings or what they would take under intestate succession.

Here, it is likely that Doris will be able to take as a pretermitted child since Doris's mother was not provided for. Moreover, although it may appear it be deliberate, it seems that the omission of that child was not intentional in the sense that the testator did not want the child provided for, but possibly due to social, moral, privacy reasons as opposed to cutting a child out of a will. Therefore, under these circumstances, it is likely that Doris is entitled to take as an omitted child. Moreover, it is likely that Doris's share will come from the residuary and thus reducing the overall residuary estate.

4. Sam's Share as an Omitted Child

Sam, on the other hand, is likely not able to take as an omitted child.

As aforementioned above, where a child is omitted from a will but the testator's spouse who is the parent of the child is given a majority of the estate, the court will not then provide a separate share for such omitted child. The rationale here is that it is presumed that upon the death of the second parent, the omitted child would be provided.

Here, Sam was omitted from the will, but under the will his mother was given the residuary which is valued at $3 million where the estate in its entirety is valued at

$3,325,000. Thus, it is likely that the testator intended that Sam would be provided for indirectly by the surviving wife, Sam's mother, and that Sam would eventually take the remainder upon the mother's death.
Therefore, Sam is likely not entitled to a share as an omitted child.

5. Residuary to Wife

The wife will be entitled to the residuary estate, although it will be reduced in order to account for the pretermitted child, being Doris.

Under the will, Testator clearly stated that the residue of the estate would go to his Wife "if she survives me."

Absent any other provisions, as the wife clearly survived him, the wife would be entitled to the residuary, which would first be reduced to account for Doris's share as a pretermitted child.

ANSWER TO MEE 4

The bequest of the automobile to Husband's brother passes to the brother's adopted child, Fred. The issue is how the UPC will interpret a survival requirement.

A will speaks at the time of death. Therefore, its terms will be interpreted according to the assets in the estate at that time. A general gift may be supplied by an asset acquired after will execution. A testator may provide language of survivorship, which seeks to require a named beneficiary to survive the testator to receive any gift for himself or his estate. However, while traditionally that language was effective in lapsing gifts of predeceased beneficiaries into intestacy, the UPC provides that this survivorship requirement is not enough. Instead, an anti- lapse statute will save the gift of the predeceased beneficiary and issue it to that taker's heirs as substitute takers. Some states' anti-lapse rules only apply to blood relatives of the testator.

State Y has adopted the Uniform Probate Code (UPC). The testator's domicile at his death determines the distribution of personal property, and the situs of real property determines the distribution of real property.

Husband died in State Y, where he was domiciled and where his real property is located. Therefore, State Y controls the distribution of his entire estate.

Here, Husband gifted "any automobile I own at the time of my death to my brother if he survives me." This is a general gift, providing his brother with whatever car is in his estate at the time of death, since a will speaks at the time of death rather than at its execution. State Y follows the UPC, which applies the concept of anti-lapse rather than following a testator's strict language of survivorship, such as "if he survives me."

Husband's brother predeceased him. However, per the UPC, anti-lapse will apply. Even if State Y only allows gifts to be saved if the beneficiary is a blood relative, brother is related to Husband, so that is not restrictive. Husband is survived by his brother's adopted child, Fred. For purposes of intestacy, an adopted child is treated as any other child. Therefore, Fred is an appropriate substitute taker for Husband's brother under the will. UPC anti-lapse will gift Husband's automobile, in his estate at the time of his death, to Fred.

Husband's mother is entitled to the house at 500 South Street as a substitute for the house specifically bequeathed to her. The issue is how the UPC will treat property specifically bequeathed that does not exist in the estate at death.

A gift in a will is a specific gift if it references details about the testator's property and can only refer to one thing, such as a home's address. If a specific gift no longer exists in the estate at the time of the testator's death, it is said to have adeemed. There are three theories of ademption. The identity theory grants the beneficiary no gift, since the

specific gift bequeathed to them is not in existence. The intent theory will consider the testator's intent and may grant the beneficiary a replacement if one exists. The UPC theory entitles the beneficiary to a replacement or the sale price of the property, if sold, and presumes the testator's intent. State Y adopted the UPC.

Husband gifted "the house I own at 211 Pearson Drive, City, State Y, which I purchased as an investment, to my mother." This is a specific gift with reference to a house at one address. At the time of his death, he had sold his house and reinvested the proceeds in another house, located at 500 South St. Therefore, the house devised in the will is no longer within the estate, and as a specific gift, is subject to ademption.

The UPC theory of ademption will assume that Husband intended his mother to receive a replacement or sale proceeds of the 211 Pearson Dr house. The 500 South St house was acquired using the sale proceeds from the gifted house. Moreover, both houses were acquired for investment purposes. At no time did Husband or Wife live in the old house or the newly acquired house. These facts bolster Husband's presumed intent. Therefore, under the UPC, Husband's mother is entitled to the 500 South St house as a substitute for the one specifically bequeathed to her.

The residuary estate should be distributed to Wife. The issue is whether a surviving spouse is entitled to the will distribution as written.

Husband gifted "the residue of my estate to Wife if she survives me." Wife survived husband and is entitled to the residue of his estate, as written in the will and pursuant to Husband's

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

A pretermitted child is one who was born after will execution and is not accounted for in the testator parent's will. The UPC allows pretermitted children to take an intestate share of a parent's assets unless (i) the omission was intentional, (ii) the testator had other children, and the child's parent received the entire estate, or (iii) the child was otherwise provided for. State Y has adopted the UPC. A non-marital child may take an intestate share from her father if the father established parental rights during his lifetime or if the child can establish the parental relationship after his death.

Two years after will execution, Husband had a nonmarital child with his neighbor. The child is Doris. Husband's will does not account for any children, including Doris. Therefore, if Husband established a relationship with Doris while alive or if Doris can prove paternity after Husband's death, she is a pretermitted child. Doris was not otherwise provided for under these facts.

Additionally, there is no evidence that the omission of Doris was intentional. Lastly, Husband has another child, but Doris's mother did not receive any gift under the will.

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

Sam is not entitled to take a share of Husband's estate as an omitted child. The issue is whether Sam's mother has received a substantial portion of the estate.

A pretermitted child is one who was born after will execution and is not accounted for in the testator parent's will. The UPC allows pretermitted children to take an intestate share of a parent's assets unless (i) the omission was intentional, (ii) the testator had other children, and the child's parent received the entire or a substantial majority of the estate, or (iii) the child was otherwise provided for. State Y has adopted the UPC.

One year after will execution, Husband and Wife had a child named Sam. Sam is not accounted for in Husband's will and is therefore a pretermitted child under the UPC. Sam was not otherwise provided for under these facts, and there is no evidence that the omission of Sam was intentional. However, Husband has another child, and Sam's mother (Wife) is the beneficiary of some of Husband's estate. In fact, Wife is the beneficiary of a large majority of the estate. Therefore, Sam is not entitled to a share of the estate under the UPC because his mother excepts him.

ANSWER TO MEE 5

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

Attachment

Under the UCC, a security interest is an interest granted in collateral that secures an obligation from the debtor to the secured party (i.e., the creditor). To be enforceable, a security interest must attach to the collateral. Attachment requires the following: (i) the secured party gives value to the debtor, including a line of credit; (ii) the debtor has rights in the collateral at the time of the security interest creation; and either (iii) the debtor authenticates (i.e., signs) a security agreement that states the parties and sufficiently describes the collateral as to reasonably identify the collateral subject to the security agreement, or (iii) the secured party takes possession or exercises control over the collateral pursuant to a security agreement. One type of collateral is inventory, which is goods that the debtor sells or leases to third parties, raw materials, or works in progress. Here, the secured party gave value because Bank loaned, and continues to loan, Harmony Corporation money. The debtor had rights in the collateral because Harmony Corporation presumingly has rights in its own inventory. There was an authenticated security agreement because Harmony Corporation signed the security agreement, which also stated the parties and sufficiently described the collateral as "inventory," which is acceptable as a term of art. The flute is inventory because Harmony Corporation sells musical instruments to customers, including the flute. The security interest attached to even after acquired inventory because the security agreement expressly stated such, which is permitted. Thus, Bank's security interest attached to the flute.

Perfection

To be enforceable against other interests, a security interest must be perfected. Perfection occurs when the security interest attaches, and the secured party follows one of the methods of perfecting. One method of perfection is filing a financing statement in the appropriate state filing office (e.g., the Secretary of State) that correctly lists the secured party and debtor and sufficiently identifies the collateral.

Here, as stated above, Bank's security interest attached to the flute. Bank perfected this security interest because it filed a financing statement in the appropriate filing office that listed Harmony Corporation as the debtor, Bank as the secured party, and described the collateral as "inventory." Thus, Bank had a perfected interest in the flute.

Buyer in the Ordinary Course of Business

Generally, a perfected security interest will remain attached and perfected to the collateral upon its disposition given that the secured party follows the specified method of continued perfection under the UCC. However, a buyer in the ordinary course of business takes free and clear of a security interest. A buyer in the ordinary course of business is a buyer who (i) gives value for the collateral, (ii) purchases in the ordinary course of business of the seller who is in the business of selling goods of the kind, (iii) acts in good faith, and (iv) does not have knowledge that the purchase violates a security agreement. When a buyer in the ordinary course of business then sells the collateral to another buyer, that buyer also takes free of the security interest.

Here, Walter gave value for the flute because he paid $300 in cash and promise to make future payments for the flute. Walter purchased the flute in the ordinary course of business for Harmony Corporation because Harmony Corporation is in the business of selling musical instruments and sold it to Walter in its showroom. Walter presumingly acted in good faith absent facts indicating otherwise. Walter did not have knowledge that the purchase violated any security agreement because Walter was wholly unaware of the security agreement between Bank and Harmony Corporation. Thus, Walter was a buyer in the ordinary course of business that took free of Bank's security interest. As a subsequent buyer of the flute, Joan also took 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.

Attachment

See attachment rule above.

Here, the secured party gave value because Harmony Corporation extended a line of credit to Walter. Walter had rights in the flute because he paid cash and promised to make future payments and was given possession of the flute. There was an authenticated security agreement because Walter signed a credit sales agreement that identified the parties and sufficiently described the collateral as the flute itself. Thus, Harmony Corporation's security interest attached to the flute.

Perfection

Another type of good is a consumer good, which is when a consumer uses the collateral for family, personal, or household use. A purchase money security interest ("PMSI") is a

security interest granted in collateral when the secured party's extension of value allows the debtor to purchase the collateral itself (e.g., a line of credit). A PMSI in consumer goods automatically perfects once attached.

Here, the collateral is a consumer good because Walter intended to use it for personal purposes as a professional flutist. Harmony Corporation's security interest is a PMSI because the extension of credit allowed Walter to purchase the flute itself. Thus, Harmony Corporation's security interest was automatically perfected as a PMSI in a consumer good.

Consumer Buyer

A consumer buyer will take free of a security interest if the buyer (i) gives value for the consumer good, (ii) in good faith, (iii) from a consumer seller (i.e., a seller not in the ordinary course of selling the good), and (iv) without knowledge of a security agreement.

Here, Joan gave value for the flute because she paid $900. Joan made the purchase in good faith absent any facts to the contrary. Walter is a consumer seller because he is not in the business of selling flutes, or any musical instruments. Joan had no knowledge of the security agreement because Joan had no knowledge of any interest of Bank or Harmony.

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

ANSWER TO MEE 5

1. Whether the Bank has a security interest in the flute that is enforceable against Joan?

Under Article 9 of the UCC, for an enforceable security interest to exist, it must first attach. A security interest is said to have attached if:

a) Secured party gave value
b) The debtor has rights to the collateral
c) An authenticated security agreement that describes the property was filed or the secured party retains possession of the collateral

Here, the bank gave value to Harmony by loaning money to the Corporation. The collateral is all current and future inventory of Harmony which Harmony owns and therefore has rights to. Finally, the Bank has signed an agreement with Harmony that properly describes the collateral as 'all present and future inventory'. Such a description is sufficient for the purposes of a valid security agreement. Therefore, Bank's security interest has attached. Furthermore, Bank filed a financial statement and therefore, bank's security interest has perfected. Harmony sells musical instruments and therefore the flute sold to Walter is inventory. A buyer buys a good subject to the security interest. Therefore, the bank has an enforceable security interest in the flute. However, an exception exists wherein a buyer in the ordinary course of business (BCOB) takes the good free of the security interest. A BCOB is a (i)buyer, who buys, (ii) in good faith, (iii) in the ordinary course of business, (iv) from a merchant who is in the trade of selling that good, (v) without knowledge that a security interest exists on the good. Here, Walter bought the flute, from Harmony who is a merchant in the business of selling musical instruments. Walter had no knowledge about the security agreement between the bank and Harmony. Furthermore, there is no evidence of the transaction between Harmony and Walter having any bad faith elements. Therefore, Walter is a BCOB and takes the flute free of the security interest. Joan, having purchased the flute from Walter, also therefore, takes the flute free of the security interest.

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

2. Whether Harmony has an enforceable security interest in the flute against Joan?

For an enforceable security interest it must first attach. Here, Harmony gave the flute to Walter on credit, thereby giving value. Harmony had rights to the flute since it owned the flute. Finally, Harmony and Walter entered into a 'credit sales agreement' which essentially is a security agreement. Therefore, Harmony's interest in the flute attached. For a security interest to have priority over future interest, it must be perfected. A security interest perfect by either: (i) filing a financial statement, (ii) having possession or

control over the collateral or (iii) automatic perfection. A seller Purchase Money Security Interest (PMSI) is one where the seller sells the good on credit but retains title in the good. A PMSI is a special type of security interest that has its own priority rules. A PMSI in consumer goods is automatically perfected. However, Walter is a professional flutist and he purchased the flute for his professional performances. Therefore, the flute is not a consumer good. Therefore, it is not automatically perfected. Harmony therefore, should have filed a financial statement to perfect the security interest. Harmony did not file any financial statement and also no other perfection methods are applicable. Therefore, Harmony has not perfected the security interest.

A buyer of a good takes the good subject to the security interest only if the security interest is perfected. Joan bought the flute from Walter. Had Harmony perfected its security interest, Joan would have taken the flute subject to the security interest. One might argue that Joan is a consumer buyer and therefore would still take the flute free of security interest unless Harmony filed a financial statement prior to Joan purchasing the flute from Walter. But since Joan was also not buying the flute as a consumer good, since she is also a professional flutist, she would not have qualified as a consumer seller. Furthermore, Walter is not a consumer seller himself, which additionally poses a problem in classifying Joan as a consumer buyer.

Therefore, due to Harmony not perfecting its security interest, Harmony does not have an enforceable security interest in the flute against Joan.

ANSWER TO MEE 6

1. The issue is whether service of process on Dan was sufficient.

The Federal Rules of Civil Procedure allow service on a defendant by personal service, registered agent, delivery to a person of suitable age and discretion residing at the defendant's residence, or any method authorized under state law in which service was made. However, service of process must comply with due process notice requirements that mandate service be designed to reasonably apprise the defendant of the complaint. If the plaintiff knows or has reason to know that notice will not reach the defendant, then service is improper under due process.

Here, Penny's attorney complied with State C law that authorizes service of process by "sending a summons and complaint by first-class mail to a defendant's place of residence" because Dan was domiciled in State C at the time the lawsuit commenced (he physically lived with his parents there after getting fired and moving out of State B). However, the attorney knew that Dan would likely not receive notice. This is because the attorney had failed for weeks to contact Dan at his parents' home and learned that Dan was frequently away from home for weeks traveling throughout the country. Additionally, the attorney should have known that the letter sent to Dan's parents would not reach him in time while he was away because the envelope made no effort to distinguish itself as an item of immediate importance. Thus, because Penny's attorney knew and had reason to know that mailing the complaint and summons would not reasonably make Dan aware of the lawsuit, service of process on Dan was insufficient insofar as it failed to satisfy due process.

2. The issue is whether the district court has personal jurisdiction over the corporation.

Generally, a federal court may exercise personal jurisdiction to the extent of the state in which it sits. A court may exercise general personal jurisdiction over a defendant corporation if the corporation has continuous and systematic connections to the forum state (either incorporated or has its headquarters (nerve center) there). Alternatively, a court may exercise specific personal jurisdiction if the defendant corporation has such minimum contacts that it purposefully availed itself to the laws of the forum state and would be reasonably foreseeable to go to court there. This requires both that the claim arise out of or relate to the contacts with the forum state and that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

Here, the corporation is incorporated with its headquarters (nerve center) in State A, so the corporation does not have systematic and continuous ties to State C sufficient to exercise general personal jurisdiction. Additionally, Penny's claims arise out of and relate to the corporation's contacts with State B; more specifically, Penny's contractual

relationship with the corporation, Dan's risky unauthorized asset allocation, and Penny's subsequent losses all occurred in State B. Thus, State C has neither general nor specific personal jurisdiction over the corporation with regard to Penny's claims.

However, a defendant may consent to personal jurisdiction through their conduct. Here, State C law requires that any corporation that voluntarily registers to do business in State C consent to the exercise of general personal jurisdiction in State C. Because the corporation voluntarily registered to do business in State C pursuant to the State C statute, the corporation is likely subject to personal jurisdiction in State C. Thus, the district court likely has personal jurisdiction over the corporation because the corporation voluntarily consented.

ANSWER TO MEE 6

1a) Whether Penny properly served Dan with process under the federal rules of civil procedure.

Service of process is the method by which a party receives notice of a pending litigation against them. The federal rules of civil procedure govern the proper method of providing notice by service of process in federal court. To be sufficient, process must be served on the party personally, upon a person of suitable age and discretion at the party's usual place of abode, or in any manner authorized by the law of the state where the federal court sits.

Here, Penny served notice by mailing a copy of the complaint and summons to Dan's parents. This was not personal service on Dan or his parents at his usual place of abode. But the State C law does allow service by first class mail on a person's residence. Therefore, if his parents' house is deemed his residence, service would be proper. Residence is not defined in the federal rules, which use terms like "domicile" or "usual place of abode." But assuming it is an analogous term to those, it would likely incorporate a facts-based approach, considering whether the party is employed at or nearby the location, whether they plan to remain there permanently, and whether they return there. And under these facts, this would likely apply to Dan's parents' house. While he had been living in State B, Dan lost his job and moved back to State C to live with his parents. He is apparently unemployed, and has no apparent intent to return to State B or move elsewhere. Thus, a court could properly determine that his parents' house is his "residence" under the statute. If that is the case, service would be proper under the federal rules.

1b) Whether Penny's service by mail is proper notice under the Due Process clause of the constitution.

In addition to compliance with the federal rules, the Due Process Clause of the Fifth Amendment to the United States constitution requires that notice to a party be adequate. Due process is only satisfied if the notice is reasonably calculated under the circumstances to apprise the party of the pending litigation and allow them an opportunity to respond. A party must make this calculation based on facts known to it at the time of providing notice. Mailing letters by unregistered or uncertified mail, for example, with no proof of delivery, has been found to provide inadequate notice because there is no guarantee a recipient receives it.

Here, Penny served Dan by mailing first-class mail to his house. But Dan did not receive the mail immediately due to his traveling. Further, there was nothing on the outside of the mail that gave his parents any indication of what the contents were, so they were unable to inform Dan on a timely basis. This is important, because Penny's attorney knew that

Dan traveled frequently for long periods of time, and therefore there could be a delay in him receiving notice. And this lack of timely notice is what prevented Dan from being able to appear in court before a default was entered against him. Because he was aware of these facts, Penny will be charged with not providing "reasonably calculated" notice by failing to let Dan's parents know that the contents were urgent and they should be opened or communicated to Dan. Therefore, Penny's method of service was improper as not providing adequate notice and denying Dan due process of the law.

2. Whether the Court of State C has personal jurisdiction over Corporation.

Personal jurisdiction is the authority of the court to exercise jurisdiction over a defendant. The federal courts' personal jurisdiction is typically limited by state boundaries, and is deemed to be consistent with the jurisdiction of the state courts, unless a federal statute provides otherwise. Personal jurisdiction over a corporation can be based on many things, including 1) service of process in the forum state upon an officer or agent; 2) domicile in the forum state; 3) consent to the action; or 4) as authorized by state law and consistent with the Due Process clause of the Fourteenth Amendment. A corporation is domiciled wherever it is incorporated or has its principal place of business. Further, consent may be express (by appearing in the action) or implied (by taking an action that a state statute deems to be consent). Such implied consent can be specific to the cause of action and or can be general and apply to all causes of action. If one of these bases for personal jurisdiction is not met, the court must dismiss the case.

Here, corporation is incorporated in and headquartered in State A. Thus, it is domiciled in State A for personal jurisdiction. Likewise, service was waived, so the corporation was not served in State A. But the corporation is registered in State C. And State C's foreign corporation statute requires a corporation to consent to general jurisdiction and be subject to the same liabilities and duties as a State C corporation. Therefore, the corporation gave implied consent to personal jurisdiction in State C. Because that was general jurisdiction, the court has personal jurisdiction over any claim, including this claim brought by Penny. Even if the court limited it to jurisdiction that could be exercised against State C incorporated entities, that would also include general jurisdiction because it would be treated as the corporation's domicile and fully subject to personal jurisdiction.

ANSWER TO MPT 1

MEMORANDUM

TO: Beverly Garcia
FROM: Examinee
DATE: February 24, 2026
Re: Kari Otto matter

INTRODUCTION

Our client, Kari Otto ("Kari"), and her husband, Eric Nolan ("Eric") want to obtain a divorce and prior to doing so they would like to reach an agreement regarding their property. As such, I was tasked with analyzing (1) whether the parties' marriage was created in 2006 or 2019; (2) if the marriage was created in 2006, which property is marital and which is separate; and (3) if the marriage was created in 209, what effect, if any, that has on the characterization of property. Below is a discussion of each issue based on the relevant Franklin Family Law ("FLC") and case law.

DISCUSSION

I. Whether the parties' marriage was created in 2006 as a common-law marriage or in 2019 when they held a ceremony, obtained a marriage license, and filed for a marriage certificate.

It is more likely that the parties' marriage was created in 2006 as a common-law marriage, even though in 2019 Kari and Eric held a wedding ceremony and filed their marriage certificate in the county clerk's office in 2019.

FLC § 211 recognizes common law marriage as a valid marriage in the State of Franklin. According to *Schwartz v. Darrow*, 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." (Fr. Ct. App. 2022); *See also Howard v. Howard* (Fr. Sup. Ct. 2015). 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 a *marital* relationship, i.e., 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 circumstances. *Schwartz v. Darrow* (Fr. Ct. App. 2022). Relevant conduct includes, but is not limited to, (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 responsibilities, such as leases in both parties' names, joint bills, or other payment records; (7) evidence of joint estate planning, including wills, powers of attorney, and beneficiary designations; (8) symbols of commitment, such as ceremonies, anniversaries, cards, and gifts; and (9) the couple's references to or labels for one another. *Id.*

In *Ridley v. Brooks* the court found 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. (Fr. Ct. App. 2008). This is because the designation on the health insurance form was done to save money and Brooks often stated to her friends that she had no intention of remarrying. In *Schwartz v. Darrow,* the appellate court remanded the case to the magistrate court to reconsider whether a common law marriage existed because, even though the couple maintained separate finances, other factors and evidence, like the fact that before his death, Cohn presented Darrow with a wedding ring, proposed to her, which she accepted, and their family, friends, co-workers, acquaintances all considered them to be married, suggested the existence of a common law marriage. (Fr. Ct. App. 2022). The appellate court indicated that the shared financial responsibility factor is relevant but not necessarily indicative of lack of intent to be married, especially if the parties agree to and do hold themselves out to be married, even if they are not ceremonially married and others know of this fact. *Id.*

Here, based on the factors enumerated in *Schwartz v. Darrow,* and the totality of the circumstances, Kari and Eric likely entered a common law marriage in 2006. Kari and Eric began dating in 2005 and moved in together in 2006, and have been living together ever since, thereby cohabitating. In August 2006, Eric gave Kari a ring and asked her to marry him and she said yes. Eric also admitted that he intended to marry Kari when he asked her. Even though Eric believes that it was a promise ring and Kari believes that it was engagement ring and the fact that they did not have an official ceremony and let the marriage license they obtained expire because of Eric's nervousness of a lifelong commitment, the fact that they did obtain a marriage license on September 19, 2006, is likely indicative of an intent to marry. Moreover, unlike *Ridley*, based on the aforementioned facts, Kari had the intention of marrying Eric. Further, on September 19, 2007, Eric gave Kari an anniversary card, stating that he has "learned to be a good husband" to her, indicating his intent to be married to Kari. Further, they also had a reputation in the community as spouses. They told their friends that they were married and their friends referred to them as married, much like Cohn and Darrow. Kari and Eric also received a cross-stitch from Kari's grandmother of two people in wedding attire, named "Kari" and "Eric" with the caption "United in Love, 2006." They also send their friends and family an annual Christmas card signed "Mr. and Mrs. Nolan." Additionally, since 2006, Kari and Eric have had a joint bank account, which the both contribute to and pay bills from (including a mortgage on the bungalow they live in) and they have been filing their taxes jointly since 2007.

While it may be argued that it was in 2019 that the two were married because that is when they held a small wedding ceremony after re-obtaining a marriage license and filing for a marriage certificate, the aforementioned facts weigh in favor of finding a common law marriage in 2006. Although Kari has never used Eric's last name, except in the Christmas cards, and has only since 2019 referred to herself as "Otto-Nolan," these factors, while relevant, likely will not add much weight to the argument that the marriage only existed in 2019. Eric also admitted that he intended to marry Kari in 2006 and that the ceremony in 2019 was held only to make the relationship stronger when they began experiencing some problems when Kari expressed her wish to have had a ceremony.

Given the totality of the circumstances and the fact that Eric and Kari have been sharing financial responsibilities since 2006, it is likely that they entered a common law marriage in 2006.

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

FLC § 215 provides how property is to be disposed in divorce actions and states that unless provided by a valid pre or postnuptial agreement, the court shall determine the respective rights of parties in their separate or marital property. This section of the FLC also provides how property is distributed, absent such agreements: (1) separate property shall remain such; (2) marital property shall be distributed equally between the parties, considering the circumstances of the case and of the respective parties; and (3) in determining equitable distribution or property under (2), the court shall consider certain factors.

FLC § 200(c) defines marital property as all property acquired by either or both spouses during the marriage, subject to exceptions enumerated in § 200(d). Whereas § 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; (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; and (4) property described as separate property by written agreement.

In *Jones v. Cardiff,* the court, relying on *Price v. Price* (Fr. Sup. Ct. 2001), stated that any appreciation in the value of the separate property due to the contributions or efforts of the nontitled spouse will be considered marital property. (Fr. Sup. Ct. 2023). This includes any direct contributions to the appreciation, like financial contributions to the property, as well as nonfinancial contributions, such as by personally maintaining, making improvements to, or renovating a marital residence. *Jones v. Cardiff* (Fr. Sup. Ct. 2023). In *Jones*, the court affirmed the lower court's decision to lower Megan's share of this type of property from 50% to 25%. The court found that the home was Samuel's separate

property, the improvements made were the efforts of both parties, and therefore the increase in value was considered marital property. *Jones v. Cardiff* (Fr. Sup. Ct. 2023). However, because Samuel's income was the sole source of the funds expended on the property and his involvement in the renovations was far more extensive than Megan's, equitable distribution of the appreciation would mean that Megan receives 25%, whereas Samuel receives 75%. *Jones v. Cardiff* (Fr. Sup. Ct. 2023).

Defining separate property to include acquisitions during the marriage in *exchange* for the premarital or gift property of one of the spouses or an *appreciation* in the value of such property would generally presume some rough equivalency in value at the time between the premarital property and that which was acquired in exchange. *Bower v.* Bower (Fr. Ct. App. 2014). The court in *Bower* found that because depreciated premarital property was *replaced* by property greater in quantity and value that was largely produced or paid through activities of the marital economic partnership. The significant expansion in the farming operation was not due to unrelated market factors, rather it occurred through marital efforts, during which the wife initially directly benefitted the business, pledged her personal credit for its debts, and then contributed indirectly through her services as a homemaker and wife. The court, relying on *Litman v. Litman* (Fr. Ct. App. 2010), also indicated that even if the farm had been started after the parties were married and the wife only indirectly contributed, she would have been entitled to some share of the appreciation of the farm's value. The court concluded that the husband is entitled to be credited with the value of his initial contribution of his premarital cattle and equipment, however, the size of the present herd and equipment demonstrates that the farm experienced a manifold expansion beyond the initial cattle and equipment, due to marital efforts. As such, it would be subject to equitable distribution as marital property, rather than separate property of the husband just because it was his premarital cattle and equipment that started the operation.

A. Marital Property

The house at 1505 Clark Street was acquired in 2008, even though Eric made the 20% down payment and has a 15-year mortgage solely in his name, the house itself was acquired during the common law marriage of the spouses. It is likely that it will be subject to equitable distribution as marital property, with any appreciation in value from $400,000 to $800,000 to be distributed equitably to Eric and Kari, based on their marital efforts on the property.

The Toyota, Kari's vehicle, and Nissan, Eric's vehicle, were both acquired in 2024 during the common law marriage and after the 2019 marriage ceremony. As such, they would be considered marital property. The bank account and mortgage will both be considered marital property as they were acquired during the common law marriage in 2006.

B. Separate Property of Eric and Kari

The tract of land in Frankfurt Acres was acquired by Kari in 2001, before her relationship with Eric began. This would be separate property under the FLC. Kari also made improvements to the land during her common law marriage to Eric, however, she did so with a gift from her mother. As such, that would also be considered separate property, even though Eric mentioned wanting to receive his share of the shed on the property. If the shed was built through his efforts during the common-law marriage, it is likely that a court will be inclined to distribute that portion equitably as marital property.

The photography equipment obtained by Eric in 2005 will likely be considered separate property because he acquired it prior to the common law marriage in 2006.

III. If the marriage was created in 2019, what effect, if any, that has on the characterization of property?

Based on the FLC and case law discussed above, if the marriage was created in 2019, the property acquired prior to this marriage would likely be considered separate property of the two. Therefore, the house, additional photography equipment prior to 2019, and improvements to Kari's tract where Eric made efforts in prior to 2019, and mortgage in Eric's name, would likely all be considered separate property. Whereas, the value of the photography equipment acquired after 2019 and the cars acquired in 2024, would likely be considered marital property and be subject to equitable division.

CONCLUSION

It is likely that Eric and Kari entered a common-law marriage in 2006 and therefore any property acquired prior or appreciated in value through marital efforts will be considered marital property, whereas property acquired prior to 2006 and through gifts to one spouse, will be considered separate property. However, if a court deems that the marriage was created in 2019, the distribution of property would be affected because all property acquired prior to 2019 would be considered separate and not subject to equitable distribution.

ANSWER TO MPT 1

MEMORANDUM

To: Beverly Garcia
From: Examinee
Date: February 24, 2026
Re: Kari Otto Matter

Dear Beverly,

Please see below answers to your questions about Kari Otto and Eric Nolan's marriage following your meetings with both parties.

1. The parties marriage was created in 2006.

The issue here is whether Kari and Eric created a common-law marriage in 2006.

The state of Franklin recognizes common-law marriage as a valid marriage. *FFC §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* The burden of proving common-law marriage lies with the person claiming its existence. *Id.*

A common law marriage finding depends on the totality of the circumstances. 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. *Schwartz* In *Schwartz v. Darrow,* the court stated that a couple's decision to maintain separate finances is relevant, but not necessarily indicative of the lack of the parties' intent to be married.

In *Ridley v. Brooks*, the court found that there was no common-law marriage even though the parties lived together, shared expenses, and indicated that they were husband and wife on a health insurance form and their apartment lease because the health insurance designation was only done to save money and the wife often states to friends that she had no intention to remarry. However, in *Schwartz v. Darrow,* the court said asking someone to marry you (and having them accept) and providing a ring *could* be evidence of the couple's express agreement to marry even without a formal ceremony.

Here, we must look to the totality of the circumstances to determine whether a common law marriage between Kari and Eric was created in 2006. First, the parties have lived together since January 2005 (cohabitation); the parties "told their friends that they had gotten married, and their friends started referring to them as a married couple" ("holding out" and reputation in the community as spouses); they maintained joint bank account since December 2006 to which they have both contributed funds and paid their bills from; family members were upset that they were not included in the 2006 wedding (Eric's mother and grandmother); Eric's grandmother gave them a cross-stitch that they hung up in their house that says "United in Love September 19, 2006"; Eric and Kari sent out holiday cards saying from "Mr. and Mrs. Nolan" (symbols of commitment); Eric gave Kari a diamond ring in August 2006 and asked her to marry him (symbols of commitment); and Eric gave Kari a first anniversary card saying "I have learned to be a good *husband* to you" (symbols of commitment). The totality of these circumstances are highly indicative that there is a common-law marriage between the parties as evidenced by the amount of factors satisfied here.

However, Eric's argument that the parties were not married until the formal marriage in 2019 will be based on the fact that he only gave her a promise ring in September 2006 because "it seemed like the right thing to do", that he didn't follow through with the marriage ceremony because he was "nervous about making a lifelong commitment" and he only called Kari his wife "once in awhile". Eric's argument will likely not prevail over the totality of the circumstances like it did in the *Ridley* case because unlike there, Eric did not explicitly tell others that he was nervous about making the commitment to Kari and further, it is unlikely that a person who is receiving a ring in addition to hearing the words "will you marry me" would assume it was a promise ring and not an indication that he wanted to marry her. Further, while they kept their property in separate title, it is not necessary indicative of the lack of their intent to be married, just like with the separate finances in *Schwartz.*

Therefore, based on the totality of the circumstances, Kari and Eric's marriage was created in 2006.

2. The division between martial property and separate property based on a 2006 marriage.

Under FFC §200(c), the term "marital property" shall mean all property acquired by either or both spouses during the marriage except as specified in subsection (d). Subsection (d) of FFC §200 states that the term "separate property" shall mean: (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; and (4) property described as separate property by written agreement.

In *Bower*, the court concluded that cattle and equipment purchased during the marriage was indeed within the statutory definition of marital property and since they were not acquired by gift or inheritance, they cannot be excluded from equitable distribution. Under FFC §215(a), except when the parties have a valid prenuptial or postnuptial agreement resolving all issues related to the parties, the court shall determine the respective rights of the parties in their separate or marital property: (1) separate property remains such; (2) martial property shall be distributed equitably between the parties, considering the circumstances of the case and of the respective parties; (3)....

Any appreciate in the value of separate property due to the contributions or efforts of the non- titled spouse will be considered marital property. *Price* This includes any direct contributions to the appreciation, such as when the non-titled spouse makes financial contributions to the property, as well as when the non-titled spouse makes direct non-financial contributions, such as by personally maintaining, making improvements to, or renovating a marital residence. *Id.*

Defining separate property to include acquisitions during the marriage in exchange for the premarital or gift property of one of the spouses or an appreciation in the value of such property would generally presume some rough equivalency in value at the time between the premarital property and that which was acquired in exchange. *Bower* For example, in *Bower*, this was not the case when the depreciated premarital property was replaced by property greater in quantity and value that was largely produced or paid for through the activities of the martial economic partnership. Further, in that case, the court looked at whether the increase in value in value was due to unrelated market factors/inflation or due to the parties' mutual marital efforts. A spouse is entitled to appreciation of other spouse's separate property asset even if spouse's contributions were indirect. *Litman*

(a) House at 1505 Clark Street

Here, Eric bought the house at 1505 Clark Street in his name for $400,000 in 2008. Eric used the money that he had earned as a photographer to make the 20% down payment on the house. He took out a 15-year-mortgage in his name alone, but paid the remaining purchase price with money from the joint account.

If the parties were married in 2006, this would be considered marital property because Eric used money he earned while in the married and the mortgage was paid from the joint bank account. Eric may argue that he bought the house with separate money and it was his house before, but he did not own the house prior to the marriage (he merely rented it) and while he used money he had acquired as a photographer, he earned that money during the marriage and money earned during the marriage is marital property unless an agreement says otherwise.

Therefore, the house at 1505 Clark Street is marital property.

(b) Tract of land in Frankfurt Acres

Here, the tract of land in Frankfurt Acres was owned by Kari before the marriage (acquired in 2001). Further, Kari made significant improvements to the land using funds she had received as a gift from her mother to build a large gardening shed on the property to store equipment. Since Kari owned the land before marriage and all the improvements done were using funds Kari acquired by gift, the whole tract of land is Kari's separate property. Eric cannot argue that any of it is martial property because he did not make or contribute anything to appreciate the property using either his separate property or marital property. All improvements were done using Kari's separate property.

Therefore, the tract of land in Frankfurt Acres is entirely Kari's separate property (including the appreciation in value).

(c) Photography Equipment

Here, Eric purchased $50,000 worth of photography equipment in December 2005. This was property acquired before the marriage and therefore is separate property under §200(d)(1).

Therefore, the photography equipment purchased in December 2005 is Eric's separate property.

(d) Additional Photography Equipment

Here, Eric purchased additional photography equipment beginning in October 2006, one month after the marriage was created. The equipment was bought for $150,000, but is now only worth $120,000. Since the photography equipment was acquired during marriage, it is considered marital property.

Therefore, the additional photography equipment is martial property.

(e) 2024 Toyota Tundra

Here, the Toyota Tundra (Kari's vehicle) was purchased in May 2024 and has depreciated in value. Since it was purchased in 2024 during the marriage and there is no indication that the car was paid off using separate property, the car is considered marital property.

Therefore, the Toyota is marital property.

(f) 2024 Nissan Altima

Here, the Nissan Altima (Erics vehicle) was purchased in January 2024 and has depreciated in value. Since it was purchased in 2024 during the marriage and there is no indication that the car was paid off using separate property, the car is considered marital property.

Therefore, the Nissan is marital property.

(g) Joint Checking Account

Here, the joint checking account holds $120,000 as of December 2006. Since this joint account was created after marriage, it is separate property.

Therefore, the joint checking account is separate property.

(h) Balance on Mortgage for 1505 Clark Street

Here, the balance on the mortgage is $50,000. Since we determined above that the property is martial property, the balance will also be martial property.

II. The division between martial property and separate property based on a 2019 marriage.

See rules under Section II above.

(a) House at 1505 Clark Street

Here, Eric bought the house at 1505 Clark Street in his name for $400,000 in 2008. Eric used the money that he had earned as a photographer to make the 20% down payment on the house. Therefore, this will be considered separate property.

However, the house appreciated in value over the years and has been paid off through the joint bank account. Therefore, like in Bowers, the appreciation is due to the parties' mutual marital efforts and the appreciation will be considered martial property.

(b) Tract of land in Frankfurt Acres

This analysis does not change from the 2006 analysis.

(c) Photography Equipment

This analysis does not change from the 2006 analysis.

(d) Additional Photography Equipment

Here, Eric purchased additional photography equipment beginning in October 2006 until 2025. The equipment was bought for $150,000, but is now only worth $120,000.

Here, part of the equipment is martial property (anything purchased after 2019) and part is separate property (anything purchased before 2019). The court must look at how much was contributed to distribute equitably. However, since there was no appreciation in value, there is no need to do an analysis on that here because like in *Bower*, this was not the case when the depreciated premarital property was replaced by property greater in quantity and value that was largely produced or paid for through the activities of the martial economic partnership.

Therefore, part of the property is separate and part is marital.

(e) 2024 Toyota Tundra

This analysis does not change from the 2006 analysis.

(f) 2024 Nissan Altima

This analysis does not change from the 2006 analysis.

(g) Joint Checking Account

This analysis does not change from the 2006 analysis.

(h) Balance on Mortgage for 1505 Clark Street

This analysis does not change from the 2006 analysis because while the mortgage was separate property (Eric's), it was being paid through the mutual martial efforts of the parties and is therefore considered martial property. If the court finds that the house is martial property, both parties will be responsible for the remaining mortgage.

Please let me know if you have any further questions.
Sincerely,
Examinee

ANSWER TO MPT 2

TO: Maria Delatorre, City Attorney

FROM: Examine

DATE: February 26, 2026

RE: Measure 15

MEMORANDUM

STATEMENT OF FACTS

[*omitted*]

LEGAL ANALYSIS

I. The issue is whether the United States Flag Code bars the flying of the Earth Flag above the United States Flag.

Statutes should be interpreted in the following manner: (i) "shall" or "must" means the action is mandatory; (ii) "should" or "may" means the action is permissive (i.e., not mandatory). Walker's Treatise on Legislation § 201(h). Under the United States Flag Code, a flag should not be placed above, or on the same level, to the right of the United States flag, except during naval chaplains' church services at sea. 4 U.S.C. § 7(c). The United States flag should be placed at the center, highest point of a group of flags. 4 U.S.C. § 7(e).

Here, as an initial matter, the United States Flag Code makes the provisions set forth therein permissive, rather than mandatory, because it uses "should" rather than "shall" or "must." The Franklin Defenders of Earth (herein "FDE") wishes to fly the Earth Flag above the United States flag during its Earth Day celebration hosted at City Hall Plaza. The Earth Day flag is permitted to fly over the United States flag under the U.S. Code because the Code does not use mandatory language, rather it states that the United States flag "should" not be placed below, or on the same level as, another flag. Thus, the United States Flag Code permits flying another flag above, or at the same level as, the United States flag.

Therefore, the United States Flag Code does not bar the flying of the Earth Flag above the United States flag.

II. The issue is whether Franklin state law bars flying the Earth Flag above the United States Flag, and whether Measure 15 is enforceable under Franklin state law.

A. Franklin State Law Barring Action

See statute interpretation rule above. Under Franklin law, the United States flag shall be placed in the position of first honor. Fr. St. Gov. Code § 436. No other flag shall be placed on the same level, or above, to the right of the United States flag, except during church services. Fr. Military and Veterans Code § 617.

Here, as an initial matter, Franklin law makes the provisions regarding the United States flag position mandatory because it uses "shall" rather than "should" or "may." Under this strict mandatory provision, the Earth Day flag cannot be permitted to fly above the United States flag because Franklin law mandates that the United States Flag be placed in the position of first honor.

Therefore, Franklin state law bars flying the Earth Flag above the United States Flag.

B. Measure 15 Enforceability

Under Franklin law, the legislative power is vested in the Franklin Legislature (i.e., the Senate and Assembly). Fr. Const. Art. 4 § 1. However, the people reserve the powers of initiative and referendum. Fr. Const. Art. 4 § 1. If the subject matter of a local ordinance has been so fully covered by general law as to clearly indicate that it has become exclusively a matter of state concern, then the local ordinance is preempted by state law. *Mastai v. Ross* (Fr. Ct. App. 2004); *In re Hubbell* (Fr. Sup. Ct. 1964). Similarly, if the subject matter of the local ordinance has been partially covered by general law couched in such terms as to indicate a paramount state concern that will not tolerate further local action, then the local ordinance is preempted by state law. *Mastai*; *Jefferson School Board v. County of Jefferson* (Fr. Sup. Ct. 1980). For example, a local ordinance that sets term limits for city council is preempted by State Code that affects eligibility for local office, even though the Code does not contain an identical provision, because State Code evidenced the State's intent to exercise statewide control over election candidate qualifications and eligibility. *Mastai*; *Elder v. Board of Supervisors* (Fr. Sup. Ct. 1979). It is irrelevant as to whether the local ordinance is a county or city because cities are simply creatures of the state. *Mastai*; *Mancini v. City of Greenwich* (Fr. Sup. Ct. 1965). Thus, voters have the right to pass upon the composition of their local governments only within the State's constitutional legal framework and the laws enacted by the State's Legislature. *Mastai*; *Mancini*. Even local governments do not possess federal constitutional rights against the state that created them. *Mastai*; *Hunter v. City of Pittsburgh*, 207 U.S. 161 (1907).

Here, Franklin state law clearly covers the position of the United States flag because it expressly discusses the mandatory positioning of the United States flag. While the Franklin law does not expressly cover flying the Earth Flag, it arguably still preempts the proposed local ordinance because Franklin partially covers the subject matter of flag positioning to the extent that Franklin has the intent to exercise statewide control over flag positioning, especially in relation to the United States flag. Although the voters reserve the powers of initiative and referendum through Measure 15, Measure 15 must fit into Franklin's constitutional framework and laws. *Mastai*; *Mancini*. Measure 15 clearly does not do so because of the preemption.

Therefore, Measure 15 is not enforceable under Franklin state law.

III. The issue is whether the First Amendment to the United States Constitution requires that FDE be allowed to fly the Earth Flag above the United States flag.

If the government encourages diverse expression, the First Amendment prevents it from discriminating against speakers based on their viewpoint. *Shurtleff v. City of Boston*, 596 U.S. 243 (2022). For example, a city may encourage diverse expression by making city property, such as a plaza, available to the public for events, meaning the property is a public forum. *Id.* The question is whether there is government speech because the First Amendment does not prevent the government from declining to express a view. *Id.* Whether there is government speech or private speech may blur when the government invites people into a program, and courts must look at the totality of the circumstances on a case-by-case basis to determine which category the speech falls into. *Id.* Factors a court may look at include the history of the expression at issue, the public's likely perception as to the speaker, and the extent to which the government actively shaped or controlled the expression. *Id.* Courts have held that permanent monuments in public parks are government speech, even if privately funded. *Id.*; *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U.S. 200 (2015). Similarly, courts have held license plate designs to be government speech because the government maintained direct control over the message conveyance by actively reviewing and rejecting designs. *Shurtleff*. In *Shurtleff*, the city's refusal to allow a group to fly their flag was unconstitutional because (i) the city allowed groups to hold ceremonies on its plaza, during which they hoisted their own flag; (ii) while the flags usually represented the nation, state, and city, it was not always the case, meaning the flag would not be perceived as government speech; and (iii) the city did not control the flag raisings or the flags' messages.

Here, Measure 15 itself does not comply with the Rules and Regulations because no event activities are to occur on City Hall itself, which Measure 15 calls the flag raising to take place on. However, if Whitney has allowed other groups to hoist flags atop of City Hall in the past, then Whitney must allow FDE to do so, but Whitney is not constitutionally required to allow FDE to hoist the Earth Flag above the United States flag under the First Amendment. Specifically, Whitney has made the City Hall Plaza a public forum because

it allows groups to hold events there, subject to permit requirements, and security and safety issues. Rules and Regulations - Events on City Hall Plaza. Further, although the flags typically represent the United States, Franklin, and Whitney, that is not always the case assuming that Whitney allows other groups to raise flags during their events, meaning that the public would not view the expression as governmental. Further, although Whitney controls some aspects of the events, these aspects do not relate to the expression itself because it is regulating security and safety issues, among other things. Thus, FDE has the right to display the flag under the First Amendment but not necessarily above the United States flag in violation of Franklin law.

Therefore, the First Amendment to the United States Constitution does not require that FDE be allowed to fly the Earth Flag above the United States flag, only that the flag must be allowed during the event.

CONCLUSION

Therefore, the United States Flag Code does not bar the flying of the Earth Flag above the United States flag because the relevant provisions use permissive, rather than mandatory, language regarding the United States flag position. However, Franklin state law bars flying the Earth Flag above the United States Flag because the relevant provisions use mandatory language regarding the United States flag position. Thus, Measure 15 is not enforceable under Franklin law because the state law preempts the ordinance. Lastly, the First Amendment to the United States Constitution does not require that FDE be allowed to fly the Earth Flag above the United States flag because the First Amendment only guarantees the right to fly the flag not in regard to position.

ANSWER TO MPT 2

To: Maria Delatorre

From: Examinee

Date: February 26, 2026

Re: Measure 15.

Memorandum

Pursuant to the February 24 memo, please see each requested question analyzed below. In addition, this memorandum concludes with the overall recommended advice to be provided to the City Council regarding whether they must accept the ordinance as recommended in Measure 15.

(1) The United States Flag Code Likely Does Not bar the Flying of the Earth Flag above the U.S. Flag.

The first issue is whether the U.S. Flag Code bars the flying of the Earth Flag above the U.S. Flag. The applicable laws in the U.S. Flag Code (4 U.S.C Section 7) list a number of practices with regard to the U.S. flag, so statutory interpretation is key to understanding the rules. As explained in Walker's Treatise on Legislation, Section 201 (Principles of Statutory Interpretation), section (h), "the use of terms such as 'shall' or 'must' and similar terms, make the action set forth in the legislation mandatory. The use of terms such as "should" or "may" and similar terms, sometimes called 'precatory' terms, make the action set forth in the legislation permissive, but not mandatory." As such, in order to understand whether the Flag code is mandatory or permissive, these such words are key.

As such, it is likely that the statute will be considered precatory/permissive and therefore would not serve as a complete bar of the flying of the Earth Flag. Throughout the statute, the language used is clearly precatory - subsections (c), (e) and (f) each contain the operative word "should". Each of these subsections proscribe directions. For example, subsection (c) states that "no other flag...*should* be placed above or, if on the same level, to the right of the flag of the United States...." Further, section (e) states that the flag "*should be...at the highest point of the group when a number of flags...or pennants of societies are grouped and displayed from staffs."* Section (f) finally states that "when flags of States, cities, or localities, or pennants of societies are flown on the same halyard with the flag of the United States, the latter *should* always be at the peak. Such language indicates that these directions, though recommended, are not mandatory - there is no reason why, if the legislators wanted to make such rules mandatory, they wouldn't have used "shall" or "must" in place of each "should." Though one may argue that the use of

"always" following "should" imply a mandatory reading, this is not persuasive, as there is again no reason why, if this was intended to be mandatory, the rules wouldn't have said "shall always". Legislative intent can be gleaned from the specific words chosen, and in this case, the words chosen express highly recommended, but still permissive, directions regarding the flag. As such, these rules do not serve to bar the flying of the Earth flag above the U.S. flag.

(2) Franklin State Law likely bars the Flying of the Earth Flag above the U.S. Flag, and Measure 15 is/is not enforceable under Franklin State Law.

The second issue is whether Franklin State Law bars the flying of the Earth flag above the U.S. Flag, and separately, whether Measure 15 itself is enforceable under Franklin State Law.

a. Franklin State Law Likely Bars the Flying of the Earth Flag above the U.S. Flag.

Similar to the topic discussed in Section (1), statutory interpretation of the applicable Franklin state laws will be key in understanding whether such laws bar the Earth Flag flying above the U.S. Flag. The statutory interpretation principles discussed in Section (1) are equally applicable in this case. However, here, we likely arrive at the opposite conclusion, because the words used are mandatory in nature. For example, Section 436, though focusing on national and state flags being displayed (rather than flags of societies), states that "at all times the national flag shall be placed in the position of first honor." In addition, Section 617 of the Military and Veterans' 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 of America", subject to certain exceptions. The consistent use of the word "shall" indicates, as explained in Section (1), that such actions are mandatory.

It is possible that one could argue that these rules are inapplicable to the current case at hand, given Section 436 is discussing national v. state flags, and Section 617 involves military and veterans, both of which do not seem related to this case (as discussed below). This is not likely to be persuasive, because the language still indicates a mandatory intent, and there is nothing in the text that indicates such rule should only be applied in only certain cases. This is especially true of Section 617, which has no language implying that it only applies to military and veteran situations, despite appearing in the military and veterans code.

b. Measure 15 is not enforceable under Franklin State Law.

The second sub issue is whether the ordinance itself is enforceable under Franklin State Law. The Franklin State Constitution states in Article 4, Section 1, that the "legislative power of the State is vested in the Franklin Legislature...but the people reserve to themselves the powers of initiative and referendum." As such, the act of passing an

ordinance is valid, but there is a closer question here: whether the ordinance is preempted by any other state law. The Franklin Court of Appeals provided certain rules in *Mastai v. Ross*, where the local ordinance in Lakeville regarding term limits of council members was found to be invalid. The court stated that a "local ordinance is 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'...or if 'the subject matter has been partially covered by general law couched in such terms as to indicate a paramount state concern [that] will not tolerate further...local action" (*Mastai v. Ross).* The court reasoned that, because the State Government Code contained "numerous...provisions also affect[ing] eligibility for local offices in a city such as Lakeville" and the court noted that "a similar statute relating to the eligibility of county elected officers has been held to constitute evidence of the Legislature's intent to exercise *statewide* control over the qualifications of elected county officers" (*Id.*). Mastai's attempt to argue that because Lakeville was a city, not a county, these preemption rules don't apply was not persuasive. Lastly, the court noted that "no matter the source of the local regulation, whether by initiative in a city or a county, it cannot be contrary to the laws adopted by the state legislature.

In this case, it seems likely that the state laws will be determined to preempt the local ordinances. As discussed above, the two relevant laws that are cited contain mandatory language. Though Section 436 primarily focused on how the national flag should be flown vis-a- vis a state flag, the legislature did indeed state that "at all times the national flag shall be placed in the position of first honor." They did not indicate that this was only with regard to state flags. Further, it is likely that the focus on state flags is only because this appears in the state flag section of the state government code (it's hard to imagine that there would be another section about flag placement). As such, it seems likely that the state intended for such laws to apply statewide. Section 617 is more dispositive here, as it states broad that "no other flag or pennant shall be place above" the United States flags, except for one unrelated exception. As such, though the ordinance was validly approved by the people pursuant to the State Constitution, it seems likely that such ordinance will be preempted by Franklin State Law.

(3) The First Amendment to the U.S. Constitution requires/does not require that FDE be allowed to fly the Earth Flag above the U.S. flag.

The final issue in this case is whether the first amendment of the U.S. Constitution requires that FDE be allowed to fly the Earth Flag above the U.S. flag. The primary focus here will be whether the raising of the flag itself constitutes government speech, as the First amendment does not compel the government to make any specific speech. In *Shurtleff v. City of Boston*, the U.S. Supreme Court determined that, in order to determine whether something is government speech, the court must "conduct a holistic inquiry designed to determine whether the government intends to speak for itself or to regulate private expression." They noted specific factors, such as 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." They further noted that, even if something (such as a monument) is privately funded, it may still be considered government speech if the government maintains control over the monuments. (*Id.*). If something is considered government speech (as opposed to private speech), then there is no first amendment protection, as the government has the right to "choose what to say and what not to say" (Id).

In this case, it seems likely that this would be considered government speech and therefore would not be protected under the first amendment. First, the flags themselves are flown atop City Hall, not in the City Hall Plaza where FDE intends to celebrate Earth Day. Per the City of Whitney Rules and Regulations - Events on City Hall Plaza, Section 4.2, "no event activities shall occur on or in City Hall itself. City Hall is not part of City Hall Plaza. As such, onlookers would see two separate events: the Earth Day event in City Hall Plaza, hosted by FDE, and the flag flying atop City Hall. As a private organization, it seems unlikely that one would expect them to be allowed to fly the flag atop city hall - as such, it's likely one would think it is City Hall specifically supporting the event, and therefore, asserting some implied speech agreeing with the Earth Day viewpoints. This is distinct from the *Shurtleff* case, where it was determined that, because Boston has allowed groups to hoist their own flags historically, it was unlikely to be considered government speech. Here, however, the flag of the United States is <u>always</u> flown in the center, with the state and city flags below. There is nothing that indicates that the city has allowed other groups who host events in the plaza to fly their flags atop City Hall. As such, the holding in *Shurtleff* is not as applicable. Further, the reasons and purposes provided by the writers of the measure itself support the idea that the flag flying was intended to be seen as government speech. The intent is to fly the flag to express certain viewpoints about the importance of the earth and the priorities to fight climate change. If the FDE was truly only intending to speak for itself, it should suffice to temporarily erect kiosks, including posters and statutes, as allowed under the Rules and Regulations. However, here, the intent was likely to have the city make certain implied statements.

(4) <u>Final Opinion</u>

Overall, I suggest that we advise City Council that the ordinance is likely invalid under state law, and in the alternative, preempted by state law. Further, there does not seem to be any requirement under the First amendment that the flag be flown, as this is likely to be considered government speech. As such, the city council does not need to adopt the ordinance.