Applicant Number

Georgia Essay Questions
February 2026

Do not touch this packet or start the exam until you are instructed to do so.

- Once the exam begins, you may work on the four essay questions in any order, but remember to type your answers in the appropriate answer window (or write your answer in the appropriate answer book if you are handwriting).

- For each of the four attached essay questions, there is one blank sheet for your use as scratch paper, and you may take notes on any of the attached pages if you wish. You may remove the staple or tear out any pages, but you will need to put the packet back in order when the exam session is over.

- On each essay question, remember to demonstrate not merely your memory but also your ability to think clearly and to analyze the issues.

- Assume the questions arise under the laws of Georgia unless otherwise indicated.

ESSAY 1

Laptop applicants: Answer this question in the **FIRST** answer window.

Handwriting applicants: Answer this question in the **BLUE** answer book.

Elan & Muskey LLC ("E&M") is a new Georgia company that sells its newly patented BrainChip-iQ for installation in sophisticated robots. Robots To Go LLC ("RTG") is a Georgia company that builds robots. RTG does not manufacture the chips required to make its robots operate.

On January 1, 2023, E&M sent a written offer to RTG that stated: "We hereby offer to enter a contract to sell RTG our complete annual output of the BrainChip-iQ line for $10,000 per chip. Alternatively, we offer to provide RTG with the number of such chips it requires each year, if any, for $15,000 per chip. E&M will insert chips at E&M's factory."

RTG immediately responded. "RTG agrees to buy its annual requirements of chips each year, if any, for $15,000 per chip. Of course, we will be governed by whatever happens and, for various reasons, we may not have a need for any chips at all. We will transport our robots to E&M for insertion." E&M replied, "It's a deal." The parties then entered a written contract, which tracked the terms of RTG's acceptance. RTG agreed to pay an annual contract fee of $50,000 for the right to buy chips from E&M.

For two years, RTG purchased 40 BrainChip-iQs per year and built around 40 robots each year. RTG brought its robots to E&M for insertion. For 2025, RTG built 25 robots, which it completed by early February of that year. RTG notified E&M a few months earlier that it would likely have 25 robots for 2025.

In late February, RTG notified E&M that RTG's Robot Rover—a self-driven van that was loaded with all 25 robots and all RTG's key employees as well—was on the way to E&M for chip insertions. Unfortunately, it was an icy winter day, and the Rover crashed. All the robots were destroyed, and all the key employees were killed.

Meanwhile, at RTG's plant, one employee had remained behind—the Chief Financial Officer (CFO). After learning of the crash, RTG's CFO immediately called the President of E&M to alert him. "There has been a terrible accident," the CFO reported, "All our robots have been destroyed. Sadly, our entire staff has

perished as well. Obviously, we will not need any chips this year under the circumstances."

E&M's President immediately pushed back. "We have already built the chips for those 25 RTG robots. It cost us $8,000 out-of-pocket to build each chip." RTG's CFO sighed. "I know it's tough luck," he said, "but sadly, we don't need them." E&M's President then claimed that RTG was breaching the contract. RTG's CFO disagreed.

Unable to reach any resolution to the dispute, E&M went out into the market and sold the 25 chips to another buyer who was only willing to pay $5,000 per chip. Within a year, E&M was forced to go out of business.

E&M then filed suit against RTG under Georgia law claiming breach of contract and seeking damages, consequential damages for the loss of its business, and punitive damages.

Considering these facts, complete the following tasks:

1. Please prepare an argument on behalf of RTG that there has not been a breach of contract. Discuss the terms of the offer, the acceptance, and the terms of the contract as part of your argument.

2. Please prepare an argument on behalf of E&M supporting its claim that RTG breached the contract. Address the contract, the relationship of the parties over time, and the key events in 2025.

3. What damages might E&M attempt to claim? Please provide your estimate of the kinds and amounts of damages E&M might seek. Address the effect of E&M's mitigation, as well as the concept of and potential amount of "reliance damages" as part of your analysis. Your answer should also address whether consequential and punitive damages may be recoverable under Georgia contract law on the record here.

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ESSAY 2

Laptop applicants: Answer this question in the **SECOND** answer window.

Handwriting applicants: Answer this question in the **YELLOW** answer book.

BuildCo is a building supply company located in Newnan, Georgia. The BuildCo business and facilities are located on a 10-acre parcel of land acquired by BuildCo in 1994. Newnan Bank holds a recorded mortgage on the property with a balance of $900,000.

The BuildCo property abuts a rail line owned by Newnan Railroad (the "Railroad"). In 2015, BuildCo discovered that, due to a surveying error that occurred during construction, a 500-square-foot section of one of its warehouses encroaches onto the Railroad's property. Upon discovering the issue in 2015, BuildCo's attorney requested to purchase the strip of land in question from the Railroad. The Railroad agreed to sell the property for $5,000 on the condition that BuildCo could confirm that the Railroad was able to sell the property freely without regard to a particular legal restriction in the Railroad's chain of title. Specifically, the Railroad acquired the land in 1890 via a deed from the Miller Family containing the following clause:

> To the Newnan Railroad Company, so long as the land is used for railroad purposes; but if the land is ever used for non-railroad purposes, then to the then-living heirs of the Miller Family.

To date, no transaction has closed between BuildCo and the Railroad with respect to the encroachment area, and the encroachment remains.

Separate from the encroachment area, BuildCo operates a poorly-maintained fleet of delivery trucks that have leaked petroleum into the soil on the BuildCo property. BuildCo management is aware of the leaks but has taken no remedial action; instead, they routinely cover the stained soil with sawdust and mulch to hide the evidence of the leaks.

Also separate from the encroachment area, a local farmer, Fred, has used a dirt path across BuildCo's land to move cattle since 2017. In 2019, BuildCo's

General Manager, Greg, told Farmer Fred: "You can use this path for so long as I am the General Manager here." Greg's employment with BuildCo ended in 2024.

In 2025, BuildCo entered into a real estate purchase and sale contract with ABC Supply Corp. (ABC) to sell the BuildCo property, including all improvements located thereon, to ABC. The contract represents and warrants, among other things, that the property "has not been contaminated with any hazardous substances." The contract provided that ABC could terminate the contract for any reason during the inspection period and receive back all of ABC's earnest money deposit of $100,000; however, the inspection period has now expired. One week before closing was scheduled to occur under the contract, ABC discovered BuildCo's $900,000 mortgage with Newnan Bank, BuildCo's encroachment onto the Railroad's property, the petroleum leaks on BuildCo's property, and Fred's use of the path across BuildCo's property.

Based on the facts stated above, ABC has engaged you to analyze the following specific issues under Georgia law. Please separately explain each answer.

1. What is the impact of the $900,000 mortgage, if any, on ABC if the closing occurs and the mortgage is not repaid in full?

2. Does ABC have the ability to (a) rescind the contract based on the petroleum leaks in light of the caveat emptor doctrine and (b) recover ABC's $100,000 earnest money deposit?

3. Is there an easement or license created in Farmer Fred's favor that will require ABC to continue providing access to Farmer Fred after the closing of the purchase?

4. What legal strategies might allow ABC to maintain or otherwise resolve the encroaching warehouse structure without having to relocate the warehouse?

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ESSAY 3

Laptop applicants: Answer this question in the **THIRD** answer window.

Handwriting applicants: Answer this question in the **PINK** answer book.

Gloria—a 2-time MVP for the Atlanta Dream—was driving home from Gateway Center Arena after a game when she was struck head-on by a speeding tractor-trailer. She suffered severe injuries, leaving her in a coma in the ICU. As a big star, her accident made the news. Cam, a member of the Georgia Bar who specializes in tractor-trailer wrecks, saw the news and believed he could help Gloria win a large recovery. At that same time, Cam was hosting an old law school friend, Phil—a flashy Florida divorce lawyer who is not a member of the Georgia Bar—at his house. As they watched the news, Phil told Cam, "I bet I could get that case signed up for you, and all I'd want for it is a nice steak dinner." Cam replied that he would love to get the case and that it would be worth more than a good steak for sure, but he thought nothing more of it at the time.

Unbeknownst to Cam, the day after the wreck, Phil bought an artificial flower arrangement and got a written brochure for Cam's firm (that Cam had prepared himself), touting Cam as "better than all the other lawyers in Georgia at wreck cases." Phil then went to the ICU and charmed his way into Gloria's wing. Though Gloria was in a coma and he did not speak to her at all, he quietly left the flowers and brochure in her room. On the 31st day after the wreck, Gloria awoke from her coma, saw the flowers and brochure for the first time, called Cam, liked him immediately, and hired him as her lawyer. Cam texted Phil after being hired and said, "wow, I don't know what you did, but somehow I got Gloria's case and it's going to be a big one. I just sent you that $100 gift certificate to Jay's Steakhouse you wanted; enjoy!"

After hiring Cam, Gloria suffered pain for weeks in the hospital, incurred thousands of dollars in medical bills, and lost out on a $1 million bonus she likely would have earned if she had been able to finish the season and win a 3rd MVP award, which she was favored to do. Then, sadly, with both her beloved parents (who had supported her for years) at her bedside, Gloria died. Gloria was not married at the time of her death and had no Last Will and Testament. She had a biological son, Alex (now 20), when she was very

young, but she became so busy with her basketball career that Alex went to live with his father in Seattle and they had not been in any contact for years. After becoming successful in the WNBA, though, she legally adopted a daughter, Claire (now 18), and also took into her household a young boy, Mitch (now 11), that she was raising and supporting— though he was never legally adopted. Gloria had a close, loving relationship with both Claire and Mitch before her death, and her parents often helped her care for them when she was on the road. Claire, Mitch, and Gloria's parents have been devastated by Gloria's death, and Claire had to quit her job in order to take care of Mitch.

Since being hired, Cam has worked very hard and done a great job developing a strong case showing the tractor-trailer driver was drunk and that the trucking company knew he had a drinking problem but let him drive anyway. Cam is now ready to file a lawsuit against the trucking company. He has come to you, his associate, with the following questions, which he has asked you to separately answer in a memorandum to him:

1. Should I have any ethical concerns under the Georgia Rules of Professional Conduct for how I gained representation in Gloria's case? Please alert me to the requirements of any rules of conduct that may be at issue for me or my friend Phil, and specify what facts above may help—or hurt—our defense if anyone were to claim we acted unethically.

2. Without addressing negligence claims against the trucking company, which are well-known, please separately advise me under Georgia law (a) if we can bring both a wrongful death claim and an estate survivorship claim in this case; (b) if so, who is the right person(s) to be the actual named Plaintiff(s) to bring each such claim; (c) what types of damages can be recovered for each such claim, if any; and (d) which of Gloria's family members has a *legal right* to receive a portion of any recovery.

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ESSAY 4

Laptop applicants: Answer this question in the **LAST** answer window.

Handwriting applicants: Answer this question in the **TAN** answer book.

Velma G. Silver, 62, a retired librarian who lived in Macon, Georgia, became enamored with cryptocurrency after inheriting a sizable estate. On a dating app, she met Dante Blaze, a 48-year-old self-styled investor known online as "CryptoKing." Over several months, their relationship deepened, with Dante frequently staying overnight at Velma's home and advising her on digital investments.

In late January, Velma discovered that over $2 million worth of Bitcoin had disappeared from her digital wallet. She texted her friend Marjorie: "I think Dante is a con man who hacked my digital wallet. I'm scared he'll come after me if I confront him." Marjorie replied by text that Velma should "BE CAREFUL. I never liked him and I think he is dangerous and could hurt you." Meanwhile, Velma received WhatsApp messages from "Alexis Moon," a disguised account later traced to Dante, warning her not to "make trouble about things she didn't understand." Velma also asked her SmartTalk AI assistant, "How do I prove someone stole my Bitcoin?"

On February 1, Velma's SmartTalk voice log captured her saying, "Dante, why did you steal from me?" followed by a male voice: "You'll regret this." Hours later, Velma was found dead, strangled with a rope. Police investigation recovered:

1. Velma's cellphone with text and WhatsApp messages (the texts between Velma and Marjorie and the WhatsApp messages to Velma from "Alexis Moon").

2. SmartTalk AI voice logs that recorded the "You'll regret this" conversation.

3. Dante's laptop, including files suggesting he had engaged in other crytocurrency thefts and had been accused by other people of hacking their digital wallets.

4. Blockchain records showing Velma's digital wallet was emptied ten days before her death. A blockchain expert traced the stolen cryptocurrency through a series of anonymous wallets to an exchange account registered to Dante, supported by account registration emails and IP logs matching Dante's home address.

Dante has been charged with Felony Murder, Theft, and Wire Fraud. The prosecution seeks to introduce the four pieces of evidence listed above. For each piece of evidence, separately analyze its admissibility under Georgia law.

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February 2026
MPT-1 Item

Otto v. Nolan

Otto v. Nolan

FILE

LIBRARY

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

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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.]