Question MPT-1 – February 2026 – Selected Answer 1

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

Dear Ms. Garcia,

You have asked me to outline when Kari and Eric's marriage was created, and depending on that date, which property will be considered separate property versus marital property. I have answered these questions below.

<u>Did Kari and Eric marry in 2006 or 2019?</u>

Franklin Family Code Section 211 states that common-law marriage is recognized as a valid marriage in Franklin. Thus, if Kari and Eric meet the elements of common-law marriage, they will be recognized as married from the start of their common-law marriage. The burden of proving common-law marriage lies with the person claiming its existence. *Howard v. Howard*. With Kari as our client, and Kari believing they married in 2006, it will be our burden to prove that Kari and Eric married in 2006.

Howard states that 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 agreement ("holding out"). The *Howard* court states that the key inquiry is whether the parties mutually intended to enter a marital relationship, which is sharing a life together as spouses in a committed, intimate relationship of mutual support and obligation, as looked at in the totality of the circumstances.

As to the mutual agreement to marry, the *Schwartz v. Darrow* court found that evidence of the couple's express agreement to marry could be seen through Cohn asking Darrow to be his wife, her acceptance, and his providing her with a ring. The court stated that that evidence could show the couple's express agreement to marry, even without a formal ceremony or other supporting factors (such as joint finances). Here, like the couple in *Schwartz*, Eric asked Kari to marry him while giving her a ring, and Kari accepted. Unlike the couple in *Schwartz*, Kari and Eric filed joint tax returns starting in 2007 and they kept a joint bank account beginning in December 2006, which both suggest conduct manifesting this mutual agreement to be married. While the joint tax returns and bank account are not dispositive actions, the IRS permits common-law spouses to file jointly, and there is no evidence suggesting that a couple that is dating would otherwise be allowed to file joint taxes.

All of the above actions suggest the marriage began in 2006. But the primary inquiry, according to the *Howard* court, is evidence of mutual agreement of the couple to enter marriage, and Eric's statements in the February 2026 meeting suggests that he did not have the *present* intent to enter marriage in September 2006. He shared that he saw the ring given in 2006 as a promise ring, not an engagement or wedding ring, and they did not feel pressure to actually get married, since they lived together. Also, Eric and Kari had individual property, careers, and did not have a partnership where one was a homemaker while the other was the breadwinner; this more individualized conduct may be construed by a court as an indication that the couple did not have the intent to be married. Further, Eric characterized the 2019 ceremony as something that Kari "always wanted," suggesting that she did not view any actions in 2006 as a type of wedding ceremony. One note as to the ring; the *Schwartz* court did not define the ring given as a specific type of ring, seemingly finding the gift of any ring to be sufficient as evidence of an agreement to marry, which may work in Kari's favor.

As to conduct manifesting the mutual agreement to be married (*Howard*), the court suggested conduct may include symbols of commitment, such as celebrating an anniversary, cards, and the couple's references to or labels for one another. Evidence going towards their being married in 2006 include Kari and Eric's annual Christmas cards, which started in 2006, and were signed with a shared last name. Eric gave Kari an anniversary card one year after their alleged engagement, where he referred to himself as a husband. Further, Eric called Kari his wife to their community. Evidence that goes to their marriage beginning in 2019 is that Kari started using a shared last name only after the 2019 ceremony.

Other evidence of the marriage beginning in 2006 includes Kari and Eric's cohabitation and holding themselves out to their community as married, as the couple did in *Schwartz*. This is also evidenced by Eric and Kari's friends, family, and community viewing them as a married couple. Unlike *Schwartz*, in which the alleged husband's father did not think they were married, all of Kari and Eric's family members believed they were ceremonially married married; Eric's grandmother stitched a wall hanging that suggests a wedding, with the words "United in Love" and the woman wearing a wedding gown, veil, and holding a bouquet, with the man formally dressed. Eric's mother and grandmother were further upset that Kari and Eric allegedly deprived them of being there "for the wedding in 2006," which further shows that Eric's own family members believed them to be married, unlike Cohn's father who believed, like Cohn, that he was not married.

In looking at the totality of the circumstances, Eric and Kari seemed to begin their marriage in 2006. Although Eric may not have characterized his intent in 2006 as marriage, identified the ring as one symbolizing marriage, nor did Kari and Eric have a marriage ceremony until 2019, nor Kari used a shared last name until after that ceremony, much of Kari and Eric's other conduct suggest that they mutually intended to be married and held themselves out as such. This other conduct includes their cohabitation, celebrating their anniversary, sending cards with a shared last name to their community, and their family, friends, and broader community all believing Kari and Eric to be married.

Thus, a court will likely find that Kari and Eric began a common-law marriage in 2006.

<u>If the parties married in 2006, which property is marital property and which is separate property?</u>

Franklin Family Code 200 defines marital property as property acquired by either or both spouses during the marriage that is not separate property. Separate property is property acquired before marriage, property acquired by bequest, devise, descent, or gift from a non-spouse, and any increase in the value of separate property, except to extent appreciation is due in part to the contributions or efforts of the other spouse. The *Bower* court affirmed this, finding that assets produced or purchased during the marriage, when not predating the marriage and not acquired by gift or inheritance, were considered marital property as defined in Fr. Family Code 200(c). A spouse is entitled to appreciation of the other spouse's separate property assets when that spouse contributed, even indirectly. *Litman v. Litman*. Any appreciation in the value of separate property due to the contributions or efforts of the nontitled spouse will be considered marital property, including when the nontitled spouse personally maintains, makes improvements to, or renovates a martial residence. *Price v. Price*.

I will go through each of the properties listed in the Assets and Debts Worksheet and identify each as marital or separate property, as aligned with the case law above and Kari and Eric's own actions, with the assumption that they married in 2006.

House at 1505 Clark Street (and the mortgage for this property): This property was purchased in January 2008, after Kari and Eric's marriage began, and was used as their marital residence. Eric used money he earned as a photographer to put down a 20% down payment on the property. Although Eric may have used his own funds, the house was bought during the marriage, and as such, would be considered marital property. *See Bower*. The mortgage was further paid using their joint bank account, and while the mortgage was in Eric's name alone, that does not disqualify Kari from entitlement to the house and any following appreciation. *See Litman*. Since Kari and Eric both lived in the house since 2005, well before the house was purchased, a court will likely infer that Kari made personal indirect contributions to the house, as evidenced by her living there. As such, the house and mortgage would be considered marital property, and while Eric may end up keeping the house, he will owe Kari the valuation of her and their contributions to the property.

Tract of land in Frankfurt Acres (including the shed): Kari purchased the tract of land in September 2001, well before she and Eric met. As such, the tract of land itself would be considered her separate property. *See* Franklin Family Code 200. But the land has appreciated in value, in part due to the addition of the large gardening shed.

Kari used funds she received as a gift from her mother to hire a local contractor to build the gardening shed, which she used to store her equipment. The increase in value the shed provided would also be considered Kari's separate property, since she used funds through a gift from a non-spouse, which is considered separate property. Eric stated that Kari can keep her acerage, but he should be reimbursed for his share of the shed on that property. Yet there is no evidence that Eric contributed to the building or maintaining of the shed on the property. Unless Eric is able to show that he contributed, whether financially through the joint bank account, or personally put work in to improving the shed, he will not be entitled to any part of the shed as marital property.

Photography Equipment from 2005: Eric bought $50,000 worth of photography equipment in December 2005, after he and Kari began living together but before Eric proposed to her. They did not have a joint bank account until December 2006, so Eric used his own premarital money to purchase the equipment. As such, this photography equipment would be considered Eric's separate property. But the husband in *Bower* had cattle and equipment that was purchased before the marriage, but had worn out and been replaced by other equipment using postmartial profits or loans with the wife cosigning. The photography equipment seems to be a similar situation, and as such, Kari would likely not be entitled to the 2005 equipment, but the equipment acquired beginning in 2006, as detailed below.

Photography Equipment acquired starting in October 2006: Eric and Kari did not yet have a joint bank account as of October 2006, but they were married as of September 2006. As such, all purchases of the photography equipment were made after their marriage and would be considered marital property. *See* Fr. Family Code 200(c).

2024 Toyota Tundra Pickup Truck: This would be considered marital property, as this was acquired during the marriage. *See* Fr. Family Code 200(c).

2024 Nissan Altima Sedan: This would be considered marital property, as this was acquired during the marriage. *See* Fr. Family Code 200(c).

First Bank Joint Checking Account: As property shared during marriage, the bank account would be considered marital property.

<u>If the parties married in 2019, what effect does that have on the property characterization?</u>

I will go through each of the properties listed in the Assets and Debts Worksheet and identify each as marital or separate property, as aligned with the case law listed in the preceding section and Kari and Eric's own actions, with the assumption that they married in 2019.

House at 1505 Clark Street (and the mortgage for this property): The house was acquired as Eric's premartial separate property, as evidenced by his purchasing of it and his name being on the mortgage. But the *Jones* court affirmed that a nontitled spouse will be entitled to their direct contributions, both financial and nonfinancial, to the property. As their marital residence, Kari likely will be found by a court to have contributed to the maintenance and improvement of the property at least beginning in 2019, and would be entitled to her portion of that appreciation in value. For before 2019, a court may view the joint bank account use to pay the mortgage as Kari's direct financial contribution to the property. As such, the house and mortgage will likely be considered marital property and divided as such.

Tract of land in Frankfurt Acres (including the shed): The tract of land itself and the shed would be considered her separate property, as explained above. *See* Franklin Family Code 200. Again, unless Eric is able to show that he contributed financially, directly put work into improving the shed, or indirectly supported, he will not be entitled to any part of the shed as marital property.

A spouse is entitled to appreciation of the other spouse's separate property assets when that spouse contributed, even indirectly. *Litman v. Litman*. Any appreciation in the value of separate property due to the contributions or efforts of the nontitled spouse will be considered marital property, including when the nontitled spouse personally maintains, makes improvements to, or renovates a martial residence. *Price v. Price*.

Photography Equipment beginning in 2005: The photography equipment purchased after their marriage in 2019 would be considered marital property. For equipment acquired before 2019, *Litman* states that a spouse is entitled to appreciation of the other spouse's separate property assets when that spouse contributed, even indirectly. The photography equipment has depreciated in its total value, but that does not impact whether Kari contributed to the acquisition or improvement of the equipment. Since Eric likely used the joint checking account to purchase the photography equipment following their opening of the account, a court will likely find that Kari contributed to this equipment and as such would be entitled to some amount (or some valuation) of it.

2024 Toyota Tundra Pickup Truck: This would be considered marital property, as this was acquired during the marriage. *See* Fr. Family Code 200(c).

2024 Nissan Altima Sedan: This would be considered marital property, as this was acquired during the marriage. *See* Fr. Family Code 200(c).

First Bank Joint Checking Account: While the joint account was opened before Eric and Kari's marriage, these comingled assets continuing throughout their 2019 marriage until the present will likely be considered marital property, unless there is a way to trace the money to their individual contributions predating the marriage.

As detailed above, I analyzed when Kari and Eric's marriage was created (which a court will likely find to be 2006), and depending on when the marriage was found to have began, which of Kari and Eric's property will be characterized as marital property as compared to separate property. Please let me know if you have any further questions.

Best,
Examinee