How to Attack the Otto v. Nolan MPT

Family Law | Objective Memo to a Supervising Attorney | Common-Law Marriage + Property Characterization

THE METHOD — KARI'S 6 STEPS, APPLIED

1. **Read the task memo twice.** Garcia wants an objective memo on three questions: (1) marriage created 2006 or 2019; (2) if 2006, marital vs. separate property; (3) if 2019, the effect. No statement of facts, no percentages, no business interests. Answer each issue with rule, application, and a conclusion.
2. **Work the Library, pull the rules.** FFC §211 (common-law marriage valid), §200(c)/(d) (marital vs. separate), §215 (disposition). Cases: Schwartz v. Darrow (CLM standard + factors), Jones v. Cardiff and Bower v. Bower (appreciation of / exchange for separate property), Ridley v. Brooks (no CLM).
3. **Anchor your client and the pivotal fact.** Kari claims a 2006 common-law marriage; she carries the burden by clear and convincing evidence. The whole property split turns on the marriage date, so Issue 1 drives Issues 2 and 3.
4. **Jot each case's loser as your yardstick.** Darrow (remanded, likely CLM despite separate finances), Ridley (NO CLM, designation was convenience), Jones (appreciation from nontitled spouse's efforts = marital), Bower (premarital asset replaced by a much larger marital-era herd = marital, credit the premarital contribution).
5. **Work the File, matching facts to each factor.** Sort every worksheet asset by acquisition date against the marriage date, and line up the Schwartz holding-out factors (joint account, joint tax returns, 'Mr. and Mrs. Nolan,' anniversary card, reputation) versus Eric's counter-facts (promise ring, no ceremony, surname).
6. **Outline, then write.** One IRAC block per issue. Cite the Library authorities by name. Conclude each issue explicitly, and flag that the 2019 alternative shrinks the marital estate.

ISSUE 1

Was the marriage created in 2006 or 2019?

FFC §211 makes common-law marriage valid. Under Schwartz v. Darrow (quoting Howard v. Howard), the claimant must show by clear and convincing evidence a mutual agreement to marry plus conduct manifesting it (holding out), judged on the totality of the circumstances. The listed factors: cohabitation, community reputation, joint accounts, joint property, joint tax returns, shared financial responsibility, estate planning, symbols of commitment, and mutual labels.

ATTACK SEQUENCE

1. State the standard and who bears the burden (Kari, clear and convincing).
2. Prove mutual AGREEMENT as of 2006: proposal accepted, September 19, 2006 marriage license, Eric calling Kari 'wife,' and Eric's admission he 'intended to marry her.'
3. Prove HOLDING OUT: joint bank account since 2006, joint tax returns since 2007, 'Mr. and Mrs. Nolan' cards, the first-anniversary card, community reputation.
4. Compare the cases: stronger than Darrow (who had separate taxes/accounts); unlike Ridley (convenience designation + stated intent NOT to remarry).

5. Address and outweigh Eric's facts: 'promise ring,' no ceremony/expired license, Kari's surname use only after 2019, and the 2019 ceremony (a vow renewal).

HOW IT PLAYS OUT HERE

- ▸ **Agreement.** Eric's own admission that he intended to marry Kari in 2006 largely resolves the agreement element in Kari's favor.
- ▸ **Holding out.** The joint account and joint tax returns are the exact factors Schwartz weighted heavily when they were ABSENT in Darrow; here they are present.
- ▸ **Weakest link for Eric.** No ceremony and the surname point are relevant but not dispositive under Schwartz, which does not require a ceremony.

Conclude: most likely a common-law marriage arose in 2006.

ISSUE 2

If married in 2006 — marital vs. separate property

FFC §200(c): marital property is all property acquired during the marriage. §200(d): separate property includes property acquired before marriage or by gift from a non-spouse, and the increase in value of / property exchanged for separate property, except appreciation due to the other spouse's contributions. §215: separate stays separate; marital is divided equitably (do not assign percentages).

ATTACK SEQUENCE

1. Classify each worksheet asset by its acquisition date against the 2006 marriage date.
2. Marital: house (2008, bought with marital-era earnings, sole title irrelevant), both 2024 cars, joint account, and post-2006 photography equipment; mortgage is marital debt.
3. Separate: Kari's Frankfurt Acres land (2001, premarital) and the 2022 shed (gift from her mother, §200(d)(1)); Eric's initial $50,000 equipment (Dec. 2005, premarital).
4. Use Bower for the later equipment: a manifold expansion produced by marital efforts is marital, but credit Eric with the value of his premarital gear.
5. Reject Eric's claim to the shed: unlike Jones/Bower, he contributed no funds or effort to the land, so no appreciation is attributable to him.

HOW IT PLAYS OUT HERE

- ▸ **House.** Acquired 2008 during the marriage with Eric's earnings and a mortgage in his name → marital despite the title.
- ▸ **Shed.** Built with Kari's mother's gift → separate; Eric added nothing, so his 'share of the shed' claim fails.
- ▸ **Equipment.** 2005 gear separate; the ~$120k acquired during the marriage is marital under Bower, crediting the premarital $50k.

Conclude: house, cars, joint account, post-2006 equipment are marital; Kari's land + shed and Eric's 2005 equipment are separate.

ISSUE 3

If married in 2019 — what changes

The classification rule is the same; only the marriage date moves. Under a June 2019 marriage, only property acquired from 2019 forward was acquired during the marriage.

ATTACK SEQUENCE

1. Move everything acquired 2006-2019 into separate property: the house, the pre-2019 photography equipment, the pre-2019 account balance, and the mortgage.

2. Keep as marital only the post-2019 acquisitions: the two 2024 vehicles and any equipment acquired after 2019.

3. Note the constants: Kari's land (premarital) and the gift-funded shed stay separate under EITHER date.

HOW IT PLAYS OUT HERE

- ▸ **Why Eric argues 2019.** A 2019 date pulls the house and most equipment out of the marital estate, dramatically shrinking what is divided.
- ▸ **Bottom line.** The marriage date in Issue 1 is outcome-determinative for the property split.

Conclude: a 2019 date makes the pre-2019 assets separate, leaving only the 2024 cars and post-2019 items marital.

TRAPS TO AVOID

- ▸ **Do not assign percentages.** The memo asks only what is marital vs. separate, not the split, and excludes business interests.
- ▸ **Cite the Library, by name.** An MPT is graded on using Schwartz, Jones, Bower, Ridley, and the FFC sections, not outside law.
- ▸ **Title vs. source of funds.** Sole title and a solo mortgage do not make the house separate; acquisition during the marriage with marital earnings controls.
- ▸ **Gift tracing.** A gift from a non-spouse (the shed money) stays separate even when spent during the marriage.