

**Essay Prompt 2**

***“Please identify the assets and debts that the court will have to address. For each asset and debt, advise Paul as to whether the court is likely to consider the property or debt to be marital or separate, advise Paul as to how the court is likely to allocate that property or debt between the parties, and explain why.”***

This short essay evaluated the applicant’s ability to identify property types at issue in a typical divorce proceeding. Points were allocated based on the number of assets or debts the applicant identified, whether the applicant correctly labeled the property as separate or marital, and whether the applicant offered a conclusion as to how the court might allocate the property between the parties. Applicants did not have to write their answer in any particular format, but a high-scoring essay would have included all of the information listed in the paragraphs below.

Marital property includes all property acquired during the marriage unless an exception applies. Premarital property is generally separate property unless it is comingled or increases in value. Gifts to a party during the marriage are generally separate property unless they are comingled with marital property, and increases in value of separate property are marital property. The court must divide marital property equitably, but not necessarily equally, without regard to marital fault.

The court must address the credit card debt. Paul incurred the credit card debt before the marriage and without Lila’s knowledge. The credit card debt is Paul’s separate property. The court will allocate the credit card debt to Paul.

The court must address the six-acre plot of land. The land was gifted to Paul before the marriage so it is his separate property. However, the increase in the value of the land during the marriage is marital property. The court will likely let Paul keep the land but order him to pay Lila an equitable share for the marital increase in value.

The court must address the diamond engagement ring. The ring was Paul’s premarital property, but he gave the ring to Lila. When Paul gave the ring to Lila, it became her separate property. The court will likely let Lila keep the ring.

The court must address the painting. Lila’s parents gifted the painting to both parties during the marriage so it is marital property. The court is likely to let Lila keep the painting and order her to pay Paul an equitable share of its value.

The court must address the mountain home. The parties built the home during the marriage. They used marital funds to build the house, including funds from their joint bank account and the \$50,000 that Paul’s parents gave them as a wedding gift. Building the home on the land that is Paul’s separate property and using marital funds to build it should probably be considered comingling. The mortgage is in Paul’s name only. The mountain home is likely marital property. The court will likely let Paul keep the home but order him to pay Lila an equitable share of the home’s value.

The court must address the mortgage on the marital home. The mortgage is in Paul's name only. However, the parties incurred the mortgage during the marriage so it is a marital debt. The court will likely assign the mortgage to the party who gets the mountain home (likely Paul).

The court must address the loan from Lila's parents. The parties incurred the loan during the marriage, so it is a marital debt. The parties used the money to finance the mountain home. However, as there is no documentary evidence of the loan it is unlikely to be treated (allocated) as a real debt.

The court must address the joint bank account. The parties acquired a joint bank account during the marriage and it is titled in both their names. The bank account is marital property. The court will divide the bank account between the parties.

The court must address the motorcycle. Lila inherited the motorcycle from her father but she gifted it to Paul and transferred title to his name. Paul invested in the motorcycle. The motorcycle is Paul's separate property and the court will likely allocate it to him.