Essay Prompt 1

"Based on that information please do the following:

a. List each asset and debt subject to an order for property division.
b. For each listed item, identify whether that asset or debt is separate or marital property.
c. If the fact pattern leaves you unable to classify an asset or debt as separate or marital, identify the additional information you will need from your client in order to make that determination.

Do not address who you believe will be allocated each asset or debt or issues regarding spousal maintenance."

This short essay evaluated the applicant's ability to identify and classify the distinct types of property that are subject to a marital property division under C.R.S. section 14-10-113. Points were allocated based on the applicant's recognition of property division principles, the correct identification of property as an asset or debt, an accurate classification of property as separate or marital, and whether the applicant understood those instances when property could not be classified without additional information. 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 below.

General Principles

All property that is acquired during the marriage is presumed to be marital property. All property acquired before the marriage (premarital property) is considered separate property unless it is commingled with marital property or increases in value during the marriage. Debts are a form of property and can be marital or separate.

Taylor's Signing Bonus

Taylor's 2013 signing bonus from Law Firm is an **asset**. Because Taylor received the signing bonus before the marriage, it is considered Taylor's **separate** property. However, the court could consider, as an economic circumstance when dividing the marital estate, that Taylor spent the bonus on himself and not the wedding (as the parties had agreed) or other household expenses.

Wedding and Engagement Rings

The wedding and engagement rings are **assets**. Robyn and her parents paid for the rings that the parties exchanged. However, the rings are **conditional gifts** from one spouse to the other. They are **neither separate nor marital property**.

Robyn's 2005 Subaru

Robyn's 2005 Subaru was an **asset**. Robyn had a 2005 Subaru when she entered into the marriage. Robyn and her parents maintained the 2005 Subaru during the marriage. The 2005 Subaru was Robyn's **separate** property when she traded it in. However, the funds Robyn received from the Subaru are marital to the extent that they exceed the value of the Subaru at the time of the marriage. You must ask your client for information about the value of the 2005 Subaru at the time of the marriage and at the time of the trade-in to determine whether there was any increase in value and therefore whether any of the funds Robyn received are marital property.

Robyn's New Subaru
Robyn's new Subaru is an **asset**. Robyn's parents bought her a new Subaru during the marriage. However, the new Subaru is **not marital property** because it either belongs to Robyn's parents or it was a gift to Robyn and therefore excluded from the marital property presumption.

The Downtown Condo
The downtown condo is an **asset**. Taylor purchased the downtown condo during the marriage. Even if Taylor put the title to the condo in his name, the title of property is not dispositive of the nature of the property. The condo is presumed to be **marital property**.

Furniture for Taylor's Condo
The furniture Taylor bought for the downtown condo is an **asset**. Taylor purchased the furniture during the marriage, so it is presumed to be **marital property**.

Savings for the Parties' First Home
The parties' savings (if any) are **assets**. During the marriage, and after Taylor paid off his student loans, the parties started saving their income to purchase a new home. Any savings are presumed to be **marital property**.

Belongings in the Parties' Rental Property
The belongings in the parties' rental property are **assets**. The parties had belongings in the rental property that Taylor did not want when he moved out. There is **not enough information** in the question to classify the belongings as separate or marital property or to value them. You need to ask your client when they purchased the belongings, if any of the belongings were gifted to either party or to the marriage, and for the value of the items.

Bank Accounts
The parties' bank accounts are **assets**. However, there is **not enough information** to classify the accounts as separate or marital property. While the parties maintained separate accounts, separate property may become marital property if commingled with marital property. You must ask your client whether the parties ever commingled the funds in their separate accounts with marital funds. You will also need to compare the balances in each account at the time of marriage with their present balances to determine whether the funds in the bank accounts are separate or marital property.

Student Loans
The parties' student loans are **debts**. Both parties incurred student loans before the marriage, so the debts are **separate property**. Even though the loans are paid off, the court may consider, as an

economic circumstance when dividing the marital property, whether the parties spent marital funds to pay down the debts.

Wedding Debt

The wedding debt is a **debt**. Robyn and her parents paid for the wedding before the marriage. Premarital debt is ordinarily separate debt. However, there is **not enough information** to determine whether some or all of the debt is attributable to Robyn. You must ask your client how much debt Robyn incurred for the wedding versus her parents. You must also ask your client whether Robyn's parents' contribution to the wedding was a gift or loan to Robyn. Any loan incurred by Robyn for the wedding would be her separate debt. The court may consider, as economic circumstances in dividing the marital property, that the wedding debt benefited both parties and that Taylor unilaterally chose not to use his signing bonus for the wedding despite the parties' agreement.