

Deepening Your Analysis: Contracts

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On the bar exam, **analysis** is where you earn the most points. The rule statement shows you know the law. The analysis shows you can use it. Analysis means taking the specific facts from the prompt and explaining, step by step, why they satisfy or fail each element of the rule. A conclusion without this reasoning is just an assertion -- the grader has no evidence you understood the problem. Below, we compare the analysis portions of your essay against a model answer, with specific ways to strengthen each one.

Issue 1: Can the Neighbor Sue the Painter for Breach?

Your analysis:

When there are valid offer, acceptance, and consideration of a contract between two parties, then that contract is legally binding. When one party changes the terms or transfers the contract to another person without the original party's consent, then there is not a valid assignment. There was no valid assignment of the homeowner's contractual obligations to the neighbor. Because there is no valid assignment, the neighbor would not have a valid breach of contract action against the painter.

Model analysis:

The neighbor was not a party to the original homeowner-painter contract. For the neighbor to enforce the contract, the neighbor must establish either (a) a valid assignment of the homeowner's rights, or (b) status as an intended third-party beneficiary. Assignment of rights transfers the right to receive performance to a third party. Here, the homeowner attempted to redirect the painter's performance from his own house to the neighbor's -- but this changes the nature of the obligation, not just who receives it. A change in the location and subject of the work is a material modification, not a simple assignment. Without a new agreement between the painter and the neighbor supported by consideration, the neighbor has no privity and cannot maintain a breach of contract action.

You reached the right conclusion -- the neighbor cannot sue -- but your reasoning has a critical doctrinal error that would cost significant points. You conflated *assignment of rights* with *delegation of duties*. An assignment transfers a **right** to receive performance. A delegation transfers a **duty** to perform. You wrote that the homeowner tried to assign "contractual obligations" -- obligations are duties, not rights. This confusion signals to the grader that you do not understand the distinction, which is a core concept the question is testing. Additionally, your analysis is conclusory: you state there is no valid assignment but never explain *what* a valid assignment requires or *why* the facts here fail those requirements.

Build this habit: Before writing about assignment or delegation, pause and ask: am I talking about a right or a duty? "Assignment transfers a right to receive performance. Delegation transfers a duty to perform." Writing these definitions out first prevents the conflation and earns separate points for each concept.

Issue 2: Can the Retiree Sue for Breach of Contract?

Your analysis:

The retiree would not succeed in a breach of contract action because the retiree is not a valid assignee or not part of the delegation of duties from the original parties between the homeowner and the painter. Although the retiree wanted both the homeowner and neighbor to paint their houses to increase their property values, the retiree is not part of the homeowner and the painter's original contract. The retiree has no interest whatsoever in the contracts between the homeowner and the painter.

Model analysis:

The retiree's claim depends on third-party beneficiary status, not assignment or delegation. A third-party beneficiary can enforce a contract if the contracting parties intended the performance to benefit the third party (an intended beneficiary). If the benefit is merely incidental, the third party has no standing. Here, the homeowner contracted to have his house painted for his own benefit. The retiree's benefit -- improved property values and neighborhood aesthetics -- is a byproduct, not the purpose of the contract. The retiree is an incidental beneficiary and therefore cannot enforce the contract against the painter.

This is the most significant gap in your essay. The question is testing whether you recognize the **third-party beneficiary** doctrine, and you missed it entirely. Instead, you analyzed the retiree's claim through assignment and delegation -- which are the wrong frameworks. The retiree never received a transfer of rights from anyone. The question is whether the retiree was an *intended* or *incidental* beneficiary of the original contract. An intended beneficiary can sue; an incidental beneficiary cannot. The facts clearly make the retiree incidental -- the homeowner contracted for his own house, not to improve the retiree's property values. Spotting the correct doctrine is worth more than a full analysis of the wrong one.

Build this habit: When a non-party wants to enforce a contract, run through a checklist: (1) Are they an assignee? (2) Are they an intended third-party beneficiary? (3) Are they merely an incidental beneficiary? Each theory has different elements. Identify which theory fits before analyzing it.

Issue 3: Can the Painter Recover from the Neighbor?

Your analysis:

Presuming that the painter paints the neighbor's house, that performed party made substantial performance to complete the contract. When the painter substantially performed to paint the house under an implied in fact contract, then the painter is a valid party to the valid contract with the neighbor. A court would find that the painter will get the \$6,000 because he substantially performed his part of the contract with the neighbor.

Model analysis:

There is no express contract between the painter and the neighbor -- the neighbor never agreed to hire the painter or to pay \$6,000. However, the painter may recover under two alternative theories. First, an implied-in-fact contract: if the neighbor knew the painter was painting her house and accepted the benefit without objecting, her conduct manifests assent to pay for the services. The elements are mutual assent shown through conduct and an expectation of compensation. Second, even without an implied contract, the painter can recover under unjust enrichment (quasi-contract): the neighbor received a benefit (a freshly painted house), the painter conferred it expecting payment, and it would be unjust for the neighbor to retain the benefit without paying. Recovery would be the reasonable value of the services, which may differ from the \$6,000 contract price.

You identified the right general theory -- implied-in-fact contract -- but misapplied a key doctrine. **Substantial performance** determines whether a party has fulfilled enough of their obligations under an *existing* contract. It does not create a contract where none existed. You used it as if completing the painting work creates contractual privity with the neighbor. It does not. The correct framework is: did the neighbor's conduct (knowing about and accepting the painting) manifest assent to an implied agreement? Alternatively, does unjust enrichment apply? You also missed the distinction between the \$6,000 contract price (which applies to the homeowner contract) and the reasonable value of services (which is what the painter could recover from the neighbor under quasi-contract).

Build this habit: Before using a legal doctrine, state what it does in one sentence. "Substantial performance means a party has completed enough of their contractual duties to trigger the other side's obligation to pay." If that definition does not fit the situation you are analyzing, you are using the wrong doctrine.

Issue 4: Can the Painter Recover from the Homeowner?

Your analysis:

The painter would succeed in a contract claim against the homeowner because the homeowner transferred the contract obligations to the neighbor without the painter's consent. When a party transfer the rights to a third party without the other party knowing it, then there is a breach of contract.

Model analysis:

The homeowner is the original contracting party and remains liable under the contract. The homeowner directed the painter to paint the neighbor's house instead of his own. The painter performed as directed. A delegation of duties does not automatically release the delegator from liability -- the delegator remains responsible unless there is a novation (an express agreement among all parties to substitute a new obligor). The painter never agreed to release the homeowner. Without a novation, the homeowner's obligation to pay \$6,000 remains intact.

You reached the right conclusion -- the painter can recover from the homeowner -- but your reasoning is muddled. You framed it as a breach caused by an unauthorized "transfer" of obligations, when the simpler and stronger argument is: the homeowner is the original contracting party, he directed the painter to perform elsewhere, the painter performed as directed, and the homeowner's payment obligation remains. The core doctrine is the **delegator's continuing liability**: delegation does not release the original party unless there is a novation. You did not mention novation at all.

Build this habit: Start with the simplest theory that reaches the right result. "The homeowner promised to pay \$6,000. The painter performed. The homeowner must pay." Only reach for more complex doctrines when the simple theory does not work. Then ask: "Was there a novation?" If no, the original party remains liable.

Conclusory Analysis vs. Proper Analysis

Below are specific sentences from your essay rewritten to show the difference. The conclusory version states the outcome. The rewritten version explains *why* the facts lead there.

Issue 1 -- No valid assignment

CONCLUSORY	There was no valid assignment of the homeowner's contractual obligations to the neighbor. Because there is no valid assignment, the neighbor would not have a valid breach of contract action against the painter.
REWRITTEN	The neighbor was not a party to the original homeowner-painter contract. The homeowner attempted to redirect the painter's performance to a different house, but this changes the nature and location of the work -- it is a material modification, not a simple assignment of rights. Without a separate agreement between the painter and the neighbor supported by consideration, the neighbor lacks privity and cannot sue for breach.

Issue 2 -- Retiree's standing

CONCLUSORY	The retiree is not a valid assignee or not part of the delegation of duties from the original parties. The retiree has no interest whatsoever in the contracts between the homeowner and the painter.
REWRITTEN	The retiree was never assigned any rights and was never delegated any duties. The correct framework is third-party beneficiary. The homeowner contracted to have his own house painted -- the retiree's benefit (improved neighborhood aesthetics and property values) is incidental, not the purpose of the contract. As an incidental beneficiary, the retiree has no standing to enforce the agreement.

Issue 3 -- Substantial performance

CONCLUSORY	When the painter substantially performed to paint the house under an implied in fact contract, then the painter is a valid party to the valid contract with the neighbor.
REWRITTEN	There is no express contract between the painter and the neighbor. However, if the neighbor knew the painting was happening and accepted the benefit without objecting, her conduct manifests assent to an implied-in-fact contract. Alternatively, the painter can recover under unjust enrichment: the neighbor received a valuable benefit and it would be unjust to keep it without paying.

Issue 4 -- Homeowner's liability

CONCLUSORY	The painter would succeed in a contract claim against the homeowner because the homeowner transferred the contract obligations to the neighbor without the painter's consent.
REWRITTEN	The homeowner is the original contracting party who promised to pay \$6,000 for painting services. He directed the painter to paint the neighbor's house, and the painter performed as directed. A delegation of duties does not release the delegator unless there is a novation. The painter never agreed to release the homeowner, so the homeowner remains liable for the full \$6,000.

This essay shows that you are engaging with the material and attempting to use legal structure -- you organized by issue and tried to follow an IRAC format. That foundation matters. The gaps are in two areas that are fixable with focused practice. First, **doctrinal precision**: you must distinguish assignment from delegation, know what substantial performance actually does, and recognize third-party beneficiary as a separate doctrine from assignment. These are discrete rules you can drill. Second, **analytical bridges**: every conclusion needs a sentence that connects the specific facts to the specific elements of the rule. "The neighbor cannot sue" is a conclusion. "The neighbor cannot sue because she was not a party to the contract, was not assigned any rights, and was not an intended beneficiary" is analysis. The difference between those two sentences is the difference between a 2 and a 4.