

# Deepening Your Analysis: Real Property

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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: Landlord's Duty to Mitigate Damages

### Your analysis:

The two-year lease term for a \$1,200 monthly payment was created between Carla and the tenant. Carla will not be entitled to the 12 months of unpaid rent from the tenant because Carla had the opportunity to re-rent the premises for the equal amount on three different occasions. Therefore, Carla failed to mitigate her damages, Carla would only be entitled to a reasonable extent being the weeks to find a new tenant not months.

### Model analysis:

When a tenant vacates early, the landlord has a duty to make reasonable efforts to re-let the premises. Carla had three opportunities to re-rent the house at the same \$1,200 monthly rate but declined each one. Because suitable replacement tenants were available and Carla took no action to re-let, she failed to exercise reasonable diligence. Her recoverable damages are limited to the rent lost during the period it would have reasonably taken to find a new tenant -- likely a matter of weeks, given that three qualified prospects came to her -- plus any reasonable costs of re-letting.

You reached the right conclusion -- Carla cannot recover all 12 months. But your analysis skips the key step: *why* did she fail to mitigate? You said she "had the opportunity" but did not explain what reasonable diligence looks like or why turning down three qualified tenants falls short of it. The model walks through the standard (reasonable efforts to re-let), applies the specific facts (three opportunities at equal rent, all declined), and explains the consequence (damages limited to the reasonable re-letting period). Each step earns separate points.

**Build this habit:** When you write that someone "failed" a legal standard, explain what they should have done and what they actually did. "Carla should have re-let the premises, but she turned down three tenants willing to pay the same rent" -- that is the analysis.

## Issue 2: Co-tenant's Right to Share Rental Income

### Your analysis:

Joint tenants with rights of survivorship holding a property are entitled to equal shares amongst each other to use the property for their own enjoyment and to obtain payment should property create an income. Here, Alonzo and Barbara are entitled to a share of the rental income that is payable to Carla under the lease because the tenancy allows for the holders to receive equal shares of any and all to do with the property.

### Model analysis:

When a co-tenant in possession collects rent from a third-party tenant, she must account to the other co-tenants for their proportionate share of the net rental income. Carla leased the property to a tenant at \$1,200 per month. As one of three equal joint tenants, Carla must account to Alonzo and Barbara for two-thirds of the net rent collected. Each co-tenant is entitled to one-third. Carla's right to lease the property as a co-tenant in possession does not eliminate her obligation to share the proceeds.

You reached the right conclusion but your reasoning is circular: you said they are entitled to a share "because the tenancy allows for equal shares." That restates the conclusion as the reason. The model names the specific doctrine -- a co-tenant in possession who collects third-party rent must *account* to the others -- then applies it by calculating shares (one-third each). Graders award points for the specific rule and the specific math, not for the general principle of equality.

**Build this habit:** If your "because" clause just restates your conclusion in different words, it is not analysis. Ask yourself: could a reader who does not know the law follow my reasoning from the facts to the conclusion? If not, you need to name the specific doctrine and show the specific calculation.

## Issue 3: Fair Rental Value and Ouster

### Your analysis:

After Carla moved into the house, she is not required to pay the fair rental value of \$1,500 per month because she occupied the property as Alonzo and Barbara are permitted to occupy the property. An ouster has not occurred per the facts, therefore, all tenants are able to occupy the property equally.

#### Model analysis:

A co-tenant in sole possession generally has no obligation to pay fair rental value to the other co-tenants, because each co-tenant has an equal right to possess the entire property. This changes only if an ouster occurs -- meaning the co-tenant in possession denies the others the right to enter or use the property. Here, the facts do not indicate that Carla locked Alonzo and Barbara out, refused them access, or otherwise denied their right to co-occupy. Without an ouster, Carla owes nothing for her sole possession.

You stated the right conclusion twice -- no ouster, no rent owed -- but never defined what ouster actually *is*. The model defines it (denying the other co-tenants the right to enter or use the property), then walks through the facts to show it did not happen (no lockout, no refusal of access). Your essay says "an ouster has not occurred per the facts" without explaining which facts you examined or what you were looking for. A grader reading your version cannot tell if you know the ouster doctrine or just guessed.

**Build this habit:** Before saying something did *not* happen, define what it would look like if it *did*. "Ouster means one co-tenant denies the others access. Here, nothing suggests Carla prevented Alonzo or Barbara from entering the house." Now the grader knows you understand the doctrine, not just the answer.

## Issue 4: Whether a Lease Severs a Joint Tenancy

#### Your analysis:

A JTWROS does not sever by leasing a property to a tenant, the ownership interests remain the same. The only way to sever is by transferring their interest during their lifetime not in their will after death. The leasing of the property to the tenant did not sever the relationship between the three children and did not create any effect following her death.

#### Model analysis:

The critical question is whether Carla's lease to the tenant severed her joint tenancy interest. Severance requires the destruction of one of the four unities (time, title, interest, possession). In the majority of jurisdictions, a lease grants a temporary possessory interest but does not permanently destroy the unity of interest or title, so it does not sever the joint tenancy. Some jurisdictions hold that a lease temporarily disrupts unity of possession, creating a partial severance during the lease term. Under the majority rule, which this prompt likely tests, the joint tenancy survived. Therefore, when Carla died, her interest passed by right of survivorship to Alonzo and Barbara -- her attempted devise to her son in her will had no effect.

This is the most important issue on the prompt, and your analysis did not engage with the core question. You stated that a lease does not sever -- but this is exactly what the question is asking you to analyze, not assume. The model explains *why*: a lease is a temporary possessory interest that does not destroy the four unities required for a joint tenancy. It also acknowledges the minority view (some courts find partial severance), which shows the grader you understand this is a contested area. On the bar exam, treating a debatable point as settled is the single fastest way to lose points.

**Build this habit:** When a question asks "what effect, if any" -- that is a signal that the answer is genuinely debatable. State both sides. "Under the majority rule, no severance because... Under the minority rule, possible severance because..." Then pick a side and conclude. Showing both views earns more points than asserting one.

## 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.

#### Duty to mitigate

##### CONCLUSORY

Carla failed to mitigate her damages, Carla would only be entitled to a reasonable extent being the weeks to find a new tenant not months.

##### REWRITTEN

Carla failed to mitigate because she turned down three separate tenants willing to pay the same \$1,200 rent. A landlord exercising reasonable diligence would have accepted one of these offers. Her recoverable damages are limited to the weeks it would have taken to secure a replacement tenant, not the remaining 12 months of the lease.

### **Co-tenant rental accounting**

<b>CONCLUSORY</b>	Alonzo and Barbara are entitled to a share of the rental income because the tenancy allows for the holders to receive equal shares of any and all to do with the property.
<b>REWRITTEN</b>	Because Carla collected \$1,200 per month from a third-party tenant, she must account to her co-tenants for their share. As equal one-third joint tenants, Alonzo and Barbara are each entitled to \$400 per month of the net rental income Carla collected.

### **Ouster**

<b>CONCLUSORY</b>	An ouster has not occurred per the facts, therefore, all tenants are able to occupy the property equally and fairly without paying either tenants.
<b>REWRITTEN</b>	Ouster occurs when a co-tenant in possession denies the others access to the property. Nothing in the facts suggests Carla locked Alonzo or Barbara out or refused to let them use the house. Without an ouster, Carla has no obligation to pay fair rental value for her sole occupancy.

### **Severance by lease**

<b>CONCLUSORY</b>	A JTWROS does not sever by leasing a property to a tenant, the ownership interests remain the same.
<b>REWRITTEN</b>	Severance requires destroying one of the four unities. A lease transfers a temporary possessory interest but does not permanently destroy the unity of title or interest. Under the majority rule, Carla's lease did not sever the joint tenancy, so her interest passed to Alonzo and Barbara by survivorship when she died.

You spotted most of the right issues and your instincts are sound -- you generally reach the correct outcome. The consistent pattern is that you state conclusions without the reasoning that earns the points: (1) define the standard before applying it; (2) when you say someone "failed," explain what they should have done; (3) when a question says "if any," treat it as debatable and show both sides; (4) replace circular reasoning with specific facts and specific calculations.