<table>
<tr><td>4 Severance of JT</td><td></td></tr>
<tr><td rowspan="2">Conclusion</td><td><u>Joint tenancy:</u>

In conclusion, it is likely that [A] and [B] hold the property as JTs.
Accordingly, the right of survivorship central to JT applies, meaning upon the death of one joint tenant, that person’s interest automatically accrues to the surviving joint tenant(s) and does not form part of the deceased's estate.

OTF, [deceased JT] died before [surviving JT]. Consequently, [deceased JT] cannot dispose of [his/her] interest even by will. Rather, [surviving JT] automatically acquires [the deceased]'s interest, entitling [surviving JT] to the entirety of the property by survivorship.

If order of death is uncertain:
OTF, the order of death of the JTs remains unclear. Thus, under s 184 of the PLA, it may be presumed that the deaths occurred in order of seniority, such that the younger person is presumed to have survived the elder. Accordingly, the property will ultimately pass through the estate of [younger co-owner].

If there is a mortgage:
OTF, [deceased JT] had mortgaged [his/her] interest. In such situations, the mortgage may be held to have extinguished upon that tenant's death as the interest itself disappears. Thus, [surviving JT] may be entitled to take the property free from the mortgage, although the mortgagee may still recover the debt from the deceased's estate (Lyons).

JT at law, but TiC in equity:
However, as the TiC is only in equity, at law the co-ownership still amounts to a JT. Thus, the surviving JT will hold the property on trust for the deceased’s estate in accordance with their proportionate shares</td></tr>
<tr><td><u>Tenancy in Common:</u>

In conclusion, it is likely that [A] and [B] hold the property as TiCs.
As TiCs each hold a distinct share in the property, no right of survivorship will apply. Rather, [A] and [B] will be entitled to deal independently with their own shares of [amount] and [amount] respectively.

Consequently, upon the death of [deceased TiC], [his/her] interest may be taken to form part of [his/her] estate and may pass under a valid will (or, in the absence of a will, pursuant to the rules of intestacy). Thus, [beneficiary] may inherit [deceased TiC's share in the property.</td></tr>
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<table>
<tr><td colspan="2">RIGHTS AND DUTIES OF CO-OWNERS</td></tr>
<tr><td colspan="2">As [A] and [B] are likely co-owners of [property], they are entitled to the rights and subject to the obligations arising from co-ownership. Generally, each co-owner is entitled to use each and every part of the land co-owned, provided that they do not exclude the other co-owners from the land. Further, a co-owner in sole should not receive more than ‘his just share or proportion’ of the benefits derived from the property.

Thus, the issue is whether [D]'s conduct has infringed any of the rights of [P], or otherwise breached any obligations arising from the co-ownership.

○ The right of user extends to exploitation of the land (e.g. growing cops, carrying on a business)
→ each co-owner who exploits the land is entitled to keep personally the profits of this exploitation (unless it is expressly agreed otherwise/the income relates to the land itself (e.g. rent))</td></tr>
<tr><td>Right to possession</td><td>Sole occupance:
OTF, [occupying co-owner] may contend that [he/she] is entitled to occupy and possess the whole of</td></tr>
</table>

	the [property] as a co-owner. Generally, each co-owner is entitled to concurrent possession and enjoyment of the entirety of the co-owned land, and a co-owner in occupation is ordinarily not required to pay occupation rent to the other co-owner(s). Therefore, prima facie, [non-occupying co-owner] is not entitled to compensation merely because [occupying co-owner] has been solely occupying the property. <u>Exceptions:</u> However, [non-occupying co-owner] may argue that this general rule is displaced by an exception, as occupation rent may be payable where: + The co-ownership comes to an end and the occupying co-owner claims for improvements: the co-ownership between [non-occupying co-owner] and [occupying co-owner] has come to an end. Thus, [occupying co-owner] may claim that [he/she] is entitled to compensation of the improvements made to the property. + There is an agreement between the parties for the payment of occupation rent: the parties had agreed for [occupying co-owner] to pay rent while occupying the property. + The occupying co-owner wrongfully excludes the other co-owners: [facts]. Thus, [non-occupying co-owner] may argue that this wrongfully excluded [him/her] from occupying the property in [his/her] position as a co-owner, thereby falling within the scope of an exception to the right. OTF, [relevant exception]. On balance, it is likely to be found that the exception of [exception] [applies/does not apply], thereby [entitling/not entitling] [non-occupying co-owner] to compensation for the time [occupying co-owner] had been solely occupying the property.
	Application to VCAT for the sale/division of land: OTF, the parties applied to VCAT for the [sale/division] of the property. Thus, pursuant to s 233(1)(a) PLA, VCAT may order compensation or reimbursement between co-owners. In determining whether such an order should be made, VCAT may consider whether a co-owner who occupied the property should pay an amount equivalent to rent to a co-owner who did not occupy it (s 233(2)(e)). However, VCAT must not order occupation rent unless one of the conditions in s 233(3) is satisfied. OTF, [non-occupying co-owner] may argue that: + [occupying co-owner] is seeking [compensation/reimbursement/an accounting for] money expended by them (s 233(3)(a)) + [he/she] had been excluded from occupation of the property, and thus is entitled to claim an amount equivalent to rent (s 233(3)(b)) + it was not practicable for [non-occupying co-owner] to occupy the property with [occupying co-owner], and, as a result, [he/she] suffered detriment by [detriment/having to pay rent elsewhere]. Accordingly, [he/she] should be entitled to compensation under s 233(3)(c). ○ Generally, this jurisdiction is broader than the common law and is not confined to situations involving allowances for improvements. Thus, as s 233(3)(_) is likely satisfied, VCAT may order [compensation/reimbursement] to be made to [non-occupying co-owner].
Improvements to the land	**Contributions to Rates, Taxes, Mortgage Payments and Other Outgoings** OTF, [P] may argue that [he/she] is entitled to contribution from [D] for the [$] [he/she] paid towards the property's [rates/tax/mortgage payments/other outgoings]. Generally, where a co-owner pays more than [his/her] proportionate share of rates, taxes, mortgage repayments, or other liabilities charged against the land, [he/she] may recover the contributions towards those payments from the other co-owner(s). OTF, [P] paid [rates/taxes/mortgage repayments/other outgoings] of [$], for which both co-owners

	were liable. Thus, as this exceeds [P]’s proportionate interest in the property, [he/she] may seek contribution from [D] to the extent of [D]'s share of the liability. Here, [P]'s entitlement to contribution may be secured by an equitable lien over [D]'s share. ○ The expenditure may not be voluntary because it relates to a debt charged against the land
	Improvements to the Property: OTF, [P] may argue that [he/she] is entitled to compensation from [D] for the [$] [he/she] paid towards improvements to the property. Under the common law, an occupying co-owner may claim compensation for improvements or repairs of a lasting character. Compensable improvements: OTF, [P] expended [$] on [improvements], which increased the value of the property by [$]. Thus, the expenditure likely constitutes a lasting improvement capable of attracting compensation. Per *Boulter*, [P]’s allowance will be limited to the lesser of: + the actual cost of the improvements; and + the increase in value attributable to those improvements OTF, [P] incurred [$] in carrying out the improvements, while the improvements increased the value of the property by [$]. Accordingly, [P] is likely entitled to an allowance of [$], being the lesser of the two amounts. As [D] owns a [share] interest in the property, [he/she] will be liable to contribute proportionately to that allowance. [P] may be able to obtain an equitable lien over [D]'s interest in the property as security for repayment of the contribution. Ordinary maintenance, running costs, minor repairs: ○ Repainting OTF, [P] may argue that [he/she] incurred [$] in paying for the [ordinary maintenance/ running costs/minor repairs] to the property. However, [D] may argue that such costs do not constitute lasting improvements that are capable of attracting compensation. As compensable costs only include lasting improvements, [$] [P] incurred as expenses for the [minor repair] may unlikely be sufficient for [him/her] to be compensated. Thus, [P] may unlikely be awarded with compensation OTF. Claim during the subsistence of the co-ownership: However, a co-owner cannot generally claim contribution for improvements during the subsistence of the co-ownership. Rather, such a claim arises only when the co-ownership comes to an end through partition or sale.
	Application to VCAT for the sale/division of land: OTF, the parties applied to VCAT for the [sale/division] of the property. Thus, pursuant to s 233(1) PLA, VCAT may order compensation or reimbursement between co-owners. Per s 233(1)(_), in determining whether such an order should be made, VCAT may consider: (a) Any amount reasonably spent by a co-owner in improving the land (b) Costs reasonably incurred in maintaining or insuring the land (c) Payments exceeding a co-owner's proportionate share of rates, mortgage repayments, purchase money, instalments, or other outgoings for which all co-owners are liable (d) Damage caused by the unreasonable use of the land by a co-owner Improvements: OTF, [P] expended [$] on [improvements]. Thus, [P] may argue that the expenditure was reasonable and improved the value of the land. Accordingly, VCAT may take this expenditure into account when determining whether compensation should be awarded under s 233(2)(a). While it is unclear whether s 233(2)(a) displaces the common law rule limiting recovery to the lesser of the cost of the improvements and the resulting increase in value, [D] may argue that the

<table>
<tr><td></td><td>common law approach remains relevant. OTF, the improvements cost [$] and increased the value of the property by [$]. If the common law approach is applied, compensation would likely be limited to [$], being the lesser of those two amounts.

Maintenance, Insurance and Outgoings:
OTF, [P] paid [$] towards [maintenance/insurance/rates/mortgage repayments/other outgoings] in excess of [his/her] proportionate share. Thus, VCAT may order reimbursement under ss 233(2)(b)–(c).

Damage to the Property:
OTF, [D] caused damage to the property through [unreasonable use]. Thus, VCAT may take that damage into account pursuant to s 233(2)(d) when determining what compensation or reimbursement is just.

Accordingly, VCAT may order [compensation/reimbursement] in favour of [P] for an amount that is just and equitable in the circumstances.</td></tr>
<tr><td>Rents and profits</td><td>

This right to account can be exercised at any time during the co-ownership, not just on termination (s 234)
VCAT may make any order it thinks fit to ensure that a just and fair accounting of amounts received by co-owners in respect of the land or goods occurs (s 234B)

OTF, [P] may argue that as a co-owner, [he/she] is entitled to a proportionate share of the profits derived from the property. Per the Statute of Anne and 28A(1) PLA, a co-owner may require another co-owner to account for profits received in excess of that co-owner's just share or proportion.

OTF, [D] received profits of [amount] from [renting out the property/licensing the land/third-party payments/etc.]. Thus, [P] may contend that [D] must account for those profits and distribute [P]'s proportionate share.

Personal labour, skill, capital or exertion:
However, [D] may counter that the profits were generated through [his/her] own [labour/skill/capital/exertion], rather than from the land itself. Per Henderson, a co-owner is not required to account for profits that were merely the fruits of [his/her] own labour, such as profits earned through farming or operating a business on the land.
Here, as the profits were derived from [D]'s personal efforts in [facts], these profits may not be found to constitute more than [D]'s just share or proportion of the co-ownership, and thus no duty to account may arise.

Profits received from third parties (rent, license fees, etc.):
As these profits were received from a third party by way of [rent/licence fees/other payments] arising from the property itself, rather than from [D]'s own labour or exertions, [D] may likely be required to account to [the other co-owner(s)] for their proportionate share (Henderson).

Thus, on balance, [D] may [likely/unlikley] be liable to account for the profits of [profits] made during [his/her] [conduct]..</td></tr>
<tr><td>The right to alienate and encumber the land</td><td>OTF, the issue is whether [D]'s conduct in [transferring/mortgaging/leasing/granting an easement over] the property was a permissible exercise of [his/her] rights as a co-owner.

<table>
<tr><td>Right to alienate/transfer interest</td><td>Tenancy in common
OTF, [D] may argue that [he/she] was entitled to transfer [his/her] interest in the property, as [P] and [D] hold their interests as TiC.

As TiC hold distinct and identifiable shares in the property, they may freely sell, transfer, or otherwise dispose of that share without the consent of the other co-owners.</td></tr>
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		Thus, [D] is entitled to transfer [his/her] [share] to [third party], and such transfer OTF is not in breach of any of [P]'s rights or [D]'s obligations.
		Joint tenancy OTF, [P] may argue that [D] was not entitled to deal with [his/her] interest in the property without the consent of [P/other co-owners], as the parties hold the property as joint tenants. However, [D] may argue that while joint tenants do not hold distinct shares, they may nevertheless alienate or transfer their interest without the consent of other joint tenants. In such cases of transfer, the consequence is that the JT is severed in respect of the transferred interest, which is thereafter held as a tenancy in common. Thus, [D] may likely be held to be entitled to transfer [his/her] interest without the consent of [[P]/other joint tenant(s)]. Accordingly, the JT was severed as to [D]'s interest, such that [transferee] now holds that interest as a TiC, while the remaining joint tenants (i.e. [P] and [remaining JT]) continue to hold their interests as joint tenants between themselves. <u>Example:</u> + A + B + C are joint tenants + C sells to D → A and B remain joint tenants of ⅔ of the property, while D is a tenant in common with ⅓ interest in the property.
	Right to encumber with mortgage	**Tenancy in common** OTF, [D] may argue that [he/she] was entitled to encumber [his/her] interest in the property, as [P] and [D] hold their interests as TiC. As TiC hold distinct and identifiable shares in the property, they may freely mortgage their share without the consent of the other co-owners. Mortgage over [D]'s share only: OTF, [D] mortgaged [his/her] share of the property to [third party]. Thus, the mortgage is valid over [D]'s share. Mortgage over the whole property: However, OTF, [D] purported to mortgage the entirety of the co-owned property. [P] may argue that [D] lacked authority to encumber [P]'s interest. As a TiC cannot grant greater rights than those held by [him/her], the mortgage will only operate over [D]'s own share and will not bind [P]'s interest. Thus, the mortgage is effective solely as a charge over [D]'s share in the property.
		Joint tenancy OTF, [P] may argue that [D] was not entitled to mortgage [his/her] interest in the property without the consent of [P/other co-owners], as the parties hold the property as joint tenants. However, [D] may argue that while joint tenants do not hold distinct shares, they may nevertheless be entitled to mortgage their interest in the property as the creation of a mortgage is incidental to the co-owner's right to use and enjoy the property (*Lyons*).

		OTF, [D] mortgaged [his/her] interest to [mortgagee]. Thus, [D] was entitled to create the mortgage without obtaining the consent of [P/the other joint tenant(s)], and the joint tenancy remains intact (s 74(2) TLA; *Lyons*). However, with such mortgage, it must be noted that the mortgage will not survive [D]'s death. As the right of survivorship continues to operate, [D]'s interest is extinguished upon death and accrues to the surviving joint tenant(s). Consequently, the mortgagee's security is also extinguished, although the mortgage debt may remain recoverable from [D]'s estate (*Lyons*). Accordingly, the mortgage is valid, but it does not sever the JT and remains subject to the operation of survivorship.
	Right to grant lease	**Tenancy in common** OTF, [D] may argue that [he/she] was entitled to lease [his/her] interest in the property, as [P] and [D] hold their interests as TiC. As TiC hold distinct and identifiable shares in the property, they may deal with their own interest, including by granting a lease, without the consent of the other co-owner(s). Lease over [D]'s share only: OTF, [D] leased [his/her] share of the property to [third party]. Thus, the lease is valid over [D]'s share. Lease over the whole property: However, OTF, [D] purported to lease the entirety of the co-owned property. [P] may argue that [D] lacked authority to encumber [P]'s interest, as [D] cannot grant exclusive possession of the entirety of the co-owned property without the consent of the other co-owner(s). Thus, as a TiC cannot grant greater rights than those held by [him/her], the lease will operate only in respect of [D]'s interest and will not affect [P]'s share of the property.
		Joint tenancy OTF, [D] may argue that [he/she] was entitled to grant a lease over [his/her] interest in the property. Per *Lyons*, a JT may grant a lease of [his/her] interest as an incident of the right to use and enjoy the property, without obtaining the consent of the other JT(s). However, as all JTs retain concurrent rights of possession, a JT cannot unilaterally grant exclusive possession of the entirety of the co-owned property to a third party. OTF, [D] granted a lease to [third party]. Thus, [D] was entitled to lease [his/her] interest, but not the entirety of the co-owned property. In this case, per *Frieze v Unger*, the JT is temporarily suspended for the duration of the lease in order to protect the lessee's (i.e. [lessee]'s) rights. Upon the expiry of the lease, the JT resumes in its original form. Co-owner dies during the lease term: However, OTF, [D] died during the lease term. Thus, per *Frieze v Unger*, the reversion passes to the surviving joint tenant(s) by survivorship (i.e.

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<td>[surviving joint tenants]), subject to the lease for the remainder of its term. Thus, [lessee] remains entitled to occupy the premises for the rest of the lease term. Once the lease expires, [surviving joint tenants], resume holding the property as JTs free from the lease.

Co-owner leases the entire premises:
OTF, [D] purported to grant [lessee] exclusive possession of the entirety of the co-owned property. However, as [D] was only one of the JTs, [he/she] could not grant rights greater than those possessed by [him/her]. While [D] was entitled to lease [his/her] own interest, [he/she] could not unilaterally deprive the remaining joint tenant(s) of their concurrent rights of possession. Thus, the lease is effective only to the extent of [D]'s interest, and [lessee] is not entitled to exclusive possession as against [the other joint tenant(s)].</td>
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<tr>
<td rowspan="2">Right to grant easement</td>
<td>Tenancy in common
OTF, [D] may argue that [he/she] was entitled to grant an easement over [his/her] interest in the property.

As TiC hold distinct and identifiable shares, they may encumber their shares with an easement without the consent of the other co-owner(s). However, [D] cannot unilaterally burden [P]'s share. Thus, the easement is valid only to the extent that it affects [D]'s interest.</td>
</tr>
<tr>
<td>Joint tenancy
OTF, [D] may argue that [he/she] was entitled to grant an easement over [his/her] interest in the property.

Per Hedley, a JT may grant an easement over [his/her] interest, provided that the easement does not interfere with the concurrent rights of the other JT(s).

Easement does not interfere with other JT’s interests:
OTF, [D] granted an easement to [third party] over [property]. As this easement merely affects [D]’s own interests and does not materially impair the rights of [remaining joint tenant(s)], it may likely be valid.

Easement interferes with other JT’s interests:
OTF, [D] granted an easement to [third party] over [property]. [P] may argue that the easement interferes with [his/her] rights as a joint tenant, as [facts]. Here, as all JTs are entitled to possess and enjoy the whole property concurrently, [D] cannot unilaterally grant an easement that substantially burdens or interferes with the rights of [other joint tenant(s)].
Thus, the easement will be valid only to the extent that it does not interfere with the rights of [other joint tenant(s)].

Co-owner dies during operation of the easement:
However, OTF, [D] died while the easement remained in existence. As the right of survivorship applies, [D]'s interest is extinguished upon death and accrues to the surviving joint tenant(s). Thus, the easement granted by [D] also comes to an end (Hedley), and [third party] can no longer rely on the easement following [D]'s death.</td>
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<td>Adverse possession between co-owners</td>
<td>OTF, [P] may argue that [he/she] has acquired [D]'s interest in the property by adverse possession. Generally, a co-owner may adversely possess the interest of another co-owner where [he/she] has been in possession of the entirety of the land, or has received more than [his/her] undivided share of the profits or rent, for at least 15 years (s 14(4) LAA; Wills).</td>
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	OTF, [P] has [been in exclusive possession of the property and/received [all/most] of the profits/rent/benefits derived from the property] since [date]. Further, throughout this period,[D] has not shared in the possession, profits, or rent. Thus, [P] may argue that [his/her] possession became adverse from [date]. Thus, as more than 15 years have elapsed since this date, [D]'s right of action has likely expired, and [P] has likely acquired [D]'s interest by adverse possession. No intention to possess is required: While [D] may attempt to argue that [P] lacked the requisite intention to possess, a separate intention to possess adversely is not required between co-owners. Rather, the statutory deeming provision in s 14(4) operates automatically once a co-owner possesses more than [his/her] share of the property or its profits (*Wills; Fourniotis*). 15 years has not yet expired: However, [D] may argue that [P] has not possessed more than [his/her] proper share of the property or its benefits, or alternatively that the 15-year limitation period has not yet expired. Thus, [P]'s claim may likely fail, and [he/she] may unlikely be found to have acquired [D]'s interest by adverse possession.

SEVERANCE OF A JOINT TENANCY	
The issue is whether [D]'s attempted severance of the JT between [P] and [D] was effective. Usually, severance of a JT occurs when there is destruction of 1 of the 4 unities (interest, time, or title). Given [D] can show that the JT was validly severed, [P] and [D] will thereafter hold the property as TiC in distinct and proportionate shares. **MEASURES OF SEVERANCE:**	
Unilateral severance	**Alienation by a joint tenant** OTF, [D] may argue that the JT was severed by the alienation of [his/her] interest. In order for alienation to constitute a valid severance of JT, it must be shown that [D] had alienated [his/her] interest, and that such alienation had become effective by way of a deed (for General Law Land) or execution (for Torrens system land). Alienation to a Third Party: OTF, [D] transferred [his/her] interest to [third party]. As the transfer introduced a new owner who acquired title at a different time and through a different instrument, the unities of title and time were destroyed. Thus, the JT was effectively severed and [third party] holds [D]'s prior interest as a TiC, while [remaining JTs] continue to hold their interests as JTs between themselves. Alienation to Another Joint Tenant: OTF, [D] transferred [his/her] interest to [other JT]. Thus, this transfer destroys the unities of title and time and severs the joint tenancy in respect of the transferred interest. Alienation to Oneself: OTF, [D] may argue that [he/she] severed the JT by transferring the interest to [himself/herself]. Per s 72(3) PLA, a person may convey land to themselves. Thus, if the transfer was effective, the JT will be severed. <u>Has Alienation Become Effective?</u> Legal severance: Further, as the land is held under the [Torrens System/ General Law], and [registration has occurred/a deed has been executed], [D] may be found to have legally severed the JT.