# Online Coursework Submission Cover Sheet”

“Module Code and Name:” Law 202x Land Law

“Question Number:” Q1

“Word Limit:” 2500

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### **Critically discuss and compare the relative importance of the legal profession, the judiciary and Parliament in the development of land law. You should illustrate your answer with reference to either: the law of mortgages, or trusts of the family home, or the law on leases.**

### **Introduction**

Land law in England and Wales serves as a fundamental pillar of the legal system, governing the ownership, use, and transfer of property. It balances competing interests: the rights of individual property owners, the equitable claims of cohabitants, and broader societal needs. The development of land law has been shaped by the interplay between three key actors: the legal profession, the judiciary, and Parliament. Every participant performs their unique though entangled part of constructing, comprehending, and adjusting the concept of this branch of law to its applicability.

The judiciary, however, plays an important role in improving and evolving land law through the outcomes of the cases. Judges apply, explain, clear up, and apply legislative provisions; apply legal principles to modern conditions. Most importantly in the case of trusts of the family home the judiciary has had the active role to interpret the equitable interests of the cohabitees as witnessed in Stack v Dowden and Jones v Kernott . In civil justice, lack of legislation and, therefore a legislative vacuum, is filled judicially since judges are able to provide fair solutions as legislatures do in case of gaps in statutes.

It is Parliament that is the source of some of the statutory structures in land law, which eliminate systematic vices as well as lay down some of the rules in propositions. That is why Parliament has passed various Acts, like the Law of Property Act 1925, the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) and the Matrimonial Causes Act 1973 in order to effect changes in the system of land transactions, to define property rights anew and to protect the necessary parties. However, legislative reform is known not always to keep up with the pace with society transformation.

### This essay compares the roles and effectiveness of the legal profession, judiciary and Parliament in the evolution of the land law particularly concerning the trust of the family home. The dynamics of this area demonstrate these actors’ interdependence, as do larger concerns with private ownership versus fair use.

### **The Legal Profession**

The legal profession is a central figure needed to facilitate growth and enforcement of land law as they enable the legal framework, judicial decisions and real world solutions.

#### **Contributions**

The contributions of the legal profession to land law are multifaceted, covering practical implementation, advocacy, and academic analysis:

**Practical Expertise**: Solicitors and barristers assist clients with drafting trust deeds, resolving cohabitation disputes, and applying legislation like TOLATA to establish beneficial ownership. They analyze and enforce other legal rules enacted by Parliament and as developed by the courts, to actual situations. For example, solicitors often rely on the measures of the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) to deal with the common property disputes relating to a trust, legislative instruments, and the law.

**Advocacy and Influence**: Advocates facing the court in important matters including Stack v Dowden [2007] UKHL 17 are known to directly contribute to reasoning happening in the courts. Here again, thorough understanding of co-ownership principles was important in allocation of property when two people lived together as a couple.

**Academic Critique and Development**: Academics like Martin Dixon critique doctrines of co-ownership, providing insights into beneficial ownership and influencing both judicial and legislative developments. His critique of cases such as Stack v Dowden and Jones v Kernott [2011] UKSC 53 has affected scholars’ analysis of property law as well as subjecting practitioners and judges to enhanced understanding of the doctrines of equity.

#### **Limitations**

Despite its significant contributions, the legal profession faces inherent limitations that constrain its ability to shape land law comprehensively:

**Reactive Nature**: In essence, the profession works based on parameters laid down by Parliament and the judiciary and, therefore, often plays a largely reactive role. Although practitioners and academics may be able to draw attention to gaps in the legal provisions, they are unable to implement systematic reform.

**Accessibility Challenges**: The expensive nature of legal services poses a major challenge since the services remain a preserve of a few people and especially the less privileged. Litigation relating to trusts of the family home are often associated with relationship breakdowns and a party may be financially incapable of employing the services of a legal expert.

**Dependence on Judicial and Legislative Action**: The profession regrettably uses legislation and court decisions to address deficiencies in the laws regulating the profession. For instance, scholars and the profession have been urging for statutory changes in order to grant clearer and more equitable rights to cohabitants, but Parliament has not yet responded adequately.

**Complexity and Specialization**: The developments in the land law practice have made it very technical to warrant enhanced specialization in the field of law. It also restricts the extent to which the general practitioners can practice affordable and accessible services.

### **The Judiciary**

By construction of statutes, clarification of concepts and ensuring that laws evolve with society, the judiciary has a part to play in the evolution of land law. The judiciary’s work mainly involves handling cases and making decisions and rulings that become authoritative and used in future to determine the application of principles of land law.

#### **Contributions**

The judiciary ensures clarity, equity, and responsiveness in land law, particularly where legislative frameworks are ambiguous or silent.

**Constructive Trust Principles**The judiciary understands constructive trusts particularly those relating to cohabitation. Gissing v Gissing [1971] established that constructive trusts arise from common intention and reliance, providing equitable solutions for non-marital relationships lacking formal agreements.

**Co-Ownership and Beneficial Ownership**Decisions like in the case of Stack v Dowden [2007] and Jones v Kernott [2011] developed co-ownership rules. Stack v Dowden clarified joint beneficial ownership presumptions, while Jones v Kernott allowed courts to infer changing intentions from conduct.

**Filling Legislative Gaps**Rules such as the TOLATA 1996 do not give much help to the litigating couples living together. Of course, legal gaps are filled by judicial decisions like Stack v Dowden by giving the voice to equitable considerations where legislation remains silent.

#### **Limitations**

**Reactive and Incremental Development**The judiciary works only on a case-by-case basis; therefore, it is not as all-pervasive as to carry out a general development."Judicial development is case-dependent, leading to incremental progress and occasional inconsistencies, as seen in differing emphases in **Stack v Dowden** and **Jones v Kernott**."

**Inconsistencies in Reasoning**Interpretation differences, for example, Stack v Dowden that dealt with legal presumptions and Jones v Kernott that dealt with an inferred intention caused difficulties of finding a right measure between the poles of certainty and flexibility.

**Dependence on Statutory Frameworks**Many important policy questions such as rights to cohabit, are not answered by statutes like TOLATA as these statutes do not enable the judiciary to reform the legal system in the big picture kind of way.

**Complexity and Accessibility**Written work, again, has the disadvantage of being long and complex in its reasoning, which can prove prohibitive to the layman, where, without legal aid, the resources are often required for this level of use, and land law draws attention to this issue.

### **Parliament**

Parliament provides the legal fundamentals of land law in the form of statutes governing property acquisition, utilization, and disposal. However, unlike the judiciary and the legal profession, Parliament possesses statutory powers to make laws in response to emerging problems, to promulgate principles and form new systems and meet the social requirements of society.

#### **Contributions**

**Modernization of Land Transactions: The Law of Property Act 1925**The **Law of Property Act 1925 (LPA 1925)** The Law of Property Act 1925 modernized land law by:

* simplifying property ownership and replacing outdated feudal tenures.
* Supporting the establishing of the trusts and allowing property to be owned by more than one person.

**Clarification of Trustees' Powers: The Trusts of Land and Appointment of Trustees Act 1996 (TOLATA)**The Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) was introduced to remove uncertainties existing in concerns to trusts of land. Key contributions include:

* Imposing on the trustees the authority to deal and deal the trust assets in the best way that benefits the beneficiaries.
* Identifying beneficiaries’ relieves, including a right of occupation of trust property and a right to apply under section 14.

**Fairness in Property Distribution: The Matrimonial Causes Act 1973**The Matrimonial Causes Act of 1973 provided the legal basis of equality of property division at divorce as well as providing the means for the court to take into account both financial and non- financial contributions, the needs of the parties and eventually the duration of the marriage. Brought to civil partnerships by the Civil Partnership Act 2004.

**Broader Social Issues**As a law maker, Parliament has also introduced legislation that deals with other property related matters including tenancy legislation or housing legislation.Parliament has addressed broader property issues.

**Limitations**

**Slow Response to Changes in Society**Thus, the action-response of Parliament to different societal issues such as rights of cohabiting couples remains rather slow. Unlike married couples, the cohabitants have no titular rights to an interest in a family home upon dissolution of their relationship and instead claim under common law principles of constructive trusts and proprietary estoppel.

**Uncertainty as to the provisions of the statute.**There are statutes that are general but which do not decide on main matters. For instance, Section 14 of TOLATA gives the courts an arbitrary jurisdiction of the disputes but lacks limitation of the interests at stake.

**Fragmentation of Land Law**Finally, because of the piecemeal system of law making by Parliament, there has been compartmentalization of land law. What has been established by the LPA 1925 and TOLATA etc therefore form a good starting point.

### **Comparative Analysis**

The Progressive development of land law in England and Wales has been the contribution of Parliament, the judiciary, and the Legal profession. All these entities have their individual yet complementary purpose of developing, consolidating and implementing the law, and more specifically in the field of the trusts of the family home.

#### **Parliament: The Legislative Framework**

It is from the Parliament where foundational beliefs are formulated and laws on systematic matters and principles are passed. Where the family home is involved the trust of land Parliament has given the basic structure for dealing with the issues of dispute and co-ownership.

**The Role of TOLATA 1996**:  
Among these legislations, the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) is regarded as very important. It aimed to modernise the law by replacing the trust for sale with a trust of land, providing the trustee’s broad authority to deal with trust assets while also acknowledging the rights of the beneficiaries.

**Clarifying Rights and Responsibilities**:  
By enacting TOLATA, Parliament has made sure that the participating parties to the family’s trust home have their roles as well as reimbursement duties. For instance, the right of beneficiaries to occupy the trust property under Section 12 of the act.

**Addressing Systemic Issues**:  
Its interventions also try to deal with structural defects like fairness in the distribution of property and assets in case of dissolution of relationships by arguing on legislation such as Matrimonial Causes Act 1973.

**The Judiciary: Refining and Adapting the Framework**

The judiciary also has a significant responsibility on progressive development of the land law since it is a constant process of applying the statutes, covering their deficiencies, and offering solutions in the form of judicial decisions.

**Judicial Interpretation of TOLATA**:  
More specifically on TOLATA, the judiciary has whilst strengthening its principles that are relevant to the exercise of judicial discretion under Section 14. Two examples which show how legislation provisions have been given concluded interpretations can be the Stack v Dowden [2007] UKHL 17 and Jones v Kernott [2011] UKSC 53.

**Developing Principles of Beneficial Ownership**:  
Legal judgments have led to the enhancement of the law in beneficial occupation especially with regard to cohabitees where there is scant standard legislation. Thus, in the case of Stack v Dowden House of lords also stated that presumption can be displaced, in case, there exists evidence as to the accurate intentions of each party..

**Adapting to Societal Changes**:  
The judiciary has been able to work round this by ensuring that gaps left by Parliament are filled. For instance, where there is no clear legal code that deals with rights of cohabitees, courts have come up with what is called ‘ long remedies equitable’ principles like constructive trusts and proprietary estoppel that may be relied on by non-marital partners.

**Legal Professionals: Bridging Theory and Practice**

Solicitors, barristers and academics are the intermediaries between the law as passed and enacted and its implementation and application.

**Application of Statutory and Case Law**:  
Professional legal people employ the professional knowledge to explain and enforce compliance with the law as well as other legal situations in trust of the family house conflicts. For instance the common area barristers seek legal advice from standards that have been set in Stack v Dowden, Jones v Kernott.

**Advocacy in Landmark Cases**:  
Experts of law have directly contributed to the evolution of land law. The speeches of counsel in Stack v Dowden supported the House of Lords’ conclusion about the presumption of joint beneficial interest.

**Academic Critique and Reform Proposals**:  
Legal scholars and writers also advance the subject of land law through providing an analysis of the current portions of the law and availing suggestions on the requirement for change. Legal academics like Martin Dixon and Nicholas Hopkins have looked into the tension within register-sharing and equitable shares.

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#### **Collaborative Interplay**

The development of the land law is very much dependent on the contributions of Parliament, the judiciary and the various legal persons. Each actor contributes uniquely to the evolution of this legal domain:

* **Parliament** lays down legislation and covers areas of institutional concern and setting of standards.
* **The judiciary** finesse and revise this structure by case law.
* **Legal professionals** connect theory and practice, the successful use of the law in practice with an ability to shape its future evolution through actual work involving advocacy.

**Conclusion**

Recent developments in England and Wales’ land law demonstrate that the process of codification is never-ending as well as participatory and most importantly parliamentary, judicial and professional. All performers have their part in maintaining the structure of the law, its stability and malleability as well as justice especially in the aspects of the contemporary real estate sphere.

Parliament provides foundational statutes like TOLATA 1996, while the judiciary adapts these frameworks to evolving societal needs. Legal professionals bridge the gap between theory and practice, ensuring the law’s relevance and accessibility.

By this the judiciary develops these frameworks through case law authorities such as Gissing v Gissing [1971] Stack v Dowden [2007] and Jones v Kernott [2011] so that the law continues to evolve with society and plays fair by all parties involved. Even the courts still respond to failure of Parliament by providing remedies through judicial decisions, yet they suffer from the problem of being case based decisions, and therefore may be characterized by too much legal inconsistency, which again underlines that the judiciary needs to interact with other players.

Legal practitioners act in the middle ground between teaching and practical implementation of statutory and case laws. Their work helps to shape laws and its study in the progress of legal practice, but questions of affordability beg the question of how to expand legal assistance.

The relationship between these actors is perhaps most clearly seen in trusts of the family home and how statutory laws, case laws, and professionals assist in reconciling legal titles with ‘equity.’ By involving stakeholders, the gym indicates that there is a constant evolution of new problems and a need for review of the land law to make it fair.

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