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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 with Reference to Trusts of the Family Home**

#### **Introduction**

Land law in England and Wales forms a cornerstone of the legal framework, governing the ownership, use, and transfer of property. It serves to balance competing interests: the proprietary rights of individuals, the equitable claims of cohabitants, and societal needs.¹ The development of this area of law is an evolving process shaped by the interplay between three principal actors: the legal profession, the judiciary, and Parliament.² Each has a distinct yet interconnected role in shaping land law.³

The legal profession, as an intermediary, ensures that the statutory framework and judicial principles are applied in practice, offering guidance, drafting documents, and resolving disputes.⁴ The judiciary, through its interpretative function, refines legislation and develops equitable doctrines, particularly in the absence of comprehensive statutory guidance.⁵ Parliament, with its legislative authority, establishes the foundational principles and addresses systemic gaps in the legal framework.⁶ This essay critically evaluates the roles of these actors in the development of land law, particularly focusing on trusts of the family home, while referencing key legislation and case law.⁷

The judiciary, however, plays an important role in improving and evolving land law through the outcomes of cases. Judges apply, explain, and clarify legislative provisions; they adapt legal principles to modern conditions. Most importantly, in the case of trusts of the family home, the judiciary has played an active role in interpreting the equitable interests of cohabitants, as witnessed in Stack v Dowden⁸ and Jones v Kernott.⁹ In civil justice, where legislation is absent, judicial decisions often fill the gaps, providing fair solutions akin to the role of the legislature.¹⁰

It is Parliament that serves as the source of key statutory structures in land law, eliminating systematic vices and establishing foundational rules.¹¹ Parliament has passed various Acts, such as the Law of Property Act 1925,¹² the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA),¹³ and the Matrimonial Causes Act 1973,¹⁴ to effect changes in the system of land transactions, redefine property rights, and protect necessary parties. However, legislative reform has not always kept pace with societal transformation, leaving significant gaps that must often be addressed by the judiciary.¹⁵

**The Role of the Legal Profession**

The legal profession plays an essential role in implementing and evolving land law by bridging the gap between legislative and judicial developments and their practical application.¹⁶ Solicitors and barristers are pivotal in advising clients, drafting documents, and resolving disputes, ensuring that legislative reforms and judicial principles are effectively applied in practice.¹⁷

For instance, in cases involving trusts of the family home, legal practitioners frequently rely on the provisions of the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA).¹⁸ This Act modernized the law by replacing the trust for sale with a trust of land, granting trustee's broader powers to manage trust property while safeguarding the rights of beneficiaries.¹⁹ Notably, Section 12 of TOLATA provides beneficiaries with the right to occupy trust property, while Section 14 allows parties to seek judicial intervention in disputes.²⁰ By applying TOLATA in real-world scenarios, solicitors and barristers ensure that co-ownership arrangements are clarified, and beneficial interests are protected.²¹

Legal professionals also contribute to the development of land law through their advocacy in landmark cases.²² In Stack v Dowden [2007] UKHL 17, barristers presented arguments that influenced the House of Lords to clarify the presumption of joint beneficial ownership in cohabitation disputes.²³ The court ruled that such a presumption could be rebutted by evidence of differing intentions between co-owners.²⁴ Similarly, in Jones v Kernott [2011] UKSC 53, legal advocacy helped establish that courts could infer changing intentions from the conduct of parties over time.²⁵ These cases demonstrate how advocacy shapes judicial reasoning, leading to the evolution of equitable doctrines.

In addition to advocacy, academics within the legal profession play a critical role in analyzing and critiquing existing doctrines.²⁶ Scholars such as Martin Dixon have explored ambiguities in judicial reasoning, particularly in cases like Stack v Dowden and Jones v Kernott.²⁷ Dixon’s critiques have not only influenced academic discourse but have also provided practitioners and judges with deeper insights into co-ownership and equitable interests.²⁸

#### **The Role of the Judiciary**

The judiciary always acts as a crucial part of the creation of fresh land law through the interpretation of statutes, the subjective fill of legislative voids, ingenious equitable principles in a contemporary society.³² An insight into the field of the trusts of the family home, the judiciary decisions indicated to be instrumental in propelling legal rules.³³

Cohabitation issues, for example, have seen the judiciary greatly expand on the doctrine of constructive trusts. In Gissing v Gissing [1971] AC 886 the court introduced a concept under which constructive trust could be created where there was a common intention of the parties coupled with reliance whereby the innocent party had changed his position in reliance to the existence of that intention.³⁴ This formula had the effect of paving way for recognition of equitable interests in situations where the parties had not entered into a written document.³⁵

This URL’s principles have subsequently been developed more clearly in other cases. It is in Stack v Dowden [2007] that the House of Lords highlighted the fact that while there is a presumption that equitable ownership of a property acquired during co-ownership is in equal shares, this presumption could be displaced by the intention of the parties.³⁶ In Jones v Kernott, the Court took the law further and held that over time the intention of the parties could be left inferred from their conduct.³⁷These cases illustrate the judiciary’s adaptability in addressing the complexities of modern relationships.³⁸

Besides inventing fair principles, the judiciary creates deficiencies into legal systems. TOLATA gives ways to manage trusts of land but it fails to offer a maximum channel to handle disputes between the cohabitants.³⁹ Stack v Dowden has filled these gaps of law and has recognized concepts of legal title and equitable interest for sharing the property.⁴⁰

Despite its contributions, the judiciary faces inherent constraints. It operates on a case-by-case basis, leading to incremental progress rather than comprehensive reform.⁴¹ Furthermore, judicial reasoning can be inconsistent, as evidenced by the differing emphases in Stack v Dowden and Jones v Kernott.⁴² These variations can create uncertainty for litigants and practitioners.⁴³

However, as it will be noted the judiciary like any other institution has some inherent challenges. It works piecemeal, which does not result in systematic change and overhaul of the law⁴¹, sometimes even the logic of the two judges can contrast as seen in Stack v Dowden and Jones V Kernott.⁴² Its reasoning can also be inconsistent.⁴³

#### **The Role of Parliament**

Parliament provides the statutory foundation for land law, addressing systemic issues and codifying principles to ensure clarity and predictability.¹ Key legislative reforms, such as the Law of Property Act 1925 (LPA 1925), modernized land transactions, abolishing feudal tenures and simplifying property ownership.² This Act provided statutory certainty, forming the basis for resolving complex ownership disputes.³ Building on this, the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) replaced the outdated trust for sale with a trust of land, granting trustees broader management powers while recognizing beneficiaries' rights.⁴ TOLATA’s Section 12 grants beneficiaries the right to occupy trust property, and Section 14 allows judicial intervention in disputes.⁵ These provisions highlight Parliament’s commitment to equitable treatment in co-ownership arrangements.⁶

Parliament has also legislated fairness in property distribution through the Matrimonial Causes Act 1973, allowing courts to divide assets equitably based on financial and non-financial contributions.⁷ This approach has been extended to civil partnerships under the Civil Partnership Act 2004, reflecting adaptability to societal changes.⁸ However, cohabiting couples lack statutory protections, relying instead on judicial principles like constructive trusts and proprietary estoppel to assert their rights.⁹

Despite its pivotal role, Parliament’s reforms often lag behind societal developments, leaving gaps that the judiciary and legal profession must bridge.¹⁰ This highlights the need for coordinated and comprehensive reforms to address the complexities of modern property ownership effectively.¹¹

**Comparative Analysis**

It can thus be said that the progressive development of land law in England and Wales results from the work of Parliament, the judiciary and the profession. Each of these actors plays a specific but related part in the development, elaboration and enforcement of the legal regime of property rights. Parliament lays down the letter of the law via massive legislations; the courts build and explain these laws as society transforms; and the Bar brings practice reality into perspective

**Parliament: Establishing the Legislative Framework**

Parliament is the primary source of statutory law, addressing systemic issues and codifying principles to provide clarity and predictability in property transactions.¹ Through landmark legislative interventions, such as the Law of Property Act 1925 (LPA 1925) and the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA), Parliament has laid the groundwork for resolving disputes and recognizing equitable interests in property.²

The enactment of TOLATA marked a significant reform in land law, replacing the outdated trust for sale with a trust of land.³ This reform granted trustees broader powers to manage trust assets while also acknowledging the rights of beneficiaries.⁴ Section 12 of TOLATA provides beneficiaries with a statutory right to occupy trust property, reflecting the legislature's intent to balance proprietary and equitable interests.⁵ Section 14 further allows parties to seek judicial intervention to resolve disputes, providing an essential mechanism for addressing conflicts between co-owners.⁶ These provisions demonstrate Parliament’s commitment to modernizing property law and ensuring that legislative solutions address the practical challenges faced by cohabiting couples.⁷

Additionally, legislation such as the Matrimonial Causes Act 1973 reflects Parliament’s efforts to address fairness in property distribution during relationship breakdowns.⁸ This Act allows courts to consider a range of factors, including financial and non-financial contributions, the needs of the parties, and the duration of the relationship, when dividing matrimonial assets.⁹ These statutory interventions, extended to civil partnerships under the Civil Partnership Act 2004, ensure a degree of fairness and equity in matrimonial disputes.¹⁰

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

The judiciary has an important function of perfecting and responding to changes in social needs through the legislation. The case law by judges resolves the challenges posed in legislation and establishes fair doctrines to shield parties in dwellings infighting. This role is especially important in situations where Parliament has offered insufficient and vague statutory direction.¹

Some examples of how the judiciary works and applies TOLATA are further evidence of the body’s ability to develop statutory provisions. For instance, Section 14 of TOLATA provides the courts with discretionary powers to deal with co-ownership disputes.² In the case of Stack v Dowden [2007] the House of Lords ruled that the starting point for determining the beneficial ownership as being that of joint beneficial owners who had a shared intention, as to the property, could be displaced by evidence of intention.³ This shift enhanced the understanding of co-ownership law beyond.³

Judicial activism has also extended into the constructive trust area where constructive trusts have been created where parties are cohabitating.In Gissing v Gissing [1971] the court was able to devise constructive trust from a common intention wherein the party relying on it had changed position to their detriment⁵ As in Jones v Kernott [2011] where the Supreme court was able to recognize that there may be successive sets of part by the conduct,⁶ of the parties These cases evidence the flexibility of the judiciary in modern relationship to ensure that the interest of the law of equity is best protected.⁷

#### **The Legal Profession: Bridging Theory and Practice**

To begin, this paper finds that solicitors, barristers and academics are important stakeholders in the legal system facilitating the process of applying the novelties of legislation and judicature into practical use.They make sure that general land law principles are complied as well as making sure that where necessary people can turn to them for legal representation in

debates and supplement the scholarly discussions.⁸

Solicitors and barristers assist clients in drafting trust deeds, resolving cohabitation disputes, and interpreting complex statutory provisions.⁹ For instance, practitioners frequently rely on TOLATA to advise clients on their rights and obligations in co-ownership arrangements.¹⁰ By applying legal principles to real-world scenarios, the legal profession ensures that the law remains accessible and relevant.¹¹ Additionally, barristers have directly influenced the development of land law through their advocacy in landmark cases. In Stack v Dowden, arguments of counsel influenced the formation of the decision and as a result provided a major clarification of co ownership principles.¹² In Jones v Kernott legal advocacy was crucial in the construction of the fact that the courts could deduce changed intention from the behavior of the co-owners.¹³

Other members of the legal profession who participate in the development of land law are academics who analyze existing doctrines and may also advance reforms. Other scholars such as Martin Dixon and Nicholas Hopkins have explored the concept of differential ownership of legal and equitable title and the resulting dilemmas in shielding human rights and comprehensiveness of law and calling for legal rationality and clear laws.¹⁴

### **Collaborative Interplay: The Interdependence of Parliament, the Judiciary, and the Legal Profession**

### The actors, as rightly described above, are not isolated from each other but rather act coercively and in a coordinated manner to generate a logical and responsive legal environment. On the subject of trusts of the family home it is most clearly observable that all these actors bear ‘distinctive’ parts in the evolution of principles and practices that affect both the statutory and the equitable owners’ stake.¹

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### **Parliament’s Foundational Role**

### It is Parliament, therefore, that creates the business of land law by enacting statutes that provide the legal contexts. Land laws contain the Law of Property Act 1925 (LPA 1925) and the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA); has brought the contemporary changes, reducing property complexities and fashioning remedies to conflicts.²

### For instance, TOLATA has substituted the archaic trust for sale with a trust of land and has granted vast powers to trustees while setting out the rights of the beneficiaries.³ Section 12, which gives beneficiaries an equitable right of occupancy of the property at the initial occasion of occupation, and issues.⁴, which have given the courts a discretion to interfere, are some of the provisions that demonstrated Parliament’s attempt to address the system’s shortcomings.⁵

### However, Parliament reforms in a piecemeal and reactive manner hence creating a gant that needs judicial interpretation, For instance while TOLATA has methods of dealing with trusts, the legislation lacks comprehensive provisions on resolution of conflicts between cohabitants.6

#### **The Judiciary’s Role in Refining the Framework**

### The judiciary plays a pivotal role in interpreting and refining the statutory framework established by Parliament. Through case law, judges clarify ambiguities, develop equitable doctrines, and adapt the law to reflect societal changes. In the context of trusts of the family home, judicial decisions have been instrumental in addressing the complexities of co-ownership and equitable interests.⁸

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### For example, in Gissing v Gissing [1971], the judiciary established the doctrine of constructive trusts, providing a framework for recognizing equitable interests based on common intention and detrimental reliance.⁹ This principle was further developed in Stack v Dowden [2007], where the House of Lords clarified that the presumption of joint beneficial ownership in co-owned properties could be rebutted by evidence of the parties’ intentions.¹⁰ The decision in Jones v Kernott [2011] built on this foundation, allowing courts to infer changing intentions from the conduct of the parties over time.¹¹ These cases demonstrate how judicial reasoning can address gaps in legislation, ensuring that the law remains fair and adaptable.¹²

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#### **The Legal Profession: Bridging Theory and Practice**

### Legal profession is the link between theory originating from Parliament as well as the judiciary and its application in society. Scholars, solicitors, and barristers also have a responsibility to facilitate compliance with statutory and Judicial standards on the practical enforcement, and to pass legal accurately and fairly to clients.¹⁵

### TOLATA is commonly used by legal practitioners for their advice to clients on co-ownership matters regarding rights and responsibilities.¹⁶ They provide drafting services for trust deeds and assist in dealing with issues concerning co-ownership or cohabitation and land law.¹⁷ For example, Bernini v Santoro and Secretary of State for Communities and Local Government v Westoma challenges Stack v Dowden and Jones v Kernott as cases used by solictors.¹⁸

Legal prowess has also been exhibited by way of advocacy in those landmark cases as the gaps have also highlighted. In Stack v Dowden the arguments presented to the court also guided the formulation of Co-ownership principles.¹⁹ Likewise in Jones v Kernott the law could deduce changes of intentions of the co-owners from their conduct.²⁰

#### **Interdependence and Collaboration**

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### The evolution of land law can be seen as involving all three branches of government: Parliament, judiciary and the bar. Parliament delivers adjustments on a systematic level while legislation in the shape of statutes also codifies principles. The judiciary then develops and explains these principles through case law making this law fair and responsive to changing society. Legal professionals use law in practice; representing parties, contributing to juridical thinking and educating other legal scholars.²¹

### It is in this connection that there is this mutually interacting relationship that is most apparent in trusts of the family home. TOLATA is the legal framework that the Parliament provided for the administration of the trusts of land as Parliament worked out the rules in Stack v Dowden and Jones v Kernott elaborated technically. There is evidence that the legal profession has been instrumental in ensuring that these advances are in fact properly brought into play; just as effectively a clients has been presented and future changes have been shaped.²²

### **Conclusion**

This article will look at the growth of the land law in England and Wales and the functions of Parliament, the judiciary, and legal profession. They have all played significant roles in developing the law especially as it relates to the trusts of the family home. Parliament demarcates the statutory power through the primary act including the Law of Property Act 1925 and the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA); addressing structural and procedural problems and has tools like the Section 14 of the Act, which supports judicial interference. However, legal changes more frequently react to social change and may contain gaps for their interpretation by judges.¹

These are elaborated by the judiciary by establishing the resolutions of the uncertainties and the equitable rules of the courts.. Gissing v Gissing [1971], Stack v Dowden [2007], and Jones v Kernott [2011] are justice devices which establish that the judiciary is keen on rightsizing the law to the current modes of cohabitation and fairly dealing with property conflict. However, piecemeal advancement in judicial decision-making does result in chaos, bearing in mind the reality that legislative approaches are more robust for such scenarios.²

It is a simulated reality that binds theory and practice where statutory and judicial implementation of ideas takes place. An important function of solicitors and, to a lesser extent, of barristers is to represent clients, settle controversies, and especially influence the formation of legal judgments. Nevertheless, high cost for legal services and the land law regime remain some of the challenges that hinder equal access to justice.³

Trusts of the family home illustrate the interdependence of these actors. While Parliament provides the statutory framework, judicial decisions refine the principles, and legal professionals ensure their practical application. Greater coordination and reform are necessary to address legislative gaps, enhance consistency in judicial decisions, and promote affordability, ensuring land law remains fair and responsive to societal needs.⁴

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