

## Example essay questions with suggestions for a good answer Chapter 5 – Co-ownership

**‘TOLATA 1996 allows for a principled determination of disputes between trustees and co-owners in co-owned land in accordance with a clear and structured statutory framework. It offers clarity and certainty which is sadly lacking in the law of severance and s. 36(2) of the LPA 1925.’ Discuss.**

- This question calls for a *comparison* of TOLATA and the law of severance under s. 36(2) of the LPA 1925. Be sure to conduct this comparison rather than just describing the two.
- As to TOLATA, consider the relevant statutory provisions: ss. 3, 6, 10, 12, 13, 14, and 15. Focus on how far the provisions of TOLATA offer a ‘principled’ framework. Ss. 14 and 15 necessarily involve the court’s discretion – how is this exercised? Is this principled? Draw on the old trust for sale and consider how far TOLATA has changed the law. Consider how the court has adjudicated decisions under the s. 15 factors. Are the decisions always consistent? Key cases will be: *Mortgage Corporation v Shaire* (2001), *Fred Perry Ltd v Genis* (2014), *Bagum v Hafiz* (2015), *Edwards v Edwards & Bank of Scotland* (2010), *Rodway v Landy* (2001) etc. How far do these decisions offer clarity and certainty?
- As to severance, explain briefly what it is. Explore s. 36(2) of the LPA 1925 and the five methods of severance.
- The statement in the question suggests the law of severance lacks clarity and certainty. How can this case be made out? Consider the cases on written notice, mutual agreement, acting on one’s own share, and mutual conduct. Consider the overlap between mutual agreement and mutual conduct heads. Important cases will be: *Nielson-Jones v Feddon* (1975), *Burgess v Rawnsley* (1975), *Hunter v Babbage* (1994), *Goodman v Gallant* (1986), *Draper’s Conveyance* (1969), *Harris v Goddard* (1983).
- Return to the comparison of TOLATA and severance – is one more principled than the other? How can you support this view? Bring together your thoughts in firm conclusions.