Question 1: Compare and contrast successive ownership and concurrent ownership. While both take effect under a trust regulated by TOLATA, what differences may remain in the application of that Act to each type of trust?

We have outlined the difference between successive and concurrent ownership in part 1, though you may find it useful to refer to our discussion of co-ownership in chapter 17. In practical terms, we have seen that the principal difference between them is that co-owners are concurrently entitled to possession to legal or beneficial title, while successive owners are entitled to possession in succession. This difference impacts on the nature of the parties’ rights and on the utility of the doctrines:

- **Co-owners** enjoy unity of possession; they are concurrently entitled to possession of the whole of the land.
  - Co-ownership is therefore appropriate where it is intended that the beneficiaries will benefit from the land simultaneously. For example, where a house is bought as a shared home.
- **Successive owners** do not have unity of possession. Possession is enjoyed by the beneficiary (or beneficiaries) with a life estate, while subsequent interests are held in remainder or in reversion. The nature of the life estate and the concepts of ownership in reversion and in remainder are explained in part 3.
  - Successive ownership is therefore appropriate where it is intended that all the benefits of the land will vest in the first beneficiary for their life, and only be enjoyed by the second beneficiary on the death of the first. For example, where a husband dies and intends his wife to remain in their home for her life and, on her death, for the home to pass to their children.

One point of similarity between successive and concurrent ownership is that both take effect under a trust which is now regulated by TOLATA 1996. We have seen in part 6 that the Act does not differentiate between co-ownership and successive ownership in the powers conferred on trustees or the rights conferred on beneficiaries. However, the different legal nature of the beneficial interests will impact on the application of the Act. For example, the Act confers a right to occupy on beneficiaries who are “beneficially entitled to an interest in possession in the land”. In a successive interest trust this excludes beneficiaries with an interest in remainder or in reversion. This position accords with the expectations of parties to a successive interest trust. However, we have also seen that the application of provisions of the Act concerned with the beneficiaries’ rights to be consulted and the matters to which the courts are directed to have regard when settling disputes may create greater uncertainty in their application to beneficiaries with interests in remainder or reversion.
Question 2: When might it be appropriate to confer (i) a life estate; (ii) a licence to occupy, and (iii) a lease determinable on death?

We have noted in part 4 that a life estate is central to successive ownership. We have also seen that there are other ways in which occupation for life can be granted. Table 20.1 in part 5 provides a comparison of the life estate, a licence to occupy for life and a lease determinable on death. To answer this question, you should refer to that comparison and consider circumstances in which particular features of each of these arrangements may be appropriate. Consider, for example, the following:

- The life estate and determinable lease are property rights while a licence is personal. What advantages does holding a property right confer on the lifetime occupant?
- While both are proprietary rights, what differences exist between the life estate and determinable lease that may make one or the other more preferable? Consider, for example:
  - What role do trustees play where a life estate is created? How does the role of trustees differ from that of a landlord of a lease?
  - We have seen in part 3 that in a successive ownership trust the estate is held in remainder or in reversion. Which of these is most closely replicated by a lease? Which of the following arrangements could more readily be replicated by a lease:
    - X wishes to ensure on his death that his house is kept as a home for his wife for her life, and then pass to their children;
    - Y wants to provide a home for life for his elderly aunt, with the property to return to him on his aunt’s death.