

Example essay questions with suggestions for a good answer

Chapter 11 – The law of mortgages

The law of mortgages attempts to strike a fair balance between the interests of mortgagees and those of mortgagors who may be facing serious financial difficulty. How far does the law succeed in achieving this?

- This question is not an invitation to write everything you know about mortgages! Always address the question set. This means unpacking the words it contains: what are the interests of mortgagees? What are the interests of mortgagors? Discuss the competing and potentially conflicting interests here. Beware presenting the scenario as overly-simplistic: it is not bad bank versus innocent borrower. Banks lend to make profit but are also vital to the economy. Equally, mortgagors take advantage of the availability of funds to finance lifestyle and business choices.
- How far should the law protect mortgagees? How far should the law protect mortgagors, who may have taken out loans that they cannot repay?
- Next, move to assess how the law has met the challenge of balancing these interests. You will want to consider the following:
 - The right to possession; s. 56 of the AJA 1970 and how this provision has been interpreted by the court;
 - The duties owed by mortgagees when in possession of mortgaged land and when seeking to sell mortgaged land: key cases to discuss will be *White v City of London Brewery* (1889); *Palk v Mortgage Services Funding plc* (1993); *Quennell v Maltby* (1979);
 - Examine cases where the court has ordered sale despite objects by the mortgagee: *Palk v Mortgage Services Funding plc* (1993); *Polonski v Lloyds Bank Mortgages Ltd* (1997);
 - You may also reflect on the court's willingness to strike down clauses that serve as 'clogs and fetters' on the equitable right to redeem: *Fairclough v Swan Brewery Co Ltd* (1912); *Knightsbridge Estates Trust Ltd v Byrne* (1939);
 - Consider the 'Pre-Action Protocol for Possession Claims based on Mortgage or Home Purchase Plan Arrears in Respect of Residential Property' (updated in 2011), which provides for steps that the court will expect a mortgagee to have followed before seeking possession.
- Be sure to return to the question in assessing how far these measures strike the balance between mortgagee and mortgagor. Does the law favour one over the other? Is that necessarily problematic? Should one side be favoured? Use this to bring together your analysis into firm conclusions.