

## Example essay questions with suggestions for a good answer

### Chapter 12 – Land law and human rights

Howell (2007) has urged that property lawyers should resist the seductive effects of human rights, arguing that '[l]and law must ... keep to the narrow stony path. Land law is essentially pragmatic and practical and, most importantly, has consequences for third parties: certainty is almost always justice ... the introduction of human rights values is a wild card which is wholly unpredictable ... parties will not enter into agreements over land if they cannot be sure of their effect, and practitioners will not be able to advise them.' How far does recent jurisprudence support the stance advocated by Howell?

- Be sure to remember that the focus of this question is on the *jurisprudence* on human rights and land law. Avoid making overly generic responses which are not rooted in decided case law. That said, begin by explaining the – arguably – uncomfortable relationship between land law and human rights. Why is it so? Explore the different impulses at play underscoring property law and human rights. Should they be natural bedfellows?
- Move to consider more precisely the areas where human rights have the potential to influence land law: Art. 1 of the First Protocol to the ECHR and Art. 8 of the ECHR:
  - Art. 1, Protocol 1 – how does it work? What is meant by 'possessions'? Has it had much impact on land law? Consider *Broniowski v Poland* (2005), *Antoniades v UK* (1989), *Scott v UK* (1984), and *J. A. Pye (Oxford) Ltd v UK* (2006) from the House of Lords to the Grand Chamber of the European Court of Human Rights.
  - Art. 8 – how does it work? What is meant by 'home' and, importantly, what is *not* covered? Reflect on the important decisions of *Pinnock* (2010) and *Powell* (2011) as to the requirement for the court to conduct a proportionality review in possession proceedings brought by a local authority against a local authority tenant. Whilst the court in these cases seems to open up the possibility of a greater role for Art. 8 in possession proceedings, a number of counterweights were also introduced, minimising the chance of a successful Art. 8 challenge – outline these. Consider also the importance of procedural safeguards (*R (on the application of ZH and CN) v London Borough of Newham and London Borough of Lewisham* (2014)) and the issue of vulnerability (*Southend-On-Sea v Armour* (2014)).
- *McDonald v McDonald* (2014) and (2016) – explore the Court of Appeal and Supreme Court judgments on the issue of the horizontal effect of Art. 8. What was decided and how was it reasoned? What are the implications of the McDonald litigation? Reflect on Nield's work and other academic commentary on the decision.
- Conclude by drawing together the sum of your analysis. Do you feel Howell's view of the interrelationship of land law and human rights is winning out? Can you see a different approach being taken in future in view of the fast pace of human rights jurisprudence? Might Brexit have any influence on your thinking?