Short questions assignment essay example

Law, Criminal Justice

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Question 1.

The Land and Conveyancing Law Reform Act (2009) came into force on 1 December 2009, providing for comprehensive modernization of the land – related legal relationships in Ireland. The most important impact of the Act lies in abolition of any vestiges of feudal times` land law that may have survived through ages (e. g., abolition of freehold estate). Significant changes were introduced in the sphere of co-ownership, creating new challenges for purchasers, who are now required to ensure that consent to the land severance had been obtained, so that conveyance will not be considered void in the future. Furthermore, the Act secures interests of joint owners, stating that the registration of judgement mortgage does not sever the joint tenancy itself. An updated statutory regime for easements was also provided for by the Act, so that parties will not anymore be obliged to seek court orders to formalize their easement rights. Significant changes were also introduced into the legal framework of freehold covenants` functioning. It is also worth stating that the Act has exerted significant influence not only to property in land relationships, but also on contractual ones. In the field of

land-related contractual relationships the Act had legally confirmed some of the rules, which were previously stemming from case law only, for instance the Act provided for written form of any contract, which involves sale or other `disposition`` of land. Detailed provisions on conditions of contract`s enforceability were provided by the Act. Furthermore, revision and classification of nineteenth century`s rules of deeds was conducted with respect to most recent developments in the field of contract law. Detailed revision and updating of the rules relating to mortgages was also conducted. The analysis of previous legislation and the text of the act itself (Irish Statute Book, 2009) allows us stating that the Act is designed in a way to conduct total legal reframing and simplifying of land relationships, so that the interests of as many stakeholders as possible can be taken into account.

Question 2

Common law countries concept of the rights to land is significantly different from the ones, which are wide-spread in countries of civil law. Furthermore, different concepts related to land property are strongly interrelated in terms of legal systems, so that only several features can be singled out to help scholars and practitioners distinguish between different rights and interests in land. In her article ``On estates and interests : a tale of property and ownership rights” (1998) S. Bright, Oxford specialist in landlord and tenant law, refers to distinguishing the concept of ownership from all other related concepts, basing her argumentation on the basic difference, which exists between legal and equitable rights (p. 546). To explain the difference let us, first of all, state that in common law countries single piece of property can be owned by several people at the same time, and it will not mean that they

share ownership. The thing lies in the fact that they enjoy property rights of different quality. It means that one person may have legal title with respect to this piece of property, whereas other people will have equitable titles. Legal title means actual property, while equitable title refers to the right to obtain the ownership in case legal title is currently owned by another person. So, the main distinction, which can be singled out between ownership and other related titles, lies in the fact that in normal course of events ownership means that legal and equitable titles are not separated, whereas other property rights-related concepts tend to allow separating legal and equitable titles. It is worth mentioning that distinction between legal and equitable proprietary rights is of high importance for practice, especially with respect to the possibility of trust`s existence. Special implications in this regard may also refer to the joint ownership.

Question 3

In very basic terms numerus clausus principle refers to the fact that in some legal systems the subsystem of real estate provides only for a limited number of forms in which property rights and interests can manifest themselves. For instance, leases can be limited to such four basic types as the term of year; the periodic tenancy; the tenancy at will and the tenancy at sufferance (Merrill&Smith, 2000, p. 11). Despite the fact that at the first sight the idea of limiting the number of standardized proprietary rights- and interests-related forms seems to be clear, Merrill&Smith (2000) claim that numerus clausus principle has a very odd status in terms of the common law system (p. 23). On the one hand, numerus clausus principle is observed to exert significant influence on the core system of real property rights, while,

on the other hand, deviations from the doctrine of fixed estates still exist, being manifested in such forms as creation of equitable servitude or right of publicity. Nonetheless, it is necessary to understand that deviations under study appear quite seldom and only in limited spheres of property rights, namely nonpossessory interests and some intellectual property rights.

Another argument for the importance of numerus clausus principle`s role in real estate rights regulation lies in the fact that one has highly limited chances to persuade either executives or court to create a new form of property, so that individual interests regarding particular immovable property will be formalized.

Having proved the importance of numerus clausus principle in terms of both theory and practice of land law, let us proceed with analyzing the rationale behind its having been introduced. The need to research in justifications for the introduction of numerus clausus principle stems from the fact that few efforts were applied to analyze the interrelations, which exist between numerus clausus principle and freedom of contract. The first rationale behind the operation of numerus clausus principle is associated with its being seen as a device, used to minimize impact on durable property interests on those, who will be going to deal with assets under study in the future. Such a view allows us understanding numerus clausus principle as a tool, which is aimed at preventing situations, when too many individuals can have the veto right with respect to disposition or usage of particular resource. The second justification deals not with economic, but social effects, stating that limiting the number of property forms can serve as stabilizing factor as any reforms regarding the change in property forms are likely to be introduced by

legislative means, contributing to stability of property relationships, which should be perceived as a crucial societal relations-related factors.

Despite the fact that lots of criticism is associated with the functioning of numerus clausus principle, I consider its functioning totally justifiable with respect to the strong need of maintaining public order.

References

Irish Statute Book., 2009. Available through Irish Statue Books website www. irishstatutebook. ie [Accessed 1 October 2013]

Merrill, T. W., Smith, H. E., 2000. Optimal standardization in the law of property: the numerus clausus principle. The Yale Law Journal, 110, pp. 1-70

Bright, S., 1998. On estates and interests : a tale of property and ownership rights. In: Bright&Dewar, eds., 1998. Land law themes and perspectives, pp. 529-546