

Transcript of Ben McFarlane's video podcast

Do we really need another book about land law?

There are of course lots of books about land law; and some of them are quite good. But, perhaps surprisingly, there hasn't previously been an authoritative text, cases and materials book on the subject. And that's quite surprising as the text, cases and materials format is, in fact, ideal for land law. It allows students to have a single volume which has not only the key cases and statutes but also contains extracts from the best academic writing as well as author commentary setting it all in context. In many ways having a good text, cases, and materials book is like having a good tutor; you get the important material presented to you and you get it presented in a clear way. You get an explanation of the key issues and why the material matters. And in fact, because land law is quite a difficult subject, in this book there is more author commentary material than is usual in a text, cases, and materials book. This gives us the opportunity to explain to students why the material is important and to help them to understand how it fits together.

Students often find land law to be difficult: Why is that?

We should expect any subject that is studied at university or as part of a post-graduate qualification to be intellectually demanding. It is true that, at first, students do find land law to be particularly difficult; more difficult, than for example, tort law. There are good reasons for this. For example, in the very first chapter of the book, we look at two very similar cases. Each case involves a husband who owns a home, and he wants to borrow money from a bank in order to support his business, and in each case, initially, at least, the husband shares occupation of the home, with his wife.

In each of these cases, the husband borrows money by way of a mortgage transaction; that is to say, he gives the bank a power if he fails to repay the loan. In each of these cases, the husband takes out the mortgage loan without the consent or even the knowledge of his wife, and in each of the cases, inevitably, the husband fails to repay the loan. As a result, the bank wants to remove the wife, sell the house, and be free to use as much of the proceeds of the sale that it needs to pay off the debt. But of course the wife doesn't want to leave. It is her home; she has been living there, and she didn't consent to the mortgage. These cases are clearly very difficult. On the one hand, nobody wants to evict an innocent occupier. On the other hand, if the bank is unable to get its money back, the cost of borrowing might go up for all of us, and as we have seen over the last year or so, the economic health of banks is perceived as having great importance to the general health of the economy.

So the first reason land law is difficult, is because those cases are simply very difficult to decide. The second reason it's difficult is because judges use quite technical rules. For example, in one of the cases we look at in the first chapter, it is the bank that wins, whereas in the other case, the wife wins. At first, that seems quite confusing, but once we look in detail at the technical rules, and come to understand them, it's possible to explain those differing results. Over time those initial difficulties can be dealt with, and that is one of the things we try to do in the book.

Does studying land law get easier?

It is rather like a code: if you receive a coded message, at first it might seem gibberish; it might seem impossible to understand. But once you have cracked that code, then you will be able to understand not only that message, but also any other message sent in that same code; this is how land law works. What we try to do in the first part of the book is, very carefully, explain some basic principles which can be applied to any land law case. Again, it is perhaps possible to compare it to tort law. At first, Tort Law seems relatively easy. If someone, for example, produces a drink which contains a dead snail, and the consumer, after drinking the drink, becomes unwell, we can all agree that the producer should pay some damages to the consumer. But when you consider more difficult cases of negligence, for example, cases involving economic loss, or nervous shock, suddenly things get much harder, and those friendly concepts like, "reasonable foreseeability", and "fairness", become much harder to apply. Tort law starts off easy, but it does not get any easier. Whereas, land law by contrast, may start off quite difficult, but it does not get any harder. What we try and do in the book is give students the tools they need to understand the "code", and to see how it applies throughout the subject.

Lots of students also say that land law is boring: Do you agree?

It is true that people do often find it boring. Certainly, at first, but it is impossible to say in objective terms, whether anything is interesting or not, often that is simply a question of personal choice. For example, I think football is quite interesting, but I think rugby is very boring, and there are plenty of people who think the opposite. It is certainly true that if you do not understand something, then you are much more likely to find it boring, and so the time to judge is not when you are starting a subject and it looks quite difficult, but by the time you have finished. What we try to do in the book is to enable students to understand the subject, and therefore, to make an informed judgement about whether they like it or not. It would be a surprise if land law was completely devoid of interest. For example, the cases involving occupiers of homes, against banks; those cases raise very important issues about what it means to live in a home and about the importance of e-commerce and society in protecting people who have homes. These types of disputes have given rise to lots of academic judicial legislative controversy which we look at in the book. In the book we put forward differing opinions on the various debates. A student using the book can consider these opinions, and hopefully using the material in the book, they can also form their own.