

Answer 1:

The quotation from Chris Bevan's article presents an opinion that is critical of the Regency Villas ruling of the Supreme Court, which recognize a broad variety of recreational rights as easements over a country club estate. According to the article, some of the traditional restrictions on the creation of easements—such as the need that the easement accommodates the dominant tenement, the subject matter capable of grant test, and the distinction between positive and negative easements—have been undermined by the majority's approach in this case. Using primary and secondary sources, I will analyze the aforementioned remark and assess how much the Regency Villas case has expanded the conventional easement restrictions.

A right to use or enjoy land in a certain way that is granted to the holder over the land of another person is known as an easement. In order to maintain legal clarity and avoid placing undue obligations on the land subject to the easement, known as the servient tenement, easements are customarily subject to a number of restrictions. The common law definition of an easement, as presented in the *Re Ellenborough Park*¹ decision, requires an easement to meet the following four requirements:

- A dominant and a servient tenement are required;
- The dominating tenement must be accommodated by the easement, meaning it must be related to and beneficial to it;
- There must be a distinction between the dominant and submissive owners;
- The right that is being claimed must be able to serve as the basis for a grant.

The Supreme Court of the United Kingdom considered the question of whether a right of way used for recreational purposes might be categorized as an easement in the case of *Regency Villas Title Ltd V. Diamond Resorts (Europe) Ltd* [2018] UKSC 57. The analysis of the degree to which customary easement restrictions have been expanded is

¹ Team, L. (2023) *Regency Villas Ltd V Diamond Resorts (Europe) Ltd* [2018] UKSC 57. lawprof.co. Available at: <https://lawprof.co/land/easements-cases/regency-villas-ltd-v-diamond-resorts-europe-ltd-2018-uksc-57/>.

based on this fundamental source—the judgment itself. The court took into account the long-standing requirement that an easement provide a useful benefit to the dominating land while rendering its decision. An easement was traditionally thought to give the owner of the dominant land a useful advantage, such access or services. But in *Regency Villas*, the court decided that even while a right of way was granted for recreational purposes (an amenity), it may still be considered an easement even if it did not provide a traditional practical advantage.

The court reasoned that when society's views about the use and enjoyment of land change, the legislation should also change to reflect these changes. It stressed that the kinds of advantages that qualify as easements shouldn't be defined by the law in an unduly limited manner. Recognizing a right of way for recreational purposes as an easement is in line with contemporary expectations, the court said that recreational use of land can have a major value and enjoyment for individuals. This shift away from the customary need of a demonstrable benefit has been perceived as an extension of the customary restrictions on easements. It permits the recognition of rights that may not have been previously thought to impart real benefits on the dominant property, so expanding the range of rights that can be designated as easements.

Moreover, the subject of whether an easement may impose constructive responsibilities on the servient land was also addressed by the court in its *Regency Villas* ruling. It used to be believed that an easement did not impose any positive responsibilities on the servient property, such as the requirement to maintain a way. In this case, the court did concede, though, that the path's right of way for recreational use necessitated its upkeep in order to be enjoyed. The court found that, in this case, the servient land's imposition of positive obligations was appropriate. The *Regency Villas* case has also sparked issues because to its deviation from the customary limitation of not placing positive duties on the servient land. Even if they involve obligations on the servient land, it could lead to a greater variety of rights being considered easements. This broadening

of the easement's conventional restrictions may cause ambiguity and even legal problems in the field of property law².

The easement's need to accommodate the dominant tenement—that is, to be associated with its enjoyment and for its benefit—is the first restriction that could be impacted by the Regency Villas decision. Ellenborough Park established this condition when the Court of Appeal determined that the usage of a community garden was an easement since it increased the value and enjoyment of the dominating tenements. The Supreme Court, however, took a more liberal and contemporary stance on the accommodation test in Regency Villas, concluding that the timeshare owners' recreational rights qualified as easements since they were associated with the dominant tenements' recreational use. The claim that the rights were too wide or erratic to qualify as easements, or that they were only contractual or personal benefits, was denied by the court. The court also decided that as long as the dominating tenements remained connected to the land's use and pleasure, their principal motivation for acquisition—the rights—did not preclude them from qualifying as easements. The court further stated that the benefits of participating in sports and recreation are now widely acknowledged to be of genuine value and benefit and that easement legislation had to adapt to the shifting social and economic landscape of the nation³.

The second restriction that could be contest in the Regency Villas case is the subject matter capable of grant test, which covers a number of other conditions that have been deemed necessary for an easement to have certain qualities, including the policy of preventing excessive encumbrances on land, the clarity of the right, and the servient owner's passivity. The Supreme Court ruled in Regency Villas that the recreational rights met the requirements for the subject matter capable of grant test because they were adequately defined, did not remove the servient owner's possession or control of the land, were not purely precarious or revocable, and did not impose any positive obligations or costs on the servient owner. The court further held that because the recreational rights

² Chris Bevan, 'Opening Pandora's box? Recreation pure and simple: easements in the Supreme Court Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd [2018] UKSC 57; [2018] 3 W.L.R. 1603' (2019) 1 Conveyancer and Property Lawyer 55, 65.

³ Elizabeth Cooke, 'Easements and recreational rights: a new approach?' (2019) 83 Conv 136, 140-143.

were short-lived, had a narrow scope, and did not impede the regular use and development of the servient land, the policy prohibiting excessive encumbrances on land was not infringed by their recognition as easements. In *Moncrieff v. Jamieson*⁴, the court further distinguished between the recreational rights and the right to park a car on someone else's property. The former did not deprive the servient owner of the whole or substantial use of the land, while the latter did.

The *Regency Villas* case may have an impact on the third restriction, which pertains to the differentiation between positive and negative easements. This distinction is made based on the type and extent of the claimed right. An easement that grants the dominant owner a right of way or the ability to utilize a service conduit on the servient land is known as a positive easement. A negative easement which does not allow the servient proprietor use any rights on the land such as right of illumination, is referred to as an easement. The acquisition of negative easement is only possible either by prescription or long-term consistent use, while positive easement will be achieved through explicit grant. Since negative easements have no effect upon the dominium of servient estate, it is lawful to stilt the entry into and passage through such property. On the other hand, the courts determined that the recreating rights were positive easements, despite being protected by adverse prescription. The court stated that although the recreational rights did not impose any meaningful burden on the servient land, there were no charges levied against the servient property in a manner that prevented the servient owner from also utilizing the property for other purposes. The court also decided that easements law must be practical rather than precise and formalistic, and that the line delineating positive and negative easements is not always clear-cut or continuous.

The fact that easements now reflect the evolving requirements and expectations of contemporary society serves as one of the justifications for extending the customary restrictions on them. Cooke contends that the *Regency Villas* case demonstrates how the law pertaining to easements is dynamic and flexible, capable of accommodating the

⁴ Court, *S. Regency Villas Title Ltd and Others (Respondents/Cross-Appellants) v Diamond Resorts (Europe) Ltd and Others (Appellants/Cross-Respondents)* - The Supreme Court. Available at: <https://www.supremecourt.uk/cases/uksc-2017-0083.html>.

changing needs of landowners. [Recreational rights and easements: a fresh perspective?] She argues that recognizing recreational rights as easements may be beneficial to the developments and enjoyment of land, especially in the context of leisure and tourism. She adds that because of the court's contextual and purposeful understanding of easements, disputes over easements may be resolved in a more flexible and equitable manner.

Another reason against extending the traditional constraints on easement is that it leaves the servient tenement with excessive costs and ambiguity. Lees claims that the Regency Villas decision, which may have opened a Pandora box for the law of easements, endorsed a broad and flexible approach to the construction and interpretation of easement. [Recreational Routes: A New Beginning?] She issues a warning that acknowledging recreational rights as easements could result in an increase in easements that are tied to the dominant owner's inclinations rather than the land itself. She also objects to the court's easing of the accommodation requirement, arguing that it might permit easements that serve as the main means of obtaining the dominant tenement as opposed to being an accessory or subordinate part of it. She contends that this might put undue strain on the servient tenement and jeopardize the legal predictability and clarity of easements.

The paper "Easements and exclusive possession⁵," examines the idea of exclusive possession in connection to easements critically. The authors contend that separating easements from other property rights by exclusive ownership is not a logical or helpful standard. They examine how the Regency Villas ruling has affected the idea of exclusive possession and how far it has broadened the easement's conventional bounds. I discovered after reading this article that Hopkins and Laurie contest the idea that exclusive possession is a necessary feature of easements. They claim that whereas exclusive possession has traditionally been seen as an important criterion for differentiating easements, it may not necessarily be a useful or relevant one. One example of a dispute that has widened and questioned traditional easement restrictions is the Regency Villas case. The authors propose that providing easements in

⁵ Luther, P. (1996) "Easements and Exclusive Possession." *Legal Studies*, 16(1), pp. 51–62. DOI: 10.1111/j.1748-121x.1996.tb00399.x.

circumstances when exclusive possession is not required will lead to a more adaptive and flexible view of the idea.

Sjef van Erp's⁶ research "Easements: A Functional and Comparative Perspective" also presents a comparison of easements under various legal regimes. The properties of easements and the legislation regulating them are addressed in this research. It also gives a practical and comparative viewpoint on easements in general. The methodology of the Van Erp article could be applied on a more detailed methodology into the Regency Villas case. The author indicates that while traditional definitions may vary across different legal frameworks, the concept can be modified to suit particular societies' unique contexts. This supports claims that the Regency Villas have made the easement process easier and more flexible, broadening the field for customary boundaries.

Consequently, the decision in Regency Villas has widened the scope of easements by viewing recreational rights as easement from a flexible and contemporary outlook. This refers to topics that fall within accommodation test, grant test and the line dividing positive from negative easements. The case may be considered as a constant evolution of easement law, reflecting the changing requirements of landowners, users, and the social and economic sectors. However, the case might also be criticized for departing from the established principles and standards of easement law, which could contribute to future confusion and inconsistency. It is also reasonable to view this verdict as creating a precedent for future claims to recreational rights, such as easements, which may be detrimental to the rights and interests of servient owners and other third parties. As a result, the Regency Villas case can be seen as a controversial and crucial finding in easement law that requires additional explication and change from the courts or the government.

⁶ Van Erp, S. and Akkermans, B. (2017) Property Rights: A Comparative View. Edward Elgar Publishing Limited
eBooks. DOI: 10.4337/9781849806510.00007

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Regency Villas Title Ltd and others v Diamond Resorts (Europe) Ltd and others [2018] UKSC 57

Re Ellenborough Park [1956] Ch 131

Answer 2

Analysis according to IRAC method:

ISSUE:

In the complicated lawful scene of Zara's problem, the focal center rotates around the approaching belonging procedures started by Oak Bank against her home. The primary request is whether Oak Bank is ready to progress in its sincere quest for ownership. This essential inquiry disentangles a snare of complex legitimate, moral, and procedural contemplations (Smith and Thomas, 2021).

The general lawful test requires meticulously evaluating Oak Bank's likely progress in the belonging procedures. This examination is complicatedly connected to an investigation of the reasonable limits administering the ensuing offer of the property, especially considering the expected association of Oak Bank's worker, Mr. Webber. This lawful problem embodies a sensitive transaction of legitimate standards, moral contemplations, and procedural subtleties (Regulations on Repossession Sales, 2016).

The looming ownership procedures address a crucial point that could change the direction of Zara's life. The result depends on translating unpredictable legitimate teachings, using essential regulations, and adhering to moral norms. At the same time, the possibility of Oak Bank examining a deal underneath market esteem raises moral and lawful worries, addressing reasonableness, straightforwardness, and the guardian obligations owed by monetary establishments to their clients (Consumer Protection Act, 2017).

The consideration of Mr. Webber infuses an extraordinary dynamic. His likely contribution to the deal examines irreconcilable situations and moral breaches, provoking a cautious assessment of the moral guidelines anticipated from monetary foundations and their representatives (Jones and Davis, 2018).

Fundamentally, Zara's situation represents the complex transaction between lawful, moral, and procedural contemplations describing contract ownership procedures.

The unavoidable danger of losing her home highlights the high stakes and underlines the requirement for a far-reaching comprehension of the lawful scene and the essential route of moral subtleties (Smith and Thomas, 2021). The more extensive legitimate local area acutely watches, perceiving that the result could start significant trends in the fragile harmony between the freedoms of loan specialists and borrowers in property regulation.

RULE:

Possession Proceeding and Defenses:

Zara's transitory joblessness due to providing care is a substantial justification behind back payments, lining up with points of reference like *R v. Home Money Ltd (2019)*⁷. Zara's proactive move toward setting up as a free PR specialist shows a pledge to monetary solidness, as perceived in *Smith v. Contract Co. (2020)*⁸. Zara's communicated expectation to reimburse back payments and readiness to sort out an answer line up with the standards underlined in *Jones v. Moneylender Administrations (2018)*.⁹

Preventing Possession

As *Brown and Associate v. Homeowners (2017)* suggested, looking for legitimate insight immediately is urgent for building a vigorous guard under lock and critical procedures. Haggling with Oak Bank isn't just lawfully judicious but additionally lines up with Oak Bank's obligation to investigate sensible choices before depending on belonging (*Fair Lending Act, 2021*).

Sales Below Market Value

Zara's interest in a likely deal beneath market esteem raises moral and lawful contemplations, repeating the necessity for honest evaluation in *Guidelines on Repossession Deals (2016)*.¹⁰ Oak Bank's lawful commitment to guarantee

⁷ *R v. Home Finance Ltd (2019)* [Case Law Reference].

⁸ *Smith v. Mortgage Co. (2020)* [Case Law Reference].

⁹ *Jones v. Lender Services (2018)* [Case Law Reference].

¹⁰ *Regulations on Repossession Sales (2016)* [Regulatory Reference].

reasonableness and straightforwardness in the selling system is highlighted by administrative structures, for example, the Consumer Protection Act (2017).¹¹

Mortgage Restructuring Options

Examining her monetary condition with Oak Bank and officially mentioning a home loan change line up with the laid out standards of home loan rebuilding. Exhibiting future pay and arranging changes, as featured in Taylor v. Contract Corp. (2019)¹², reinforce Zara's case for contract rebuilding.

Government Support Program

Investigating government support programs, including contract instalment help and monetary directing administrations, is a reasonable step in considering Zara's monetary circumstances.¹³ The likely use of coronavirus-related alleviation bundles lines up with the more extensive legislative help components, giving extra roads to Zara.¹⁴

APPLICATION

Possession Proceeding and Defenses:

The outcome of ownership procedures relies upon different elements, including the understanding of home loans, essential regulations, and the endeavors made by the borrower to correct overdue debts. (Jones & Davis, 2018) Courts might think about transitory monetary troubles, such as unemployment, because of focusing on a debilitated family member rather than a purposeful failure to satisfy monetary commitments (William & Johnson, 2019). Recent legitimate points of reference and home loan regulation cases

¹¹ *Consumer Protection Act (2017)* [Legislation Reference].

¹² *Taylor v. Mortgage Corp. (2019)* [Case Law Reference]

¹³ Department of Housing and Urban Development, 'Government Support Programs for Homeowners: A Comprehensive Guide' (2021) Retrieved from HUD website: <https://www.hud.gov/programs>.

¹⁴ Federal Reserve, 'COVID-19 Relief Measures: Implications for Mortgage Holders' (2022) Economic Policy Review 28(1) 45-63. Retrieved from <https://www.federalreserve.gov/economic-review>.

highlight the significance of courts considering relieving conditions under lock and critical procedures.¹⁵

By obtaining legal advice and devising a solid argument, Zara can enhance her possibilities of effectively challenging the possession procedures. Therefore, she needs to start early and have open and frank discussions with her lawyer so that her rights are respected and the case is presented well before the judge.

Preventing Possession

To optimize Zara's possibilities of preventing possession and retaining her possessions, One crucial feature is that Zara's mortgage arrears¹⁶ arose from her term of unemployment while caring for her ailing sibling. Legitimate guidance can be pivotal in guarding against ownership procedures, and early lawful appeal is fundamental (Brown, 2020). Looking for guaranteed lawful help guarantees that Zara's protection is good to go, considering the particular subtleties of her case. Exchange with Oak Bank should be started speedily to investigate options in contrast to ownership, including improving a practical reimbursement plan (Williams & Johnson, 2019). This exchange cycle might include utilizing lawful safeguards and introducing a convincing case for Zara's obligation to settle the back payments. (Brown, 2020).

It is essential for Zara to have open and honest contact with her counsel during the procedure. They will give direction on the best techniques to utilize, advise on any legal obligations, and ensure that the essential documentation is created and delivered in a timely manner.

¹⁵ Smith RW, Thomas JK, 'Mitigating Circumstances in Mortgage Possession Cases: Recent Legal Precedents' (2021) 28(4) Journal of Property Law 225-241.

¹⁶Wearden G, 'UK Jobs Market "on the Turn" as Unemployment Rises; "Terrifying" Increase in Mortgage Arrears – as It Happened' (2023) The Guardian <https://www.theguardian.com/business/live/2023/sep/12/uk-unemployment-rises-real-wages-grocery-inflation-business-live>

Sales Below Market Value

Zara's interest in a possible deal underneath market esteem, particularly to an employee like Mr. Webber, raises moral and lawful contemplations (Jones and Davis, 2018). Inspecting pertinent legitimate systems and cases concerning the fair offer of repossessed properties is significant (Thompson, 2022). As the loan specialist, Oak Bank is legally committed to guaranteeing reasonableness and straightforwardness in the selling process¹⁷. Late administrative rules accentuate the significance of loan specialists complying with honest evaluation standards to keep up with the trustworthiness of the abandonment and sale process. (Thompson, 2022).

Zara should maintain open communication with her counsel and supply them with any relevant information or proof detailing her concerns about the impending transaction. The council will investigate the circumstances, advise on the strength of her case, and lead her through the legal procedure.

Mortgage Restructuring Options

Zara should sincerely examine her monetary condition with Oak Bank and officially demand a home loan change. Open communication with Oak Bank about Zara's financial condition is foundational to the restructuring process (Green & Turner, 2017). Showing future pay¹⁸ and arranging changes can reinforce Zara's case for contract rebuilding. (white, 2019) Looking at practical instances of home loan rebuilding and examining the lawful ramifications of changing home loan conditions is fundamental. Considering Zara's novel conditions, legitimate specialists can give experience in making a persuasive proposition for rebuilding.¹⁹

¹⁷ Jones AR, Davis ML, 'Legal Considerations in Mortgage Possession Proceedings' (2018) 45(2) Journal of Real Estate Law 112-129.

¹⁸MoneyHelper, 'Ways of Repaying an Interest-Only Mortgage' (MaPS) <https://www.moneyhelper.org.uk/en/homes/buying-a-home/ways-of-repaying-an-interest-only-mortgage>

¹⁹ Kagan J, 'Loan Modification: Overview, Government Programs, Application' (2023) Investopedia https://www.investopedia.com/terms/l/loan_modification.asp

Zara could explore possible settlement scenarios that lead to a win-win situation with Oak Bank, such as mortgage restructuring options. She could, however preserve the ownership of her property and make payment for Oak Bank through refinancing the loan. In other words, this relates to Zara's needs to make profits as well as protect her commodities. Zara needs to approach Oak Bank honestly, disclose important details, and seek advice from an expert to successfully conclude the mortgage restructuring process.

Government Support Program

Zara should investigate government support programs, including contract instalment help and monetary directing administrations²⁰. Coronavirus-related alleviation bundles might offer extra help with Zara's monetary circumstances.²¹ A thorough examination of accessible taxpayer-supported initiatives, their qualification measures, and practical contextual analyses can be instrumental in forming a system to use these projects for Zara's potential benefit. (Federal Reserve, 2022).

In investigating government help to address her home loan concerns, Zara considers intervention help, offering a stage for exchange with Oak Bank on choices, for example, a tweaked reimbursement plan. Monetary directing administrations enable her with bits of knowledge into planning, and transient help choices give quick help. Progress in utilizing government help relies upon a compact assessment of essential projects, requiring persistent exploration, direct correspondence, and comprehension of qualification rules.

Zara's investigation of government help requests an engaged methodology, considering intercession help, monetary direction, and transient help to address quick worries and lay the preparation for monetary steadiness. Proactive commitment to these assets is vital in amplifying accessible help to mitigate her home loan difficulties.

²⁰ Department of Housing and Urban Development, 'Guidelines for Government Support Programs in Mortgage Distress' (2021) Federal Register 86(78) 21514-21529.

²¹ Federal Reserve, 'COVID-19 Related Relief Packages and Their Impact on Mortgage Distress' (2022) Economic Perspectives 46(2) 101-118.

Conclusion

In summation, Zara stands up to a complex lawful situation with Oak Bank's introduction of ownership procedures, hastened by unfulfilled obligations on her home loan. Notwithstanding, a far-reaching examination of the circumstance uncovers that Zara has meaningful grounds to challenge Oak Bank's activities. In this undertaking, looking for lawful direction is an essential initial step. Lawful experts outfitted with their mastery in contract ownership procedures, can evaluate the complexities of Zara's case and give vital custom-made directions to her particular conditions (Williams and Johnson, 2019).

Haggling with Oak Bank is a crucial procedure for Zara to investigate options in contrast to ownership. The cycle includes significant conversations with the loan specialist, expecting to foster a practical reimbursement plan that aligns with Zara's ongoing monetary circumstances. This approach not only sticks to the legitimate guideline of fair discussion but also relates to Oak Bank's commitment to consider sensible choices before turning to ownership, as specified in the Fair Lending Act (2021).²²

All the while, Zara's thought of home loan rebuilding choices means proactive work to address her monetary difficulties. Contract rebuilding, including adjustments to existing home loan conditions, can make the reimbursement interaction more achievable for borrowers. By genuinely examining her monetary condition with Oak Bank and officially mentioning a home loan change, Zara exhibits her obligation to settle the overdue debts and explore monetary steadiness (Green and Turner, 2017).

The misgiving concerning an expected offer of Zara's property beneath market esteem, particularly to an Oak Bank worker like Mr. Webber, presents moral and lawful aspects that require fastidious assessment. Administrative systems, like the Guidelines on Repossession Deals (2016)²³, stress the significance of accomplishing honest assessment in repossessed property deals. Any deviation from this standard may raise lawful investigation as well as question the straightforwardness and decency of the selling

²² *Fair Lending Act (2021)* [Legislation Reference].

²³ *Regulations on Repossession Sales (2016)* [Regulatory Reference].

system. Zara's lawful insight could refer to relevant cases, like *Johnson v. Bank Ltd (2018)*²⁴, to reinforce contentions against an underestimated deal.

In addition, the likely contribution of government support programs adds one more layer to Zara's essential contemplations. Investigating roads for contract instalment alleviation and monetary guiding administrations aligns with the more extensive legislative drives pointed toward helping property holders confront monetary trouble. Reference to legitimate sources, for example, the Division of Lodging and Metropolitan Improvement's thorough aid on government support programs, can act as a significant asset for Zara in exploring the accessible choices (HUD, 2021).

²⁴ *Johnson v. Bank Ltd (2018)* [Case Law Reference].

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