

UNIVERSITY OF CAMBRIDGE  
FACULTY OF LAW

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**Legal Problems**

**Speakers: Professor Graham Virgo and Dr Janet O'Sullivan**

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GV: Good morning everybody. My name is Professor Graham Virgo and this is Dr Janet O'Sullivan and we both teach in the Faculty of Law. You've already had a session telling you a bit about studying law at Cambridge. I'm sure you were told about the difference between lectures and supervisions but what we want to do in this session is actually to give you an idea as to what it is actually like to study law at Cambridge. Now, you're experiencing a lecture by being in one of the lecture theatres and having two lecturers talking to you. What we really want to do is to give you an idea of what it's like to be in a supervision, that small group teaching where you discuss legal issues and legal problems, having done reading beforehand to prepare you to do that. Now, we're in a big class here, there are a lot of you, so we can't mimic a supervision properly but we're going to try. Now, of course, you've done no advance reading but hopefully you have had a sheet with some questions on but you'll also see the questions up on the board as well. These are the sort of questions that you would expect to see in a supervision. They've been drafted by us to identify some problems that may be technically rather difficult but also raise some big issues of policy.

When you're studying law what you need to do is to ask various questions to start to think like a lawyer. You need to ask, first of all, what is the law? Secondly, how does the law apply to this problem, and that may require you to interpret the law. Then you come up with a result and then you need to step back and think, "Well, am I happy with that result? Is that fair? Is that just? Is that workable?" If it is, fine, but if not what can we do to improve the law to make it fair, to make it just, and to make it workable? So, we will go through some of these problems in a minute. We will, where appropriate, give you a bit of a law so that you at least know the sort of things to be thinking about, and then we will want you to participate. Now, for this session to work we really do want you to participate and, frankly, everybody can participate even if you're here just accompanying a potential law applicant. Our experience is, perhaps, it's parents and others who get really excited about some of these issues. That is fine. Now, we may be very rude, it depends how much you want to contribute, we may cut some of you off to try and get as much participation as possible. Some of you will know the law that we're talking about and you might want to talk about a particular case or use a bit of terminology which for most of you will mean nothing at all. Please don't worry about that. So if you know a bit of law, fine, but most of you won't. Don't worry. Frankly, you can say almost whatever you like in response to these questions. There aren't really any right or wrong answers. A lot of this is judgement and interpretation. That's not quite true. If you disagree with us you are, by

definition, wrong. What we say must be right, but you may wish to challenge what we say and think there are alternative points of view.

So that's all I want to say by way of introduction. We're going to go straight into the first problem then I'm going to hand over to Janet to do probably two and then I will finish with either one or two depending on how we're doing for time. So, the first problem, Daniel and Emily decide to burgle Fred's house in the middle of the night when he will be asleep. Emily knows that Daniel carries a loaded gun with him but he promises that he will only use it to frighten Fred. When they break into the house they start to put ornaments and jewellery into a bag. Fred is woken by the noise and goes downstairs to investigate. When Daniel sees Fred he shoots him dead. Should Emily be criminally liable for Fred's death? Now, obviously, we're in the area of the criminal law and you may know that in this country we have a criminal offence called murder and for murder you need to kill somebody, intending either to kill them or to cause serious injury. So I'm certainly going to assume that Daniel is guilty of murder. Let's just assume that. It's also clear that Daniel and Emily are guilty of burglary. We can say that and ignore it now. The question is whether Emily is and whether Emily should be criminally liable for Fred's death.

Now, I don't want to say too much about the law here. I want you to work out some of the issues yourself, but I will say that this problem has proven to be really controversial in this country recently. There was a very important decision of the Supreme Court recently on this very issue; an issue which is often called the issue of joint enterprise liability. Essentially, at the heart of joint enterprise liability the question is, if you go along with somebody wanting to commit one crime suspecting that that person might commit another crime and that other crime is committed, should you be guilty of that other crime? That's exactly what we've got here. We've got two people, Daniel and Emily, agreeing to commit burglary, going along to commit burglary, but Emily is aware that Daniel does have with him a loaded gun. Now, they've not agreed that it will be used to commit murder but she knows he has that loaded gun and he does use that to commit murder. The question is, should she be guilty of murder bearing in mind she didn't cause the death? She didn't pull the trigger but she did go along with Daniel being aware that he had this gun. Just to put it in context, it's worth knowing that if you say yes, Emily should be guilty of murder, the sentence for murder will be imposed on her which is mandatory life imprisonment. That will be the consequence of saying she should be guilty of murder. So, I've spoken enough there. Let me hand over to you. Are there any thoughts on whether or not Emily should be criminally liable for Fred's death? Yes.

A: There was no intention of Emily in respect of killing Daniel... to kill Fred so she cannot be responsible for killing him as she wasn't... doesn't have the intention of that.

GV: Correct. Well, she certainly is not the murderer but we do have a body of law called the law of accessory liability, and joint enterprise forms part of that. That law says if you assist or encourage somebody to commit a crime and they commit that crime then you are guilty of that crime as well. So, the fact that she hasn't actually pulled the trigger does not automatically mean that there is no criminal responsibility. The question is whether you think there is responsibility on her part for going along with Daniel knowing that he had a gun. Are there any other thoughts? Yes.

A: If she is an accessory is there an alternative other than murder for her?

GV: Very good. She could be guilty of manslaughter and if you're guilty of manslaughter you're likely to be punished but you don't get the mandatory life sentence which is available for murder. But you are only guilty of manslaughter if you are aware of a lesser crime being committed. So that would be available, for example, if she wanted him to beat up Fred or maybe shoot him in the leg rather than kill him. So there is an alternative which is manslaughter. Yes.

A: Can we ask the question of the extent to which she aided him to get to the position whereby he could pull the trigger... so how much she helped him to the point where he could shoot the person or her definition of 'frighten' in the robbery, so—

GV: Okay.

A: —does he mean to shoot or just scare him by possessing a gun?

GV: So, let's assume what she assumed he would do is that he would just have this gun and wave it at Fred to frighten him to keep him away, maybe to get the key to a room or something and wouldn't actually use the gun. In the light of that do you think she should be punished for Fred's death?

A: No, it should be probably armed robbery or...

GV: So the burglary offences relating to that. Fine. Yes.

A: If there was a promise between Daniel and Emily that he would not shoot wouldn't this count as a verbal agreement between them so she would not have been really aware that he would shoot?

GV: Right. Indeed. What if she knows that he's a bit of a tough character and maybe she's aware that he doesn't always go along with what he says? He's a bit dishonest. He's a bit violent. I think that would be important. Would that change your mind?

A: Yes. It would.

GV: Okay. Other thoughts. Yes.

A: So, surely because she knew the gun was loaded there's the question of did she really believe that it was just going to be used to threaten him non-violently?

GV: Right.

A: And then, because of that, surely she has aided murder because she didn't stop him when she knew he had a loaded gun. She didn't take any action to stop him.

GV: Right. So she went along with him knowing he had the loaded gun and therefore it might be used in the course of the burglary and therefore – I'm putting words in your mouth – but would you basically say she was responsible to some extent—

A: Yes.

GV: —for the murder?

A: Because she didn't try to stop it in any way.

GV: Then she should be guilty of murder as a result?

A: Yes.

GV: Okay. Any other views? Yes.

A: It seems that Daniel is capable of doing such other type of criminal offences like burglary, Emily should consider the fact that he's capable of murder as well. She had the moral duty of trying, at least, to stop him committing this murder and considering this I can... at least I believe that she should be guilty as an accessory.

GV: Okay. So she should be guilty. Right. Yes.

A: Will it be manslaughter if she knows that he's going to be waving about this loaded gun, that's putting Fred's life at risk? It's not killing Fred but she is led to the opportunity...

GV: Right. So, you're saying it's not as bad as... she's not associating herself with a murder but she's associating herself with a crime which might result in killing and therefore it could be manslaughter?

A: Yes.

GV: Okay. Let me just take a couple more and then we'll stop. Yes.

A: What if she was manipulated by Daniel? For example, we're not sure of her mental state when she agreed to actually go with Daniel to commit the burglary at Fred's house.

GV: Right.

A: Wouldn't that reduce the crime of murder to manslaughter maybe?

GV: It's a good point and we would certainly need to consider that. If we can say she was suffering from a mental abnormality of some kind that could be taken account to reduce murder to manslaughter. If she was just being manipulated and pressurised that would actually be irrelevant. You cannot plead duress or pressure as a defence to murder, so we have to distinguish quite carefully between those two.

A: Okay.

GV: Yes.

A: If attempting to stop Daniel in any way would put her life at risk does that make—

GV: It might if we can say she's actually... it would harm her to intervene. The problem with that is there are cases where that's been argued and judges have said, "Well, you shouldn't have put yourself in that position in the first place so you can't then run that

argument". Again, that would depend on very careful analysis of the facts. Okay. I'm just going to stop there and I want now you all to make up your mind. In the light of those arguments who thinks that Emily should be guilty of murder; she's sufficiently responsible for associating herself with Daniel that she should be guilty of murder herself? Do you want to raise a hand?

A: She should or, English law, would?

GV: I'm going to focus on should and I'll tell you what the law says in a minute. But let's focus on the should. You are creating the law by your vote. So who thinks she should be guilty of murder? A number of you largely sitting at the back. Those of you at the front may think nobody, actually it's the people at the back who are more likely to say murder. Who thinks she should not be criminally liable for the homicide at all? We've got her for burglary but nothing as regards Fred's death. A few of you. Who thinks she should be guilty of something relating to the homicide, let's call it manslaughter? A few more. I think the majority is going for that. Well, let me just finish on this with telling you what the law is. The answer is it is a complete mess following a recent decision of the Supreme Court. Before that decision the position was if Emily went along with this plan, agreeing to commit burglary, but suspecting that murder might be committed; she was aware of the gun; she was aware it was loaded and that it might be used, and it was, she would be guilty of murder. But the law changed recently and the Supreme Court, in its decision, said you will only be guilty of murder in Emily's position if you intended murder to be committed. The old law was really you suspected it might be committed, now it is much more difficult to convict you of murder because we have to show that that's what you intended. I think on these facts that will be difficult to prove. But the Supreme Court also said if you are aware that a lesser offence might be committed and you want that offence to be committed, so if she's really happy for this gun to be used to frighten Fred and it actually goes off and murder is committed, she could be guilty of manslaughter. So those of you who said manslaughter, we actually don't know, it depends on all the evidence, we are going to have hundreds of cases coming through the courts as a result of this decision because there is lack of clarity as to what you need to prove. But if we can prove that she was willing, at least, for there to be a frightening of Fred then she would be guilty of manslaughter. So those of you who said manslaughter I think you are probably right on those facts. But then that does raise the big issues of policy as to whether that's right. Is that actually appropriate for the Supreme Court to narrow the criminal law in that way and therefore to say murder is unlikely to be available on these facts? Or is it sufficient to say, actually, we can get her for something, that's manslaughter, she will be punished, but it's not as bad as the cold-blooded killing of the person who actually fires the shot? So you can see there that suddenly you work out, or try and work out, what the law is but then you have to ask the big questions: why are we doing that; is that the right response? There will be very different views on that particular issue. So I'm going to pause at that point and hand over to you.

JO: Do you have any idea how we move onto the next? Not like that.

GV: There must be other ways.

JO: Right. Thank you very much. Well, we're going to move away from the criminal law now and into the territory of what you might call the civil law or people suing each other, normally for compensation or financial damages. So I've picked two very contrasting civil

law topics. The first is up on your screen now, really quite high up. It's about Mr and Mrs Smith who have six children already so they decide they do not want any more children and Mr Smith decides to have a vasectomy. The first thing you realise when you come to study law is that you can't possibly be squeamish; it's worse than being a medic. You have to cope with all sorts of unpleasantries like vasectomies that go wrong. Anyway, unfortunately the vasectomy operation is performed incompetently by Dr Langham and does not work. Mrs Smith becomes pregnant shortly afterwards and, in due course, gives birth to a baby girl. Can Mrs Smith and her husband recover damages from Dr Langham, compensation? Well, the first thing to say is that I'm going to make an assumption that this was not a private operation; that this operation, this treatment, was performed on the NHS and that just steers us away from the law of contract, which I'm going to talk about in a minute, and into the territory of what we call the law of tort. So it's the body of law that allows people to sue each other for suffering harm as a result of wrongdoing by the other person where that wrongdoing consists of something that the state regards as wrong rather than something that's wrong because they've promised something and not complied with what they've promised. So, we're into the territory of the law of tort and in particular I'm going to narrow us down to the law of negligence. Now, the law of negligence is enormously important. It covers pretty much every walk of life you can think of. The sort of paradigm, the classic pattern is probably a road accident where somebody drives carelessly, runs into you, and you suffer personal injury, broken leg or a fractured skull, whatever it might be, and you're therefore off work and you're in pain and you're unable to enjoy life and to carry out your hobbies and so on and you need some compensation from the negligent driver to put you back financially into the position you'd have been in had the negligence not happened. So that's the classic pattern.

Let me just tell you one more thing before we explore this set of facts. Just like crimes have their constituent elements, like you've got to have killed someone or you've got to have intended to kill or intended serious harm, likewise torts have their rules and their structure. The law of negligence can usually be boiled down into a small number of elements; one is it's got to be the sort of situation where the defendant, that's the person being sued, owes the claimant a duty of care. My God that language conceals hundreds of thousands of pages of tortuous legal learning, but let's just assume that you've got to have a duty of care situation. When you drive on the road you owe a duty of care, a duty to take care, reasonable care, to other road users and pedestrians. That duty of care has got to have been breached, by which we mean the defendant's got to have behaved carelessly or unreasonably. It doesn't necessarily mean careless, actually, sometimes it's a considered intentional decision that happens to have been an unreasonable one. So it doesn't mean inadvertence, it means unreasonableness, really. Then that unreasonableness, that negligent conduct must have caused – so there's got to be a causal link between the negligence and the damage, the injury that the claimant suffers. So you've actually got... Well, we can break it down into four elements: there's got to be a duty of care that was breached; the breach of the duty has got to have caused – whatever that means – damage. Now, bearing in mind the differences between this factual scenario and our, sort of, paradigm, our classic road accident, can anyone think what might make this difficult? Which bits of the negligence structure might be difficult here? Which might be straightforward? First of all, which bit is straightforward, do you think? Yes.

A: The doctor has a duty to take, he had a duty of care to Mr Smith.

- JO: Good. I think you're absolutely right. Duty of care ought to be straightforward. A doctor owes a duty of care to his patients. Tick. Let's move on to the next bit. There are difficulties though, one is, who's actually suffered the injury? Actually, if we can leap over... The two in the middle are probably easy. We're told 'incompetently', well that's probably lawyers' shorthand for "we're not going to argue too much about whether Dr Langham behaved unreasonably." Let's assume we've got that, we can tick that box, that there's fault. I mean, also there doesn't seem to be any argument about the fact that the fault caused the injury, whatever the injury is, because I think we can assume that he performed the vasectomy, had he or she performed the vasectomy competently – they do occasionally reverse themselves so there are causal issues there, but let's assume that if it wasn't for the negligence this pregnancy wouldn't have resulted. I'd love to spend all day talking to you about causation and the law of negligence but we haven't got time. So, actually, the focus is on the relationship between the duty of care and the type of damage. What's the damage here? Is it like a broken leg? Yes.
- A: There's no direct physical harm, but there's not harm but they're, in a way, suffering financially and in other ways from having had a child they didn't want.
- JO: Good. So there's financial loss. There's financial loss. Bringing up a child, I mean, you've all seen the statistics, how many hundreds of thousands of pounds it costs to bring up a child over time from zero to 21, or whatever it might be. So we've got financial damage. It's not quite the same as a broken leg even though we can only really calibrate damage in financial terms. Compensation can't set the bones back together and make it as if it never happened but it can compensate you for the financial effects of a broken leg. But we start to get into interesting territory. Let's just see what you had to say about it at the back there.
- A: It could cause them an ethical dilemma as to whether to have an abortion or not.
- JO: Good. Good. The issue of the availability of abortion is extraordinarily interesting here. In fact, as far as the proper application of English law is concerned there would be no grounds for an abortion here, but we all know that that's much ignored, actually, certainly in the early part of pregnancy. So we'll come back to that point in a minute but that's a really important point, actually. But let me just introduce a few thoughts. One is that the Law Lords – this case was real with some difficulties – the Law Lords had enormous problems with how to categorise damage here. There were some elements of the claim that resembled a straightforward personal injury action. Mrs Smith went through the pain and discomfort of pregnancy, which ladies in the room may remember can be pretty grim at times. But that was a tiny part of the claim. The bulk of the claim, as you've recognised, was for the financial outlay for an unwanted child. This troubled the Law Lords enormously. I like your use of the consequent ethics because that imbues the study of law. What is the ethical position that the law is taking if it says that the birth of a healthy child is damage for the purposes of the law, is injury, is the equivalent of a broken leg? That troubled the Law Lords enormously, not least because we have a publicly funded healthcare system where resources are, rightly, under scrutiny. How does it feel to the ordinary person on the London Underground, or the M62, or however we define the standards of normal, acceptable justice? How does it feel for the NHS to pay out hundreds of thousands of pounds worth in damages to the parents of a much-loved child and refuse IVF treatment to a family that can't get pregnant? That's difficult.

So what does English law do? What it does – and we're back to where we're started – is load those ethical issues into the duty of care concept and therefore instead of saying the logical thing, which someone said right at the beginning, which is duty of care is easy, doctor owes his patients a duty of care, English law gets itself into a turmoil because it says, "Does he owe a duty of care in respect of unwanted children?" So, some of the difficult questions of policy are concealed in a duty of care analysis. I mean they weren't concealed on this occasion, they were openly debated. The answer was, according to the House of Lords, that Mrs Smith could recover damages for the pain and discomfort of pregnancy but not for the birth of a healthy child. Let me just, very quickly, before we move onto something else, fill you in on what happened next in the law because the lovely thing, one of the many lovely things about studying law is that it never stays still, as you've detected from Professor Virgo's discussion of the recent case law on joint enterprise liability. After that case was decided, and it was a very clear decision by a unanimous House of Lords, now the Supreme Court as it would be restyled, that there was no possibility of recovering damages in tort. The next claim came along; identical facts except the baby was born disabled, horribly disabled, seriously disabled. There's a nice twist – nice is the wrong word – but an interesting twist which is that the disability was nothing to do with the way the vasectomy was performed or the sterilisation operation was performed. The sterilisation just failed then some weeks or months later the woman fell pregnant with a baby that turned out, by coincidence, to be disabled. This woman's life was very different from the life of the mother in the first case. The baby was born with such severe disabilities that this mother was, sort of, not sleeping for 23 hours out of 24 and had a very difficult life that she would have avoided had the sterilisation – I can't remember if it was female sterilisation or a male vasectomy – but either way, had the sterilisation been successful she would have avoided this.

But then what does the law do because, on the one hand, the court, the judges are humane people and they can recognise that this claimant was in a very position from the claimant in the first case? But they also balk, quite rightly, at the idea that we can say that the birth of a disabled child is a damage but the birth of a healthy child isn't. I've got a disabled child; she's 15; she's got Down's Syndrome. How could the law say to my family that two of my children are a blessing and one of them is a damage or an injury to me? Astonishingly difficult ethical question. Of course, the other thing that one knows as a parent of both a disabled child and a non-disabled child is that it's the non-disabled ones that cost you money because they go to university. So it's very difficult. The law has resolved itself up to a point with a subsequent, with a third House of Lords decision that said we can get round this a bit – not very successfully, but a bit – by saying damage isn't the cost of bringing up the child, that's an irrelevance, the damage is interference with the people's reproductive autonomy. They have lost something which is the ability to control the size of their family and we should reflect that in a small award of damages, but it's not the same as trying to capture how much it's costing them to bring up the child. That may be satisfactory or it may be deeply unsatisfactory depending on your view of the role of the judiciary. They sort of invented this new award of damages with no parliamentary authority to do that.

So just from that tiny little problem you see what territory you get into: economics, the funding of the Health Service, morals, ethics, and bigger questions, religious questions. I wish I had time to talk about the... One of the things that was pleaded was "You're the cause of your own loss because you could have had an abortion" and the court, quite rightly, I think, absolutely refused to accept that argument. But, so, there we have ethics

and vasectomies and so on. Let's move on, let me see if I can do this. Page down, Graham, page down. That's the one you have to press. So this is a bit more complicated, a bit more commercial. Let's just read through it and see where we get to. "The royal wedding of His Royal Highness Prince Rupert to Lady Sophia Sterling was due to take place on 1<sup>st</sup> August. On the 5<sup>th</sup> of March the department store Herrods," can you see what we did there? This is taken out of an exam paper that our students sat last summer so I just nicked it for this purpose. So, "Herrods contracted with an outfit called the Royal Staffordshire Pottery Ltd, which we'll call RSP, for the supply of 1,000 limited edition hand painted royal wedding plates featuring the image of the royal couple and the date of the marriage, for a total contract price of £50,000" which, if you can't do the maths I've helpfully worked out at £50 per plate, "of which £10,000 was paid on contract", paid in advance. "The balance was payable on delivery of all the 1,000 plates and delivery was to be made no later than 1<sup>st</sup> of May". What happens next? "On 1<sup>st</sup> April Buckingham Palace announced that the couple had broken off their engagement and the wedding would not go ahead. On 2<sup>nd</sup> April – presumably just waiting to check that it wasn't an April Fool's joke but was in fact true – "on 2<sup>nd</sup> April Herrods told RSP that in the circumstances it regarded the contract as null and void and demanded the return of its £10,000 pre-payment. RSP ignored that communication; completed the remaining plates; delivered them to Herrods on 3<sup>rd</sup> May and is now demanding the balance of its price." "We had a contract. We want our money." It ought to say, well it does, is RSP entitled to claim the balance of the price? So we're now in the territory of the law of contract. Now, does anybody have a thought about what you need to know in order to answer this properly? Is there any information that you're not given that you'd need to know? Yes. Sorry?

A: The contract. What is in the contract?

JO: What's in the contract. Absolutely right. We're given the bare bones of what the contract says. We're told that the price and we're told the dates and so on, but in the real world it's highly likely that the contract would contain a provision that deals with an eventuality of this kind, an unforeseen, sometimes it's called a force majeure clause or something, you know. If you've ever looked at a commercial contract, I hope you haven't thus far in your lives, but huge, long clauses about what happens in the event of terrorism and lightning strike and act of God and all these kind of strange phrases. So, in a way that ought to be the answer, but the problem is that the law of contract tries to provide a default position to sort things out where the parties haven't agreed in advance what should happen. There's a body of law called the doctrine of frustration, which is just so apt, the name of it, I think, students fine. It deals with the very rare situations where the law will actually let you off your contract because something completely unexpected has happened. This body of law is usually invoked – and I have to say it's very rare; English law's pretty strict about holding people to what they've agreed – but it's usually invoked where the contract has become impossible. Famous 19<sup>th</sup> century example, contract to hire a music hall to give a series of concerts and the music hall burnt down before the date. The thing about contracting is that you make the contract, if you've got any sense, in advance of the time when it's going to be performed; that's the whole point of contracting is to allocate risk in advance. So these things can happen. There the court said the parties didn't envisage that their contract would cover this; they wanted to hire a music hall not a smouldering, you know, ruin, and therefore the law, never mind what the parties had agreed, the law excused them from having to pay the hire for this smouldering wreck. Can anyone see any difference in the fact pattern here? I mean, it's obviously different, but if you were generalising about the music hall case, how is this different? Yes.

A: There is a difference because the hall burnt before the actual date of the contract, the concert, but in this case we can see that RSP failed to deliver their plates on the due date, actually they delivered—

JO: But the cancellation of the wedding was a month before. So the question is, what effect, if anything, does the cancellation of the wedding have on their contractual obligation to deliver in May? But the twist about the date is a little bit to make it a more difficult question. But what is the difference between the cancellation of the royal wedding and the burning down of the music hall? Yes.

A: Well, the plates are still intact.

JO: Sure, absolutely. This event may be unexpected; it may change the landscape. Let's use some contemporary language, it may be a seismic event that's changed the landscape completely but it doesn't make the contract impossible; it just makes it pointless for one of the parties, they're not going to be able to sell these plates. There's a very famous case that every law student knows about involving – if I could get the name of the king right it would help – Edward VII, Queen Victoria's son, became king at the turn of the 20<sup>th</sup> century and he got appendicitis on the day of his coronation so his coronation was cancelled at the last minute. There were lots of contractual ramifications for that, one of which was the people that had hired rooms in Pall Mall to watch the coronation procession go past. What's the effect of the cancellation of the procession on those contracts because, of course, they're not impossible; you could still sit in the room and look out of the window and see nothing going past? Now, most people had the good sense just to rearrange the contract for the rearranged date of the coronation, but one particular man was being a git and wanted to hold the punter to have to pay to hire his room even though there was no coronation going past. The court decided that, exceptionally, that contract was frustrated. So one of the things you'd have to – I'm looking at the time – one of the things you'd have to work out here is whether this contract was frustrated, because if it is then the obligation to perform disappears and you have to adjust what's happened in the past; you have to adjust the money that's been paid and so on in the past.

Alternatively, this contract remains absolutely in force whereupon you'd have to analyse the effect of this communication saying, "Two fingers up to you; we don't want your plates anymore." A lawyer would call that, I'm almost certain, a repudiatory breach of contract, sticking two fingers up to the contract saying you don't want it anymore. The other interesting issue there is, okay, faced with a repudiatory breach of contract what can the innocent party do? Sure, they can claim damages. You can always claim damages for breach of contract. But the Staffordshire Pottery here hasn't sought to claim damages; they've sought to do the opposite, ignore the repudiatory breach and perform the contract. Can they do that? Can they claim their price? All sorts of interesting law that deals with the question of whether you can just stick your fingers in your ears and ignore a repudiatory breach and perform. In a way you ought to be able to, even though that causes great hardship to the other party that's told you they don't want these bloody plates and you're purporting to deliver them. The twist, of course, is that they're being delivered two days late. What effect does that have? Does that change it back? Is that now a breach going the other way and so on and so forth? I know we're supposed to keep to time, so I hope that's given you a little taste of the law of contract not being snore,

reading through 100-page, closely-typed documents, but being actually quite interesting and alive and fascinating as well. We've got time for a bit of—

GV: I'm going to finish—

JO: I think we have got time for a bit of...

GV: Yes, the others can wait a little bit. Oh dear. Page down.

JO: Page down.

GV: I've done it. I've done.

JO: There's three at the top. Did you put that three there?

GV: I just typed the three in. But anyway, we want to finish with this question. There is a fifth question which we're not going to look at, we'll let you think about that in your own time, but question number four. Emma tells Duncan that she has obtained some confidential information relating to a company. Once this information is made public the value of the company's shares will increase significantly. Duncan says that he will pay Emma £10,000 for this information, including the name of the company. Emma agrees. It is a criminal offence to agree to deal in such insider information, as it's called. Duncan pays Emma £10,000 but she does not provide him with any of the information. Should Duncan be able to recover his money from Emma? This is actually a very simple problem. This is about a body of law called the law of restitution. If you pay money to somebody expecting to receive something in return and you get nothing, you can get your money back. So, on the face of it, Duncan can recover his money from Emma, but the problem is the underlying context for this was that both parties are tainted by illegality; they both participated in something which is a criminal offence.

So should the law say, "Well, if you're tainted by illegality we're not going to help you; you're a naughty person and you can't come to the courts for help"? But if the law says that, that means Emma, who is equally naughty, holds onto the money, lucky Emma. Now, this is a really difficult dilemma for the law. Should we say, "We're going to throw up our hands and not help you; you're naughty. Go away"? Or say, "Actually, we're going to unwind everything that's happened; forget the illegality, and put you back in your original position," so that Emma doesn't profit and Duncan recovers his money? Let's just do this on a show of hands, really quickly. Who thinks Duncan should recover his money? Thank you. Who thinks Duncan should not recover his money? That's pretty close. This is a real case – I've removed some of the complexities – which was heard by the Supreme Court in February and, unusually, there were nine justices sitting in the Supreme Court; normally there are five but there were nine in this case. I was actually one of the barristers who was arguing for one of the sides in this case. We haven't yet had the judgment, so I don't know what the answer is, but we are expecting judgment possibly even next month. There will be a case which is going to resolve this problem. I will say the answer is obvious, because of the side I was arguing, Duncan should recover his money; they should be allowed to unwind the transaction and put them back to their original position. Other people will argue differently, I'm well aware, and we'll have to see how the justices decide it.

Well, I hope that problem, and the others as well, just shows you that actually we are talking about live issues. Law is not, honestly, dry and dusty; it is live and exciting and important. Let me just say one thing, finally, if you have any doubt as to whether law – and particularly law at Cambridge – is the right subject for you, if you like looking at these sorts of questions and talking about them as we’ve been talking about them, I think that’s one of the best tests to say that law is the right subject for you. Now, you will be asking loads and loads of questions, perhaps today and subsequently, and one of those questions, I am sure, will be, “What about law? What about studying law at university?” If you want a further answer to that question a book has been published called, “What about Law?” You’ve just said it’s out of date.

JO: One of the chapters—

GV: One of the chapters is about European Union law so there will be a new edition at some future point, but at the moment it remains valid. But we wrote – well, yes, we did contribute to this book, “What about Law?”, but we wrote it for people like you who are trying to work out whether law is the right subject and particularly the way we teach it at Cambridge. Of course, our families’ holidays and Christmases depend on us selling many, many copies of this book, reasonably priced at all good bookshops. But I hope that, at least has given you an idea of why we think studying law is the best option for you at university. Thank you very much.