

**UNIVERSITY OF CAMBRIDGE
FACULTY OF LAW**

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Legal Problems

Speakers: Professor Graham Virgo and Dr Janet O'Sullivan

Right, good morning everybody. My name is Graham Virgo and this is Janet O'Sullivan and we are going to run the next session which is entitled "Legal Problems". You have heard a bit already about law at Cambridge and how law is taught. So people like us stand up in a room like this giving lectures but we also have the supervision system, the small group teaching system, and really what we want to do in this session is to give you an idea of what it's like to be in a supervision. Now, it's not going to be exactly the same because supervision group sizes are much smaller, typically two, three or four students and a supervisor, and the students have been given reading to do before the supervision in preparation for the discussions but, putting those things to one side, we will be able to replicate to some extent what the supervision experience is like and actually what we really hope to do is... if any of you are uncertain about whether law is the right subject for you or Cambridge is the right place for you, maybe if you engage in this session and enjoy the sort of things we are talking about, that might indicate to you, "Yes, this is the right subject and the right place."

Now, when you are studying law we encourage you all to think like lawyers and we can interpret that in all sorts of different ways, but quite often in a supervision you are given a legal problem and you are encouraged to think like lawyers. That means you need to dissect the problem, work out what is going on, who needs advice, what are the issues. Then you need to work out what the law is and that may require very careful interpretation of complex and contradictory law. Then you apply that law to the problem and hopefully get a result, but then because you are studying law as an academic subject you need to step back a bit and think about that result and think, "Well, is that right? Is that fair and, if it's not, what should we do to get a better result?" and that sometimes requires you to think philosophically and ethically and economically about what the purpose of the law is in that particular case.

Now, for this session to work we rely on audience participation and we really want you all to participate and actually we really do mean all of you. So those of you who are accompanying potential law students, we have done this before, accompanying adults often get really excited about all these issues as well. That's fine and do participate. We are not going to pick on individuals. Put your hand up – if you all get too excited we may cut through this and say we need to move on – and don't worry really about what you say. There will be some people here who have a bit of understanding about law and may actually use some technical terminology and some of you may think, "Well, I haven't any idea about what the law is or the terminology is." That doesn't matter, and actually there aren't any wrong answers. You can say, "Well, that's not true." If you disagree with us you are, by definition, wrong, but apart from that you really can say whatever you like. This is not a test, it's just seeing how you think about legal

issues and giving you an idea of what studying law is actually like. So that's by way of introduction.

You should in your bags have received one sheet or two sheets stapled together entitled "Legal problems". We will put the slides up as well. There are five problems. We have to stop at 20 past eleven so there won't be time to go through all of them but when you are travelling back home you may want to have a look at the questions that we haven't had a chance to look at and discuss with friends and family what you think the issues are and what the answers are. So let's start with the first problem. I will just read it out. "Andrew and Ruth decided to burgle Fred's house in the middle of the night when he would be asleep. Ruth knew that Andrew always carried a loaded gun with him but he promised that he would only use it to frighten Fred. When they broke into the house they started to put ornaments into a bag. Fred was woken by the noise and went downstairs to investigate. Now, there are two alternative things that happened. First, furious that Andrew and Ruth were stealing his property, Fred shot at them both killing Andrew and injuring Ruth. Do you think Fred is guilty of an offence, of a criminal offence so that he can be prosecuted and punished?"

Now, let's focus particularly on killing Andrew. Now, you may know that in this country we have a criminal offence called "murder". I hope you know that, and murder is committed when you cause somebody's death intending either to kill them or to cause them serious injury. So I suppose the first question is do we think that Fred is guilty of murdering Andrew? Are there any thoughts about that? Yes.

A: Yes, because it seems that his motivation was more revenge for stealing his property and so it's not self-defence. He didn't have to kill Andrew, it was just because he was furious.

Okay. So he is furious, he has certainly caused Andrew's death and we haven't got all the evidence here but this looks as though, particularly if it's revenge-based, he is setting out to kill or to cause serious injury. So that does look like murder, but then you did jump ahead and say, "It's not self-defence." Is that right, is this self-defence? Because if it is there are defences to murder and some of those defences mean you are acquitted of murder. So are there any thoughts about that? Yes.

A: Really we can only say it's self-defence if Fred himself is aware that Andrew is carrying the gun. Now, the text hasn't necessarily stated that so I suppose we can't really assume that he is aware—

Fine. I mean, if this was a criminal trial we would want to investigate that, but there is certainly nothing to suggest that Andrew actually has this gun out, but we could look at it on two alternatives. One, Fred thinks Andrew is unarmed or is not aware of a gun or he thinks he does have a gun. Would that make a difference? Yes.

A: Well, he had certainly shot at them both, so was he really aiming for Andrew or he was shooting because he is furious?

He is shooting because he doesn't like either of them, let's say, and Ruth survives but Andrew is dead. Yes.

A: I think it does matter, because if he did have a gun arguably the reason why he shot them was to protect himself from, I don't know, from being shot, not always his property because he could always get his property back.

Right, but even if Andrew has a gun, I mean, of course, he could just aim that gun at Fred but he has not actually shot at Fred. Fred fires the first shot, so we would need to investigate that. Let's make this more difficult though, let's assume that Andrew does not have his gun out. It's in his pocket and Fred doesn't think he has a gun. Do you think Fred has a defence of self-defence?

A: I would say no, because it's not proportional. So if the person doesn't visibly have that gun in their hands then his response with the gun wouldn't have to be severe.

Okay. So in a way the question then becomes do we consider it reasonable for Fred to have killed Andrew, bearing in mind that Andrew is committing a crime? He has actually entered into Fred's property and he is taking his ornaments, his precious ornaments. Is that sufficient, do we think, to justify Fred in shooting Andrew?

A: No.

A: No.

It's not, fine, because human life is worth more than property? Could we put it in those terms? We might want to put it in those terms. What if we change it to say that Andrew did have his gun? He has not fired a shot but Fred can see that Andrew has a gun. Does that make a difference?

A: Well, if he has seen there is a gun it doesn't necessarily mean it's self-defence. because if his life wasn't being immediately threatened by the gun he is not necessarily seeing it as a direct threat to his life. It's not necessarily still proportional because self-defence is about threat to your life or serious injury. That wasn't necessarily apparent to him.

So you would say therefore he shouldn't have a defence even if Andrew has a gun?

A: If he has the gun being pointed at him then perhaps, yes, but if he has the gun in his pocket or in his bag, perhaps not.

So it will depend on looking at all the facts, really good. Now, I haven't given you much law on self-defence and honestly this is an area of the law that's really messy, but it's interesting some of you picked up some words which are relevant to self-defence. Self-defence applies where on the facts as you believe them to be, your actions can be classified as reasonable. That's the basic test: is what you did reasonable? But over recent years parliament has been rather concerned about cases where people are burgling houses and stealing property and householders come across those people and use fatal force and in those householder cases parliament has actually changed the law to say that if you use fatal force in those circumstances it is a defence except if what you have done is grossly disproportionate. Some of you used the language of "proportionate", which is really good, but actually the statute says "grossly disproportionate". Now, imagine you are on the jury and you have heard all these facts and seen the evidence. Would you say that what Fred has done was grossly disproportionate?

Now, we need to distinguish between the two cases. Let's say Andrew had a gun and was aiming it at Fred. Is Fred killing Andrew grossly disproportionate?

A: Yes, "grossly" normally means gone beyond the ordinary human being's limits, what the average person would do. Andrew might have been aiming at Fred but never actually shot, or if he shot and missed then we might say that Fred wasn't being grossly disproportionate.

Does it matter, do you think, that Fred fired the first shot, should that matter?

A: I think it does.

It does, okay. Yes.

A: I don't think it does, because he could have sort of done a pre-emptive strike. So he thought that Andrew is most likely going to shoot him if he doesn't—

It's basically then Fred's life or Andrew's, okay. Any other views on this? Yes.

A: I think we should have to put ourselves in that respect. If we can't say, "Yes, I'd have waited for the first shot to occur," if you were in that situation. I wouldn't be willing to wait for the first shot, I'd be too worried. If someone was aiming a gun at me and I had a weapon myself—

So if I had a gun now—

A: Okay, in that case, you couldn't say that, yes, you'd refrain until they fired the first shot, I think yourself pursue instinctually—

So I pull out a gun and aim it at you, you happen to have a gun with you and you then shoot me. Would you regard your action as grossly disproportionate?

A: No.

Even though you have killed a professor of law [in the middle of our progress? 00:14:51]. It's a matter of judgement, fine. What if there is no gun? Andrew does have a gun but Fred doesn't know, it's hidden away. Would you say Fred's action then is grossly disproportionate? Or for those of you who said it was grossly disproportionate if Andrew had a gun, presumably, it's exactly the same if he doesn't have a gun, but what about those of you who would want to distinguish between these cases. Would anybody say you should have a defence of self-defence if Fred has fired the shot and isn't aware that Andrew has a gun? Would anybody think there should be a defence there? Some of you, why?

A: I suppose I might, because Fred is in this scenario, probably extremely panicked. He has come downstairs in the middle of the night, he has just woken up, he is not in his right mind really and he sees these two masked robbers and he has done it instinctually, furious rather than having thought about it and it may not be... and I would say it isn't that grossly disproportionate because he is very frightened.

Okay. So you certainly, and cases have said this, have to put yourself in the position of that person at that time, aware of the particular stress and strains that they are facing. Okay, any other views. Yes.

A: I think as well that Ruth is there, so there is two of them and he is on his own. It makes it more threatening—

Okay. So therefore though by two of them being present there is a greater threat to him. I'm going to pause at that point. Just to say, I think this illustrates really well how you can state the law but actually when you are thinking about applying it and the right result, there will be all sorts of different interpretations and what you were doing is just thinking about what does "grossly disproportionate" mean and it will mean different things in different contexts. I just want to do this for the fun of it. Let's just say the facts are Andrew has a gun with him but he hasn't got it out. Fred doesn't know of the gun and fires a shot and kills Andrew. Who thinks Fred should not be guilty of murder? Okay, who thinks Fred should be guilty of murder? I think that's a few more for should be guilty of murder.

A: Life imprisonment.

Yes, life imprisonment, absolutely, it's a serious crime. Now, briefly, what about the alternative scenario. This is a very different question. This time when Fred comes across Andrew and Ruth, Andrew has his gun and he shoots Fred dead. Andrew is guilty of murder, nice and easy. Life imprisonment, he will be locked up, punished, but what about Ruth? Ruth was going along with Andrew to commit burglary so she is guilty of that, but she knew that Andrew had a loaded gun, but Andrew had promised that he would only use that gun to frighten Fred and in the end he didn't, he actually killed Fred. There is a very complex body of law called "accessory liability" and what that basically says, if somebody commits a crime and somebody else helps or encourages the commission of that crime with an appropriate awareness that that crime might be committed and that crime is committed, then that person can be guilty of the same offence. So you can be an accessory to murder if you helped or encouraged the murder with an appropriate awareness. On these facts, do you think Ruth should be guilty of murder as well, as an accessory? Yes.

A: Does the court know that she knew though? She could just say [inaudible 00:19:44].

You are right, if this was a real trial we would have to investigate her statements carefully. She knows, she has owned up. "I knew he had a loaded gun but he told me he wasn't going to use it." Do you think she should be guilty of being an accessory to murder? Yes, yes.

A: No, I don't think she should be guilty because she [was on a pretence? 00:20:13] that murder wasn't going to be committed and she might think there is no intent that she or Andrew commit it and she did not go in knowing that there was going to be—

Okay, and good, you have used the word "knowing", knowledge, that the law focuses on whether you know or intend that that offence will be committed, but then the question is if that's what the law says, is that right? She has gone along with this chap, knowing that he has a gun and we know that in the pressure of the situation that gun might be used. Should we prosecute and punish her for going along at a time when that gun is used to commit murder?

A: Well, yes, because she knew that the gun was loaded and [inaudible 00:21:07] [may not have got him to unload it? 00:21:09] so... because it could have frightened the... he could have frightened Andrew without having a loaded gun, therefore, she encouraged him to shoot him—

Fine.

A: —because she knew of the risk.

Which therefore raises all sorts of other deeper questions about what the point of the criminal law is. Why should we prosecute her for that? Why should we punish her, what we are trying to say about her behaviour that justifies convicting her for it? Okay, I'm conscious of time, I'm going to have to stop this one there. There is so much more we could say about that but well done. We will move on to—

Right, how do we get to number 4?

You want to go to number 4?

Yes. Right, so I'm going to move on to something really rather different but don't go away with the idea that it's only the criminal law that gives rise to sexy dilemmas and conceptual problems of the kind you have been hearing about. So I have put up a rather more commercial problem. So let's just start with the main bit and then we will look at the alternatives briefly at the end. "Bob's daughter is getting married on Friday. Back in July 2015 he made a contract with Ariadne to install a deluxe marquee in his garden for the wedding reception for an agreed price of £10,000. At nine o'clock this morning," look how topical I am being, I made it in the present tense, "an hour before the marquee was due to be delivered, Ariadne phoned Bob and told him that she was not going to install the marquee unless Bob agreed to raise the contract price to £15,000. Bob was outraged and rang around all the other marquee companies in the area but all were fully booked. Advise Bob." So any thoughts first of all? Yes.

A: Here Ariadne has breached the contract. The contract was an agreed price of £10,000 two days before. The contract has been breached because Ariadne has raised it by £5,000.

Okay. So you are absolutely right. The one thing that's clear on these facts is that Ariadne is in breach of contract, on the assumption that she is saying either expressly or implicitly that she is not going to erect the marquee for the agreed price. So let's assume she has said, "And unless you raise the price I am not going to turn up," so she is in breach of contract. So does it help Bob to know that? What would you say to Bob at that point? You're his solicitor, he has gone to see you. You say, "Ariadne is in breach of contract." Where does that take him? Yes.

A: I think [you need to... actually on some of the? 00:23:55] wording within the contract, was there a clause which allows that changes to be made within the time period and—

Absolutely right, so that's a really good point. Before you start giving advice on breach of contract you would want to make sure that you had checked the wording of the contract. Sometimes they have things like a price variation clause or a period of time during which one party can change the terms. Let's assume there is nothing like that. So the wedding guests are due in two days' time. So the first thing I need to tell you is that being advised that this is a

breach of contract is not a lot of help to Bob because the English law of contract hardly ever gives a really powerful remedy. What Bob is going to want his solicitor to tell him is that Ariadne can be marched into court within the next 48 hours and compelled to perform the contract at the agreed price on pain of going to prison or something like that. It doesn't work like that. Very occasionally you can get that sort of court order to compel someone to perform their contract but it's incredibly exceptional in English law.

So your advice to Bob at that point would be, "Well, you can sue her for breach of contract and it's taking about nine months to get a slot in the small claims court for an action of this kind and in about two years' time you will probably get damages to compensate you for the fact that she didn't perform the contract," but that's not really going to help the 200 guests that are going to stand in the pouring rain in his garden without a marquee over them. Let's move the facts on slightly, let's assume that Bob decides, to use the phrase that I don't think is a filthy phrase although some people have suggested it might be, but I don't if you have ever heard this expression, Bob feels that he is over a barrel, which is to do with sailors, I believe, having water pumped out of their lungs when they have drowned. You are over a barrel, you have got no choice. He has lost his options, he has got no autonomy. He has got no real choice other than to give in. So let's say he agrees to pay the extra £5,000. He might actually pay it or he might simply agree to pay it. Let's say he actually pays it, that makes it slightly simpler. He actually pays £15,000. In the cold light of day a week later when the marquee has been erected and the wedding reception has gone ahead very successfully, do you think he should be able to sue Ariadne to get that extra £5,000 back? Yes.

A: Go on—

A: Which one, me?

You, yes, great.

A: I would say no, because in the text it says she was being paid to install a deluxe marquee in his garden and so until the point that she actually erected the marquee the contract hadn't been entered and—

No, the contract was entered into in July 2015.

A: So is that assuming he pays it?

So they made a contract, it's a really nice point actually, which is that the magical thing about the law of contract is that when you make... we haven't got time to talk about all the requirements for a binding contract, and the word "binding" itself suggests something rather sort of 50 shades of grey-like, but it's sort of... it is, you know, you are under an enforceable obligation to do something in the future. So you go from a position where you are free to do anything you like in the world to a position where because you have given a promise that someone's giving something in return you have bound yourself to do something in the future and the law regards that as enforceable. So the question is people are free to change their minds all the time. Bob changed his mind but only did so because he didn't have any real choice.

Now, if we go back to Professor Virgo's example, if this was a primitive kind of legal system we were talking about here, we might be exploring a situation where someone put a gun to his head

and said, “Unless you pay me £15,000 instead of £10,000 I’m not going to do the work,” and there it would be very, very obvious, wouldn’t it, that the law should give the victim a right to their money back, but if you think about it, what Ariadne has done is perhaps not quite so blameworthy in a primitive sense but she has done something wrongful. She has threatened to breach a contract, a contractual obligation that she had willingly undertaken, she has threatened to breach a contract in circumstances where the only reason Bob paid the extra money was because of that threat and in circumstances where he had no reasonable alternative option. He has rung round all the other marquee companies and they are all fully booked.

So, in fact, I think on those facts English law probably would give Bob a remedy to recover the money, the extra money, the £5,000 if he has paid, it or give him a defence if he has agreed to pay it when the metaphorical gun was to his head. He has agreed to pay but now doesn’t want to, and that’s called “duress”, “economic duress” and that represents, that sort of main facts pattern that I have put there, represents the sort of classic form, the easy form of duress where you have got those three features. A threat to breach a contract which caused the other party to pay and where they had no reasonable choice but to do so. I mean, he could have chosen to say, “Stuff you, I will see you in court.” He had a choice. He could have banged his fist on the table and stuck to the original contract, but that wasn’t a practical one because he had 200 guests turning up in 48 hours’ time. Now, how would your advice differ? If that’s the law, that there is thing called “economic duress”, that you can argue vitiated his consent to paying this extra money, wasn’t genuinely what was agreeing to do.

How would your advice differ first of all if she phoned up like this in slightly different terms? The first example she said, “I’m sorry to tell you, Mr Bob, but I’m not going to erect that marquee unless you pay me £15,000 because I’m a,” you know, nasty piece of work, but in part A she had to raise the price for all her customers because the cost of running a marquee business has risen dramatically in the past two years as a result of new health and safety legislation. That’s quite a believable scenario. She rings up and she said, “I’m awfully sorry, I hate to do this to you. I’m not trying to screw you, I’m not trying to make a profit. I’m just passing on, you know, costs that are, you know, being forced upon me. I’m simply trying to stay afloat. You understand, don’t you? I’m being very reasonable.” Does anyone think that should make a difference to whether Bob can claim the £5,000 back, anyone think it does make a difference? Yes, why do you think it makes a difference?

A: Because within reasonable time, yes, but not at nine o’clock of the morning they are going to be doing it.

Okay.

A: So if it was six months beforehand then, yes, because—

So let’s explore that. If it was six months before, it probably wouldn’t even have ticked all the boxes in the main part of the problem because he almost certainly would have had a reasonable alternative open to him. Here, that box is still ticked, you are quite right. He still has no reasonable alternative open to him, but is she doing something wrongful? So she is not in bad faith. Professor Virgo knows exactly what I am going to try and say here. Can I just say most of you seem to think it makes no difference, is that right? That if on the morning of them coming she says, “I’m really sorry, it’s not my fault. Prices have gone up beyond my control,” you think that makes no difference, he is still, as it were, over a barrel. I think you are right. There are some commentators who think that part of the essence of economic duress should be the bad

faith of the party making the threat. That seems to me to be nonsensical in a commercial world. You make a contract, you have to abide by it. We don't explore people's motives. This is not criminal law, we are not punishing people. We look at the obligations that they have undertaken. What about B. She made a mistake back in 2015 and he was getting this marquee for a bargain price because she wrongly inserted £10,000 into the written contract when the standard charge for that particular marquee would have been £15,000. So all she is doing is correcting an error. Any thoughts? Yes.

A: Well, nothing has changed. She has had two years to change this price, she hasn't done so until an hour before she is doing it, so no excuse.

Okay, quite right. Would it make any difference to your argument if Bob spotted the error at the time and thought, "What an idiot, she has only gone and put the wrong price in. You know, she doesn't realise she has made an error. I'm just going to quickly sign it and send it back." Is that a capitalist triumph, you know, or is that something where you feel he shouldn't be able to hold her to that? What if she put £15 instead of £15,000 and he spotted it? I'm not going to answer it because I'm conscious of the time. These are the standard sorts of questions that we have to think about in the law of contract. What do you do about mistakes? I know many of you will remember situations where companies put goods for sale on the internet and put the wrong price and a million customers clicked "yes" and clicked "purchase" and off they go. So how should the law of contract respond to errors?

Final question. If I read them out you can tell me. What's different about the facts here, what's materially different about the facts here? "Bob had left until the very last minute to try and book a marquee and was phoning Ariadne for the first time two days before the wedding date. Sensing his desperation (capitalist) Ariadne quoted £15,000 instead of her usual price of £10,000 for that particular marquee." What's the crucial difference between that scenario and the main one? Yes, right in the corner.

A: They haven't entered the contract to begin with.

Absolutely right. It sounds obvious but it's not always obvious to see that that distinction is so crucial. This time they are not in a contractual relationship to start with, so does that change your analysis? Let's say he agrees to pay £15,000 and later he tries to argue it should be £10,000 because that was her usual price. Anyone, yes. I don't mind, I'm not quite sure who I am pointing to but—

A: I feel like he should just have to pay the amount that he agreed to because that was what the contract was originally [and that's why you couldn't? 00:35:47] argue that, you know, if he is organising something two days before then he will have to overcompensate for the short—

Absolutely, he is an idiot, right, he is an idiot, but how about this, and you are quite right, that this is crucially materially different, that she is not threatening to do something wrongful which is breach a contract that already exists, she is simply being a hardnosed negotiator? Many of the parents in the room will be familiar with gazumping. You know, you are making a deal to buy a house and you have agreed a price but that contract hasn't come into effect yet because you haven't exchanged contracts. You have agreed a price of £200,000 for a house and the moment before you are about to exchange contracts the vendor says to the purchaser, "Do you know what, I'm thinking £230,000 sounds a bit more like it," and you think – I'm not going to use

a rude word – but, “You have got me over a barrel. You know, I have got the removal men and I’ve got a chain of contracts. I’m selling my own house and I have got no choice, I’m going to go ahead.” Some people think it’s appalling that that contract is binding, that gazumping makes no difference. That if you decide to sign for £230,000, that’s the contract price.

What if someone realises that they have got the only stock of medicine that is going to cure a particular outbreak of a very unusual but fatal disease? They would normally charge £2 a tub but because of the circumstances they decide to charge £200 a tub or £2,000 a tub. Are there any limits to freedom of contract, to the circumstances in which we are simply utterly capitalist and say, you know, you charge what you like? What if the person who is at the other end is very vulnerable, should the law protect people? What if a salesman knocks on an old lady’s door and the old lady hasn’t got dementia but she is rather naive and the salesman or the antiques dealer says, “That’s a lovely painting you have got above your mantelpiece, madam.” “Yes, it is, isn’t it, I like it very much.” “Such a lovely painting. I will give you £60 for it.” “Oh yes, thank you. £60, done,” and what the salesman hasn’t told her is that he has spotted it’s by Constable and worth £60,000? No, no wrongful threats. Hasn’t said anything false, hasn’t put a gun to her head, yet somehow you feel uncomfortable with that outcome. So maybe that’s just given you a few things to think about in a very simple scenario. Some of the things that the law of contract has to deal with, everyday commercial scenarios where you are always up against the limits. Freedom of contract in its sort of purest sense versus how do we regulate this, how do we ensure fair transactioning and so on. Anyway, have we got time for another little exercise?

Shall I do one last short one?

Yes, you do another one.

Then we will have to stop but let’s look at a problem that has a bit of criminal law and a bit of contract law in it and this is problem number 2. Now, I need to give you a little bit of background to all of this. There is a body of law in this country that says if you pay money to somebody to do something and you give them the money and they don’t do anything that they said they would do, you can get your money back, that’s a long recognised rule in English law, but let’s just see how far that idea should go. “John paid Anthony £10,000 to induce him to kill John’s girlfriend Susan. Should John be able to get his money back in the following alternative circumstances? First, Anthony decided that he would not kill Susan but he has refused to repay the £10,000 to John.” Now, they actually made a contract. That was a contract for Anthony to go and kill Susan. Now, you may know, well, I have told you already about murder being an offence in this country but an agreement to commit murder is a conspiracy and that is a criminal offence as well. Do you think John should be able to go to court to get a judge to make Anthony pay the money back? What do you think?

A: No, surely you can’t have a legally enforceable contract to perform an illegal act?

That is right. This is an illegal contract and it is void because it’s illegal, but can you get your money back? Why not? Yes. You, yes.

A: I definitely think there is like an element of like unjust enrichment there because he has got the £10,000 and he hasn’t done like what John had told him to do and he has benefited from the £10,000 without any sort of like reciprocating the action.

Okay.

A: So I think he has definitely benefited from it without [inaudible 00:41:41].

Okay. So Anthony has benefited. Should Anthony pay the money back?

A: Yes.

He should. Why should he?

A: Because he has got the £10,000 without doing anything so—

Correct, yes, Anthony hasn't done what he said he would do. Now, I know he said he would commit murder but should Anthony be allowed to hold onto this money?

A: I would say that, well, by making this contract, surely as he is intending to kill, that is criminal, as we have all agreed, so therefore he would have to give the £10,000 back because by... or he would not get to keep the £10,000 at least because otherwise that's almost encouraging these contracts to be made and future cases will arise.

In the light of that, is the right policy to say, "As between the two of them it's better to restore them to their original position rather than to allow Anthony to profit"? I'm putting words in your mouth but you would agree with what I have just said?

[Even might be better? 00:42:49].

What? It's even—

It might be an even better outcome.

There may be other outcomes but so would it make any difference if Anthony actually killed Susan? So he did what he promised to do and he is guilty of murder and we can lock him up but could John get his £10,000 back then? Because, as you said, this is an illegal contract. There is no contract and if there is no contract, surely you can't perform anything under the contract and therefore you ought to get your money back? Isn't that a logical position to reach? Would anybody agree with what I have just said? Nobody, which is a bit surprising because there was a case in the Supreme Court, the top court in the country last year, didn't involve those facts although it did involve an agreement paying an awful lot of money to commit a crime and this problem was identified by some of the judges and some of the leading judges in the country—

One—

Three of them actually said if money is paid to commit murder and the murder occurs, that money should be repaid. Now, you may say, "That's bonkers. That's just an absurd result," and it might be but I would say to you, why do you think that's absurd? Can anybody say why in that second situation the money shouldn't be repaid? Yes.

A: As a criminal offence has already been committed, obviously, as has been identified before, they haven't entered into a legally binding contract.

Right.

A: Say if someone, for example, buys some stolen goods, they don't enter into a legally binding contract. It's a gentleman's agreement—

Okay, correct.

A: —and a person tries to get a refund on that and obviously they can't, it's not enforceable by law.

It might not be enforceable by law, you are right, but the problem here is if we say that Anthony can hold onto this £10,000, what we are actually saying is he can profit from his crime and that may even be regarded as an unfair result. So actually we have a situation where you are saying John shouldn't get the money back and, arguably, Anthony shouldn't get the money. You said there might be a third or is there an alternative solution to this problem?

A: Just take money off both of them and—

A: Absolutely.

And do what with it?

Confiscate.

A: [Inaudible 00:46:06] like, yes, the government or the [inaudible 00:46:13].

Okay, so the charity or the government, arguably the same thing, and use it for better purposes. That, I think, is the right answer. Interestingly, in this case in the Supreme Court last year there were two men who had agreed to commit a very serious crime who were both in court. They were never prosecuted and they were basically one saying, "Give me my money back," and the other person saying, "No," and the money went back, it was ordered to be paid back. Whereas I think there was this third solution which is confiscation for the charity or the state.

They have to have been prosecuted for the confiscation regime—

They don't actually.

Don't they?

They don't, so that was an option there, absolutely. Now, actually we have gone over time. We have got 30 seconds left but I just want to pull this together by saying two things finally. First, I hope that's given you an idea of what it's like to study law. I think you may gather, we really enjoy teaching law and talking about it and all these issues. Secondly, and I make no apologies for what I am about to say, you might be thinking, "Is law the right subject for me to study at university? Is there a book I could read that might help me determine that?" and the answer is there is and we and other people at Cambridge have written a book for people like you, all of you, potential law students and others, called "What About Law? Studying Law at University". There are other books on the market, they do different things. This actually answers the

question, what about law? I hope you have enjoyed this session and I hope you enjoy the rest of open day, thank you.