

SECOND EDITION

WHAT ABOUT LAW?

STUDYING LAW AT UNIVERSITY



Catherine Barnard, Janet O'Sullivan and Graham Virgo

EDITORS

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Studying Law at University

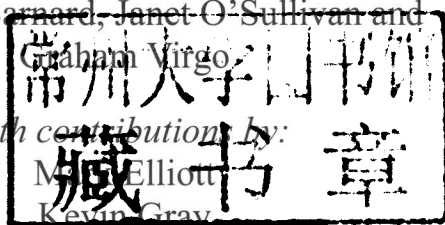
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WHAT ABOUT LAW?

Most young people considering studying law, or pursuing a career in the law, have very little idea of what learning law involves and how universities teach law to their students. This book provides a 'taster' for the study of law; a short, accessible presentation of the study of law as an academic subject, designed to help 17- and 18-year-old students and others decide whether law as an academic discipline is the right choice for them as a university subject, or, if they have already made the choice, what to expect when they start their studies

What About Law? counters the perception that law is a dry, dull subject. On the contrary, the book shows how the study of law can be fun, intellectually stimulating, challenging and of direct relevance to students. Using a case study approach, the book introduces prospective law students to the legal system, as well as to legal reasoning, critical thinking and argument.

This is a book that should be in the library of every school with a sixth form, every college and every university, and it is one that any student about to embark on the study of law should read before they commence their legal studies.

For more information and full details of the cases see the companion website www.whataboutlaw.com or www.whataboutlaw.co.uk.

All of the authors have long experience in teaching law. They have also been involved in advising prospective law students at open days and admissions conferences at Cambridge and beyond.

Foreword

The two questions most often asked of a barrister about his or her profession are, 'How can you defend someone if you know they are guilty?' and 'What should I (or my son/daughter) read in order to decide whether to study law?'. This book now provides the answer to the second enquiry, leaving more time for discussing the first.

You can learn something about legal studies by reading the law reports in *The Times* or attending a trial at your local Crown Court or watching classic films such as *Twelve Angry Men*. But like a tourist in a foreign country where you do not speak the language, it can help to have a professional guide. The authors of this volume expertly identify and communicate the essence of the subject: its broad scope, covering a wide range of social, political and moral problems; its intellectually satisfying methods of analysis, based on logic, precedent and judgment; and, above all, its entertainment value.

The law addresses everyday concerns and its reasoning is often no more than applied common sense. But we lawyers do not make it easy for others to understand what we are talking about. Lawyers still have, as Jonathan Swift observed nearly 300 years ago, 'a peculiar cant and jargon of their own, that no other mortal can understand'. This can be confusing, even intimidating, to others. One of the great merits of this volume is that the authors demystify the process. They strip away the obscurities and explain what the study of law is really all about.

I very much hope and expect that the information, and enthusiasm, contained in these pages will encourage potential law students. Our society may not need more lawyers. But we certainly need more lawyers who think clearly about the meaning and the content of the laws that govern all our lives.

Lord Pannick QC
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Preface

What About Law? is primarily intended to be a ‘taster’ for the study of law as an academic subject, with a view to helping prospective students decide whether reading law at university is for them. It also aims to provide an introduction to the main subjects students will study for a law degree. We hope that many other sorts of reader will find something in it to interest them too, perhaps school careers’ advisers or parents wishing to understand what their children are studying, or planning to study, at university. Indeed, we hope that any intelligent non-lawyer who has ever wanted to know a bit more about English law will find this book a valuable tool.

However, this book comes with a health warning: it does not provide a comprehensive review of the nuts and bolts of the legal system. There are plenty of such books on the market. Nor is it packed full of useful tips as to how to be a good student of law (how to write good essays, how to prepare for exams, etc) or how to become a barrister or solicitor. Rather, it explores what the law is, how it has developed, how the judges interpret it and *why* it is that way. It does so by examining seven cases, each one taken from the subjects forming the ‘core’ of any law syllabus (criminal, contract, tort, land, equity, constitutional and EU Law). These seven core subjects are the minimum which students must study, and pass, in order to be able to undertake their professional training to become practising solicitors or barristers. Sometimes students consider these subjects dry and technical. The aim of these chapters is to show that they are anything but.

In analysing the seven cases, the various authors examine the legal

issues raised, the legal reasoning employed by the judges in the different courts, and the relationship between the particular area of law and some of the broader social, political, philosophical, ethical and economic debates. But, of course, each chapter inevitably moves beyond the one chosen case, exploring other aspects of the relevant legal landscape, such as related decisions of other courts as well as legislative developments.

Putting it another way, the aim of this book is to use the cases in the same way as newspapers write features on the ‘life in the day’ of a particular celebrity: each case is used to illustrate issues which have ramifications beyond the immediate subject in hand. The subjects of many of these cases are not celebrities, certainly not in the tabloid sense of the word, but ordinary people suffering the vicissitudes of life. And because each case is known by the name of the parties (and not by a sterile reference number or date as on the continent) these individuals acquire a certain celebrity status among law students. If you like what you see, you can read the actual cases themselves on the companion website (www.whataboutlaw.com).

As you will discover, the cases studied in the core subjects are the foundations to understanding any branch of law and for learning that elusive skill—how to ‘think like a lawyer’ (and this certainly does not mean how to charge clients a lot of money). Of course the study of law is academically demanding (this should never be forgotten), but it is also intellectually stimulating, controversial, of daily relevance and very often highly entertaining.

Each of the authors of the chapters in this book is a leading academic and we have, cumulatively, over a century of university teaching and research experience. We hope that we have managed to convey some small part of our own boundless enthusiasm for our subjects—if so, we will have achieved our objective.

Catherine Barnard, Janet O’Sullivan and Graham Virgo (editors)
Cambridge, September 2010

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The editors would also like to express sincere thanks to their colleagues and friends, Mark Elliott, Kevin Gray and Tony Weir for writing the constitutional, land law and tort chapters, respectively, and for their constant encouragement and support for this project.

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Introduction to Law

Catherine Barnard, Graham Virgo and
Janet O'Sullivan

STARTING TO THINK ABOUT LAW

Picture this. Laura, who is 17, organises a party at the family home while her parents are away for the weekend. It gets out of hand. For Laura and her parents, it is a nightmare. But for a lawyer, there are as many questions as there are empty bottles strewn the next morning across the prized living-room carpet.

What if the party was very noisy? It might have caused a nuisance to neighbours living nearby and those neighbours might have contacted the local authority, whose noise-prevention officers have powers to close the party down or reduce the noise in some other way. If the party was large enough—and loud enough—to cause a serious nuisance across a wide area, Laura and her guests might even be prosecuted for the crime of public nuisance and eventually punished.

What if the partygoers damaged the house or stole some of the family's possessions? These are obviously criminal offences, but what happens if the perpetrators can't be identified? Can guests be forced to give evidence of what happened? Can they get into trouble if they don't name names? If the perpetrators are easily identified and have lots of money, Laura's parents might even consider suing them for compensation to cover the cost of all the damage. If the parents choose not to bother, but claim instead on their household insurance policy, can the

insurance company recoup some of the money it pays out from those responsible for the damage?

What if one of the invited guests, Mark, was seriously injured when he tripped over a loose paving-stone on the patio—a stone that Laura's parents knew was dangerous and had been meaning to get fixed? He might want to sue the parents for compensation, but would it make any difference to his chances of success if the parents had expressly banned their daughter from inviting anyone to their home while they were away? And what if Mark was drunk or messing about when he tripped, but the paving stone was sufficiently dangerous that he would, more likely than not, have tripped and suffered the same injury even if he had been perfectly sober? Do people nowadays resort too readily to litigation when injured, unwilling to accept that they have no one to blame but themselves for what happened?

How would the arrival of gate-crashers affect the position? What was their legal status while in the house—were they trespassers? If so, what does that mean? They might be guilty of a crime, such as burglary, if they intended to steal property. Could they be forcibly ejected by the hostess's friends, even if this requires physical violence? What if the hostess turned a blind eye to their arrival or appeared to welcome them, but later wanted to throw them out? And what if a gatecrasher is injured tripping on that same dodgy paving-stone?

The internet adds a new dimension to the problem. Perhaps Laura publicised the party on an internet chatroom, or maybe some of her so-called friends hacked into her account and publicised the party without her permission. Would this generate any legal liability in itself? What about any responsibility of the company supposed to monitor the chatroom? Is it asking too much to expect a traditional, national legal system to cope with the challenges of an online world?

Did Laura buy alcohol for the party, even though there are supposed to be laws preventing that happening? Or did she raid the parental drinks cabinet? Are there any laws that penalise *serving* drinks to under-age people at private parties, or any licensing requirements that apply to such private gatherings? We all know about the problem of binge drinking, but some countries have laws imposing 'social host liability'—this means that if a host has served alcohol and then allows an obviously

drunk guest to drive home, the host might be liable to pay compensation if the drunk driver later injures or kills someone on the road. Should the same laws be introduced in the UK and, if so, should they apply just to commercial premises, like pubs, or should they apply to private parties too? And should they apply if the person killed or injured is not an innocent third party but the drunk driver himself?

Meanwhile, back at the party, what if some guests did things they deeply regretted next morning? If a woman consented to sex when drunk, but the man knew that she wouldn't have consented if she had been sober, is he guilty of rape? And can a drunken consent to sex really be considered consent? What if a man believes a woman is consenting, but only because he is too drunk to realise that she isn't? The legal age of consent to sex is 16, so what are the criminal law consequences of a 19-year-old man having sex with a 15-year-old girl who said she was 17, or of a 15-year-old boy having consensual sex with a girl his own age? Is it right for the law to attach such overwhelming significance to the age '16' in this context? Is it practicable to have laws that are so difficult to enforce?

As the party descended into chaos, there was a fight and a man was hurt. Can he sue for damages, even though he was a willing participant in the fight? If the fighting spilled out onto the street, can the police arrest the perpetrators for causing a breach of the peace or for drunk and disorderly conduct? Are there any additional protections for under-age suspects?

Finally, the police raided the party and found that illegal drugs were being taken. Is it illegal to take drugs, to share them, or just to supply them? Is it economically and politically sensible to tackle drug-taking using the criminal law?

Laura is clearly going to be in trouble with her parents, but can she be held legally responsible for any of these disastrous events, even if she spent all night cowering in her bedroom, terrified and unable to do anything to bring the party to an end? And should her parents be regarded as legally responsible, even though they were not there and were horrified to discover the chaos when they got home?

* * *