

EXAMPLE ONLY
INTERVIEWEES WILL BE PROVIDED WITH ACTUAL TEXTS BY THE COLLEGE

Pre-reading for Law Interview

Attached to this sheet are two texts that will be discussed in your interview. You are welcome to make notes. You are free to refer to these texts (and any notes you have made) during the interview.

All of the necessary information is given on the attached sheets. No other knowledge of the law is necessary.

Text 1:

Text 1 consists of an extract from a judgment. When reading the text, it may be helpful to keep the following questions in mind:

- What are the facts of the case?
- What did the parties argue in support of their case?
- What did the judge decide?
- Why did the judge reach their decision?
- Can you deduce a legal rule from the judgment that could be used to decide similar cases in the future?

Text 2:

Text 2 consists of an excerpt from a piece of legislation, followed by two factual scenarios. Consider how you might apply the legislation to the facts presented in each scenario.

Important Warning

This document may not be shared with anyone else in any way. The contents of this document may not be discussed with anyone (except the interviewers) before, during or after the interview. Please permanently delete this document at the end of the interview. Failure to comply with the above will constitute gross misconduct and may result in the rejection of your application.

Information regarding extract

In this case, David told John that David would shortly obtain confidential information affecting the price of certain shares traded on the stock exchange. David offered John to invest John's money in the stock market based on this confidential information. John agreed and transferred £620,000 to David for the purpose.

Using confidential information to trade is a crime. In addition, agreeing to do so with another person is in itself a crime (even if no trading takes place).

In the event, David never obtained the confidential information and never invested John's money. When John asked for his money back, David did not return it. John then sued David for the money.

The legal issue in this case was whether John should recover his money given it was paid for an illegal purpose.

Extract from judgment

...

145 The present appeal concerns a claim for the return of money paid by [John] to [David] pursuant to a contract to carry out an illegal activity, and the illegal activity is not in the event proceeded with owing to matters beyond the control of either party.

The specific issue on this appeal

146 In such a case, the general rule should in my view be that [John] is entitled to the return of the money which he has paid. In the first place, such a rule ("the Rule") is consistent with the law as laid down in the 18th century by two eminent judges, one of whom is regarded as the founder of many aspects of the common law, including illegality; in addition it has support from some more modern cases. Secondly, the Rule appears to me to accord with policy, which is particularly important when illegality arises in the context of a civil claim. Thirdly, the Rule renders the outcome in cases in one area of a very difficult topic, that of contracts involving illegality, and the maxim *ex turpi causa non oritur actio* (ie that no claim can be based on an illegal or immoral arrangement), relatively clear and certain.

147 I turn first to the authorities. In *Smith v Bromley* (1760) 2 Doug KB 696n, the Court of King's Bench permitted a plaintiff to recover money she had paid to someone who had agreed to procure her brother's discharge from bankruptcy, which was an illegal consideration. Lord Mansfield CJ said at p 698 in the course of his judgment that, although the payment had been made for an illegal purpose: "Upon the whole, I am persuaded it is necessary, for the better support and maintenance of the law, to allow

this action; for no man will venture to take, if he knows he is liable to refund.” Lord Mansfield CJ subsequently followed this approach in *Walker v Chapman (1773) Lofft 342*, where a bribe to defendant to secure a job for the plaintiff in Government service was held recoverable, in circumstances where the job was not in fact obtained.

...

149 In the following century, the same approach was adopted in *Taylor v Bowers (1876) 1 QBD 291* (which involved transfer of goods rather than of cash). Cockburn CJ said at first instance, at p 295, that it was “well established that where money has been paid, or goods delivered, under an unlawful agreement, but there has been no further performance of it”, then “the party paying the money or delivering the goods may repudiate the transaction, and recover back his money or goods”. The Court of Appeal agreed, and at p 300, Mellish LJ, with whom Baggallay JA and Grove J agreed, said:

“To hold that the plaintiff is enabled to recover does not carry out the illegal transaction, but the effect is to put everybody in the same situation as they were before the illegal transaction was determined upon, and before the parties took any steps to carry it out.”

...

154 More broadly, it appears to me that policy supports the Rule, in part for the simple reasons given in the passages cited in para 147 above. Further, as Lord Mance JSC points out, there is obvious attraction in the notion that, if all transfers made pursuant to an unexecuted illegal contract are re-transferred, then the parties are back in the position that they were, ie as if there had been no illegal contract, which again would seem to comply with policy.

...

157 Quite apart from principle, it appears to me that the Rule would establish, or maintain, a degree of clarity and certainty in relation to one aspect of the law on the vexed topic of the effect of illegality on contractual claims. One thing which is clear from reading only some of the large number of judgments on the law on that topic over the past 350 years is the inconsistency of reasoning and outcome in different cases. Those responsible for making and developing the law in any area must strive to achieve as much clarity and as much certainty as are consistent with principle and practicality.

158 There is, I acknowledge, some attraction in the point that the need for certainty in this area is diminished by the fact that parties to an arrangement which is illegal have less cause for complaint if the law is uncertain. However, criminals are entitled to certainty in the law just as much as anyone else. In any event, third parties are often

affected by the enforceability of rights acquired or lost under contracts, and innocent third parties, it could be said with force, are in a particularly strong position to expect certainty and clarity from the law. Quite apart from this, there is a general public interest in certainty and clarity in all areas of law, not merely because it is a fundamental aspect of the rule of law, but also because the less clear and certain the law on any particular topic, the more demands there are on the services of the courts.

...

163 In the present case, [John] paid £620,000 to [David] pursuant to a contract, under which [David] was to use the money to trade in [certain] shares with the benefit of inside information for their common benefit. That was a contract whose agreed fundamental purpose was illegal. In fact, the anticipated inside information was not forthcoming and the contract effectively lapsed. I can see no good reason on these simple facts for not applying the Rule and accordingly I consider that [John] is entitled to the return of the £620,000.

* * *

St Catharine's College, Cambridge
Law Interviews Text 4B

The following is an excerpt from a piece of legislation.

2 Liability for damage done by dangerous animals

- (1) Where any damage is caused by an animal which belongs to a dangerous species, any person who is a keeper of the animal is liable for the damage, except as otherwise provided by this Act.
- (2) Where damage is caused by an animal which does not belong to a dangerous species, a keeper of the animal is liable for the damage, except as otherwise provided by this Act, if—
- (a) the damage is of a kind which the animal, unless restrained, was likely to cause or which, if caused by the animal, was likely to be severe; and
 - (b) the likelihood of the damage or of its being severe was due to characteristics of the animal which are not normally found in animals of the same species or are not normally so found except at particular times or in particular circumstances; and
 - (c) those characteristics were known to that keeper or were at any time known to a person who at that time had charge of the animal as that keeper's servant or, where that keeper is the head of a household, were known to another keeper of the animal who is a member of that household and under the age of sixteen.

5 Exceptions from liability

- (1) A person is not liable under section 2 of this Act for any damage which is due wholly to the fault of the person suffering it.
- (2) A person is not liable under section 2 of this Act for any damage suffered by a person who has voluntarily accepted the risk thereof.
- (3) A person is not liable for any damage caused by an animal kept on any premises or structure to a person trespassing there, if it is proved either—
- (a) that the animal was not kept there for the protection of persons or property, or
 - (b) (if the animal was kept there for the protection of persons or property) that keeping it there for that purpose was not unreasonable.

6 Interpretation of certain expressions.

- (2) A dangerous species is a species—
- (a) which is not commonly domesticated in the British Isles; and
 - (b) whose fully grown animals normally have such characteristics that they are likely, unless restrained, to cause severe damage or that any damage they may cause is likely to be severe.
- (3) A person is a keeper of an animal if—
- (a) he owns the animal or has it in his possession; or
 - (b) he is the head of a household of which a member under the age of sixteen owns the animal or has it in his possession;

and if at any time an animal ceases to be owned by or to be in the possession of a person, any person who immediately before that time was a keeper thereof by virtue of the preceding provisions of this subsection continues to be a keeper of the animal until another person becomes a keeper by virtue of those provisions.

St Catharine's College, Cambridge
Law Interviews Text 4B

Applying what you have learned about the law on dangerous animals from the excerpt set out above, consider liability in each of the following situations.

1. Whilst walking in a meadow owned by the council, Agnes is bitten by Fang, a large dog that is playing off the lead. His owner Jaya and her mother Kamala are nearby. Fang used to be very aggressive towards other dogs, and for that reason Jaya usually kept him muzzled on walks when other dogs were likely to be nearby, but today she forgot and left the muzzle at home. Fang bit Agnes accidentally, when she was picking up a ball to throw for him.

2. Tariq, an animal rights campaigner, removes an ostrich from a zoo and transports it to an area of open moors, where he believes the bird will be able to live more naturally. While driving across the moor at twilight, Philip, aged 80, encounters the ostrich and is so shocked at the sight that he drives off the road. Then one of the front tires of his car bursts, and he is badly shaken by the experience. Philip had recently been warned by his doctor not to drive long distances or at night, because of his age and poor health.