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Catherine Barnard, Janet O'Sullivan and Graham Virgo - What About Law? Studying Law at University

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This is a book with a clearly stated mission: to provide a 'taster' for the study of law as an academic subject, designed to help 17 and 18 year olds decide whether law is the right choice for them at university. If read thoughtfully, it should succeed admirably in this aim and it should, as is claimed, be widely available in sixth form libraries (indeed has been so recommended by the writer of this review to the school attended by the 17 year old she knows best).

The book starts with a scenario guaranteed to freeze the blood of the parents of those at whom this book is targeted: the chaotic aftermath of a teenage party gone horribly wrong. This excellent start involves the reader in the inevitable nightmares arising from drink, drugs and sex through noise and gate-crashers by way of the question of an over-litigious society. The questions are raised but, slightly frustratingly, not actually answered (with the exception of the guest tripping on a paving slab); perhaps the authors were wary of offering what might be uneasily close to legal advice relevant to the book's target readership, perhaps the questions did not fit neatly enough into the main format of the book, which is to look at each of the seven core subjects by means of the critical analysis of a case which raises issues about that area of law, about the principles, priorities and value judgments underpinning English law and about the method by which they get there. It is this case based approach which sets this book apart from other introductory accounts of law. The party scenario might have been returned to at the end of the book; instead, the epilogue invites consideration of legal issues

hinted at in the picture on the front cover; an upbeat and intriguing note on which to end, but connections with the rest of the book could perhaps have been briefly made.

The book claims that it is intended to help young people decide whether law is the right choice for them as a university subject and it does an excellent job of demonstrating what the academic study of law involves. The reader should be left in no doubt of the need for intellectual rigour. The book makes no claims to provide assistance on what is correctly implied (p4) to be the separate question of whether the reader is cut out for a career in the law, a point worthy of underlining, since it is arguable that too many of the numerous students clamouring for university places to read law see a law degree primarily in terms of being the first stage in training to be a legal professional and in so doing are not fully prepared for the finely balanced evaluations and lack of certainty in which a law degree will involve them, as the second part of the first chapter, entitled 'Legal method', ambitiously and successfully makes clear. The authors boldly set out their stall, asserting that 'there is an awful lot more' to law than 'looking up rules and regulations in dusty old books' (p16). They also point out that choosing to study law does not close off other avenues of academic interest. Perhaps the fact that the Land Law chapter closes with an allusion to Shakespeare's *The Merchant of Venice*, juxtaposed with the first words of the chapter on Equity referring not unexpectedly to Dickens' *Bleak House*, is testimony to this?

The first chapter is perhaps the most ambitious, and the difficult question, familiar to anyone who has grappled with the design of first year law programmes, raises its head, as to how much of the nuts and bolts of the legal system need to be understood before the more obviously interesting task of case analysis and the context, rationale and implications of decisions is undertaken. Sources of law is a topic rightly included here, even if its comprehension can only really be achieved by examination of the sources themselves and their usage, which is the main business of the following seven chapters; again, a 'chicken and egg' problem inherent in course design. Whether citation of cases needs explaining here is more debatable, and attempts at brief overviews of the court system are always tricky, with the inherent risk of glossing over such matters as the dual criminal/civil jurisdiction of most courts or of overwhelming the novice with superficially rather tedious but potentially significant detail. Perhaps slightly more attention could have been given to clarifying what is meant by 'the House of Lords' in this context, given how long confusion often reigns over this issue amongst first year law students; the authors correctly give a nod to differing forms of dispute resolution, even if their blanket assertion that arbitration is cheaper than litigation in complex commercial matters may raise eyebrows.

The seven chapters on the core subjects are each written by different authors. The three co-authors of the book (jointly credited as having written the first and last chapters) each contribute a chapter (one contributes two) and the remaining four are written by other members of the Cambridge University Law Faculty. Whilst the approach is structurally consistent, the styles vary (though not jarringly) and personalities appear to come through. One may speculate whether a potential Cambridge applicant will use these differences to target particular tutors.

The first substantive chapter addresses Criminal Law, a sensible choice befitting the layman's perception of law per se. The thoughtful reader may well wish to muse more deeply on the sections entitled 'The Reasons for Punishment' and 'Reasons for characterising conduct as criminal'; topics which may already have been encountered. However, the author deliberately addresses these wider issues succinctly so as to concentrate on the case presented here, *R v Brown*, presumably chosen almost as much for its salacious subject matter (sado-masochistic men) as for what it exemplifies in terms of Criminal Law or the Common Law system. Of necessity terms and technicalities are explained (*actus reus*, *mens rea*, GBH etc) but the implications of this decision, the reasons for disquiet about it and the significance of dissenting judgments are well canvassed. Readers will enjoy following the subsequent development of this area of law, considered with reference to the 'moving love story' in *R v Wilson* (the elderly couple who decided that the husband would brand his initials on his wife's buttocks as a symbol of their mutual affection) as much as Graham Virgo enjoyed writing it. The conclusions highlight with admirable clarity the different levels on which *Brown* can be analysed. Perhaps a little more could have been made of the fact that the case dealt with a statutory offence, and the interplay between statute and case law underlined. The intention of the book is to demonstrate this by the examples of the cases chosen; these supply the context when this subject reappears in the final chapter and anyone 'cherry picking' only the first and last chapters will miss the whole point of the book.

The chapter on Contract starts in a way familiar from introductory lectures on Contract law: a gentle reminder of the pervasiveness and frequency of contract and its occurrence in our everyday lives. It then proceeds apace. The choice of *Ruxley Electronics Limited v Forsyth* is a brave one, though the case is explained here considerably more lucidly and rigorously than in some text books. Students grappling wearily with the subject of damages at the end of their contract law course – reference is made to the topic of remedies often being regarded as an 'unimportant add on' (p56) – could do much worse than to read this chapter and ponder what just compensation for a broken promise actually entails, though less high minded considerations, such as the importance of tactics in litigation and of not being seen as 'pedantic [and] demanding' as is suggested the House of Lords viewed Mr Forsyth, are also shrewdly highlighted. The analysis makes no concessions to the lazy reader but is a model of clarity. The comment (p57) made in respect of English law that 'it is not necessarily the big money cases that raise the important issues of legal principle' might equally well be made, however, by an EC lawyer referring to *Costa v ENEL*.

Tony Weir, the author of the chapter on Tort, sensibly recognises that he cannot assume familiarity with his subject and gives an overview ranging from the elements of negligence to the questions of pure economic loss, psychiatric harm and tort as deterrence. The case chosen as the vehicle here is *McFarlane v Tayside Health Authority* where the claim concerned loss arising from an unwanted pregnancy occurring after a failed vasectomy. The relevant issues are considered in the light of a number of other cases: the relatively straightforward facts of *McFarlane* facilitate these diversions as well as consideration of the policy issues, and the 'simply extraordinary' (p95) nature of the decision and the fact that it '[displaces] normal rules of tort law' clarify rather than confuse the well-ordered discussion.

The reference on p94 to ‘the distinction between statutory and judge-made law’ possibly deserves more than the ‘moment’s notice’ of which it is stated to be worthy; as already mentioned, this theme could have been reinforced by some cross referring.

Kevin Gray, who undertakes the Land Law chapter, clearly feels the need for a ‘hard sell’ of his subject. Having started with a reference to Blackstone’s disenchantment for Land Law, his defensiveness goes firmly on the attack. The bizarre facts of the complex case of *Chhokar v Chhokar* are presented, not unreasonably, in terms worthy of the potboiler from which they could have been derived, and amply justify the requisite ‘encounter[s] with the technicalities of land law’ which Professor Gray admits are ‘not entirely easy’ (p105). The necessary mention of the ‘jurisdiction of equity’ on p101, summarised in a brief parenthesis, whilst focusing specifically on legal and beneficial ownership, may however be somewhat baffling, and it might have been helpful if reference had been made to the slightly more extensive explanation of equity in the following chapter at p120-121. Another section of this chapter addresses statutory interpretation: a beautifully written explanation of some of the issues which might usefully have referred back to the first chapter where statutory interpretation is considered in the context of legal method. Neither of these points detracts, however, from the fact that this superbly crafted chapter is a highlight of the book which amply justifies the claim that the law of property is ‘an arena in which the agony and ecstasy of life are played out against a backdrop of abstract proprietary concepts’. If the prospective student fails to be both intrigued and entertained – if a little daunted – one could justifiably say that he or she is not possessed either of the intellectual tenacity or fascination with human foibles which will make the study of law truly engaging.

One wonders whether the chapter on Equity should in fact precede the one on land law, but perhaps, as suggested above, a closer awareness between the authors of these two chapters of what the other was saying about equity might suffice. Links could also be drawn between the theme of the ‘fair and just result’ referred to here (p120) and the ‘fairness’ of the question of whether occupation rent is due from a co-owner in sole possession referred to in the land law chapter (p115). The case of *Foskett v McKeown* is well chosen for the opportunities it affords to show how different ways of arguing can lead to different but equally ‘equitable’ results. The influence of equity on the legal system as a whole is dealt with in a more thorough and enlightening way than in some English Legal System textbooks; the tone contrasts with that of the preceding chapter; more measured, perhaps a little more prosaic. A practitioner may be surprised that the benefits of settlement, and the issue of ‘settlement in the shadow of the law’, are not mentioned until p126, their significance perhaps being downplayed. The case is indeed ‘complicated’ (p125) and the law relating to tracing notoriously so, though the careful explanation using peas as examples should keep the persistent reader adequately grounded. Again, more thorough cross referencing would not go amiss; the brief explanation of *obiter dicta* (p135) largely repeats that given in the introductory chapter.

The next subject addressed, Constitutional Law, may be expected to appeal naturally to the prospective law student; maybe that is why the unquestionably sound introduction to the chapter feels just a little lacklustre. The case of *R (on the application of Jackson and others)*

v Attorney General goes to the heart of many aspects of constitutional law, and David Feldman considers it necessary to set out at some length the UK's basic constitutional framework. Readers deciding to gloss over some of this could still gain a reasonable understanding of the discussion of *Jackson*: we do not really need to know here which are the 'higher courts' capable of issuing a declaration of incompatibility under the Human Rights Act. The conclusions to the chapter do, however, well summarise the importance and relevance of the issues integral to *Jackson*, and may persuade the reader to return to the account of the litigation if they chose to skim over the detail. The author should also be commended for the kind of useful cross referencing which is sometimes lacking elsewhere in the book, for example in his reference on p147 to the disapplication of national law inconsistent with EC law, reference being made to the subsequent chapter.

The European Union is breezily introduced with a confident assertion as to the reader's lack of neutrality on the topic, and illustrated copiously with reference to media myths (and cartoons), as well as an account of the benefits to our national diet from EU membership (though arguably the ubiquity of pasta in this country nowadays has at least as much to do with the advent of cheap package holidays). The author takes a robust approach to the EU/EC distinction, effectively ignoring it; not unjustifiable given the mission of the book, though the Community's shining role in preventing war between the major European powers seems a little dimmed by the assertion that this has lasted ever since the founding of the EU. Only since 1992? In fairness, this distinction is explained later in the chapter (p185) and is unlikely to grate on the book's intended readership. The chapter deals with the *Bosman* case and is written with a notably (one might say refreshingly) lighter touch than the previous two chapters. The technicalities of the *Bosman* decision are not allowed to detract from the presentation of the 'big ideas' of EC law: the benefits of free trade, free movement of persons, citizenship. Some intricacies are glossed over: the astute reader may wonder why Mrs Carpenter was able to rely on the ECHR in the ECJ. The overall focus in this chapter inevitably differs from that of the others in that the judgment addressed emanates from the ECJ and cannot be held up as an exemplar of the Common Law system.

The concluding chapter, entitled 'Drawing some of the threads together', focuses on the fact that the law is not clear-cut and on the undeniable though related fact that judges in both the UK and the ECJ are often engaged in value judgments of various sorts and will be influenced by the context of the matter they are hearing. The constitutionality of judges making law is touched on, but briefly; and the most perfunctory of nods given to the composition of the judiciary, though this is soon dismissed with the assertion that most people's experience of judges is positive. Whilst it is true that clichés about the unrepresentative nature of the judiciary have been thrown into relief by recent cases which may do more to protect citizens' rights than Parliament does, there is obviously more to this issue than alluded to here. Subtleties of interpretation are well illustrated by reference to *P v S* and a reprise of *Chhokar v Chhokar*; that sensitivity to nuances of wording is seminal to legal study is rightly underlined. The enthusiasm of the authors for the academic study of their subject is infectious, and this energetic little book should give those musing about a law degree a better insight into whether to study law at university than any amount of work experience in a

lawyer's office, which after all, is not the inevitable outcome of a law degree, any more than it necessitates one.