Matthew Fenwick*

Larry Blotter lived under a fixed-term lease at number 11, Clapham Street, London with his relatives, Mr and Mrs Dulsby and their horrid son Bud. If you were being polite you would say that living with Bud was about as unappealing as a lifelong career in conveyancing. Bud hit Larry to an immoderate and unreasonable degree. Since Larry had not yet read about the remedies available under criminal assault and torts upon the person, he was powerless to defend himself. Instead, he retreated to the cupboard under the stairs and imagined that he was a powerful and respected QC with a wig and gown and an army of junior paralegals wheeling loads of ring-binder folders on steel trolleys.

You see, through no fault of Larry's, Mr Dulsby and Mrs Dulsby were laypeople: hapless individuals who read for pleasure. They devoured piles of Dan Brown and Maeve Binchey and JK Rowling without ever pausing to ask themselves 'what were the material facts?,' 'what was the *ratio decidendi*?,' 'what remedies lie on the case?.' Ever since he was *doli incapax*, reading Chancery Reports by torchlight underneath the bedcovers, Larry knew that he was different. Larry was a lawyer.¹

At this early juncture in proceedings, I must inform my readers that Larry's biological parents are irrelevant to this story.² Yet on rainy days

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¹ This aberration can be traced to an incident when Larry, aged 7 months, was left unattended on the sofa for 30 seconds. Larry rolled his chubby foot onto the remote control, inadvertently switching the channel to Parliamentary Question Time. His mother rushed back the moment she heard the squabbling and interjections, but it was too late. Larry's malleable mind was altered beyond all hope of *restitutio integrum*. Do not let this happen in your home.

² This disclosure is made without prejudice of any later reference in subsequent proceedings, nor is it indeed a contractual promise that such reference will be made.

Larry did gaze out the window and wonder if the *Freedom of Information Act* afforded him assistance, or alternatively, whether a tracing order could be made in Equity.

It was early one pitch-black winter afternoon in the English town where Larry and the Dulsbys cohabited. Inside, it was cosy and warm. Outside, the trees tapped on the windows like disgruntled plaintiffs. Larry perched at the top of the stairs reading a biography entitled *Lord Denning: In Brief.* The Dulsbys loafed in the living room, engaged in various working-class pursuits. Mrs Dulsby put down her copy of *New Weekly* and summonsed Larry. 'Put that encyclopaedia down, Larry, and come and watch '100 Greatest Sexy Advertising Bloopers' with us.'

Mr Dulsby joined in the pleadings. 'Yeah, come on Larry. Those books leave dust all over the lino.'

'But Uncle, I hadn't even got through the headnotes!' counter-pleaded the respondent.

'Give us that!' cried Bud, from behind, snatching the volume from Larry's hand and stampeding down the stairs like reporters leaving the courthouse after the Michael Jackson verdict.

'Hey! I had a possessory lien over that book!' cried Larry.

'Finders keepers losers weepers,' sneered Bud, a reply which Larry did not consider to be an adequate cross-claim. He began to explain this to Bud.

'Yeah, whatever,' interrupted Bud and read from the book in a manner not befitting the solemnity of the case at all. '... and hereby, pursuant to the aforementioned allegations in subsequent proceedings and with respect to the hereunder, whereas.'

'Stop it!' cried Larry. The lightning-shaped scar on his forehead throbbed. 'You're being simply beastly!'

'Now Larry,' remonstrated Mrs Dulsby. 'Be careful or you'll hurt his self-esteem.'

'Yeah,' said Mr Dulsby. 'You watch yourself or we'll cancel your subscription to Lexis-Nexis online.'

Larry nearly cried with frustration. 'What would Lord Denning MR do now?' he thought, but even his hero could not save him.

Without prior notice, a great thunder of flapping wings descended on the house.

Mr Dulsby looked up. 'Don't tell me it's those bleeding pigeons again.'

'No dear,' sighed Mrs Dulsby. 'I believe they're magical owls come to bring us a message of mystical importance.'

'Oh, that'd be right. Now where the hell did I put that thing...?' Mr Dulsby kept an air-rifle by the sofa for such occasions. However, before he could contravene the provisions of the *Prevention of Cruelty to Animals Act 1979*, Larry rushed outside and grabbed a message from one of the owls (thus sparing us all three chapters of needless plot development). The owl politely asked Larry to countersign to acknowledge receipt and then was on his way. Larry untied the ribbon and unrolled the message, which read:

'Judgement and Final orders:

Mr Larry Blotter (the respondent)

Hereby to spend five (5) years in Grumblebumwarts School of Law. The respondent is to attend at least 10% of lectures and 95% of social functions. Subjects covered during lectures are to include the Priestley Eleven (11) curriculum (contracts, criminal law, equity, property etc, notwithstanding the relevance of such subjects to the respondent's career path). Attendance required on Monday the 5th of March at Grumblebumwarts.'

Larry looked around blindly, like a Legal Aid solicitor whose client had absconded. It was all too much to take in at once.

'What's the matter with you Larry?' asked Mr Dulsby. 'You've come over all pale.'

'Yeah Larry,' sneered Bud. 'Get some fake tan on you like the rest of us.'

'Aunt! Uncle!' Larry stammered. 'I'm going to study law!'

'Oh. Is that it?' said Mr Dulsby, and, rotating his copy of *Inside Sport* 90 degrees, became engrossed in his magazine once more.

Mrs Dulsby tut-tutted into her cup of tea. 'I've always heard that law is a grimy, slimy, sticky, unpleasant business. Wouldn't you rather be a doctor instead?'

A gigantic figure loomed out of the Agapantha bush where presumably he had been hiding for some time, potentially violating the 'Criminal Harassment' provisions of the *Crimes Amendment Act 2000* (ACT). As Rowling puts it, '[h]is face was almost completely hidden by a long, shaggy mane of hair and a wild, tangled beard, but you could make out his eyes, glinting like black beetles under all the hair.'³

'Now look 'ere yon folks, arr that be me telling yer, so it is. This 'ere young 'un's been haccepted inta the most prestig-i-ous Law School in this jurisdictshun, to be sure an' all.'

Mr Dulsby hauled himself upright, scattering a TV dinner tray from his lap. 'Where the devil did you and your accent spring from?'

The giant planted his massive hands on his correspondingly massive

³ JK Rowling, *Harry Potter and the Philosopher's Stone* (first published 1997, 2001 ed) 39. s 41, *Copyright Act* 1968 (Cth).

hips. 'I be Hagrid, the Hassistant Dean of Hundergraduate Student Hadministration at Grumblebumwarts, that's 'oo. An' if yeh durn folks don' be letting li'l 'arry 'ere go to school I be getting' roight angry and be a-saying things in an even more rustic dialect, arrr.'

'Wicked!' said Larry.

'We'll get you to ther train stashun, me lad, don't yer worry yer noggin about that. First it's down to ther Co-Op bookshop with us, me hearty with a hey nonny-no and a bottle of rum. Be seein' yer then!' the giant called out over his shoulder to Larry's custodians. 'Hop on, young 'arry,' said the giant. A gigantic scooter rested against the elm tree outside. Hagrid pulled on a big black helmet and kicked the starter. 'And here's one for you too. Make sure you buckle up, like. Obey ther spirit an' not just ther letter of ther law, so they be tellin' you. Now, there'll be all manner of books..., Wright on Wrongs, Lindsay on Liens, Bates on Banking, Mitchell on Maritime Law...'

'Surely I don't have to carry all those to school every day?' protested Larry.

"Fraid so, young fella. First though we needs to get yer highlighter."

Next Monday, all the eager first-years bundled onto the *Terms and Conditions (Express)* train. Larry saw lots of teenagers like himself, all excitedly clutching their highlighters and ringbinder folders. As a lawyer-in-training, Larry understood that 90% of succeeding in law school is having the right stationery. One redheaded boy obviously hadn't learnt *that* lesson, meandering through the crowd, still carrying the same folder he'd used in Year 10. The night before, Larry had peeled off all the stickers of BMX bikes from his folder and written legal maxims in black texter. '*Contra bonos mores.' Ei incumbit probatio qui.*' That sort of thing. The redheaded boy caught Larry's eye and sauntered over. 'Hi! My name's Don Measley. What's yours?'

'Larry Blotter. Pleased to meet you. Did you get an invitation to Grumblebumwarts too?'

'Oh no,' said Don. 'I got my place in law school from an equity scholarship for redheaded students. They're trying to increase the proportion of us in legal practice, I think. Ah well, cheers to affirmative action, I say.'

Larry briefly pondered the distinction between formal and substantive equality as it applies to Higher Education policy, but the train's arrival curtailed his thoughts.

The two boys piled their bags onto the train. 'I've heard this train runs on circular reasoning!' whispered Don. 'Cor!'

'What's that?' said Larry.

'Honestly! Don't you boys know anything?' A rather bossy sort of a

girl with bushy brown hair hauled her bags up the aisle and sat down in their compartment. She proceeded to expound on the principles involved. 'So you see, the journey is long and expensive and passengers ended up exactly where they began, except grubbier and poorer.'

'Wicked!' said Larry. 'What's your name?'

'I'm Heroimne,' said the girl. 'H-E-R-O-I-M-N-E.'

'Say, did you get a place at Grumblebumwarts through an equity scholarship for women?' asked Don, excitedly bobbing his red hair.

'No, you troglodyte. I'm no minority interest group. I'm here on merit, not on some patronising quota system. Women are the future of the legal profession, I'll have you know.'

The train lurched, belched steam and was still.

'Is that it?' said Larry.

'Think so,' said Don.

'But all that fuss and bother didn't get us anywhere at all!' replied Larry.

'Just like the court process, silly,' said the girl, and heaved her bag from the luggage rack unaided.

'All right, everybody out. Don't make me serve heviction notices on yer mangy persons,' bellowed Hagrid, who had been standing on the platform the whole time. All the students piled dutifully out onto the platform on the other side of the train. Hagrid led them up the steps to the admissions hall. 'Rightyho, I'll be 'anding you over to Professor McGonagaggle who's the Dean of this 'ere faculty. Cheerio then and I'll see yer all at the first social function.'

Professor McGonagaggle was a formidable woman with a piercing gaze and a pince-nez balanced on the bridge of her nose. Larry had heard stories of her fearsome academic reputation. She was made a partner in Mallesons before even graduating. While at the firm she hired a team of paralegals to do her sleeping for her. Today, the Professor stood beside a stool covered with a black cape. 'Welcome, first years,' she said. 'You have chosen an ancient and noble profession. Or, should I say, it has chosen *you*.' Thunder and lightning crashed outside. Larry's scar throbbed again. 'Look to the left of you. Now look to the right of you. Only one of you will graduate to become a lawyer.'

'Gosh! That's a funny sort of welcome,' Larry whispered to Don, the redheaded boy. The speech went on for some time, talking about case-based learning, the Socratic method and integrated cross-faculty elearning initiatives.

Just as Larry was beginning to think he'd never get to try the finger food that he could see just past Professor McGonagaggle, her voice rose. 'And, in conclusion, as Francis Bacon once said, 'Atheism leaves a man to sense, to philosophy, to natural piety, to laws, to reputation, all which may be guides to an outward moral virtue, though religion were not; but superstition dismounts all these, and erects an absolute monarchy in the minds of men...the master of superstition is the people; and arguments are fitted to practice, in a reverse order."

'What?' thought Larry, and looked across at Heroimne who was nodding quietly.

'Good luck, students,' said the Professor. 'Let the sorting begin!' She pulled off the cape with a flourish to reveal a horsehair wig floating in mid air. A black cloak hung over the stool. Indeed, the whole affair looked as if a judge had adjourned and forgotten to tell their clothes.

'First student: Abbot, Hannah,' called out Professor McGonagaggle.

A bemused girl stood and peered around her. Hannah's hair was pulled back with bulldog clips. 'This way, Hannah!' called her friends, and laid a trail of post-it notes leading towards the sorting-hat.

The wig scrunched thoughtfully. 'Hmmm. Not much interest in the real world. Yes, I agree. It's far too factual. Plenty of brains, but doesn't know where to put them... Are you sure? You could be making so much more money in one of the other houses. Very well. Academia for you!' The girl smiled quietly to herself, wandered back to her place, and opened her volume of *Harts Jurisprudence*.

'Boot, Terry,' called the Professor. A boy came forward with gelled hair and a pin-striped suit.

'Ah,' said the wig. 'A cunning mind. Sees two sides to every moral question. Will do anything for the client. What's that? Mmm, big companies *do* have a right to legal representation. Oh yes, the social justice movement *has* distorted the law to fit their personal moral agendas. I know exactly the place for you...Corporate Law!'

The pale boy adjusted his cufflinks smugly and joined a similarly dressed group who began networking their laptops together to share notes.

Many other first-years donned the wig and were dispatched to their respective houses. Then, at last, it was Larry's turn.

'Yes. The famous Larry Blotter. Well. A fine mind for academia. It's not really *that* hard. It's all just regurgitation, anyway...'

Larry screwed up his eyes. 'Please just black-letter law. *Please* just black-letter law.'

'Not Academia? I *see*. Corporate counsel? You'll work in a big office with a pastry cart... No? Well the only thing left. PRIVATE PRACTICE!'

Larry gazed into his future. Hours in front of a photocopier, local court appearances, long hours, and then maybe, just maybe, a partnership in a pokey suburban family law practice at the end of it all. He sighed. Could anything be more perfect?

By now, the hall was clearing. Already, the students had formed their groups – the mature-age students, the grammar school boys, the students who wanted another certificate to go with their accounting degree... Then, from the corner of his eye, Larry noticed Professor McGonagaggle leaving, a stack of books in her arms. The pile teetered dangerously. The top volume slipped and fell: Meagher, Gummow and Lehane's *Equity: Doctrines and Remedies*. All gasped as the venerated volume fell to earth.

Larry's legs pumped beneath him. He threw himself forward crying 'Nooooooooooo!' in slow motion and caught the book before it hit the ground.

Everyone clapped and shouted 'Hurrah!' three times.

'Well! A resourceful young fellow indeed!' said Professor McGonaggagle. She paused. 'Yes... he might just be quick enough. Mr Blotter, please see me in my office in 2 hours.'

Don was at Larry's side in an instant. 'Cor!' he said, his redheaded hair bursting with excitement. 'What do you think that's about?'

'I don't know,' said Larry. 'Perhaps she's read the practice essays I sent her last week.'

'Well, let me know, anyway,' said Don. 'Now I'm off to a tutorial support session for redheaded law students. We get free digestive biscuits and soda pop! Smashing!'

Larry entered the Professor's office to find her with a large essay on a pair of scales. 'Hmmm, 420.6 grams? That's about a credit, I'd say...'

'Erm, excuse me Professor.'

'What!? Oh, Heavens!' The Professor threw a cloth over the scales. 'Mr Blotter, thank you ever so much for coming to see me. I have a question to ask you. Have you ever heard of... Quibbling?'

'No? What's that?'

'Not heard of Quibbling? You have got a long way to go before we can unleash you on an unsuspecting laeity. Mr Blotter, Quibbling is how lawyers pit their wits and their courage against one another. Each game begins when two teams are given a legal issue to dispute. They must go away and prepare a case, then present it before a mock-court. It's a rough sport. Many's the law student who's brained themselves on a volume of Law Reports or crushed between a compactus stack.'

'Goodness. I'd simply love to be on the team. I could be a witness or a court officer or...' said Larry.

'I had in mind something a little more specialised for you, Mr Blotter.'

'Really?'

'Yes. With your pluck and courage, you'd be a fine solicitor.'

'A solicitor? What do I do?'

'Mr Blotter, games are won and lost on the skill of the solicitor. Their task is to hover above the fray and to hunt for the elusive golden thread of the common law.'

'Smashing! The elusive golden thread of the common law!'

'Yes. The principle, or set of principles, that give coherence to the body of precedent accumulated over hundreds of years. From this golden thread one can deduce an inherent morality to our legal system as well as, more generally, a linear evolution of legal doctrine. Without the golden thread, our legal system would be nothing more than a haphazard collection of precedents held together by legal fictions and enforced by the implied tyranny of the state.'

'Gosh," said Larry. He thought back to the Dulsbys at home, reading for pleasure. If only they could see him now. Go into medical practice indeed! He sure had *quid pro quo'd* their *ergo demonstrandum*.

Then a question occurred to him. "But why is there a vacancy on the team, Professor McGonagaggle. What happened to the last solicitor?"

"*Res ipso facto,* my boy," said Professor McGonagaggle and hurried Larry out of the office.

On the day of the Quibbling tournament, the sun rose high in a bright blue sky. The Law Library, where the tournament was to take place, however, was built in the 1960's – an age when prison architecture, fluorescent lighting and concrete were very much in vogue.⁴

Everyone gathered on the asphalt lawn outside for the reading of the question. Professor McGonagaggle waited at the lectern, tapping her glasses against the wood like a recently appointed Judge testing their gavel. 'Bear with us a moment, please students. The question will be here in a reasonable time...'

A motorcycle roared up outside and crashed into the bushes. Hagrid stumbled in, clutching an envelope. His cheeks were red, his nose was red, his pupils were dilated. He had obviously been enjoying the University's St Patrick's Day celebrations.

'*Tabhair póg dom, táim Éireannach*!' slurred Hagrid in perfect Gaelic, and handed the envelope to the Professor.

'Thank you Hagrid. I suggest that you go and find a Barrister's chambers to sleep it off.' Professor McGonagaggle began to read as an assistant passed out copies of the question.

'A company based in Victoria orders a truckload of apricots. The truck driver is from Queensland, but on a recent holiday in Ibiza he dallied with a nursing student named Trisha. The shipment is due in New South Wales in one week's time. At the border, a guard stops the truck and says, 'Stop! The Constitution forbids you to cross this border.' The truck has a bumper sticker which says, 'Honk for first stop, love-town.' Discuss the legality of the bumper sticker with reference to the *Crimes Act 1919*, s38.'

Heroimne nudged Larry. 'I say. Don't you find the half-baked humour in these take-home exam questions just a little patronizing?'

⁴ The windows in the new Information Technology Building, by contrast, were wall-towall, climate responsive, polarised and auto-tinting.

The Corporate Team immediately connected their laptops to their mobile phones and began browsing Austlii for primary materials. Larry sniffed. 'When will law students learn that good legal research consists of a good utilisation of both electronic *and* hardcopy resources. There's only one way to find the elusive golden thread of the common law. To the law library!'

The three friends arranged to meet by the monstrous three-headed sleeping dog by the library elevators. 'Talk about security,' said Ron.

'I know,' said Larry. 'Why couldn't they have electronic sensor gates like the other unis?'

Heroimne shrugged. 'Well, I suppose after the previous Vice-Chancellor ran off with all the money they had to make a few cutbacks.'

Heroimne, Don and Larry picked their way over the cobwebbed bodies of the Masters (Research) students and into the inner sanctum of the library. Torches flickered evilly against the black stone walls. Strange runes adorned the stone shelves. Such was the fashion in 1960's architecture.

'Crumbs! Is that the law librarian who taught us for 'Introduction to Legal Research?' said Don. In the shadows at the far end of the shelves, a spindly creature crouched and muttered to itself. 'Yessses. We will sssssssource crosssess-referencessses, won't we my precious?'

Just then, a band of armoured men clattered in through the fire-exit: a male dwarf, a male warrior, two or three male hobbits and an effeminate (but still male) elf.

'I see him, Master Frodo,' said one, pointing after the law librarian.

'Well done, Sam. Don't let him escape us this time!'

'What's the Medieval Society doing down here in the law library?' asked Heroimne.

'Beats me,' replied Don.

Weeks passed. The three friends survived by foraging amongst the chip-packets and soft-drink cans left on the tables by commercelaw students. Other teams came down to the law library when the University's computer networks crashed, but largely the three were left alone. They never knew what time of day it was (the prison-style slit windows admitted too little light) but when they got tired, they huddled together round a fire lit in a wastepaper basket.

'It's cold in here, Heroimne,' said Don, looking across. The firelight flickered in her eyes.

'I know it is,' she said and rubbed her arms.

'Throw another medical journal on the fire, would you, Larry?'

Every so often, one of them stumbled upon some promising line of precedent. 'Feast your eyes on this *obiter dicta*,' one of them would say and, wresting a torch from the walls they pursued the cited authorities. But always the line of precedent petered out in the obscure 1600s nominate reports.

After one roof-thatching-contractual-dispute-case too many, they became despondent. Larry wiped his spectacles in despair. 'What on earth are we going to do? We'll never find the elusive golden thread of the common law.'

'It does seem rather hopeless,' conceded Don. 'All our systems – even the Legal Research textbook – haven't helped us.'

Heroimne sighed. 'All these cases wherein the elusive thread of the common law is said to reside are English! What does that say about claims to legal universality? And the contest closes tomorrow at 9:15am by the Law Office counter.'

Don brightened up. 'Maybe if we went to the Union bar, drank till 3.00 then worked solidly for the next 6 hours – maybe that would help.'

'Hush Don,' said Larry. That's no way for a young lawyer to tal \hat{k} – especially not one who, some day, will stand up for the rights of redheads all over the world. No, I'll tell you what we'll do. We'll take every single book in the library, photocopy it, then highlight it thoroughly.'

And so they began, bringing a trolley up to the shelves. Soon, the books were flying from the shelves and photocopied. A pile of highlighted papers mounted towards the ceiling.

'Help me get down these Commonwealth Law Reports,' said Larry.

It was then that they found the Solicitor's bones.

'What does it say,' asked Don and Larry.

Heroimne began to read. "A company in Victoria orders a truckloads of apricots'...It's the question!"

'Surely not...'

'No…'

Heroimne turned over the paper. 'Hang on. There's more. 'After my research, I have discovered that the elusive golden thread of the common law lies in the...' she broke off. 'Oh. Is *that* it?'

'Let me see, Heroimne,' said Don and read over her shoulder. His face fell. 'Oh.' He handed it to Larry, who read it carefully and frowned. Then he gently placed the arm back in between the shelves.

'I think we should put all this back exactly as we found it. Don, Heroimne, pass me those Law Reports. We've seen enough.'

EPILOGUE

My experience of legal education differs in a few minor details from the experiences of Larry Blotter. Unlike Larry, I was not told that two-thirds of

the audience would drop out (that was the medicine orientation session). I recall the usual welcomes and exhortations – but also the observation that doing a law degree didn't necessarily turn you into a lawyer. Some of us sitting there that day would become practitioners; others would forge alternative career paths. I write from the latter perspective. In the vernacular: if you're not sure you want to be a lawyer, then what's the point of a law degree?

It's interesting to watch how the impact of my legal education changes in the years since graduation. The finer details of statute law were the first things to go. Reams of case law are long gone; it was my failure to accurately retain legal data that helped persuade me against a career in legal practice. *Donohue v Stevenson* remains, but who could ever forget a snail trapped in a bottle of ginger beer. What stays with me, though, is a way of thinking; to be more precise, a collection of intellectual resources that I can apply to whatever confronts me.

Indeed, a concern for linguistic precision is one of the lasting effects of my education. Meaning matters. Law teaches us that a host of alternative outcomes turn on the interpretation given to words. In some manifestations, this can lead to paralyzing pedantry. Its positive form allows me to critically interrogate the variety of discourses that constitute my society. Advertising, the language of politics, power and spin are all opened up for scrutiny. 'All Stock Must Go' sales offering '*up to* 50% off' just don't excite me like they used to. At election time, when I daily meet the 'Honest Australian Taxpayer,' I wonder, who is included by this term and who is excluded? Just as legislation is framed after protracted deliberation, law encourages me to see the very conscious choices behind the particular words chosen in politics and the media.

Law also encourages me to be careful about categories. In discussions with friends who haven't studied law, I notice a tendency to collapse distinctions; to blur definitions. One friend argued that the situation of the Palestinians was basically the same as that of Australia's Indigenous people. My legal training prompts me to be cautious in such situations; to ask more questions. For what purposes are they the same? What are the differences and what implications flow from this?

Conscious (and potentially conscientious) citizenship is one of the great benefits of a grounding in law. An immersion in the structures of power and the language of rights helps me to engage with the process of government. In my own experience, that has led to involvement in the ongoing campaign for Indigenous rights and to making submissions regarding touted reforms to charity legislation. Not only that, though, a law degree helps me to remove the mystique from Law; to see it as a very human institution – venerable, but also contingent, evolving and open to improvement.

On that topic, in my studies (and brief time as a researcher in the court of Equity), I have frequently come across the black-letter view of law.

That is, there is one meaning inherent in a given legal phrase or doctrine, and that the task of the courts is to objectively ascertain such meaning, with absolute restraint of personal investment. Since this is my first and last opportunity to pronounce upon the subject in a scholarly journal, allow me to state conclusively that the possibility of ever attaining such detachment is as fantastical as wizards and sorcery.