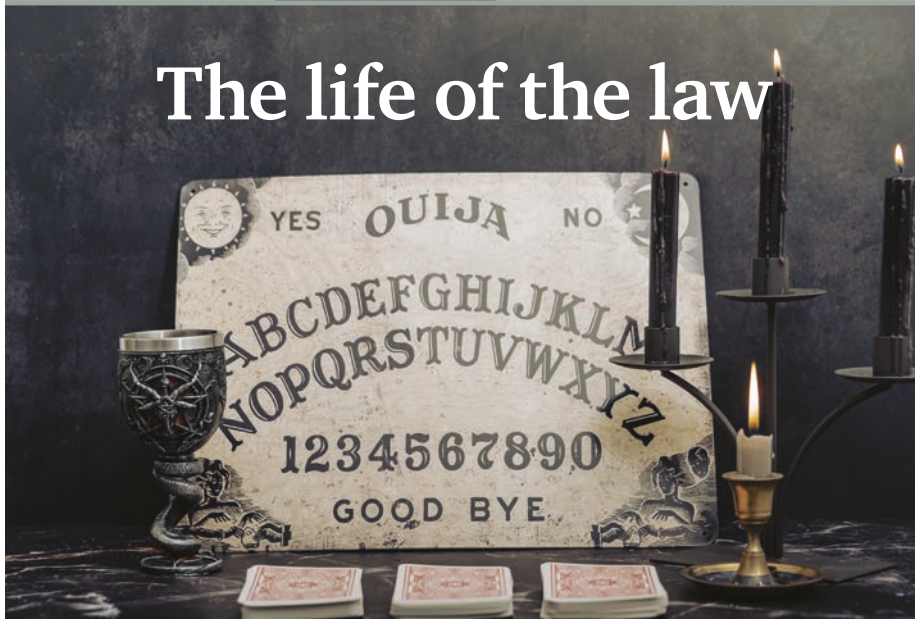


# The life of the law



## Mark Pawlowski uncovers examples of horror and the peculiar that have found their way into the law reports

It was Lord Macmillan who (quoting US Justice Oliver Wendell Holmes) remarked that ‘the life of the law has not been logic, it has been experience’. The law reports, of course, abound with life’s experiences, mostly unpleasant and sometimes tragic. However, one occasionally comes across a case that reveals the bizarre and even the comic side of our human nature. Below is a small selection.

### A case of mistaken identity

Many of us remember the decision in *R v Collins* [1972] 2 All ER 1105 from our student days. A young man of 19, after a good deal of drink, used a ladder to climb up onto a girl’s window hoping to have sex with her. The girl woke up and saw a naked male form and jumped to the conclusion it was her boyfriend and invited him into the bedroom. The couple had sexual intercourse, the girl eventually realising the young man was a stranger. The Court of Appeal quashed the young man’s conviction for burglary with intent to commit rape on the ground the jury had not been invited to consider the vital question whether he had ‘entered’ the bedroom as a ‘trespasser’. The facts of the case (as recited by Edmund Davies LJ) revealed the bedroom window was wide open and the young man was naked (except for his socks). In the course of his judgment, his Lordship remarked that ‘this is about as extraordinary a case as my brethren and I have ever heard either on the Bench or while at the Bar’ and that, if the facts ‘were put into a novel or portrayed on the stage, they would be regarded as so improbable as to be unworthy of serious consideration and verging at times on farce’.

### Strange adoptions

In the American case of *Bedinger v Graybill’s Executor* 302 SW 2d 594 (1957), the Kentucky Court of Appeals held that a husband could adopt his own 45-year-old wife so she might qualify as a child under his mother’s will. Interestingly, the court, reviewing the statute which provided for the adoption of ‘any person’, rejected the argument that the relationship created violated public policy.

“The tenants fled a house, claiming ghostly disturbances”

### A bizarre case of assault

A notable case in the law of torts is *Lane v Holloway* [1968] 1 QB 379, the so-called ‘monkey-faced tart’ case. A fight between a cantankerous old man, who was ‘rather infirm and full of beer’, and a healthy 23-year-old youth was held to give rise to a civil action in damages for assault. The fight arose out of a verbal exchange in which the young man’s wife had shouted abuse at the old man, to which he responded by shouting: ‘Shut up, you monkey-faced tart!’ The fact the old man had to some extent provoked this altercation did not preclude an award of damages for his personal injuries.

### Contacting the spirit world

Very spooky behaviour can be found in the criminal law case of *R v Young* [1995] QB 324. Four members of a jury, while staying overnight in a local hotel,

used a Ouija board to contact the victim of a murder to determine the guilt or innocence of the accused. The Court of Appeal, not surprisingly, held this was a material irregularity and duly quashed the conviction for murder.

### Haunted houses

In *McGhee v Hackney London Borough Council* (1969) 210 EG 1431, the court had to consider the alleged effect of poltergeists on the relationship of landlord and tenant. The tenants fled a house, claiming ghostly disturbances. (It is not yet known whether the landlord’s covenant for quiet enjoyment covers this eventuality.) After they had left, a mysterious fire damaged the premises and the rent officer fixed a nominal rent. The High Court held the rent officer had acted lawfully and ruled that no blame for the fire should be shouldered by the tenants.

### Naughty landlords

In *Courtney v Fox* [1989] CLY 310, the tenant, a young man aged 18, was physically evicted from his accommodation by the landlord’s girlfriend, who was dressed in leathers wielding a whip and handcuffs! The County Court judge awarded exemplary damages to the young tenant, marking the court’s disapproval of such conduct.

### Who is an occupier?

The law of rates does not normally give rise to amusing decisions. But there was a certain Keystone Cops quality about *London County Council v Hackney Borough Council* [1928] 2 KB 588. Here, an old school in Hackney had been left empty by the London County Council (LCC). But Hackney Council charged rates on the building because they noted that it still contained some old cupboards and a mangle. This, they alleged, meant the LCC was still in ‘beneficial occupation’ of the building. When the LCC ignored Hackney’s demand for rates, and even ignored a magistrates’ court summons, Hackney obtained a distress warrant. Bailiffs then seized a tramcar owned by the LCC. Only at this stage did the LCC respond by making an application to the High Court to have the seizure set aside. The High Court held that, even though Hackney’s assertion of beneficial occupation was misconceived (empty cupboards do not a schoolroom make, nor iron mangles a home), it was now too late for the LCC to dispute the issue. They had to pay up to get their tramcar back!

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