



ZOMBIE LAW:

Answers to nine post-apocalypse cocktail party legal questions

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Popular interest in zombie movies,¹ books² and television shows³ is rising faster than the undead themselves. Consequently, many of you who know of my interest in matters undead have been asking me: “Andrew, what role if any will the legal profession have after the dead rise?”

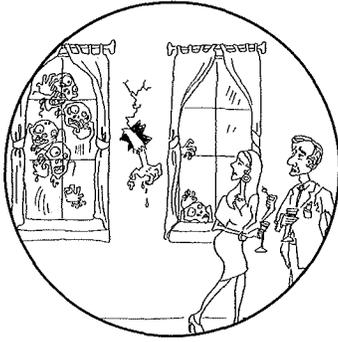
One might be tempted to assume that, in a world where herds of ambulatory corpses clog the cities and roam the countryside with an insatiable appetite for human flesh, the rule of law will be that of the gun, and accordingly there will be no need for lawyers. After all, zombies don’t listen to reason and are not interested in legal niceties. Indeed, they can only be stopped by a sharp and decisive blow to the head, whether delivered by pistol,⁴ baseball bat,⁵ rock,⁶ sword⁷ or crossbow bolt.⁸ Seasoned advocates may be capable of dissecting your argument, but the only thing zombies want to dissect is your innards.

As for the surviving humans, one would expect they would at most be concerned with, well, survival. In general, their worries will range from where they will find their next sources of fresh wa-

ter, petrol and ammunition⁹ to whether they will ever find a permanent safe haven¹⁰ and on to the recurring question “Where did that scratch on your arm come from?”¹¹

That said, survivors will have downtime. Lots of it. There will be stretches where temporary safety has been found, food and alcohol have been located, and idle banter over drinks ensues for lack of anything else to do. That will inevitably give rise to questions about what you did for a living before the apocalypse. As at any pre-apocalypse cocktail party, responding with “lawyer” will inevitably give rise to people seeking free legal advice.

The fact that your entire family, social circle and firm have been eaten and/or are shuffling around in a partially decomposed state, along with the judiciary and constabulary, is no reason to let your legal training go to waste. That said, I appreciate that not everyone has expertise in the application of current law to the post-apocalyptic context. But I do. And, since I might need a favour from one of you at some point,¹² here are the answers to nine legal questions you are likely to be asked over cocktails by your fellow survivors.



1. QUESTION: *Criminal law* – How soon post-infection but pre-zombification is it lawful to kill a person in anticipatory self-defence?

ANSWER: Prophylactic post-infection/pre-zombification measures are entirely permissible as self-defence under the *Criminal Code*.¹³ Indeed, you would be a sentimental fool not to do the unpleasant deed as soon as practicable after a confirmation of infection.¹⁴ It is not a question of whether an infected person will zombify and try to eat you, but rather a question of when. Definitely something you want to get ahead of.¹⁵

2. QUESTION: *Rules of Professional Conduct* – You’re a lawyer? Hey, I’m a lawyer too. Listen, after the dead rose I bumped into one of my clients in a survivors’ refugee camp. We would like to have sex. Do the LSUC *Rules of Professional Conduct* prohibit such activity?

ANSWER: Pre-apocalypse it would depend on the nature of your retainer and the power balance in your solicitor-client relationship, but becoming intimate with a current client was generally not a good idea.¹⁶ However, nowadays you’d probably have a pretty good argument that the apocalypse itself terminated your retainer. In that case, s/he is a former, not current, client and you are likely in the clear. Also, taking a practical perspective, keep in mind that the members of the Law Society Tribunal are now either mindlessly wandering the overgrown lawn of Osgoode Hall or have barricaded themselves into the Benchers’ wine cellar and are arguing over how to divide the last case of Châteauneuf-du-Pape. So the risk of disciplinary action is low to nil. What the hell. Go for it.

3. QUESTION: *Limitations* – Does the zombie apocalypse toll my limitation period?
ANSWER: Yes.¹⁷

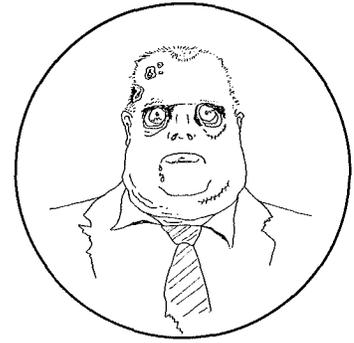
4. QUESTION: *Property rights* – How long can I let survivors squat on my farm near Creemore¹⁸ before they obtain occupancy rights? Can I evict them, or do they acquire rights under the *Residential Tenancies Act*?

ANSWER: Uhm, they can stay as long as they want to stay. You can’t evict them because there is no Landlord and Tenant Board. And there is no provision in the *Criminal Code* permitting you to kill over-holding refugees who pose no threat to you.¹⁹ So please let us stay. Please.



5. QUESTION: *Family Law* – Is zombification grounds for nullification of my marriage?

ANSWER: The answer will depend on the post-apocalypse scientific community’s conclusion as to what a zombie is, biologically speaking – a truly “undead” creature that is not human at all,²⁰ a body that is merely a vessel for the brain and soul of an occupying demonic creature,²¹ a dumbed-down version of the pre-zombification person animated by signals restricted to the amygdala portion of the brain²² or an individual suffering from an infection who never actually died prior to transition.²³ However, regardless of zombic origins and consequent legal status,²⁴ a sharp blow to your zombie spouse’s head, while admittedly emotionally difficult for most survivors to deliver,²⁵ is an efficient, justifiable and entirely legal²⁶ means of terminating all nuptial obligations.



6. QUESTION: *Municipal Law* – Is zombification grounds for removal of Rob Ford from office?

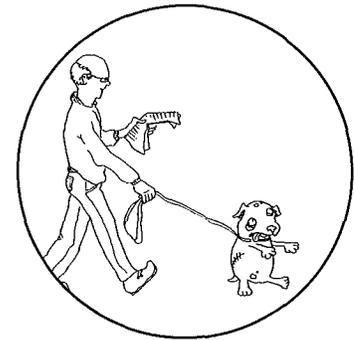
ANSWER: No. Nothing is.²⁷

7. QUESTION: *Family Law* – Is it okay for me to become intimate with a fellow survivor while my spouse is still plodding around, albeit in a partially decomposed state?

ANSWER: Yes. Your spouse isn’t coming back. Except to eat you.²⁸

8. QUESTION: *Tax and Estate Law* – What are the tax implications of zombification? Does the fact that a zombie literally walks in the shoes of their predecessor human²⁹ mean the zombie figuratively steps into those shoes for taxation purposes?³⁰

ANSWER: As with all tax law, the answer to this question is incredibly complicated and arcane. I couldn’t possibly begin to comment. You need to consult a tax specialist.³¹



9. QUESTION: *Property/Animal Law* – Can I keep a zombie as a pet?

ANSWER: Are you freaking nuts? Lawful? Sure. A good idea? No. Absolutely not. Get a grip. Pull yourself together.³²

Every zombie apocalypse survivor is going to have to bring something to the table or risk being served up as a zombie nourishment diversion by others with more relevant skills.³³ You are a lawyer. Your legal training is all you’ve got. Use it well.

And good luck.

Notes

1. *World War Z* and *Zombieland*.
2. *Pride and Prejudice* and *Zombies*.
3. *The Walking Dead*, obviously.
4. Firearms being the most common method generally, though the sound often attracts more of them. Example: Carl shoots freshly zombified Shane in *Walking Dead*, season 2 with a dead-eye pistol shot from 20 metres, but the report attracts a massive wandering herd of hungry walkers* who overrun their safe haven on The Farm.
*In *The Walking Dead*, zombies are referred to as "walkers" by the protagonists or, alternatively, by subjects of The Governor (season 3), as "biters."
5. Very effective, and close to silent. Spatter can be a drawback. Example: One of Rick's early kills in *The Walking Dead*, season 1. *Ewww*.
6. Not recommended except as a last resort, given risk of being scratched at close quarters. Example: Rick to the walker on top of him in *The Walking Dead*, season 2.
7. Totally cool, but not everyone has a good blade handy. Example: fan-favourite Michonne in *The Walking Dead*, seasons 3 and 4.
8. Daryl's unique and favoured method, *The Walking Dead*, all seasons.
9. There is no question that our relatively strict gun control laws will be a disadvantage compared with those of the USA during a zombie apocalypse. While most of us currently appreciate the fact that we cannot just pop into a corner store or Canadian Tire to stock up on Glocks, semi-automatics and unlimited cases of ammo – and laugh at Americans who think it their constitutional right to do so – we will live (or die) to regret this when being chased down by a shambling herd of zombies with only Great Uncle Jim's rusty World War II-issue rifle grabbed in panic from storage, or when facing off against a roving band of better-armed and belligerent survivors who want our gas and water.
10. There isn't one. Sorry.
11. Skin-breaking zombie bites or scratches will result in zombification within a short time, ranging from a maximum of 24 hours (see *Dawn of the Dead*, *Day of the Dead*, *Shaun of the Dead* or *Zombieland*) right down to a matter of seconds (see *World War Z* and *28 Days Later*) or somewhere in between (see *The Walking Dead*). Obviously one must constantly be on guard for companions who don't want to admit they are doomed and try to hide their zombie-inflicted wounds.
12. Gas. Food. Water. Ammo. Shelter.
13. *Criminal Code*, RSC 1985, c C-46, s 34.
14. See note 11, *supra*.
15. See: *Night of the Living Dead*; *Dawn of the Dead*; *Day of the Dead*; *Demons*; *28 Days Later*; *Shaun of the Dead*; *Zombieland*; *The Walking Dead*.
16. Rule 5.03 of the LSUC *Rules of Professional Conduct* governs sexual harassment but does not outright prohibit sex with a client.
17. While the Ontario *Limitations Act, 2002* does not expressly address the issue, I am prepared to opine that the zombification of court staff and consequent inability of litigants to issue originating process will require any post-apocalypse Parliament to legislate an *ex post facto* global tolling of limitations, or the courts to routinely grant extensions based on special circumstances should Parliament fail to act. Or not. But whatever. I mean, really.
18. Applies equally to isolated cottages on small lakes in Muskoka or Haliburton/Kawarthas.
19. *Criminal Code*, *supra* note 13 at s 35(1)(d) requires that force used in defence of property be reasonable in all the circumstances. Expelling refugees seeking shelter from zombies, by force, is hardly reasonable.
20. *Night of the Living Dead*; *Dawn of the Dead*; *Day of the Dead*.
21. *Evil Dead*; *Evil Dead 2*; *Evil Dead 3*, *Army of Darkness*; *Dead Alive*; *Demons* (arguably).
22. *The Walking Dead*.
23. *28 Days Later*; *World War Z*.
24. For a complete discussion of zombie taxonomy, including medical diagnosis and whether a zombie is a legal "person" in the USA for taxation and estate purposes, see Adam Chodorow, "Death and Taxes and Zombies" (2013) 98 *Iowa L Rev* 1207. Unfortunately I am unaware of any similarly authoritative Canadian legal analysis.
25. See *Walking Dead* season 1 (the guy whose zombified wife was walking around outside his house) and season 2 (Hershal, who locked his zombie wife up in the barn with zombie friends and zombie neighbours in the vain hope of a cure, before being rudely brought to his senses).
26. Self-defence – see answer to Question 1 and *Criminal Code*, *supra* note 13 at s 34.
27. I am reluctant to issue a firm opinion on this, given that so very much could happen between my submitting this article for publication and election day. However, see *Magder v Ford*, 2013 ONSC 263, leave to appeal to SCC denied 2013 CanLII 35700. See also *Foulidis v Ford*, 2012 ONSC 7189, leave to appeal denied 2014 ONCA 530; and *Ford v Toronto (Compliance Audit Committee)*, 2012 ONCJ 92. And see City of Toronto Council resolutions adopted 12, 13 and 18 November 2013, and May–June 2014 "stint in rehab."
28. That said, you really need to see with your own eyes that your spouse has been zombified before taking this step. For a cautionary tale on this issue, see the conundrum faced by Lori in *The Walking Dead*, season 1, when she believed hubby Rick had met a nasty fate in the early days of the apocalypse and so she started sleeping with Rick's opportunistic best friend and partner Shane, only to have a very much alive Rick stroll into their survivors' camp. An uncomfortable situation, I'm sure you will agree.
29. By this I mean literally, not figuratively.
30. By this I mean figuratively, not literally.
31. Significant work on this topic in the American context has already been done. See Adam Chodorow, *Death and Taxes and Zombies*, *supra* note 24.
32. See attempts to domesticate or "tame" zombies gone very wrong in *28 Days Later* and *Day of the Dead*. Or the heart-breaking efforts of the deluded little girl to befriend them in *The Walking Dead*, season 4. On the other hand, some domestication attempts have succeeded in situations where humans have regained the upper hand globally; see *Fido* and *Shaun of the Dead*. Also see Michonne's successful use of two leashed and de-jawed/de-armed walkers as "camouflage" rather than pets in *The Walking Dead*, season 3 (with bonus flashbacks in season 4). Nevertheless, in general this remains a really, really bad idea. Seriously.
33. See Shane's shameful but arguably necessary leaving behind of Otis, giving him time to escape while the pursuing zombies were feasting, in *The Walking Dead*, season 2.