

The Trolley Problem

If you are an in-house lawyer, you will eventually face a “Trolley Problem.”

Imagine you are the conductor of a trolley, moving at high speed down the tracks. Suddenly, you notice a group of five workers on the line ahead of you. In a matter of seconds, your trolley will crash into them and kill all five. But there is a spur line branching off the tracks just ahead. If you act immediately, you can pull a lever on your trolley and divert it down the other line. The only problem is that a single worker is on that spur, and he will certainly die if you save the five.

What do you do? Do nothing and let five workers die? Or pull the lever and save the five, killing one in the process?

You probably remember this scenario from your college philosophy course. It is a famous moral dilemma created in 1967 by the British philosopher Philippa Foot. Since then, ethicists, psychologists, and neuroscientists have invented myriad revisions to her original test.

Different Trolley Problems include variations of the imposing harm. Some modify the gender, age, and social status of the victims. Some Trolley Problems give you time to ponder, while others demand an instant reaction. More creative Trolley Problems change the story leading up to the dilemma, such as making you responsible for the fact that the men are working on the track.

If you present the Trolley Problem to lawyers, however, the experiment goes awry. We lawyers don't readily accept binary options. We insist that we can warn the five men on the track, stop the trolley, or invent some other ingenious solution to spare everyone's life.

Philosophers find lawyers very frustrating. Coming up with alternative endings is not permitted in Trolley Problems, but it is instructive. It shows how difficult the underlying dilemma really is.

Don't worry about your response or reasoning. Whether you decided to pull the lever on the trolley or not, you are in good company. For the original Trolley Problem, a majority of participants would pull the lever. But in some modified Trolley Problems, where you must actively kill a person with your own hands to save others, the

majority of people do not “pull the lever” (e.g., in a hostage situation when you must kill one hostage, face to face, to save the others).

What you should worry about, however, is what you will do the next time you encounter a Trolley Problem in real life. You probably won't face a deadly choice, but if you are a corporate lawyer you will certainly deal with non-lethal Trolley Problems in some form.

These non-lethal corporate Trolley Problems are not always binary, but they do force us to make moral choices. And, like in Professor Foot's original experiment, most of our dilemmas involve deciding whether or not to take action in a situation that will negatively impact oneself or others, but for the greater good.

What are some potential Trolley Problems for an in-house lawyer?

- A minor quality issue that might lead to litigation, but raising the issue will lead to costly delays to an important product launch.
- A beloved coworker whose playful teasing brushes up to the fringes of harassment, but confronting him will destroy a jovial office environment.
- A non-toxic environmental spill that does not require expensive mediation, but reporting it might prevent a toxic accident in the future.

Like a good lawyer, you probably read the example above and thought of multiple exceptions. As we know, lawyers hate binary options and philosophers don't like testing lawyers. But Trolley Problems force us to confront one of the most difficult types of moral choice: Do nothing, with no personal repercussions, but at a greater cost to others. Or take action, at some personal cost, for a greater good.

These types of hypothetical problems can be good philosophical fun. In the real world, however, we face Trolley Problems all the time. And while these are rarely life-and-death moral dilemmas, they are true ethical choices nonetheless.

So as an in-house counsel, when you are faced with your next Trolley Problem, will you pull the lever? **ACC**

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