

## Episode Summary

**Episode number:** 118  
**Episode name:** Musk v Altman: Contracts, Estoppel and (Maybe) the Future of Humankind  
**Guest(s):** David Turner

**What area(s) of law does this episode consider?** *Musk v OpenAI: a global fiduciary duty?*

**Why is this topic relevant?** It's not often you can say that the fate of humanity hangs on the outcome of a legal proceeding. It might sound absurd, but if you believe Elon Musk, the plaintiff in the latest lawsuit against OpenAI, then the outcome of his case might be just that important.

Musk has filed a complaint against OpenAI and its founders, claiming that they breached an alleged contract which required them to 'develop [Artificial General Intelligence] for the benefit of humanity' and make its research and technology open-source – freely available to the public.

OpenAI, of course, denies all these claims, and has just published a blog post claiming that Musk always knew that to raise enough money to compete with the likes of Google, it would have to attract investors with for-profit operations.

Is GPT-4 an Artificial General Intelligence? Is AGI a threat to humanity? Would OpenAI publicly releasing the details of their research help prevent, or accelerate, that threat? These questions, some of the greatest of our time, may well be decided in the unlikeliest of places – The Superior Court of California.

**What cases are considered in this episode?** *Carlill v Carbolic Smoke Ball Company* [1892] EWCA Civ 1

- The Carbolic Smoke Ball Company advertised that their smoke ball product could prevent influenza. The company offered to pay £100 to any person who contracted influenza after using their smoke ball according to the instructions provided. Mrs. Carlill saw the advertisement, purchased the smoke ball, and used it as directed. Nevertheless, she contracted influenza and subsequently claimed the £100 reward. When the company refused to pay, Mrs. Carlill brought a lawsuit against them for breach of contract. The company defended itself, arguing, amongst other claims, that Mrs. Carlill had not provided any consideration. Finding in favour of Mrs. Carlill, the Court of Appeal clarified that consideration does not necessarily have to pass from the promisee to the promisor. Instead, what is required is that the promisee must undertake some form of detriment or inconvenience at the promisor's request. Mrs. Carlill's actions in using the smoke ball as directed constituted a detriment to herself, as she had to follow the specific instructions of using the product three times daily for two weeks. This inconvenience, willingly undertaken by Mrs. Carlill, was held to be sufficient consideration for the company's promise to pay the £100 reward.

**What are the main points?**

- Elon Musk, an alleged founder of OpenAI, filed a complaint in the Superior Court of California, asserting that OpenAI has deviated from its original mission to develop artificial general intelligence (AGI) for the benefit of humanity.

- Musk's legal claims include breach of contract, promissory estoppel, breach of fiduciary duty, and unfair business practices (a California cause of action).
- He alleges that OpenAI has turned for-profit by limiting access to its AI models, particularly GPT-4, and partnering with Microsoft.
- In response, OpenAI's released a series of emails that purportedly show Musk was aware of, and agreed to, the need for significant funding to compete with major companies like Google, and which suggested that a for-profit approach was always part of the plan.
- The core of the dispute seems to revolve around differing interpretations of the company's objectives, the open-source nature of its AI developments, and the extent to which these technologies should be shared or restricted for the common good.
- The definition and classification of GPT-4 as AGI are also contentious points, with implications for OpenAI's licensing agreement with Microsoft.
- Musk seeks a range of remedies including specific performance of the founding agreement, a declaration that GPT-4 is AGI, and a return of his donations, which he promises to give to charity.
- OpenAI, on its part, plans to request dismissal of the claims, arguing that there's no legal basis for Musk's complaints.
- The case, if it proceeds, could be decided by a civil jury in California, which adds another layer of complexity and public interest given the wide-reaching implications of the case and the technical and philosophical questions involved.

[Show notes](#)

*Musk v Altman: Contracts, Estoppel and (Maybe) the Future of Humankind*, Blog Article by Hearsay ([link](#))