

## Appendix 3

### *Lawful sports and pastimes*

The concept of lawful sports and pastimes in English law is very wide, based on centuries of experience. Lawful sports and pastimes are certain, reasonable and continuous recreational activities. *New Windsor Corporation v Mellor* (1975) 1 Ch 380, 386-387, Lord Denning MR. *Lockwood v Wood* (1844) 6 QB 50. *Hammerton v Honey* (1876) 24 WR 603, Sir George Jessel MR. *Fitch v Rawling* (1795) 2 Hy B1 393; (1775-1802) All ER Rep 571. *Mercer v Denne* (1904) 2 Ch 534, 551-533. The judicial and commissioner decisions are numerous. Each case turns on its own particular facts. The following have been found to be within the definition:

archery and shooting: *New Windsor Corporation v Mellor* (1975) 1 Ch 380

cricket, formal and informal: *Fitch v Rawling* (1795) 2 Hy B1 393; *Lancashire v Hunt* (1894) 10 TLR 310

riding horses and ponies and racing: *Lancashire v Hunt* (1894) 10 TLR 310

children playing: *Havercroft Green, Wakefield District, West Yorkshire*, (1976) 270/D/1-4. *The Field, Smailes Lane, Rowland Gill, Gateshead Borough, Tyne and Wear* (1984) 266/D/1. *Bridge Green, Hargrave, West Suffolk* (1972) 35/D/1

village dancing: *Abbot v Weekly* (1665) 1 Levinz 176

maypole celebrations: *Hall v Nottingham* (1875) 1 Ex Div 1

fishing: *Top Jetty, Woody Bay, Martinhoe, Devon* (1972) 9/D/9

football, rounders and cricket: *Virgo v Harford* (1893) *The Times* 30 March 1893

idling by the river by way of walking, fishing and picnicking: *Foreshore on the east bank of the River Ouse, Naburn, Selby District, North Yorkshire* (1988) 268/D/449

sketching and drawing and painting and bird watching: *Top Jetty, Woody Bay, Martinhoe, Devon* (1972) 9/D/9

local adults picnicking, taking dogs for walks, and fishing in the pond: *White Lane Pond, Four Doles and Clay Pits, Thorne and Stainforth, South Yorkshire (no 1)* (1984) 269/D/36-39

walking the dog, though for the benefit of humans, not the dog: *River Don and its banks, Kirk Bramwith, South Yorkshire* (1984) 269/D82-92; *White Lane Pond, Four Doles and Clay Pits, Thorne and Stainforth, South Yorkshire (no 1)* (1984) 269/D/36-39

wandering or promenading by way of pastime, recreational walking: 'Popular amusement takes many shapes; and there is no outdoor recreation so general and perennial as the promenade.' *Abercromby v Fermoy Town Commissioners* (1900) 1 IR 302, 314, Holmes LJ, following *Dyce v Lady James Hay* (1852) 1 Macq 305, HL, Lord St Leonards LC, approved in *Attorney-General v Antrobus* (1905) 2 Ch 188, 207, Farwell J. But walking across land, to get from A to B, rather than just wandering about, would seem to indicate a right, or claim to a right, of way—an easement, not a lawful sport or pastime.

The lawful sports and pastimes cited need not have existed since 1189 or time immemorial, because in the nature of things over the years habits and customs change, including lawful sports and pastimes. *Bridge Green, Hargrave, West Suffolk* (1972) 35/D/1.

The lawful sports and pastimes may be either formal and structured, eg organised team games, or informal and unstructured, eg children playing, a family walking along, even one person walking on his own, flying a kite, walking the dog, picking blackberries. There must be an established pattern of use and the use must not be 'trivial and sporadic'. *R v Oxfordshire County Council and Oxford Diocesan Board of Finance ex parte Sunningwell Parish Council* [1999] 3 All ER 385 (HL).

Taken together, and depending upon their inherent nature, the lawful sports and pastimes must have been exercised continuously, albeit perhaps seasonally, during the period specified in the application. For example: snowballing in the winter, cricket in the summer, blackberrying in the autumn, walking the dog all the year round; the first ten years football, the second ten years rounders or baseball (or softball); and so on.

Car parking does not qualify. *Attorney-General v Southampton Corporation* (1970) 21 P & CR 281; (1969) 68 LGR 288. *Attorney-General v Poole Corporation* (1938) Ch 23, CA.

May 2013