

Sport, The Crown & The Common Law —

An appraisal of the common law offence of public nuisance and the human activity of sport, embodying assessment of the responsibilities of the Executive branch of government in managing the circumstances in which public nuisances are created and assessment of the need for legislative reform.

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Abstract

When a family or a group of friends visit a beach or a park for their enjoyment and recreation and find that they are not able to use the beach or the park or are told to move off the beach or away from the park because a publicly exhibited sporting event is making use of this public space, a conflict of rights arises. The family or group of friends is not wrong in questioning the rights of a sports association to exclusive use of a public space for their public sporting event.

The thesis assesses whether the public possess rights at public places and whether these public rights are adequately safeguarded during public sporting events by reason of the development of the common law in public nuisance litigation. Common law public rights such as a public right to quietude, a public right to safety, and a public right to recreation are discussed. Courts may intervene to protect inferred common law public rights during public sporting events and may declare public sporting events unlawful. This thesis finds that common law public rights may not be impinged by the staging of public sporting events at public places. Only by means of reform of the law may common law rights be displaced and public sporting events be lawfully staged. Public sports are a special category of human activity that depend upon sanction from Parliament for legitimacy.

This thesis argues that law reform in the form of a sports code is warranted owing to the participation of the Executive in promoting public sport in breach of common law proscription of such promotion where it impinges upon public rights. Regulation in the sporting arena is not a modern legal development and this thesis describes examples of regulation from the year 1194 onwards. Each historical regulation can be viewed as attempts by the Executive to control excesses or breaches of the law in public exhibitions of sport.

Because publicly exhibited sporting events are liable to proscription as public nuisances, following the common law case law, and because the public's rights to use of public spaces may be carelessly inhibited, this thesis argues that legislative reform in the form of a Sports Code is warranted.

Declaration

This thesis is submitted to Bond University in fulfilment of the requirements of the degree of Doctor of Philosophy. This thesis represents my own original work towards this research degree and contains no material which has been previously submitted for a degree or diploma at this University or any other institution, except where due acknowledgement is made.

A handwritten signature in black ink, consisting of several loops and flourishes, positioned above the date.

25 November 2011

Table of Contents

Chapter 1	Introduction	page 9
	1. A scenario	page 9
	2. A conflict	page 10
	3. Sport, the Crown, and the common law: an overview	page 11
	4. The structure of this thesis	page 17
	5. The nature of the inquiry undertaken	page 20
Chapter 2	Historical sources of regulation of sporting events	page 24
	1. Historical Proclamations	page 27
	2. The Proclamation on Tournaments of Richard I in 1194	page 28
	3. The <i>Statuta Armorum</i> of Edward I in 1292	page 31
	4. The <i>Proclamatio facta pro Conservatione Pacis</i> of Edward II in 1314	page 33
	5. Other historical Proclamations	page 36
	6. Historical Statutes	page 41
	7. Contemporary Statutes	page 46
	8. The nature of publicly exhibited sporting events throughout the Ages	page 47
Part 1	Public Rights & Natural Rights in Sport	
Chapter 3	Public rights at public places	page 50
	1. The meaning of public place	page 56
	2. The context in which a public right to recreation might arise	page 58
	3. Public rights at public places by analogy to the public right of way	page 61
	4. The <i>Blundell v Catterall</i> blunder?	page 63
	5. Understanding the <i>Blundell v Catterall</i> blunder	page 71
	6. Public rights at public places dedicated to the public for public use	page 78
	7. Public rights arising by long uninterrupted use	page 83
	8. Use as of right	page 88
	9. The village green cases	page 94
	10. Concluding remarks	page 100
Chapter 4	Public rights & natural rights in sport & recreation	page 104
	1. Natural rights	page 104
	2. The interplay between public rights and natural rights	page 113
Part 2	The Nature of Public Nuisance	
Chapter 5	The inherent features of the common law offence of public nuisance	page 121
	1. The distinction between the common law crime of public nuisance, the tort of public nuisance, and private nuisance	page 121
	2. The definition of public nuisance	page 127
	a. Public nuisance and public morals	page 130
	b. The requirement of common injury in a public nuisance offence	page 133

	3. Common injury and public rights in public nuisance offences	page 135
	4. Is a public nuisance a single act or a continuing offence?	page 138
	5. Concluding remarks	page 147
Chapter 6	The meaning of public in public nuisance	page 149
	1. How many people must an act affect so as to amount to a public nuisance?	page 149
	2. Summary	page 156
Chapter 7	The mental element of the offence of public nuisance	page 159
Chapter 8	Remedies against public nuisance	page 165
	1. Remedy at the plaint of the Crown	page 165
	2. Decision to sue is not reviewable	page 168
	3. Only the Crown may sue to abate a public nuisance and protect public rights	page 169
	4. The right of the Crown to sue for damages for public nuisances	page 178
	5. The powers of local authorities to sue for public nuisance	page 180
	6. Concluding remarks	page 185
Chapter 9	The modern utility of public nuisance	page 187
	1. Criticisms of public nuisance	page 187
	2. Clarity in the application of public nuisance	page 193
	3. The effect of codification on the common law offence of public nuisance	page 196
	4. Concluding remarks	page 207
Part 3	Applying Public Nuisance to Sport	
Chapter 10	Public sport events & the principles of public nuisance	page 211
	1. Are public exhibitions of sport public nuisances?	page 211
	2. Who is responsible for the public nuisance where a publicly exhibited sporting event creates a public nuisance?	page 213
	3. Public nuisance may be created by the direct actions of a sporting event or by the actions of people attending at a sporting event	page 214
Chapter 11	Public sporting events causing obstruction or inconvenience to the public	page 222
	1. A public exhibition of sport which causes obstruction of or inconvenience to the use of the highway is a public nuisance	page 222
	2. Publicly exhibited sporting events creating obstruction or inconvenience directly	page 223
	3. Publicly exhibited sporting events creating obstruction or inconvenience indirectly	page 233
	4. The nature of the public right of way	page 236
	5. Concluding remarks	page 243
Chapter 12	Public sporting events causing annoyance or discomfort to the public	page 244
	1. Publicly exhibited sporting events creating annoyance or discomfort directly	page 246
	2. Publicly exhibited sporting events creating annoyance or discomfort indirectly	page 255
	3. Publicly exhibited sporting events may create annoyance or discomfort even when complying with municipal laws	page 267
	4. Publicly exhibited sporting events may create annoyance or discomfort where they escalate in occurrence	page 270
	5. Concluding remarks	page 273

Chapter 13	Public sporting events endangering public safety, public health or the life of the public	page 276
	1. Publicly exhibited sporting events endangering public safety, health or life, directly	page 278
	2. A violent sporting event may be a public nuisance	page 285
	3. Publicly exhibited sporting events endangering public safety, health or life, indirectly	page 295
	4. Doping in sport may be a public nuisance	page 296
	5. Concluding remarks	page 300
Part 4	The Role of the Crown in Regulating Public Sporting Events	
Chapter 14	The power of local councils vis-à-vis sporting events	page 303
	1. No authority but Parliament can license or pardon a public nuisance	page 303
	2. Parliamentary sovereignty	page 306
	3. Judicial performance and the dipole of Parliament and the courts	page 315
	4. Statutory interpretation	page 317
	5. The nature and extent of power devolved under Local Government Acts	page 339
	6. A local authority may be complicit in committing a public nuisance offence	page 363
	7. Concluding remarks	page 363
Chapter 15	The role of the Crown in managing publicly exhibited sports	page 366
	1. Why is the Crown involved in the resolution of a conflict of rights in sports?	page 366
	2. The Royal Peace	page 369
	3. Parens Patriae	page 372
	4. Montesquieu's jurisprudence	page 382
	5. Concluding remarks	page 389
Chapter 16	Toward a modern regulatory framework	page 392
	1. Amend Local Government Acts	page 397
	2. Promulgate a new statute for each sporting event	page 399
	3. A statute to cover the field	page 403
	4. Concluding remarks	page 417
Part 5	Conclusion	
Chapter 17	Conclusion	page 419
Part 6	Bibliography	
Appendix	Bibliography	page 424

A word on citation

This thesis uses a modified version of the *Oxford Standard Citation of Legal Authorities* (*Oxford Standard*). A modified version has been adopted because the content of this thesis has appeal to an audience wider than the legal community – namely, the sports industry, media, local government, parliamentarians, and politicians, in a wide variety of common law jurisdictions. The esoteric nature of citation in the *Oxford Standard* is believed to be detrimental to a full understanding of the arguments of this thesis by those persons who possess no legal training. Consequently, the following amendments of the *Oxford Standard* are utilized throughout this thesis:

Where the *Oxford Standard* recommends that only a number following the citation of a court report be used to denote the page at which judicial dicta are to be found, this thesis will use the phrase “at p” followed by the page number.

Where the *Oxford Standard* recommends that only a number within a square bracket following the neutral citation of a court report be used to denote the paragraph at which judicial dicta are to be found, this thesis will use the phrase “at para” followed by the paragraph number within a square bracket.

Where the *Oxford Standard* recommends that only an acronym be used to signify the court which made the decision in the case referenced, this thesis will use the full name of the court, where appropriate.

Note

The central legal question raised in this thesis, namely, whether a publicly exhibited sporting event can impinge upon public rights, was initially brought to the mind of the author consequent to a personal experience of the author and the author's mother. The author competed in the Royal Windsor Triathlon at Windsor and Eton in England in June 2002. The running leg of this triathlon race followed a route along the road bordering Windsor Castle, down to the Thames and across the Thames down the Eton High Street to Eton College and returning. During the race the author's mother, who was spectating, and was stationed on the bridge over the Thames between Windsor and Eton, became involved in a heated argument with a local resident. The local resident was upset that she was unable to take her Sunday morning walk with her dog without being bumped by the participants in the triathlon race and by crowds of people spectating, or otherwise inconvenienced by the barriers that were erected by race officials to guide the competitors through the running leg of the course. She complained that both she and her dog had to duck and weave through the crowd of spectators and through athletes competing in the race to avoid being assaulted.

The complaint of the local resident left an indelible imprint on the mind of the author. The local resident had raised important questions about the lawfulness of the triathlon event staged at Windsor and the impact that this publicly exhibited sporting event had on her rights to use of the public highway for walking and for walking her dog.