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.

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# Table of Contents

Chapter 1  
Introduction  
1. A scenario  
2. A conflict  
3. Sport, the Crown, and the common law: an overview  
4. The structure of this thesis  
5. The nature of the inquiry undertaken  

Page 9

Chapter 2  
Historical sources of regulation of sporting events  
1. Historical Proclamations  
2. The Proclamation on Tournaments of Richard I in 1194  
3. The Statuta Armorum of Edward I in 1292  
4. The Proclamation dicta pro Conservatione Pacis of Edward II in 1314  
5. Other historical Proclamations  
6. Historical Statutes  
7. Contemporary Statutes  
8. The nature of publicly exhibited sporting events throughout the Ages  

Page 24

Part 1  
Public Rights & Natural Rights in Sport  

Chapter 3  
Public rights at public places  
1. The meaning of public place  
2. The context in which a public right to recreation might arise  
3. Public rights at public places by analogy to the public right of way  
4. The *Blundell v Catterall* blunder?  
5. Understanding the *Blundell v Catterall* blunder  
6. Public rights at public places dedicated to the public for public use  
7. Public rights arising by long uninterrupted use  
8. Use as of right  
9. The village green cases  
10. Concluding remarks  

Page 50

Chapter 4  
Public rights & natural rights in sport & recreation  
1. Natural rights  
2. The interplay between public rights and natural rights  

Page 104

Part 2  
The Nature of Public Nuisance  

Chapter 5  
The inherent features of the common law offence of public nuisance  
1. The distinction between the common law crime of public nuisance, the tort of public nuisance, and private nuisance  
2. The definition of public nuisance  
   a. Public nuisance and public morals  
   b. The requirement of common injury in a public nuisance offence  

Page 121
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.
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.