



Property Christmas #Brew 2021 Your Takeaway Cup*

A light-hearted look at what might have been discussed if the nativity had involved three property lawyers instead of three kings:

Christmas Carols and Possible Causes of Action

1 Good King Wenceslas

"Good King Wenceslas looked out/On the feast of Stephen ... When a poor man came in sight/Gathering Christmas fuel."

Fearn & Ors v. Board of Trustees of Tate Gallery [2020] EWCA Civ 104

Poor man has no cause of action against prurient king in tort of 'overlooking' (but NB Supreme Court decision pending).

2 O Little Town of Bethlehem!

"O little town of Bethlehem/How still we see thee lie!... Yet in the dark street shineth the everlasting Light"

s. 79(1)(fb) Environmental Protection Act 1990

Any proceedings for statutory nuisance in respect of prejudice to the health of an inhabitant of Bethlehem caused by Everlasting Light under s. 79(1)(fb) EPA 1990 unlikely to succeed as premises from which light emitted not 'land' (or 'vessel') within meaning of s. 79(7).

3 Jingle Bells

"Dashing through the snow/In a one-horse open sleigh/Over the fields we go/Laughing all the way."

Bakwell Management Limited & Brandwood [2004] UKHL 14 (overruling Hanning v Top Deck Travel Group Limited (1993) 68 P.&C.R. 14)

Santa likely* to have acquired prescriptive easement to reach any children whose houses are accessible only over common land (or other land over which driving of sleighs might otherwise constitute a criminal offence e.g. under s. 193(4) Law of Property Act 1925).

* *Sed quaere* whether Santa's user is nec clam, nec vi, nec precario.

4 While Shepherds Watched

"While shepherds watched/Their flocks by night/All seated on the ground/The angel of the Lord appeared/And glory shone around"

Crow v. Wood [1971] 1 Q.B. 77s. 79(1)(fb) Environmental Protection Act 1990

In the event of angel of the Lord distracting shepherds such that sheep escape and trespass on land of another, there may be a defence if that other landowner has a positive obligation to fence their own land (the benefit of which positive obligation may have passed to the shepherds under s. 62 Law of Property Act 1925).

5 Silent Night!

"Silent night, Holy night,/All is calm, all is bright,/Round yon virgin, mother and child,/Holy infant, tender and mild,/Sleep in heavenly peace,/Sleep in heavenly peace."

Jones v. Ministry of Defence [2021] EWHC 2276 (QB)

Interference with heavenly peace may not constitute actionable nuisance in the event of noise from other animals in the stable being of long standing nature and reasonably managed.

6 Hark! The herald angels sing

"Hark! The herald angels sing/Glory to the new born king;/Peace on earth, and mercy mild/God and sinner reconciled"

Keshwala & Anor v. Bhalsod & Anor [2021] EWCA Civ 492

Do not delay in seeking reconciliation: applications for relief from forfeiture brought within 6 months are not inevitably sufficiently prompt.

John de Waal QC

John Clargo

Emily Betts

* with extra shot of cinnamon

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