



Gospel & Law

The newsletter of the
Ecclesiastical Law Society



Editor: Revd Dr Catherine Shelley
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Advent and Christmas Edition:

Prepare the way of the Lord....

Editorial:

As Advent's preparing of the way risks being eclipsed by the secular commercialism of Christmas, advice from the General Synod Legal Advisory Commission on the use of Church buildings for secular purposes and rights of way across churchyards seems fitting. There is also guidance on PCC membership, good practice and powers.

A summary is provided of the paper submitted to the Law Commission by the ELS working party on Burial Law. Some of the issues will be familiar to those who attended the 2015 ELS Residential Conference in Bristol.

Looking towards Christmas the newsletter concludes with a Christmas Quiz, the usual dates for the diary and some possible books for Christmas reading and/or Christmas presents.

Legal Advice from the Church of England:

At the end of October the Church of England Documents Library made available three legal opinions produced by the General Synod Legal Advisory Commission. The papers cover:

Parochial Church Councils, with guidance on PCC membership including co-option, positive discrimination by gender (illegal), good practice as regards separation of officers, the role and powers of the PCC Standing Committee and other committees of the PCC, the powers of PCCs to make charitable donations and the powers of PCCs to borrow money.

https://www.churchofengland.org/media/3332307/parochial_church_councils.pdf

Use of Church Buildings for Secular Purposes – The paper begins with the reminder that use of a church for non-parish purposes must be under a lease or licence, as the legal mechanism for regulating the relationship of landlord and tenant or licensor and licensee. Such legal arrangements must also be authorized by faculty in the case of a licence and either by faculty in the case of the lease of part of a church or by Church Commissioner's Scheme for lease of the whole church (s.68 Mission and Pastoral Measure 2011). The remainder of the paper considers the inter-relationship of the faculty jurisdiction for internal changes where the building remains mostly used for ecclesiastical purposes and secular planning controls that may apply depending on the extent of non-Church use. The inter-relationship of Listed Building Consent and the faculty jurisdiction, planning permission and change of use applications are also considered.



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https://www.churchofengland.org/media/3332320/post_offices_etc.pdf

Public Rights of Way over land forming part of a churchyard – This paper sets out the technical legal issues as to how a right of way may come into existence over a churchyard, particularly under the Highways Act 1980 by 20 years uninterrupted use. Part 2 helpfully sets out the position of PCCs and Incumbents in relation to such rights of ways and precautions that they might take to avoid a right of way arising.

https://www.churchofengland.org/media/3332294/churchyards_-_highways_oct_2016_.pdf

Your word is a lamp to my feet and a light to my path...
Psalm 119:105

Burial Law Consultation:

The ELS working group submission to the Consultation entitled 'Burial and cremation: is the law governing burial and cremation fit for modern conditions?' has been submitted and welcomed by the Law Commission. In summary the Society's submission argues for:

- 1) Consolidation of the law in England and Wales as has recently been undertaken in Scotland resulting in the Burial and Cremation (Scotland) Act 2016.
- 2) Greater clarity for those arranging burials about the significance of consecrated ground and the implications of the faculty jurisdiction for burials, monuments and exhumation
- 3) Clarification of whether disinterment on the orders of a coroner also requires a faculty and/or Secretary of State's licence (which, under the current law, it should not).
- 4) Enabling the giving of money in perpetuity for maintaining a grave and/or monument.
- 5) Clarification of the law as to the provision of burial space; at present the main providers are local authorities and the Church of England but there is no obligation on any organization to ensure adequate provision of burial space. It is suggested that a duty be placed on local authorities by an amendment to the Local Government Act 1972
- 6) Attention to be given to the re-use of grave spaces to address the lack of available space
- 7) Infant Cremations – to go further than The Cremation (England and Wales) (Amendment) Regulations 2016 in enabling applicants' wishes for cremated remains to be recorded and to bring cremations of a foetus following a pregnancy loss at less than 24 weeks within the regulations.
- 8) Reform (long overdue) of death certification to prevent a recurrence of the Harold Shipman case.
- 9) The cost of returning a body from an out of area post mortem to be borne by the coroner (and hence the public purse) rather than the bereaved family.
- 10) Clarification of the law on open-air cremation, if needed, in the wake of the case of *R (Ghai) v Newcastle City Council & Ors* [2010] EWCA Civ 59.
- 11) Clarification of the law on invasive autopsies where the public interest in an autopsy is in conflict with the tenets of religious faith.



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- 12) Clarification of the law on exhumation and re-interment in cases of archeological investigation, prompted by the case of Richard III in *R (Plantagenet Alliance Ltd) v Secretary of State for Justice* [2014] EWHC 1662.
- 13) Rectification of an anomaly around Burial Fees and the Church in Wales.
- 14) Addressing the division of responsibilities for burial and cremation law between the Ministry of Justice, the Department of Health and the Department for Communities and Local Government.

For those who are interested, a copy of the full report is available from Frank Cranmer - frank.cranmer@centrallobby.com

O come, O come, Emmanuel...

Christmas Quiz: *Replies serious and not so serious, welcome.*

The parish has brought a beautiful Christmas tree but discovers when putting it up in church that it is somewhat top-heavy; a hammer, nails and rope are to hand - what should they do?

On the Sunday before Christmas the parish will hold its annual candle-lit Carol Service; all are welcome but no child under 12 will be allowed to hold a candle. Is this restriction legal?

Following the Carol Service a sumptuous mulled wine cup is served, made with a combination of wine and port. Many parishioners enjoy a cup or two and then drive home. Several are stopped on their way home and charged with drink driving. What is the parish's liability?

As an alternative to a Christingle Service a parish decides to stage a performance of Raymond Briggs 'The Snowman' as a good moral tale of loyalty and friendship which may be more acceptable to a multi-cultural audience. Is there any legal reason why they shouldn't?

The weekend before Christmas a bride is late for her wedding, by over an hour.... How long *should* the vicar wait for her to arrive?

Four days after Christmas the vicar meets a family to plan the funeral of a family member who died on Boxing Day; the family want to sing carols at the funeral. Is this permissible?

Dates for the Diary:

London lectures 2017 - free of charge and open to members and non-members, but please book ahead (with admin@ecclawsoc.org.uk) as spaces are limited.

All lectures continue to be held at Winckworth Sherwood, Minerva House, 5 Montague Close, London SE1 9BB and begin at 5.30pm with refreshments available from 5pm.



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25th January 2017 – Philip Petchey Chancellor of Southwark Diocese, *Hidden Treasure: the Church of England's stewardship of its silver plate*

15th March 2017 – Howard Dellar, Lee Bolton Monier-Williams, *The implications of the Education Acts for Church schools and academies*

21st June 2017 – Nigel Baker, former HM Ambassador to the Holy See, *The Embassy to the Holy See: who, what, why?*

11th October 2017 – Sir Mark Hedley DL, Deputy Chair and Deputy President of the Tribunals, *Practical Aspects of the Clergy Discipline Measure*

***'The nature and diversity of authority in Anglicanism...'*, the 2017 ELS Residential Conference and AGM will be at Trinity Hall, Cambridge** from Friday 31st March to 2nd April 2017. This will also be the 30th anniversary of the Society.

Speakers whose attendance is confirmed include Rev Dr Sam Wells (St Martin in the Fields), Professor Norman Doe (Cardiff University), Rt Rev Ric Thorpe (Bishop of Islington), Rev Lucy Winkett (St James Piccadilly), Ven Jane Steen (Archdeacon of Southwark), Stephen Slack (General Synod), Rev Canon Dr Philip Groves (formerly of the Anglican Consultative Council), Chancellor Ruth Arlow and Sir John Laws.

Most services will be held in the College Chapel and the Sunday Morning Eucharist will be in Clare College Chapel, with Right Rev Christine Hardman, Bishop of Newcastle as President and Rev Lucy Winkett, St James Piccadilly as Preacher. There are still places left but they are going quickly. Prices are variable dependent on whether you have an en suite room or not and there will be bursaries available for clergy again.

Books, Books, Books...

Religious Freedom, Religious Discrimination and the Workplace – Professor Lucy Vickers – 2nd Edition - Hart Publishing – 2016

Changing Churches: A practical guide to the Faculty System – Charles Mynors – Bloomsbury Continuum – 2016

The Strange Laws of Old England – Nigel Cawthorne – Piatkus – 2015

The Ludicrous Laws of Old London – Nigel Cawthorne – Robinson – 2016

Book 1 of The Laws of Ecclesiastical Polity – Richard Hooker Ed RW Church (Classic Reprint) – Forgotten Books - 2016



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