

11.3.1 Rights of Way

The decision of the Court of Appeal in *Newman v Greatorex* [2008] EWCA Civ 1318 illustrates a limited right of way. The claimants were the owners of a residential property which included a covered passage next to it. The passage ran to the defendant's bar and beer garden. The claimants were tired of the noise, mess, and general nuisance caused by the customers of the bar using the covered passageway, and tried to stop them using it. The defendants had a right of way over the passageway in the following terms:

'... subject to the right of [H] ... and her ... tenants and servants and all other persons authorised by her or them from time to time and at all times hereafter with or without horses carts and carriages to pass and repass from and to the said other premises belonging to [H] as now used by her tenant [C] ...'

The Court of Appeal upheld the decision of the judge at first instance that the words 'as now used by her tenant [C]' were words of limitation. This meant that since C's customers would not have used the passageway, the bar's customers could not do so either.

11.3.5 Rights of Storage (Right to park)

The case of *Moncrieff v. Jamieson* [2007] UKHL 42; [2007] 1 W.L.R. 2620 contains some interesting points about the right to park, and whether or not it can be an easement. The case is persuasive only, as it was an appeal from a Scottish case. However, the law of servitudes in Scotland has similarities with the English law of easements, and English authorities were cited in the case.

The case concerned two pieces of land originally in common ownership. They were divided into two parts, one on the top of a cliff and the other below. The owner of the land at the bottom of the cliff was given a right of way to drive to his land over the other part. Clearly, he could not get the car down the steps to the cliff to park on his own land, and the right of way was useless without a right to park his car at the top of the cliffs. The House of Lords held that he did have the right to park.

There are articles on this case:

Goymour A 'Easements, servitudes and the right to park' [2008] CLJ 20.

Haley, M 'Easements, exclusionary use and elusive principles - the right to park' [2008] Conv. 244.

There is comment on the Law Commission consultation paper on Easements, Covenants and Profits à Prendre in Dixon M, 'Editor's Notebook (July/August)' [2008] Conv. 269.