

## DEFINITION OF SPORTING RIGHTS

*Ref: Encyclopaedia of forms and precedents under the heading "Nature of Sporting Rights"*

## PART 5: SPORTING RIGHTS

**180 Introduction.** This part of the title deals with the granting of rights over land for the purposes of sporting. It does not, however, deal with the granting of rights to fish which is dealt with in a separate title of this work<sup>1</sup>. Here, sporting is limited to the right to go onto land to hunt and kill game<sup>2</sup> and the right to fox-hunt over land. This right is acquired from one of the following: an owner-occupier<sup>3</sup>; an owner who has let his land but reserved shooting rights<sup>4</sup>; or an occupying tenant whose lease has not reserved such rights to the landlord<sup>5</sup>. [2001]

- 1 As to the grant of fishing rights see vol 16 FISHERIES
- 2 As to the meaning of 'game' see Paragraph 182 [2005] post. As to the game rights generally see 2 Halsbury's Laws (4<sup>th</sup> Edn) para 244 et seq and Woodfall's Law of Landlord and Tenant (28<sup>th</sup> Edn) para 1-165 et seq.
- 3 See eg Form 68 [2020] post.
- 4 See form 73 [2066] post.
- 5 Where game rights have not been reserved by the non-occupying owner they pass in every case with the possession of the land to the tenant: *{Pochin v Smith (1887) 52 JP 4, DC; Anderton v Vicary [1900] 2 QB 287, CA. See also 2 Halsbury's Laws (4<sup>th</sup> Edn) para 245. [2002]*

**181 Nature of sporting rights.** The granting of rights to shoot for game is often referred to as a lease; this is not, however, a correct use of the term. Living game animals and birds, being wild, cannot at law be the subject of absolute property and therefore cannot be leased<sup>1</sup>. This is even if the animals or birds are specifically reared for the purpose of shooting them. The right to shot over land is a privilege to go onto land to kill and take away the game. When a wild animal or bird is killed it becomes the absolute property of the owner or occupier of the land, or of a grantee or licensee of the sporting rights so long as the grantee or licensee is entitled by the grant or licence to take from the land the game killed<sup>2</sup>. The right to kill and take away the game is a profit a prendre and creates an incorporeal hereditament<sup>3</sup>. [2003]

- 1 See *Blades v Higgs (1865) 11 HL Cas 621*. As to property in wild animals generally see 2 Halsbury's Laws (4<sup>th</sup> Edn) para 204 et seq.
- 2 See *Jeffryes v Evans (1865) 19 CBNS 246; Moore v Earl Plymouth (1817) 7 Taunt at 627, per Gibbs CJ*. As to the inclusion in a grant or licence of the right to take and carry away game killed see Paragraph 188.7 [2014] and form 68 clause 1.4 [2021] post.
- 3 *Wickham v Hawker (1840) 7 M & W 63; Ewart v Graham (1859) 7 HL Cas. [2004]*

**182 Definition of 'game'.** The term 'game' has been defined by various statutes<sup>1</sup>; however, these statutes have been generally concerned with the preservation of game or the prevention of poaching game. For this reason these statutory definitions are unhelpful in the context of game which may be sported after. The definition of 'game' can also vary over the years and from area to area<sup>2</sup> and 'is not a word of definite meaning'<sup>3</sup>. In the context of sporting the term has been held to mean 'such things as are usually sported after'<sup>4</sup> and it has been stated that 'probably it also mean things fit .....End