

Foraging – mushrooms, fruit and wood©

Mushrooms

OK, let's start with what not to do and consider the beautiful, but deadly Amanita or Death Cap Mushroom. It has been responsible for a spate of deaths in the USA, particularly California, but the UK is not immune and a woman from Bridgwater (Somerset) died after cooking some from her garden in 2013. Here's a picture of what it looks like in the wild.



Most often it can be seen after heavy rain, in gardens or forests, but do not be tempted – it always causes violent nausea and vomiting – in most cases, liver failure follows and the US CDC has estimated that the Amanita mushroom is responsible for almost 90% of global mushroom deaths, as it grows on almost every continent. Another CDC report (from the 1990s) listed 9 Amanita poisonings and 2 deaths in a single week. At the time of writing (July 2017), there is no cure for such poison and so, we come to Terry Pratchett:

“All fungi are edible; some fungi are only edible once”.

Picking mushrooms and the law

The **Theft Act 1968** states that, in the case of mushrooms or plants growing wild on any land, you may take away foliage, fruit or parts of the plant without committing an offence, provided you are not taking them for commercial purposes. However, if you intend to sell the mushrooms or profit from them in another way, you are breaking the law by taking them without the owner's permission. Here's an example from 2002, when a lady called Mrs Tee-Hillman was arrested for picking chanterelle mushrooms in the New Forest.

The lady admitted that the mushrooms were for sale to restaurants and it seemed that the Forestry Commission would win the case. However, the judge threw it out of court, calling it a waste of public money. Mrs Tee-Hillman then took a civil suit against the Forestry Commission over her right to forage on common land and won herself a licence to pick mushrooms in the New Forest for life. The list below shows some of the key points if you want to go picking mushrooms.

- i. Gain permission from the landowner to pick mushrooms on his or her land.
- ii. With open-access land, run by a public landowner, check first for any local bye-laws on collecting forest plants, including fungi.
- iii. With effect from September 2016, the Forestry Commission has introduced a no-picking of fungi code in the New Forest, but this issue is still under negotiation.
- iv. Remember the laws on trespass when foraging, too, ie common land, a public right of way, etc are OK for access, but any other land may not be so.
- v. Try to follow the Country Code when picking mushrooms, ie minimising damage to surrounding foliage or plants.
- vi. Follow the Wild Mushroom Pickers' Code of Conduct too, which gives guidance on good practice.

Important safety tips on mushrooms

In general, mushrooms and fungi are very difficult to identify. Unless you are sure of the identity of a mushroom, do not eat it, which takes us back to the Amanita, which (apparently) tastes very good – before it kills you anyway. Do not forget that other types of the Amanita in the UK are the Fly Agaric and the Destroying Angel.

Any mushroom picker should learn about the safe fungi and what to do about collecting or touching fungi. If you start by finding a few safe species and researching them and just eating small amounts, you'll have a better chance of surviving for your next foray. For people who wish to learn more about fungi identification, my recommendation is a wonderful Facebook group that teaches about fungi photography, spore prints and environmentally-sensible foraging – [Mushroom foraging united kingdom](#).



Fruit

Since 1990, 21 October has been designated as National Apple Day, but is it legally permissible to just take an apple from, say, a neighbour's tree for your own use?

Experienced foragers know the answer to this one, ie which falls under the **Theft Act 1968** - "*A person who picks mushrooms growing wild on any land, or who picks flowers, fruit or foliage from a plant growing wild on any land, does not (although not in possession of the land) steal what he picks, unless he does it for reward or for sale or other commercial purpose.*"

Legal or personal use?

*My long two-pointed ladder's sticking through a tree
Toward heaven still,
And there's a barrel that I didn't fill
Beside it, and there may be two or three
Apples I didn't pick upon some bough.
(After Apple-picking, Robert Frost)*

The key phrase here is **intended use** and common law allows fruit foraging, but not for commercial use. If you take one apple from a tree to eat, you are protected by the common law from a vexatious prosecution by the tree's owner.

Having quoted the laws on theft, some councils have started to pass **local bye-laws** against foraging. Not just councils, in fact, but also the National Trust, Natural England, Scottish Natural Heritage and the Countryside Council for Wales. If such a bye-law exists, there should be notices displayed in prominent positions. These bye-laws have targeted people picking such wild fruits as apples, pears, sloes, blackberries and hawthorn berries. So, it may well be prudent to look out for notices before filling a basket full of blackberries.

So, picking a few blackberries for a pie or an anti-cough syrup to give away is fine. However, it's not fine if someone strips the bushes of all the fruit and turns the foraged food into jams, jellies, cordials, etc to sell at the local farm shop or market, ie commercial purposes.

Leaving some fruit on the trees and bushes makes sense for several reasons:

- a) Leave some for other foragers

- b) Leave some for wildlife to eat
- c) Letting fruit rot benefits wildlife that are attracted to decaying fruit, eg voles, badgers and butterflies
- d) Leaving fruit on the bushes encourages biodiversity
- e) Unwanted fruit can be picked under local agreements for food banks.

Other guidance for fruit foragers

Nobody receives a prison sentence for pinching a few apples, but there may be a fine for the theft. There are several groups who have developed [codes of conduct](#) for foragers to pick fruit from people's gardens, eg owners who do not want the fruit or cannot pick it themselves. Examples include Common Ground and Natural England. The National Trust has stated that anyone, who wants to forage on NT land for commercial use, should seek permission to set up a licensing agreement.

However, 24 new bye-laws have been proposed by [Bristol City Council](#) for the responsible use of its 212 parks and green spaces around the city. One of the new rules would ban people from removing "the whole or any part of any plant, shrub or tree" - effectively banning people from collecting wild flowers, scrumping apples and picking blackberries.

Since the consultation paper in 2016, there has been some flexibility and, by February 2017, the council stated that "Foraging, such as berry picking will continue to be allowed, providing it does not cause real harm to wildlife or wildlife habitats. Even some instances of commercial foraging may be considered acceptable providing it is done in a responsible, sustainable manner."



Wood

The **Theft Act 1968** states that in the case of plants growing wild on any land, you may take away foliage, fruit or parts of the plant without committing an offence, provided you are not taking them for commercial purposes. However, if you intend to sell the plants or in some other way profit from them, you are breaking the law by taking them without the owner's permission.

Theft or not?

With firewood or dead-wood, the law was always very clear up to 2008, as the Magna Carta 1215 allegedly stated that, "Every common man was allowed to pick up and to take home dead-wood from his unwitting Lordly purveyor for purposes of firewood and building materials."

However, this right of estover was always on suspect legal ground - there is no general right in English law to collect wood. Moreover, the Forestry Commission issued a set of rules in 2008 that prohibited the collection of dead-wood on health and safety grounds. The [current legal rules](#) are set out below.

1. It is forbidden to take fallen wood, leaves or seeds from Forestry Commission land and much of the public forests/ woods in England are owned by the Forestry Commission.
2. It is forbidden to taken fallen wood from privately-owned forests without having the permission from the owner. This is theft, ie removing fallen wood without permission, and could result in a conviction.
3. The Forestry Commission supplies licences in some areas, which allow people to collect wood for a few pounds a year.
4. In other areas the Commission holds roadside firewood sales.

Collecting or foraging wood legally

In some places, it is possible to buy [scavenging permits](#) from local Forestry Commission offices for about £120, eg Yorkshire or parts of North England. It is worth noting that such permits may be limited to the removal of dead-wood up to local limits in that area. The permits normally specify hand tools only and the permit-holder has to collect the wood from a particular area.

The best advice might be to visit several local areas of forest or woodland, to find out if the owners will grant permission for wood removal. Many woodland owners require people to remove dead-wood, either by taking down specific trees or just removing branches from the forest floor. However, it is not lawful to enter private property in order to forage for dead-wood without permission.

The health and safety rules put into place in 2008 by the Forestry Commission were not really designed to destroy the estover right, but more to ensure that any cutting of wood was done by suitably qualified wood or timber merchants.

A different set of rules arises when we think about foraging wood from [common land](#), because even so-called famous common land is owned by someone. In the case of Epping Forest, for example, the owners are the City of London Corporation, who maintain the forest as a charitable trust. Having said that, if you are foraging in an area in which it can be said you have lawful permission, eg a country park, woodland open to the public or a public right of way, it is possible to collect and take away a few twigs or branches – perhaps holly, ivy or mistletoe at Yule.

Another common question is over wood that is fallen by the [side of the road](#). Most verges and roadsides belong to the local town or county council. In the countryside, the roadside may well belong to someone, even if it's not marked as such, and foragers should try to find out the identity of an owner before taking a lot of wood and then leaving.

