

principles applicable to the disposal of chattels under *St Gregory, Tredington* and the *Bishopsgate* questions applicable to the alteration of listed churches. The court outlined and applied the *Tredington* principles and concluded that, although the parish had established that it faced ‘substantial expenditure’, the chancellor had been wrong to conclude that this amounted to a ‘financial emergency’ sufficient to show a ‘good and sufficient ground’ for the purposes of the *Tredington* principles. In reviewing the chancellor’s application of the *Bishopsgate* questions, the court further held that the chancellor had been wrong to find that the parish had proven a ‘compelling financial reason amounting to a necessity’ for those purposes. The appeal was allowed, with the Victorian Society, as appellant, paying the court costs. [RA]

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### **Re St Mary’s Churchyard, Goring-by-Sea**

Chichester Consistory Court: Hill Ch, April 2009

*Exhumation – mistake – family grave*

The chancellor granted a faculty for the exhumation of the cremated remains of the petitioner’s father and their re-interment in a ‘family grave’. The remains had originally been buried elsewhere in the churchyard, after the petitioner had been told by the funeral directors that the family grave was full. However the remains of the petitioner’s uncle had subsequently been interred in it. The combined effect of innocent mistake and the undoubted desire for family members to be buried in the same grave brought this case within the exceptional class, in accordance with the principles of *Re Blagdon Cemetery* [2002] Fam 299, Ct of Arches. [RA]

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### **Maga v Roman Catholic Archdiocese of Birmingham**

High Court, Queen’s Bench Division: Jack J, April 2009

*Child abuse – priest – vicarious liability*

Acting by his litigation friend, the Official Solicitor, the claimant alleged serial sexual abuse by an assistant priest in the Archdiocese of Birmingham during the 1970s. The priest disappeared in 1992 and his current whereabouts were unknown. The judge found that the archdiocese did not make sufficient enquiries about the actions of the priest in question when the allegations first came to

light and that this fact, combined with the claimant's disability, meant that the claim was within time and not statute barred. While the archdiocese did not accept that the priest had abused the claimant, the judge was nevertheless satisfied that sexual abuse had occurred over a prolonged period. The judge rejected the contention that the defendant could be held vicariously liable for the abuse. He reviewed the law on vicarious liability and concluded 'that the assaults which [the priest] carried out on the claimant were not so closely connected with [his] employment or quasi-employment by the Church that it would be fair and just to hold the Church liable'. Applying a similar test, he also found that the defendant could not be held liable for the inaction of the priest in charge of the parish in not investigating the complaints made against his assistant. [WA]

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## **R (on the application of Ghai) v Newcastle City Council**

Administrative Court: Cranston J, May 2009

*Hindu – cremation – open air – human rights*

Davender Kumar Ghai, a Hindu, wished to have his body cremated on an open-air pyre following his death and so requested, on behalf of the Anglo Asian Friendship Society, suitable land from Newcastle City Council. The Council replied saying that Ghai's request could not be considered because the law prohibited funeral pyres. Ghai sought a review of this decision. The Secretary of State for Justice, a Sikh temple and a wildlife trust made additional representations. Cranston J held that English law 'effectively prohibits open air funeral pyres'. The Cremation Act 1902 enables burial authorities to establish crematoria and makes it a criminal offence knowingly to take part in the burning of any human remains except in accordance with the provisions of the Act. Likewise, the Cremation (England and Wales) Regulations 2008 (SI 2008/2841) defines cremation as 'the burning of human remains' and states that 'no cremation may take place except in a crematorium the opening of which has been notified to the Secretary of State'. Although the Consultation Paper that preceded the 2008 Regulations stated that 'any question as to whether the regulations permit funeral pyres is a matter for the courts and outside the scope of these regulations',<sup>1</sup> Cranston J held that the 1902 Act and the 2008 Regulations 'put the matter beyond doubt: open air cremation is not permitted'. The effect of the 1902 Act and the 2008 Regulations was that

1 Ministry of Justice, 'Cremation regulations: consolidation and modernisation' (CP 11/07, July 2007) (available at <<http://webarchive.nationalarchives.gov.uk/> + /<http://www.justice.gov.uk/docs/cpi07.pdf>>, accessed 12 June 2009), para 40.