appeal. Though it was common ground that a priest was not an employee, an examination of the recent cases on clergy employment indicated that whether or not there was a contract of service between a minister of religion and his Church depended on the facts of the case, that there was no general presumption of a lack of intent to create legal relations between a cleric and the Church and that it did not follow that an ecclesiastical office-holder could not be employed under a contract of service. The court held that *Viasystems (Tyneside) v Thermal Transfer (Northern) Ltd* [2005] EWCA Civ 1151 had established that for the purposes of vicarious liability the tortfeasor did not have to be an old-fashioned employee. Davis LJ stated that the time had come to announce emphatically that the law of vicarious liability has moved beyond the confines of a contract of service. Leave to appeal was refused. [Frank Cranmer]

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Khaira and others v Shergill and others
Court of Appeal: Mummery, Hooper and Pitchford, LJJ, 17 July 2012
[2012] EWCA Civ 983
Religious doctrine – non-justiciability

The claim concerned disputes about the trusteeship and governance of two gurdwaras used by members of the Sikh community. The dispute centred upon whether the ninth claimant was entitled to exercise a power to remove and appoint trustees as the 'successor' of the First Holy Saint. The defendants wanted the court to grant a permanent stay because the contested claim to be the successor turned on matters of religious faith, doctrine and practice, which would involve comparison of the doctrines of mainstream Sikhism and the Nimral Kuita institution. The Court of Appeal allowed the defendants' appeal, holding that the High Court had erred in treating the particular core issue as one that was properly justiciable by the English courts. Mummery LJ held that the question of succession is essentially a matter of professed subjective belief and faith, on which secular municipal courts cannot possibly reach a decision, either as a matter of law or fact. The principle of non-justiciability therefore applied. Although there was no general principle that religious bodies or groups enjoy a spiritual independence or freedom that places them above, or exempts them from, the law of the land, or that religion inhabits a 'civil rights-free zone', the principle of non-justiciability meant that the courts will abstain from adjudicating on the truth, merits or sincerity of differences in religious doctrine or belief and on the correctness or accuracy of religious

practice, custom or tradition and that the courts will often, but not always, abstain from questions concerning validity and status.

Mummery LJ held that the principle of non-justiciability was concerned with drawing the line between what can and cannot properly be decided by a secular municipal court in disputes relating to religious doctrine and practice, including internal governance. He noted that the drawing of the line between justiciable and non-justiciable actions must be done with caution, especially in cases where the civil rights of the parties, such as property and contract rights, may be affected. The principle of non-justiciability does not apply where it is possible for the court to adjudicate on aspects of religious disputes concerning civil rights and obligations capable of being determined by legal methodology. The non-justiciability doctrine would only apply when the court is asked to answer questions that are neither questions of law nor factual issues capable of proof in court by admissible evidence. The principle of non-justiciability would therefore not apply where the court can answer the question by applying the standards of the group. Mummery LJ noted that the action would not have been stayed if it was possible to identify the successor by reference to judicial or manageable standards that were objectively ascertainable from a bond of union between the adherents of a religion. He confirmed that whether or not there are judicial or manageable standards that are objectively ascertainable from a bond of union, against which the contentions of the parties can be judged, will depend on the precise nature of the pleaded issues for the decision of the court. [Russell Sandberg]

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Re St Martin, Chipping Ongar
Chelmsford Consistory Court: Pulman Ch, 18 July 2012
Chancel pews – historic significance

A faculty was sought to re-order the chancel of a Grade I listed Norman church. Objections were raised about the change of use of the chancel through the introduction of a nave altar and about the removal of high-quality chancel pews introduced in 1931 in memory of Emmeline Pankhurst, who had worshipped in the church as a visitor on a few occasions.

The chancellor observed that the use of the chancel was in the discretion of the incumbent. The chancellor's authority was limited to whether a faculty should issue to enable work on the fabric of the church. Although installed relatively recently within the church's history, the Pankhurst pews had become a part of its history, aesthetics and fabric and were no ordinary pews. Their