

CASE NOTES

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Barrister, Deputy Chancellor of the Dioceses of Chichester and Norwich

Jivraj v Hashwani

Supreme Court: Lords Phillips, Walker, Mance, Clarke and Dyson, July 2011
Arbitration clauses – religious discrimination

The parties entered into a joint venture agreement which provided that any dispute between them would be resolved by arbitration before three arbitrators who were each respected members of the Ismaili Muslim community (see case notes at (2010) 12 Ecc LJ 121 and (2011) 13 Ecc LJ 121). The issue on the appeal was whether the arbitration clause was void in light of the Employment Equality (Religion or Belief) Regulations 2003 (as now replaced by the Equality Act 2010) as constituting an unlawful arrangement to discriminate on grounds of religion. In allowing the appeal, the court held that the regulations did not apply to the selection, engagement or appointment of arbitrators who were not ‘employees’ within the terms of the regulations but rather independent providers of services who were not in a relationship of subordination with the parties or working under the direction of the parties. *Obiter*, the court considered the question of whether being a member of the Ismaili community was a genuine occupational requirement of the position of arbitrator in this case. The court held that that requirement must be genuine, and objectively legitimate and justified. One of the more significant and characteristic spirits of the Ismaili community was an enthusiasm for dispute resolution within that community, a spirit that the parties had reflected in their engagement of members of the Ismaili community to perform mediation services earlier in the dispute. In those circumstances the requirement for Ismaili arbitrators was a genuine occupational requirement. [RA]

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Re Bacup Cemetery

Manchester Consistory Court: Tattersall Ch, September 2011
Exhumation

The chancellor refused to grant a faculty for the exhumation of the deceased from her mother’s grave in order that she could be re-interred in a grave in