

Gospel & Law

Easter Edition

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Editorial

Welcome to the Easter edition of Gospel and Law and hoping you all had a blessed, or at least enjoyable, Easter, despite the continuing wintry weather. This edition includes some serious pieces, notices of forthcoming events, and a plea for pro bono advocacy from the Dean of the Arches, but also a little Easter entertainment. I look forward to seeing some of you at the Conference and wish all readers a happy Easter-tide.

Catherine

Looking for an Attorney this Easter-tide? Who better to advocate in the case than Easter Law Firm LLC, whose slogan is 'because sometimes you have to fight...' or possibly Norman D Easter, Advocate in Oklahoma or for a criminal case, Therese M Easter, advocate in Rockwall, Texas whose 'caring attitude' to her clients sets her apart from other advocates.

Do I need a retrospective faculty and if so, for what?

To the Chancellor of Jerusalem

Dear Chancellor, I write to ask your advice about a tricky situation that has arisen in the graveyard near Golgotha. I am unclear as to the precise facts as there are conflicting accounts about the details, however, the situation seems to be as follows:

The other Friday there were some crucifixions, outside the City Walls; the body of one of those crucified was recovered from the governor for burial in a family tomb. The first problem is that Joseph of Arimathea, the person who saw to the burial, was only a friend of the deceased, not a particularly close one by all accounts; some have used the phrase 'secret admirer' whatever that might mean! The deceased's next of kin seems to have been his mother; it is unknown whether she consented to the burial undertaken by the chap from Arimathea but any consent must have been verbal as there is no written record of what took place.

The second problem is that the grave was sealed with a stone that does not comply with the Chancellor's guidance on memorials and no faculty was sought. Even more problematically that stone has been removed, no-one knows by whom, at least so the family and friends are saying. Additionally the body has been removed, with no faculty for exhumation.

It is possible that the mother did not consent to the burial and has removed the body herself, probably with the help of some of the deceased's friends as the lady herself seems a bit frail for moving a body, let alone the tombstone. I cannot get much sense from any of them as they all deny involvement and talk instead about some sort of resurrection! Alternatively, the family of Joseph of Arimathea might have objected to the burial of a criminal, near-stranger in their family tomb and removed the body to preserve the integrity of their family grave. I have not yet been able to locate any of this family. Besides the flagrant breach of the faculty jurisdiction these events may also disclose issues of criminal liability around the disposal of bodies. My inclination is simply to hand the matter over to the civil authorities to investigate the disappearance of the body, leaving the issues within ecclesiastical jurisdiction to be dealt with once the facts are clearer. Does that seem to be sensible or would you advise another course of action? I have tried contacting an Archdeacon but they are all off for their post-Easter break.

Regards, Rev Dr Catherine Shelley

Some Answers... No-one has taken on the Church Wardens' responsibilities for records and terriers for multi-church parishes or the issue of teaching catechism in Sunday school... any further thoughts? But **thanks to Neil Patterson for the following...**

Funerals: 'hopeless, because the qualification of ministers to take funerals outside church premises lies outside the scope of Canon and Church law. Many Archdeacons will have tales of their attempts to restrain the 'vultures', i.e. clergy working the funeral industry, who have often built up relationships with funeral directors. They may be retired or disgraced Anglican clergy or freelance as in the example given - apart from trying informally to stop them describing themselves as offering a Church of England funeral there is no sanction over them...'

Ministers: Yes, time for an overhaul of licensed/admitted lay ministry law, which exist in a state of great diversity which is especially unhelpful to those in them when they move Diocese. But a massive project.' *and one for the ELS conference in a couple of weeks' time...*

Vesture: A private member's motion to relax B8 has been to General Synod recently and failed, another will come along. I would say the Bishops abandoned enforcement decades ago.'

Editor's speculations... As regards roles or professions that might be incompatible with ordination for self-supporting ministers, anything that is illegal would seem to be ruled out, which excludes running a brothel. Although we have chaplains to the armed forces would it be incompatible with ordination to actually be a serving soldier (it was incompatible with Christianity to be a soldier in the early Church) or engaged in the arms industry? The senior ranks of HSBC show that it is clearly not incompatible with SSM to be a banker, despite their vilified status these days.

Apologies to those who were unable to get a readable version of Rupert Bursell's contribution on Richard III; it is reproduced this month without the graphics in the hopes that more people can access it...

Bones, Bones and More Bones

In 2003 a faculty was refused by the Chichester Consistory Court to exhume the putative remains of the Saxon King Harold Godwinson (see *In re Holy Trinity, Bosham* [2004] Fam 125). More recently bones were found in an ancient churchyard in Bicester that were at first thought to belong to St Ethelburga, the daughter of a local Saxon king; unfortunately radio carbon dating has found the relic (for such it appears to have been) to have been a mediaeval forgery. There is apparently also a hope that the bones of Alfred the Great may be found in the churchyard of St Bartholomew, Winchester. In the meantime archaeologists have discovered the remains of Richard III under a car park in Leicester within the ruins of the Grey Friars' church.

As any lawyer will appreciate each of these cases raises slightly different considerations. In the case of Richard III a licence to carry out the archaeological investigations was granted by the Secretary of State for Justice under the provisions of section 25 of the Burial Act 1857. Such a licence, however, could not have overborne the initial words of that section, namely, "Except in cases where a body is removed from one consecrated place of burial to another by faculty granted by the ordinary for that purpose" There can be no doubt that the church had been consecrated at the time of Richard's burial and therefore first question clearly is: was the church still consecrated? If it was, a faculty may have been necessary for exhumation and none was ever issued. Although the basic rule is that by consecration a building is "separated for ever from the common uses of mankind", ecclesiastical law recognises that in some (not necessarily straight forward) cases a building may require re-consecration or reconciliation: see Phillimore *Ecclesiastical Law* (2nd ed.) at 1399-1401. Putting aside the effects of the dissolution of the monasteries and bearing in mind the ruinous state of the church and its burial beneath the car park, it seems sensible to deduce that the ruins no longer remain consecrated and that the Secretary of State had legal authority to permit exhumation.

The licence granted by the Secretary of State authorises the University of Leicester to "be deposited [the remains] at Jewry Wall Museum or else be reinterred at St Martin's Cathedral or in a burial ground in which interments may legally take place". The term "burial ground" is nowhere conclusively defined in ecclesiastical or civil law but, although it may be debated whether York Minster may be regarded as such a burial ground, it seems certain that under the terms of the licence Richard III will be reburied within St Martin's Cathedral, Leicester.

And David Harte has kindly provided an additional note on further developments...

On the question of where the bones of Richard III will be reinterred, "the Plantagenet Alliance, spearheaded by 15 of Richard III's relatives, is now to challenge the Ministry of Justice's decision to grant the "section 25 licence" to the university, through which the university was given permission to remove and reinter the king's remains, and seek that the licence be quashed. The relatives will argue, amongst other things, that the Ministry of Justice failed to consult with them over the terms of the licence and that such failure constitutes a breach of Article 8 of the European Convention on Human Rights (the right to respect for private and family life). The campaigners are being advised on this case by judicial review experts from Yorkshire law firm Gordons". (<http://www.minsterfm.com/news/local/930302/call-for-judicial-review-over-yorks-richard-iii-leicester-burial/>)

There have also been developments concerning Alfred the Great. The bones believed to be his have now been exhumed, presumably under faculty, to prevent grave robbers removing them. If their date is shown to be Anglo-Saxon there seems a good likelihood that they will be his. The scope for research is particularly exciting as the bones from the mortuary chests in Winchester Cathedral containing the remains of other Anglo Saxon and Danish royalty are being examined, as part of a major project at the cathedral, and it should be possible to see if these are related to those thought to be Alfred's.

Although a faculty was refused which would have allowed the bones of King Harold to be scientifically examined, there was a full analysis at Bristol, in 2009, of the remains of King Alfred's granddaughter, Eadgyth, wife of the Emperor Otto I, when her tomb in Maddeburgh Cathedral was restored.

EJA Pro Bono Panel

A list of advocates (who can be solicitors or barristers) with some experience of the workings of the faculty jurisdiction and willing to offer their advocacy services on a pro bono basis to those involved in contested petitions (including the statutory amenity societies) has been established by the Ecclesiastical Judges Association. Since the call on individual members of the Panel is likely to be only very occasional it is undesirable for the list to be too long and being on the list is not to be taken as any warranty by the EJA as to the competence of those on it. Would anyone who wishes to be included on the list, send his or her name and a short CV to the Dean of the Arches and Auditor at Charles.George@ftb.eu.com.

Shaping the future of Parochial Ministry - Ecclesiastical Law Society Residential Conference

Friday 19th to Sunday 21st April 2013 - The Burlington Hotel, Birmingham – **Places are still available on non-residential (£165) or Saturday (£120) basis.**

The remaining London Lectures 2013 are as follows, all at Winckworth Sherwood, Minerva House, Montague Street, starting at 5.30pm; speakers and topics are as follows:

12th June 2013 – Dr Peter Smith – Churchwardens: a case of mistaken identity?

16th October 2013 – The Revd Canon John Rees, Provincial Registrar - Anglican Covenant or what?

The Law and Religion Scholars Network Annual Meeting and Conference is to be held at Cardiff Law School, as is becoming traditional, on 14th May 2013... This year's programme promises a choice of 9 panel discussions on different aspects of religion and law, including family law, Muslim law, law and ethics, employment and religion, state and church and religious freedom. For further details and a booking form please contact Sharon Alldred at Alldred@cardiff.ac.uk or Dr Javier Oliva at Manchester University.

Other events of potential interest:

9 May: Richard O'Sullivan Memorial Lecture, "Does Establishment Have A Future?"; Rt hon. Lord Mackay of Clashfern KT, Lord of Appeal in Ordinary 1985–1987, Lord Chancellor 1987–1997: The Parliament Room, Middle Temple 7.15 pm: places are limited: for further details see <http://www.lawandjustice.org.uk/index.htm>.

13 May: University of Wales, Newport: Funded Workshop: Maintaining a Faith Community: the Role of Law: details Dr Ruth Gaffney-Rhys, ruth.gaffney-rhys@newport.ac.uk

