

**OPINIONS**  
**OF THE LORDS OF APPEAL**  
**FOR JUDGMENT IN THE CAUSE**

**Gallagher (Valuation Officer) (Respondent) v Church of Jesus  
Christ of Latter-day Saints (Appellants)**

**Appellate Committee**

**Lord Hoffmann**  
**Lord Hope of Craighead**  
**Lord Scott of Foscote**  
**Lord Carswell**  
**Lord Mance**

**Counsel**

*Appellants:*  
Jonathan Sumption QC  
Richard Glover

(Instructed by Devonshires)

*Respondent:*  
Timothy Mould QC  
Daniel Kolinsky

(Instructed by HM Revenue & Customs Solicitors  
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*Intervener (Secretary of State for Communities and Local Government)*  
Philip Sales QC  
Tim Ward

(Instructed by Treasury Solicitors)

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## HOUSE OF LORDS

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Christ of Latter-day Saints (Appellants)**

**[2008] UKHL 56**

#### **LORD HOFFMANN**

My Lords,

1. This appeal concerns the assessability for non-domestic rating of a group of buildings belonging to the Church of Jesus Christ of Latter-Day Saints (commonly known as the Mormon Church) in the Borough of Chorley in Lancashire. The largest and most imposing is the Temple, which stands 48m high and has 6306m<sup>2</sup> of internal floor space on five floors. It is fully air conditioned and is fitted and finished both externally and internally to the highest standards. In addition, in proximity to the Temple, there are (i) the Stake Centre, a single storey building containing a space of 1227m<sup>2</sup> divided by a moveable partition into a chapel and a multi-purpose hall, together with a number of small meeting rooms, an office and a baptistery (ii) the Missionary Training Centre, a three storey building containing class rooms, dormitory rooms, cafeteria and ancillary rooms, as well as the President's flat, which is subject to council tax (iii) the Patrons' Services Building, a small (523m<sup>2</sup>) single storey building containing a reception area for visitors, a section which sells Church literature and a section for genealogical research by and on behalf of church members (iv) the Grounds Building, a small (287.8m<sup>2</sup>) single storey building which houses machinery and equipment used for the maintenance of the grounds and all the buildings on the site. It also contains a workshop area, garage and plant room, including the air conditioning unit for the Temple (v) the Patrons' Accommodation, a two storey building housing 35 bedroom and bathroom suites and ancillary rooms for members of the Church who are visiting the Temple and including a caretaker's flat which is subject to council tax (vi) the Temple Missionaries' Accommodation, a two

storey building containing 20 self-contained flats, each of which is subject to council tax. I shall in due course say more about the use of these buildings.

2. Hereditaments which count as domestic and are subject to council tax are of course excluded from liability for non-domestic rates and the Valuation Officer therefore excluded from assessment the flats subject to council tax (including the whole of the Temple Missionaries Accommodation). Nothing more need be said about them. The dispute is over whether all but one of the other buildings are entitled to exemption under the following provisions of paragraph 11 of Schedule 5 of the Local Government Finance Act 1988 (as amended), which appear under the heading “*Places of religious worship, etc*”:

“(1) A hereditament is exempt to the extent that it consists of any of the following—

(a) a place of public religious worship which belongs to the Church of England or the Church in Wales ...or is for the time being certified as required by law as a place of religious worship;

(b) a church hall, chapel hall or similar building used in connection with a place falling within paragraph (a) above for the purposes of the organisation responsible for the conduct of public religious worship in that place.

(2) A hereditament is exempt to the extent that it is occupied by an organisation responsible for the conduct of public religious worship in a place falling within subparagraph (1)(a) above and—

(a) is used for carrying out administrative or other activities relating to the organisation of the conduct of public religious worship in such a place; or

(b) is used as an office or for office purposes, or for purposes ancillary to its use as an office or for office purposes.

(3) In this paragraph ‘office purposes’ include administration, clerical work and handling money; and ‘clerical work’ includes writing, book-keeping, sorting papers or information, filing, typing, duplicating, calculating (by whatever means), drawing and the editorial preparation of matter for publication.”

3. The Valuation Officer accepted that the Stake Centre, with its chapel, associated hall and ancillary rooms, was a “place of public religious worship” which was entitled to exemption under paragraph 1(a) or (b). But he rejected the claims for exemption in respect of the other buildings.

4. The chief dispute is over whether the Temple is a “place of public religious worship” within the meaning of paragraph 1(a), although the Church submits in the alternative that it is a “a church hall, chapel hall or similar building used in connection with a place falling within paragraph (a)” within the meaning of sub-paragraph (b), the place falling within (a) being the Stake Centre.

5. The Valuation Officer’s case is extremely simple. He says that the Temple is not a place of “public religious worship” because it is not open to the public. It is not even open to all Mormons. The right of entry is reserved to members who have acquired a “recommend” from the bishop after demonstrating belief in Mormon doctrine, an appropriate way of life and payment of the required contribution to church funds. Such members are called Patrons and the rituals which take place in the Temple are exclusive to them. These facts are agreed.

6. Mr Sumption QC, in an argument deployed with great skill and learning, submitted that a “place of public religious worship” did not have to be open to the public. Read in its historical context (the phrase first appeared in the Poor Rate Exemption Act 1833 and has been carried over into subsequent rating legislation) the statute required only what has been called “congregational worship”, that is to say, the assembly of a congregation whose association is solely for the purpose of joining in worship and not because they have private links such as being members of the same family, school or college: see Goddard J in *Cole v Police Constable 443A* [1937] 1 KB 316, 334. The fact that the services of the Church of England were open to the public did not mean that the legislation was intended to impose the same pattern upon everyone else. A construction which did not require conformity to the practice of the Established Church would be more ecumenical and in accordance with the spirit of the age.

7. Mr Sumption pointed out the difficulties and anomalies which might arise if public access were insisted upon: some religions segregated the sexes and others excluded the public from parts of the building such as the sanctuary of an Eastern Orthodox Church. There

was no rational basis for the requirement of access by non-participants in the services and the law accepted that religious institutions could provide the necessary public benefit to qualify as religious charities even if their premises were not open to the public. If they could qualify for the purpose of charity law, why not for rating?

8. These arguments were extremely interesting but the difficulty for the appellants is that this very point was decided more than 40 years ago by this House in *Church of Jesus Christ of Latter-Day Saints v Henning (Valuation Officer)* [1964] AC 420. The case concerned the Mormon Temple at Godstone and the question was whether it was exempt from rates as a “place of public religious worship” within the meaning of section 7(2)(a) of the Rating and Valuation (Miscellaneous Provisions) Act 1955, which was the relevant legislation then in force. The House, affirming a unanimous Court of Appeal (Lord Denning MR, Donovan and Pearson LJ) [1962] 1 WLR 1091, held that the words could not apply to places used for religious worship from which the public was excluded. Lord Evershed alone showed some sympathy for the construction now advanced by Mr Sumption, but did not carry his opinion to the point of dissent, saying that he had stated his doubts in case the matter should again be considered by Parliament. No doubt the House did not have the benefit of all the arguments advanced to your Lordships by Mr Sumption, but there is no doubt that the question was squarely raised.

9. Lord Pearce, who gave the leading opinion, said (at pp. 440-441) that Parliament was entitled to take the view that religious services which were open to the public provided a public benefit which justified the exemption. No doubt the concept of public benefit in charity law was different, but it would be unwise to regard charity law as a paradigm of rationality (Lord Simonds, in *Gilmour v Coats* [1949] AC 426, 449A said that it had been built up “not logically but empirically”).

10. Mr Sumption submitted that the House should depart from *Henning’s* case or at any rate not apply its reasoning to Schedule 5 of the 1988 Act. It is true that since *Henning’s* case [1964] AC 420, the exemption has been extended to buildings used for administrative purposes (paragraph 2(a), added by the 1988 Act) and office purposes (paragraph 2(b), added by the Local Government Finance Act 1992). So the current legislation is not the same as the statute which was construed in *Henning’s* case. But the extensions are dependent upon the central concept of a “place of public worship”: the administrative buildings must be used for purposes relating to the organisation of worship in such

a place and the offices must be used by an organisation responsible for public worship in such a place. Although there is no rigid rule that words used in an Act of Parliament must be given the same construction as the courts have given those words in an earlier Act (see *Barras v Aberdeen Steam Trawling and Fishing Co Ltd* [1933] AC 402 as explained in *R v Chard* [1984] 1 AC 279) it seems to me inconceivable that Parliament did not intend the phrase to carry the meaning which it had been given in *Henning's* case. The legislature has had at least two opportunities (in 1988 and 1992) to take up Lord Evershed's invitation to reconsider the matter and has not done so. In my opinion, therefore, *Henning's* case is conclusive against the appellants on this point.

11. Mr Sumption next submitted that a different construction was required by section 3 of the Human Rights Act 1998. The exclusion of all but Patrons is a manifestation by the Mormons of their religion. Therefore, to deny them exemption on that ground would be to discriminate against them on grounds of religion, contrary to articles 9 and 14 of the Convention. Section 3 of the Act requires the 1988 Act to be "read and given effect" in a way which is compatible with Convention rights and this requires a construction which exempts the Temple from rating.

12. I put aside the difficulty that the rating list challenged in this appeal was made before the Human Rights Act came into force. In my opinion the 1988 Act does not discriminate on grounds of religion. The rule that exemption is accorded to places of worship only if they are open to the public is perfectly general. Anyone may comply. Mr Sumption submits that the discrimination is indirect. It is true that anyone may comply, but the reason why the Mormons cannot comply is that their religion prevents them from doing so. It was therefore discrimination not to treat them differently. The European Court of Human Rights has decided that article 14 applies to indirect discrimination resulting from a failure to accord different treatment to cases which ought to be treated differently: see *Thlimmenos v Greece* (2000) 31 EHRR 411; *DH v Czech Republic* (Application No 57325/00) (13 November 2007) at paragraph 175).

13. In order to constitute discrimination on grounds of religion, however, the alleged discrimination must fall "within the ambit" of a right protected by article 9, in this case, the right to manifest one's religion. In the present case, the liability of the Temple to a non-domestic rate (reduced by 80% on account of the charitable nature of its use) would not prevent the Mormons from manifesting their religion.

But I would not regard that as conclusive. If the legislation imposed rates only upon Mormons, I would regard that as being within the ambit of article 9 even if the Mormons could easily afford to pay them. But the present case is not one in which the Mormons are taxed on account of their religion. It is only that their religion prevents them from providing the public benefit necessary to secure a tax advantage. That seems to me an altogether different matter.

14. For example, I do not think that a Sabbatarian could complain that he was discriminated against because he was unable, on religious grounds, to provide services on the Sabbath and therefore earned less than people of a different religion. A case which in my opinion is very much in point is *M v Secretary of State for Work and Pensions*[2006] UKHL 11; [2006] 2 AC 91, in which a woman would have been able to secure a reduction in her liability for the maintenance of her child if she had been living with a male partner. She was unable to qualify because, on account of her sexual orientation, she chose to live with a female partner. The House of Lords decided that the alleged act of discrimination did not fall within the ambit of article 8 (her right to family life and in particular her right to live with a female partner) because loss of the opportunity to gain a financial advantage was too remote from interference with the right in question. The same seems to me true of this case.

15. Furthermore, I think that even if this can be regarded as a case of indirect discrimination, it was justified. Parliament must have a wide discretion in deciding what should be regarded as a sufficient public benefit to justify exemption from taxation and in my opinion it was entitled to take the view that public access to religious services was such a benefit.

16. The Church's alternative argument is that the Temple comes within sub-paragraph (b) as "a church hall, chapel hall or similar building used in connection with" a place of public worship. The argument is that the Temple is used in connection with the Stake Centre, which admits the public and is accepted to be a place of public worship. But in my opinion the words "used in connection with" carry, in this context, an implication of ancillary use, which is reinforced by the requirement that the building should be similar to a church hall or chapel hall. To apply this to the Temple would be having the tail wag the dog. The use of the Temple is not ancillary to the use of the Stake Centre but a separate and independent use. This point was argued in the Court of Appeal in *Henning's case (Henning (Valuation Officer) v Church of*



*Jesus Christ of Latter-Day Saints* [1962] 1 WLR 1091) but summarily dismissed. Lord Denning MR said, at p 1099:

“The short answer is that this temple is not a church hall, chapel hall nor a similar building. It is not in the least on the same footing as a church hall or chapel hall. It is a very sacred sanctuary, quite different from a building of that category.”

17. Donovan LJ said, at p 1100, that the Temple was “far too important in the life of the Mormon Church” to be described as a building similar to a church hall or chapel hall. I agree. It cannot be said to be either within the same category as a church hall or chapel hall or used in connection with the Stake Centre.

18. On the other buildings on the site, I have had the advantage of reading the speech to be delivered by my noble and learned friend Lord Hope of Craighead and agree with what he says. I add only a few short comments of my own.

19. First, the Missionary Training Centre, which is alleged by the Church to be exempt under paragraph 2(a). As its name suggests, it is used for training missionaries. The training lasts 19 days and is intended, as the Lands Tribunal found, to instruct Mormon priests how best to present the message of the Church to the public. It may include some instruction in how to conduct services, although both the Lands Tribunal and the Court of Appeal found that this was not the primary purpose of the training. But the real difficulty for the Church is that there is nothing to connect the training with the Stake Centre, which is the only relevant place of public worship. Paragraph 2(a) requires that the hereditament must be occupied by the organisation responsible for the conduct of public religious worship in a place falling within paragraph 1(a), i.e. the Stake Centre and must be used for “carrying out administrative or other activities relating to the organisation of the conduct of public religious worship *in such a place*”. Even if (which I doubt) training priests to conduct services can be described as activities relating to the *organisation* of the conduct of public religious worship, it cannot possibly be said to relate to the conduct of such worship in the Stake Centre.

20. The Patrons Services Building, as mentioned earlier, welcomes visitors to the site, sells Church literature in printed or electronic form, and has provision for genealogical research. The Church claims that it falls within paragraphs (1)(b) or (2)(a). However, it seems to me to come within neither, for much the same reasons as I have given in connection with the Missionary Training Centre. It is in fact shut on Sundays, the day on which public worship at the Stake Centre takes place. The reception area serves visitors to the site in general but particularly those who come to the Temple. However, the building is not in the least like a church hall or chapel hall (paragraph (1)(b)) and none of the activities which take place there relate to the “organisation of the conduct of public religious worship” in the Stake Centre (paragraph (2)(a)).

21. The Grounds Building, used for lawn mowers, maintenance equipment and the like, is also not concerned with the organisation of the conduct of public religious worship in the Stake Centre. Nor is the Patron’s Accommodation, which provides accommodation for Patrons visiting the Temple.

22. In the result therefore, and in agreement with the judgment of Neuberger LJ in the Court of Appeal, I would dismiss this appeal.

## **LORD HOPE OF CRAIGHEAD**

My Lords,

23. The facts of this case are not in dispute. They have been summarised by my noble and learned friend Lord Hoffmann, whose opinion I have had the advantage of reading in draft. I adopt with gratitude his account of the way in which the Church conducts its mission and of the uses that it makes of all the buildings that it occupies. The question is to what extent, on those facts, the statutory exemption from non-domestic rating that it seeks is available. To obtain the exemption it must show that each of the buildings that are in question has the characteristics described in paragraph 11 of Schedule 5 to the Local Government Finance Act 1988, as amended by section 104 and para 3 in Part 1 of Schedule 10 to the Local Government Finance Act 1992.

24. The President of the Lands Tribunal, Mr George Bartlett QC, held that the Stake Centre at Temple Way was exempt together with the cultivated areas about it and the car parking area that was dedicated to it. There is, as he said, no doubt on this point and the respondent, the Valuation Officer, has accepted it. The Stake Centre is in part a chapel and in part a chapel hall. As a chapel it is “a place of public religious worship” within the meaning of para 11(1)(a) of Schedule 5. As a chapel hall it is exempt under para 11(1)(b) because it is “used in connection with” the chapel for the purposes of the organisation responsible for the conduct of public worship there. In the President’s opinion however the rest of the hereditament was not exempt. In the Court of Appeal Neuberger LJ said that the President was entirely right to conclude that, with the exception of the Stake Centre, all the other buildings on the site are not exempt as none of them falls within the ambit of para 11: [2006] EWCA Civ 1598, para 46.

25. By far the largest building on the hereditament is the Temple. Its gross internal area is 6306.3 square metres, and it is divided internally into about 180 rooms or use areas. The gross internal area of the Stake Centre, on the other hand, is 1227 square metres. In addition to the chapel and a multi-purpose hall, there are number of small meeting rooms and offices there and a baptistry. Mr Sumption QC submitted that the Temple was exempt under para 11(1)(a) because it was a place of public religious worship within the meaning of that paragraph. If it was not, it was exempt in any event under para 11 (1)(b) because it was a church hall, chapel hall or other similar building used in connection with the Stake Centre for the purposes of the organisation responsible for the conduct of public worship there.

26. I cannot accept Mr Sumption’s primary argument that the Temple is a place of public religious worship. There might have been something to be said for his appeal to history and to various anomalies, had it been open to us to take a fresh look at this issue. But I am not persuaded that your Lordships would be justified in departing from the meaning that this House gave to the words “a place of public religious worship” in *Church of Jesus Christ of Latter-Day Saints v Henning (VO)* [1964] AC 420. In *London Corporation v Cusack-Smith* [1955] AC 337, 361 Lord Reid said that where Parliament has continued to use words of which the meaning has been settled by decisions of the court, it is to be presumed that it intends the words to continue to have that meaning. This is a presumption, not a rule. But the history of the legislation since the date of the judgment indicates that Parliament has been content that the words “a place of public religious worship” should continue to receive the interpretation that the House gave to them in *Henning*.

27. Both sides of the argument about the meaning of those words were fully deployed in the speeches that were delivered in that case. I would attach particular significance to what was said by Lord Evershed at p 430. He did not share the view of the other members of the committee that the legislative intention was that the word “public” when applied to “religious worship” in section 7(2)(a) of the Rating and Valuation (Miscellaneous Provisions) Act 1955 should mean, as Lord Morris of Borth-y-Gest put it at p 435, a place to which all properly disposed person who wish to be present are admitted. He made it clear at the outset of his speech that he was not prepared to dissent. But he wished to state his doubts and the reasons for them in case the matter should at some time come up for further consideration in Parliament. Despite this invitation, and despite changes in religious practice in this country during the past forty years, Parliament adhered to the words used in the 1955 Act when it re-enacted the exemption in section 39 of the General Rate Act 1967. It did so again when it enacted para 11 of Schedule 5 to the 1988 Act. And it did so again when it enacted the 1992 Act which amended that paragraph.

28. It is worth noting that the appellant is not the only Christian body whose religious practices might have prompted a change in the legislation, had this been thought to be appropriate, because they fell outside the scope of the exemption as interpreted in *Henning*. In *Broxtowe Borough Council v Birch* [1983] 1 WLR 314 the question was whether two buildings used for religious worship by a company of Christians known as the Exclusive Brethren were entitled to the exemption. When one of them was first used for this purpose in 1967 a notice board was placed outside it which stated that the word of God would be preached there at certain times on a Sunday. This was taken to be a declaration that the building was open to the public for religious worship according to the *Henning* test, so it was shown as exempt in the valuation list. The second building came into use in 1971, and it too was shown as exempt. But by that time the Brethren who occupied the buildings had decided to follow the teaching of James Taylor junior, principally in his teaching about separation from evil. Consequently no notice board was placed outside the second building, and the notice board outside the first building was taken down. In the result there was no sign that the public had permission to enter either of them and attend religious worship there. A proposal by the rating authority to alter the valuation list by entering the buildings as rateable was dismissed by the local valuation court, but it was upheld on appeal. The Court of Appeal was told that there might be 300 other halls where Brethren of same persuasion met that would lose the benefit of the statutory exemption as result of that decision.

29. Slade LJ said in *Broxtowe Borough Council*, at p 334, that in his judgment a meeting of persons which takes place on private premises cannot be said to be “public” within the ordinary meaning of words unless members of the public, or of the particular section of the public most concerned, are given some notice that they will not be treated as trespassers or intruders if they seek to enter the premises and attend the meeting. The forms of notice, he said, could be many and various. In some cases even the exterior appearance of the building might be enough to indicate to members of the public that they will be welcome.

30. In the present case however the respondent does not need to rely on the absence of a notice or on the appearance of the Temple from outside. To some it may seem like a large church or a cathedral. But there is no invitation to the public, or any section of it, to enter the Temple and worship there. On the contrary, the public, and even that section of the public most concerned because they are members of the Mormon church, are actively excluded from it. There simply is no question of members of the public in general being admitted to the Temple to participate in religious worship there. And only those Mormons whose worthiness to do so has been established after a searching private interview with the local bishop or branch president and stake president may receive a pass to enter it. The worship that takes place in the Temple on those conditions cannot, in the application of the *Henning* test, be said to be public religious worship.

31. Mr Sumption sought to meet this obstacle by submitting, with reference to section 3 of the Human Rights Act 1998, that para 11(a) should be read and given effect to in a way that was compatible with article 14 of the European Convention on Human Rights read together either with article 9 or with article 1 of Protocol 1. For all the reasons that Lord Hoffmann has given I do not see this case as falling within the ambit of article 9. Those who are qualified to worship in the Temple are not prevented from manifesting their religion or their belief by the fact that it is subject to non-domestic rating. The legislation is not directed at Mormons because of what they believe in. It applies generally to all whose religious beliefs and practices prevent them from participating in public religious worship. It is easier to see the case as falling within the ambit of article 1 of Protocol 1, but the second paragraph of that article preserves the right of the State to secure the payment of taxes or other contributions or penalties. In my opinion Parliament’s decision as to the scope of the exemption was within the discretionary area of judgment afforded to it by that paragraph. As there is no sound basis for holding that the *Henning* test should be departed from, the Church’s argument that the Temple is exempt under para 11(1)(a) must fail.

32. Mr Sumption’s alternative argument was that the Temple is a church hall, chapel hall or other similar building used in connection with a place of public religious worship within the meaning of para 11(1)(b). He cautioned against applying to the words “church hall, chapel hall or other similar building” concepts that are familiar to buildings that the established churches occupy. He submitted that the exemption ought in principle to be available to all religious faiths, not only to particular groups of Christians. I agree. But the Court of Appeal in *Henning* [1962] 1 WLR 1091 held that the Church’s London Temple was not a church hall, chapel hall or other similar building because it was a very sacred sanctuary. Mr Sumption said that this was a cursory decision and that it should not be followed because the sacredness of the building or the functions performed in it had nothing to do with the question whether the building itself was of the required character.

33. I do not think that it is necessary to decide whether the Temple can properly be described as a church hall, a chapel hall or other similar building. This is because these are not the only words that appear in paragraph 11(1)(b). The key words, which colour the meaning of the entire paragraph, are the words “used in connection with”. These too are words whose meaning has long been settled by decisions of the court in the context of exemption from non-domestic rating. The phrase appears in several places in paras 1 to 8 of Schedule 5 to the 1988 Act which deal with agricultural premises, and they appear also in para 9 which deals with fish farms. The wording of these paragraphs repeats what was to be found in the legislation which the 1988 Act replaced. In my opinion the meaning that has been given by the court to these words is sufficient to show that the Temple – even if it could be described as a church hall, a chapel hall or other similar building, taking those words on their own – does not fall within the exemption that is provided for by this paragraph.

34. In *W & JB Eastwood Ltd v Herrod (VO)* [1971] AC 160 the question was whether buildings used for producing broiler chickens were agricultural buildings within the meaning of section 2(2) of the Rating and Valuation (Apportionment) Act 1928. They would have been exempt had it been possible to say that they were used “solely” in connection with the agricultural operations on the land together with which they were occupied, which was used for the production of barely which was converted into poultry food. Lord Reid said at p 168G-H that the key words were “used in connection with”. He added that the ordinary usage of the English language suggested that the buildings must be subsidiary or ancillary to the agricultural operations, and that he did not foresee serious difficulty if the phrase was held to mean use

consequential on or ancillary to the agricultural operations on the land which was occupied together with the buildings. At p 169H he said that the use of the buildings were in no sense ancillary to the agricultural operations on the land, as it was a large commercial enterprise in which the use of the land played a very minor part. Similar expressions of opinion are to be found in the speeches of Lord Morris of Borth-y-Gest, Lord Guest and Viscount Dilhorne.

35. The application of Lord Reid's explanation of the meaning of the phrase to the facts admits of only one answer in this case. As the Court of Appeal held in *Henning*, the sacredness of the building and of the functions that are performed there are decisive on this point. The President, having considered the facts, said that for members of the Church the Temple is the house of the Lord, the most sacred place on earth. The ceremonies that take place there are regarded by members of the Church as of profound theological importance. Its exclusivity, with access being accorded only to those with a recommend, is a reflection of its sacred nature and of the purpose for which access is required. I think that on those findings it would be a complete inversion of the facts to describe the Temple as ancillary or subsidiary to the Stake Centre.

36. For these reasons I would hold that the Temple is not entitled to exemption under either para 11(1)(a) or para 11(1)(b) of Schedule 5. It is not suggested that any of the other buildings on the hereditament are entitled to exemption under para 11(1)(a).

37. The only other building that was said to be entitled to exemption under para 11(1)(b) was the Patrons' Services Building. It has three distinct areas. One is the foyer and day lounge. It is a reception area for visitors to the entire complex, although it has a particular role for those who are to visit the Temple. The second was described by the President as a shop. It sells religious books and leaflets, CDs and tapes relating to doctrinal beliefs and Temple clothing. The third area is the family history area, where forebears are identified for the baptism in the Temple of Patrons as proxies on their behalf. Mr Sumption said that the Court of Appeal's conclusion that the building was not entitled to exemption under para 11(1)(b) was based on some very fine distinctions, bearing in mind that the way that Wesley House was treated in *Trustees of West London Methodist Mission v Holborn Borough Council* (1958) 3 RRC 86 showed that it would have been non-rateable if it had been situated within the Stake Centre.

38. Uses that are ancillary to what goes on in the Temple are plainly of no assistance to the appellant, as the Temple is not a place falling within para 11(1)(a). As for the rest, I agree with Neuberger LJ in the Court of Appeal, para 41, that the building as a whole falls outside para 11(1)(b) as it does not have the characteristics of a church hall, chapel hall or similar building. I would reject Mr Sumption's analogy with the *West London Methodist Mission*. It is no longer a reliable guide as to how buildings that contain distinct areas that are put to a variety of uses should be treated. The legislation is now qualified by the words "to the extent that". Their effect is to require an apportionment to be made between those parts of the building that qualify for the exemption and those which do not.

39. The Patrons' Services Building was also said to be entitled to exemption under para 11(2), as were the Missionary Training Centre, the Patrons' Accommodation and the Grounds Building. The question whether they are entitled to exemption under this paragraph requires one or other of two tests to be satisfied. First, para 11(2)(a) requires them to be occupied for the carrying out of administrative or other activities by an organisation responsible for the conduct of public religious worship in a place falling within para 11(1)(a). Second, para 11(2)(b) requires them to be used as an office or for office purposes, or for purposes ancillary to its use as an office or for office purposes. It is not suggested that any of these buildings qualify for exemption under para 11 (2)(b). The words "to the extent that" which qualify para 11(2) would require an apportionment if a definable part of the building was occupied and used for these purposes. It need not be segregated from the rest of the building by walls or partitions, but it must be capable of being identified in the rating list for exemption as a separate hereditament. So long as this can be done, the question as to the method of apportionment is pre-eminently one for the valuation officer. No facts were put before the President to show that, in the case of any of these three buildings an apportionment would be appropriate. In this situation it will be sufficient if the building, albeit not exclusively, is nevertheless primarily occupied for a use which will qualify it for exemption under para 11(2)(a).

40. The problem for the appellant does not lie in satisfying the opening words of para 11(2). It plainly is an organisation responsible for the conduct of public religious worship in the Stake Centre. But it needs to satisfy subparagraph (2)(a) if it is to obtain the exemption. The mere fact that there are links between what happens in these buildings and what happens in the Stake Centre, as Mr Sumption suggested, will not suffice. To be within this subparagraph, the use must be for



administrative or other activities relating to “the organisation of the conduct” of public religious worship there. This cannot be said to be so in the case of the Missionary Training Centre. As the President put it, the missionaries are instructed as part of their training in the conduct of chapel services. But this is not the primary purpose of their training. In any event this is an activity which relates to how services in general are conducted, not to the organisation of the conduct of services in the Stake Centre or any other building that the appellant uses for public religious worship. Nor can it be said of the use that is made of the Patrons’ Accommodation. It merely provides short-term living accommodation that is primarily used by members of the Church visiting the Temple.

41. The Grounds Building houses machinery and equipment which is used for the maintenance of the grounds and all the buildings on the site. There is also a workshop area, a garage and a plant room which includes the air-conditioning plant for the Temple. It serves the whole of the site including the Stake Centre. But it is not suggested that a definable part of it used for serving the Stake Centre, nor is serving the Stake Centre the primary purpose for which it is used. In any event, as the President said, it is not used for activities that relate to the organisation of the conduct of public religious worship there. I agree with Mr Sumption that this conclusion turns on fine distinctions, because areas used for the same purposes which were within the Stake Centre and not sufficiently clearly identifiable for apportionment would qualify for exemption along with the rest of the building of which they formed part. But the valuation officer must take each building on the hereditament as he finds it, according to the way it is actually occupied and used by the ratepayer.

42. In my opinion the facts of this case show that none of the buildings other than the Stake Centre satisfy the requirements of para 11 of Schedule 5 to the 1988 Act. For these reasons, together with those given by Lord Hoffmann with which I entirely agree, I would dismiss the appeal.

## **LORD SCOTT OF FOSCOTE**

My Lords,

43. I have had the advantage of reading in draft the opinions on this appeal prepared by my noble and learned friends Lord Hoffmann and

Lord Hope of Craighead. I am in broad agreement with my noble and learned friends' reasons for dismissing the appeal, and I, too, would dismiss it, but I want to add a few words of my own on each of the two main issues raised by the appeal. I shall for that purpose gratefully adopt my noble and learned friend Lord Hoffmann's recital of the relevant facts.

44. The first issue is whether the Temple is, for the purposes of paragraph 11(1)(a) of Schedule 5 to the Local Government Finance Act 1988 (as amended), "a place of public religious worship" and therefore exempt from liability for non-domestic rates. Mr Sumption QC, both in his written Case and in his oral submissions, has equated the concept of "public religious worship" in the 1995 Act with the concept of "public worship" appearing in the Act of Uniformity 1662, and which expression, he said, had replaced the expression "common and open prayer" in the Act of Uniformity of 1559. These Acts, he submitted, sought to regulate religious observance by conferring a monopoly of "public worship" on the Church of England and meant by "public worship" what he described as "congregational worship", as opposed to private or domestic worship which was left unregulated. He then moved to the Toleration Act 1688, which abolished restrictions on the freedom of worship of protestant dissenters provided that the worship did not take place in premises with "doors locked, barred or bolted". As Mr Sumption pointed out, the main object of these provisions was to allow religious worship by dissenters without thereby facilitating the convening of seditious assemblies. Restrictions on Roman Catholic worship remained, however, in place until the Roman Catholic Relief Act 1791 which, while removing the restrictions in general, contained provisions regarding assemblies behind locked doors similar to those which had been contained in the 1688 Act. The Places of Religious Worship Act 1812 followed the same pattern. It permitted, subject to certain conditions, premises to be used for religious worship but made it an offence to hold any kind of religious meeting with the doors barred so as to prevent members of the public from entering.

45. In 1833 the Poor Rate Exemption Act introduced statutory rating relief for premises "exclusively appropriated to public Religious Worship" and which (other than Anglican Churches) had been "duly certified for the Performance of such Religious Worship according to the provisions of any Act or Acts now in force." The "Act or Acts" then in force were the 1791 and 1812 Acts and it is easy to conclude that the words in the 1833 Act, "premises ... appropriated to public Religious Worship", must have been intended to bear the same meaning as they would have borne in the 1791 and 1812 Acts, namely, premises for

religious worship which did not take place behind locked doors and from which the public were not excluded.

46. The prohibition of acts of worship behind locked doors remained on the statute books until the Acts of 1791 and 1812 were finally repealed in 1977. In the meantime the Act of 1833 had been repealed and replaced by section 7 of the Rating and Valuation (Miscellaneous Provisions) Act 1955, which was re-enacted by section 39 of the General Rate Act 1967. Both in section 7 of the 1955 Act and in section 39 of the 1967 Act, rating relief was allowed for places of “public religious worship” and there can be no doubt whatever, in my opinion, that “public religious worship” must have meant in these statutory provisions, as also it must have meant in the 1833 Act, religious worship that it was open to the public to attend.

47. The same expression “public religious worship”, is to be found in the Local Government Finance Act, 1988 and it cannot be supposed, in my opinion, that the legislature intended the expression to bear a different meaning from that which it had borne for over 150 years in the successive enactments in which that expression, or something similar, had been used. I agree with Lord Hoffmann that the *Henning* case [1964] AC 420 is conclusive against the appellants on this point. For me, however, the fascinating journey through the historical background on which Mr Sumption has taken your Lordships has confirmed rather than undermined the reasoning of the majority of this House in *Henning* and has dissolved the doubts that had been expressed by Lord Evershed in that case.

48. The second issue is whether the withholding of rating relief from the Temple on the ground that since its doors are not open to the public it cannot qualify for relief as a place of “public religious worship”, is in breach of article 14 of the European Convention on Human Rights and accordingly unlawful. It is common ground that in order to engage article 14 the discriminatory act complained of must fall within the ambit of one or other of the substantive articles of the Convention. The articles relied on in the present case, within the ambit of which the alleged discrimination is said to fall, are, first, article 9 and, alternatively, article 1 of Protocol 1.

49. Lord Hoffmann and Lord Hope have expressed the view that the withholding of rating relief from the Temple does not fall within the ambit of article 9. I am uneasy about that conclusion because it is well

settled that an allegedly discriminatory act said to be in breach of article 14 does not need to constitute an actual breach of the substantive article within whose ambit the act in question is said to fall. It needs simply to be within the ambit of the substantive article. The case-law as to when an act of discrimination, not being in breach of a particular substantive article, will sufficiently relate to that article in order to be capable of constituting a breach of article 14 does really no more than ask whether the act is within “the ambit” of the article. There is no precise yardstick; the requirement is left inherently, and perhaps unsatisfactorily, flexible. It seems to me, however, that the levying of taxation on a place of religious worship, or on those who enter the premises for that purpose, would be capable in particular circumstances of constituting a breach of article 9 and, accordingly, that it is difficult to regard the levying of rates on such premises as otherwise than within the ambit of article 9. I would prefer, therefore, to examine the second issue on the footing that the withholding of rating relief from the Temple does fall within the ambit of article 9 for article 14 purposes.

50. If that is so, there is, as it seems to me, an element of discrimination that requires to be justified. The discrimination consists of the denial of rating relief for the Temple on the ground that, although a place of religious worship, it is not a place of *public* religious worship. No one who is not a Mormon, or who, although a Mormon, does not possess a “recommend” permitting him or her entry, can enter the Temple (see para 5 of Lord Hoffmann’s opinion). The “open doors” requirement in order to enable premises used for religious worship to qualify for rating relief discriminates, adversely to the Mormons, between premises used for religious worship that are open to the public and those that are not. If that is right, the discrimination requires to be justified if it is to escape being held unlawful.

51. I would, for my part, unhesitatingly hold that the grant of rating relief to premises for religious services that are open to the public and the withholding of that relief from premises for religious services which take place behind closed doors through which only a select few may pass is well justifiable and within the margin of appreciation available to individual signatory states. First, states may justifiably take the view that the practice of religion is beneficial both to the individuals who practise it as well as to the community of whom the individuals form part, and that, therefore, relief from rating for premises where religious worship takes place is in the public interest. But, second, states may also recognise that, although religion may be beneficial both to individuals and to the community, it is capable also of being divisive and, sometimes, of becoming dangerously so. No one who lives in a

country such as ours, with a community of diverse ethnic and racial origins and of diverse cultures and religions, can be unaware of this. Religion can bind communities together; but it can also emphasise their differences. In these circumstances secrecy in religious practices provides the soil in which suspicions and unfounded prejudices can take root and grow; openness in religious practices, on the other hand, can dispel suspicions and contradict prejudices. I can see every reason why a state should adopt a general policy under which fiscal relief for premises used for religious worship is available where the premises are open to the general public and is withheld where they are not. In my opinion, the withholding of rating relief from the Temple does not constitute a breach of article 14, whether considered in the context of article 9 or, for the same reasons, in the context of article 1 of the 1<sup>st</sup> Protocol.

52. I would dismiss this appeal.

#### **LORD CARSWELL**

My Lords,

53. I have had the advantage of reading in draft the opinions prepared by my noble and learned friends Lord Hoffmann and Lord Hope of Craighead. I agree with the reasons given by both noble Lords, and for those reasons I too would dismiss the appeal.

#### **LORD MANCE**

My Lords,

54. I have had the benefit of reading in draft the speeches of my noble and learned friend, Lord Hoffmann and Lord Hope of Craighead. I agree with the reasoning and conclusions in both.

55. I would only add that I would not myself wish the phrase “definable part” used in paragraphs 39 and 41 of the speech of my noble and learned friend, Lord Hope, to be understood as requiring any physical or

spatial separation of different parts of a building before the building could be said to some “extent” either to consist of a place or building within para. 11(1) or to be occupied for the conduct, or used for activities relating to the organisation, of public religious worship within para. 11(2)(a) or (b) of Schedule 5 to the Local Government Finance Act 1988. However, here neither the Patrons Services Building nor the Grounds Building was shown to be, to any ascertainable extent, occupied for the conduct, or used for activities relating to its organisation of such worship.