

Law Report

# Rules cannot include variable provisions

Court of Appeal  
Published July 20, 2010

**Pankina v Secretary of State for the Home Department**  
**Malekia v Same**  
**Ahmed v Same**  
**Junaideen v Same**  
**Ali v Same**  
**Sankar v Same**

Before Lord Justice Sedley, Lord Justice Rimer and Lord Justice Sullivan  
Judgment June 23, 2010

The immigration rules could not incorporate provisions in another document which had not been laid before Parliament and could be altered after the rules had been thus laid.

The Court of Appeal so held in allowing appeals by Aves Ahmed, Mohamed Junaideen, Irfan Ali and Navindra Sankar against various decisions of the Asylum and Immigration Tribunal, and dismissing appeals by the Secretary of State for the Home Department, in Pankina, and Margaret Malekia against decisions of the Asylum and Immigration Tribunal.

All the individuals were graduates of approved UK tertiary institutions who wished to remain and work here. The amendments to the rules promulgated as HC 321 and laid before Parliament on February 6, 2008, introduced a points-based system for assessing their eligibility. That was amended by HC 607, laid before Parliament on June 9, 2009, so as to make the provision that was operative when the present individuals sought leave to remain.

Original policy guidance was issued in June 2008; in November 2008

this provision was reorganised so as to introduce a substantive further criterion which did not form part of the rules laid before Parliament.

**Mr Michael Fordham, QC and Mr Shahram Taghavi** for Ms Pankina; **Mr Louis Lourdes** for Ms Malekia; **Mr Zane Malik** for Mr Ahmed and Mr Junaideen; **Mr Raza Hussain, QC and Mr Ronan Toal** for Mr Ali; **Ms Margaret Phelan** for Mr Sankar; **Miss Lisa Giovannetti** for the Home Secretary.

LORD JUSTICE SEDLEY said that the issue was whether the executive, in rules which were required, subject to parliamentary oversight, to set out how it proposed to exercise its statutory functions, could lawfully reserve to itself the power to add to or modify those rules.

By a combination of legislative recognition and executive practice, the rules made by the Home Secretaries for regulating immigration had ceased to be policy and had acquired a status akin to that of law.

The statutory recognition of rules which were to have the character and on appeal, the force of law, required such rules to be certain. The immigration rules could not lawfully incorporate provisions set out in another document which had not itself been before Parliament and was able to be altered after the rule had been laid before Parliament.

Lord Justice Rimer and Lord Justice Sullivan agreed.

Solicitors: **Simons Muirhead & Burton; PG Solicitors; Malik Law Chambers; Thompson & Co; Thompson & Co; Treasury Solicitor**

# Self-contained part

Chancery Division  
Published July 20, 2010

**Crafrule Ltd v 41-60 Albert Palace Mansions (Freehold) Ltd**

The phrase "a self-contained part of a building" in sections 3 and 4 of the Leasehold Reform, Housing and Urban Development Act 1993 did not, either expressly or by implication, require that a self-contained part of a building should be indivisible into smaller such parts.

Mr Justice Henderson so held on May 27, 2010, when dismissing an appeal by the defendant, Crafrule Ltd, against the granting of a declaration by Judge Madge in Central London County Court on July 30, 2009, in favour of the claimant, 41-60 Albert Palace Mansions (Freehold) Ltd, in respect of the right to collective enfranchisement conferred on qualifying tenants by section 1(l) of the 1993

Act for twenty flats forming part of a terrace known as Albert Palace Mansions, Lurline Gardens, Battersea.

HIS LORDSHIP accepted that the correct approach to construing section 3 of the 1993 Act was, first, to look at the premises specified by the section 13 notice and consider whether they satisfied the test in section 3, which in the present case meant the definition of a self-contained part of a building in section 3(2).

Second, if the section 3(2) definition was satisfied, to ask whether any of the exclusions in section 4 of the 1993 Act applied. If none applied, it followed that the right of collective enfranchisement applied.

The claimant's construction was not in any way contrary to the policy of the 1993 Act as identified by Baroness Hale of Richmond in *Majorstake Ltd v Curtis* (*The Times* February 12, 2008; [2008] 1 AC 787).

# Surrender lease first

# Births, Marriages and Deaths

For all the gods of the nations are idols, but the LORD made the heavens. Splendour and majesty are before him; strength and joy in his dwelling-place. 1 Chronicles 16.26-27 (NIV)

## Births

**LANE FOX** On 15th July 2010, to Christine and Charlie, a son, Walter James.

**LLEWELLYN** On 16th July 2010 at 8.57pm, in Cheltenham, 7 lbs 15. Thanks be to God.

**WILSON** On 8th July 2010, to Sarah Divall and Matthew Wilson, a beautiful daughter, Lilliane Tiger Jane Yvonne.

## Marriages

**MR J.M.L. STONE AND PROFESSOR L.J. HARPMAN**  
Mr Jonathan Michael Lever Stone, son of the late Hyman and Dorothy Stone, and Professor Louise Josephine Harpman, daughter of Mr and Mrs Sigmund A Harpman, jr, were married this Spring in New York City where they now reside at 145 East 76th Street. Judge Pierre N Leval, of the Second Circuit Court of Appeals, a lifelong friend of the bridegroom, officiated.

**MR A. TEJANI AND MISS A. MEGHANI**  
The marriage took place between Alykhan, son of Mr and Mrs Azad Tejani, of Davenport, and Ashifa, daughter of late Mr and Mrs Ikbal Meghani, on Saturday 10th July 2010, at Leicester Jamat Khana.

## Deaths

**ASHWELL** June, (Edinburgh formerly Leicester). At Colinton Nursing Home, Edinburgh, on 17th July 2010. June (née Eadie), beloved wife of the late Anthony, dear mother of Caroline and Michael, and a much loved grandmother and great-grandmother. Service at Mortonhall Crematorium, Main Chapel, Edinburgh, on Friday 23rd July at 11.00am, to which all friends are invited. Family flowers only please, but donations if desired, to Leicestershire Hospice, (LOROS), Groby Road, Leicester LE3 9QE.

**BRIDGES** Maybery, passed away peacefully, aged 89, at her home in Canberra on 10th July 2010. Much loved wife of the late Brigadier Richard Michael Bridges. Memorial Service on Friday 23rd July at 11am at St John's Anglican Church, Reid, ACT 2612, Australia.

**DIMOND** Dorothy Mabel Louisa Hobbs (née Knight), passed away peacefully on 13th July 2010, having attained her magnificent 100 years in January. Beloved wife of the late Cyril James, loving mother of John and Paul, mother-in-law of Julia and Carolyn, grandmother of Sally, Christopher, Mark and Matthew, great-grandmother of Daniel, Matthew, Eleanor, Benedict, Catrin, Kara, Oliver, Luke and James. Requiem Mass at 1.30pm on 26th July at St Peter's, Ashley Common Road, Ashley, New Milton, Hampshire BH25 5AJ. Family flowers only, but donations, if desired, to Cancer Research UK, PO Box 123, London WC2A 3PX or St Christopher's Hospice, 51-59 Lawrie Park Road, London SE26 6DZ.

**DOUGLAS-PENNANT** Milly, on 14th July 2010, aged 29, after a wonderful life, adored wife of Manolo Garcia Falcon and mother of Lucia, and beloved daughter of Paddy and Sarah. Funeral on Friday 23rd July, at St John's, Tisbury at 3pm. Garden flowers only please, but, if desired, donations for cystic fibrosis research to The Anna Trust c/o Tisbury House, Salisbury SP3 6PZ.

**DUNCAN** Pam. Died at Kilfillan House, Berkhamsted, on 27th June 2010, aged 89 years. Funeral will take place on Thursday 5th August at 12 noon at St Peter's Church, Berkhamsted, Herts. Enquiries to J. Worley (f/d) Ltd, 01442 870326.

**HARDING** Joyce, on 15th July 2010, peacefully in hospital, aged 87, of Dorking. Much loved and missed by all her family and friends. Funeral Service on Thursday 29th July at St Martin's Church, Dorking at 11.00am. Family flowers only, if desired, donations for Cancer Research UK, may be sent to Sherlock Funeral Service, Trellis House, Dorking, RH4 2ES.

**HAWKINS** Osborne James (Ossie), New Zealand born, former test pilot, engineer, RNZAF and RAF pilot, died on Saturday 10th July 2010, aged 86 years. Beloved

**MACKERRAS** Sir Charles, died peacefully on 14th July 2010, aged 84. Survived by his wife Judy, and younger daughter Catherine. Funeral Friday 23rd July at 11.00am at St Paul's Church, Covent Garden. Family flowers only. Donations, if desired, to The Royal Society of Musicians of GB.

**MOSS** Richard OBE RCNC, naval architect and engineer, beloved husband of Celia and father of Celia, Susan and Bridget, died in Cambridge on 15th July 2010. Funeral Service, and celebration of his life and long marriage, will be held at the Church of St Edward, King and Martyr, Cambridge at 11.30am on Monday 26th July. Family flowers only. All attending are invited to join the family afterwards.

**PHILPOT** Rosl (née Widhalm), died at Charing Cross Hospital on Saturday 10th July 2010, aged 86 years. Beloved mother of Diana and James. Requiem Mass at Our Lady of Victories, Kensington High Street, W8 on Monday 26th July at 12.30pm followed by committal at Mortlake Crematorium. Flowers and inquiries to Chelsea Funeral Directors, 260b Fulham Road, SW10 9EL. Tel. 020 7352 0008.

**ROWLANDS** (née Wight) Peacefully on 17th July 2010, Lady Constance Rowlands, aged 90 years, in the loving and compassionate care of The Glen Nursing Home, Dore, Sheffield. For 64 years the loving wife of the late Air Marshal Sir John Rowlands, G.C., K.B.E., R.A.F. (Retd.). Dearly loved mother of Margaret and Alison, mother-in-law of Jack and Richard, grandmother of John and Jillian (and her husband Kyle). Private Cremation. Memorial Service at St Andrew's Psalter Lane Church, Sheffield on Thursday 22nd July at 11.00am. If wished, donations made payable to the "R.A.F. Benevolent Fund" may be sent to Adam Heath, John Heath & Sons, 2-16 Earsham Street, Sheffield, S4 7LS.

**SHORTER** On 15th July 2010, peacefully at home, Berenice (Bani) Knight Shorter of Southpark, 35 Duddingstone Park South, Edinburgh; greatly loved by many. Cremation at Lorimer Chapel, Warriston Crematorium, Edinburgh on 29th July at 2pm, arranged by William Purvis, Funeral Directors, 106 Whitehouse Loan, Edinburgh EH9 1BD. Tel 0131 447 5858, to whom flowers may be sent or donations in aid of Ratanagiri Monastery, Harnham, Belsay, Northumberland NE20 0HF.

**SMITH** Brian Arthur Rymer "Bars" C.B.E. of Sherborne, died peacefully on the 14th July 2010 in Yeovil District Hospital, aged 80 years. He was much loved by his wife Joan and all his family and friends. A Thanksgiving Service will take place on Tuesday 27th July, 2.00pm in Sherborne Abbey. Donations in memory of Brian for either WaterAid or The Weldmar Hospice Trust may be sent c/o Clive Wakely, Wakely Brothers, 16 Newland, Sherborne, Dorset, DT9 3JQ. Tel: 01935 816817.

**SPILLER** Robert Lambart (Bobby) Major R.A. rtd., much loved husband of Diana, proud father of Peter and Charles and grandfather of James, Tatton, Roly, and Henry, died peacefully on Tuesday 13th July 2010. Funeral to be held at All Saints, Farington on Thursday 29th July at 2.30pm. Family flowers only and donations, if so desired, to be sent to Help for Heroes, Unit 6, Aspire Business Centre, Ordnance Road, Tidworth, Hants, SP9 7QD.

**WALKER**, Robert. On 14th July 2010, Robert, very dearly loved husband of Hilary, and devoted father of Kim, Nick and Sarah, and grandfather of ten. Private family funeral. Thanksgiving Service to be arranged at a later date. No flowers please. Donations, if desired, made payable to The Alzheimer's Society.

## In Memoriam - Private

**CLAYFIELD** Dr George W D. PHIL, CCHM and MRSC. 70 on 18th July 2010. Love and miss you always, Ann and family.

## Announcements

"HISTORICALLY IMPORTANT" Rudolf Hess: The British Illusion of Peace by John Harris Published £18.99 - Jema 2010 Tel. 01604 627274.

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