

# **Pastor, Church & Law**

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FIFTH EDITION

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## STUDY GUIDE

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## INTRODUCTION

This study guide was created to facilitate the use of the primary text, *Pastor, Church & Law*, in an academic setting. Each chapter in the main text has a corresponding chapter in this study guide that consists of the following features designed to assist readers in understanding the material:

- A listing of key terms that are addressed in the text with which the reader should be familiar.
- A description of learning objectives.
- Several short-answer questions that are designed to assist readers in applying material in the text to real-life situations. Most short-answer questions are based on actual cases.
- Discussion questions that will assist readers in a deeper and more complete understanding of the material in the text.

The materials addressed in *Pastor, Church & Law* may seem overwhelming. But, using this study guide will assist in understanding the most important points. It is designed for use in academic settings such as seminars, but can also be used to facilitate training by churches, denominations, and individuals.

**Editor's Note:** *In June of 2022, the US Supreme Court delivered a decision in Kennedy v. Bremerton School District, 597 U.S. \_\_\_\_ (2022). Part of the decision included overturning a decades-old test that the Court previously announced in Lemon v. Kurtzman, 403 U.S. 602 (1971) for establishment clause cases. This study guide has been updated to reflect this change and mirrors a 2022 supplement provided with Pastor, Church & Law, Fifth Edition.*

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# CHAPTER 1

## TERMS

clergy  
duly ordained, commissioned, or licensed minister  
employee  
Internal Revenue Code  
licensed minister  
minister  
ministerial exception  
pastor  
ordained, commissioned, or licensed minister  
ordination  
self-employed  
Self-Employment Contributions Act (SECA)  
self-employment tax  
service performed in the exercise of ministry

## LEARNING OBJECTIVES

- Understand the legal difference between the terms *pastor*, *clergyman*, and *minister*.
- Explain why it is important to define the terms *pastor*, *clergyman*, and *minister*.
- Name several statutes that use the terms *pastor*, *clergyman*, or *minister*.
- Explain how the civil courts determine the definition of a “minister” when a church’s definition differs from the definition in a statute.
- Define the terms *employee* and *self-employed*; recognize the legal differences between these terms; and determine whether a minister is an employee or self-employed in several contexts including income tax and Social Security reporting.
- Understand the legal significance of the term *ordained, commissioned, or licensed*.

## SHORT-ANSWER QUESTIONS

1. A church “ordains” its office and custodial workers as ministers so that it will not have to withhold Social Security and income taxes from their pay. Is the IRS bound by the church’s classification of these individuals as ministers? Why or why not?
2. A church custodian sincerely believes that his calling is to serve his church in any capacity, and that his job as the church’s custodian constitutes the exercise of ministry. Answer the following questions:
  - a. Can the church ordain the custodian?
  - b. If the church ordains him, is he eligible for a housing allowance?
  - c. If the church ordains him, is he eligible for exemption from self-employment taxes?
  - d. If the church ordains him, will the ministerial exception bar him from bringing an employment-based lawsuit against the church?

3. Pastor C, an ordained minister, is the full-time youth pastor at his church. As a youth pastor, is he eligible to perform marriage ceremonies under a state law that permits “clergy” to perform such ceremonies? How would a civil court most likely resolve this question?
4. Same facts as question 3, except Pastor C is licensed but not ordained.
5. Same facts as question 3, except Pastor C has no ministerial credentials. He is a part-time student at a local seminary and plans to become an ordained minister in the future.
6. Is a Jewish rabbi authorized to perform marriages under a state law that authorizes “ministers” to perform such ceremonies? How would a civil court most likely resolve this question?
7. The federal tax code treats housing allowances paid to “ordained, commissioned, or licensed ministers” as a nontaxable benefit in computing income taxes. Is a Jewish rabbi, or Muslim imam, treated as a minister for this benefit?
8. Pastor D, an ordained minister, serves as music minister at her church. A choir member shares confidential information with her in the course of counseling. Is this communication protected from disclosure in court by the clergy-penitent privilege? Assume that state law extends the privilege to confidential communications made between “ministers” and counselees. How would a civil court most likely resolve this question?
9. A local congregation “ordains” its bookkeeper as a “minister of administration.” Is this legally permissible?
10. Same facts as question 9. Do you think the IRS would consider the “minister” to be eligible for a housing allowance? Why?
11. What three steps should be considered in deciding whether or not an individual is a “minister” for legal purposes?
12. List five situations in which it is important to define the term minister.
13. A church treats its minister as an employee for federal income tax reporting purposes. Should it treat the minister as an employee for purposes of Social Security? Explain.
14. List five reasons why it is important to determine whether a minister is an employee or self-employed for federal income tax reporting purposes.
15. On his way to make hospital calls, Pastor S fails to stop his car at a red light and collides with another vehicle. The driver of the other vehicle is injured. Will Pastor S’s church be legally responsible for the injuries? Explain.
16. A statute permits “ordained ministers” to perform wedding ceremonies. Is a minister who is licensed by a church that both ordains and licenses ministers legally qualified to perform wedding ceremonies? What factors would a court consider in answering this question?
17. A church has a full-time senior pastor, and two full-time associate pastors. Answer the following questions:
  - a. Is the senior pastor an employee, or self-employed, for federal income tax reporting?
  - b. Is the senior pastor an employee, or self-employed, for Social Security?
  - c. Are the associate pastors employees, or self-employed, for federal income tax reporting?
  - d. Are the associate pastors employees, or self-employed, for Social Security?

18. Under what circumstances would a church not be obligated to withhold Social Security and Medicare taxes from its non-ministerial employees, and pay the employer's share of these taxes?
19. What is IRS Form 8274?
20. What is the name of the annual information return issued by a church to an independent contractor?
21. What is the name of the annual information return issued by a church to an employee?
22. Pastor B is employed full-time as an associate pastor, but she reports her federal income taxes as a self-employed person. The church pays her medical insurance premiums. Is this a taxable or nontaxable fringe benefit? Explain.
23. Explain the meaning of the "respondeat superior" legal doctrine.
24. Pastor D was ordained by a Baptist church. He is serving as senior pastor of a Lutheran church. Can he be treated as a minister for federal tax purposes?
25. Name four references in the federal tax code to "ordained, commissioned, or licensed minister."

## **DISCUSSION QUESTIONS**

1. Pastor J files her income taxes as a self-employed person on the basis of theological convictions pertaining to the role and status of a minister. Her income tax return is audited, and the IRS asserts that she should have reported her income as an employee. Pastor J objects to being characterized as an employee. Who should have the right to determine Pastor J's status for income tax purposes? Why?
2. The Internal Revenue Code grants several tax benefits to *duly ordained, commissioned, or licensed ministers*. Who should have the authority to determine whether a minister is ordained, commissioned, or licensed? A church or religious denomination? The IRS? The courts? Why?
3. A church is affiliated with a denomination that grants ministerial credentials. The church would like to ordain or license a staff member without seeking a credential from the parent denomination. What factors would the IRS, or the courts, likely consider in deciding whether the staff member would be a minister for federal tax purposes based on the issuance of a ministerial credential by his employing church?

# CHAPTER 2

## TERMS

arbitrariness  
breach of contract  
civil, property, or contract rights  
compensation  
congregational  
contract  
excess benefit transaction  
exhaustion of ecclesiastical remedies  
fraud or collusion  
good cause  
governing documents  
hierarchical  
intermediate sanctions  
ministerial exception  
negligent selection  
polity  
reasonable compensation  
“section 501(c)(3)”

## LEARNING OBJECTIVES

- Understand the legal aspects of the selection of clergy.
- Understand under what circumstances the civil courts will intervene in internal church disputes involving the selection of clergy.
- Explain why clergy and churches should enter into a contract of employment, and identify several important items to cover in such a contract.
- Define *unreasonable compensation*, and explain the significance of this concept to churches and clergy.
- Identify those circumstances in which the civil courts may intervene in internal church disputes involving the dismissal of a minister.

## SHORT-ANSWER QUESTIONS

1. Explain the difference between a congregational and a hierarchical church.
2. A minister was ordained by a denomination that retains the authority to assign clergy to their pastoral positions. A 62-year-old minister was assigned to a small mission church. He sued his denomination, claiming that his civil rights were violated by such an “undesirable” assignment. What is the most likely result? Explain.
3. A female minister sued her denomination, claiming that the denomination engaged in gender discrimination by assigning her to a small, rural church. What is the most likely result? Explain.
4. A church refuses to call a minister because he was not ordained by the denomination with which the church is affiliated. If the minister sues the church, what is the most likely result? Explain.

5. A church's bylaws require that a minister receive a "three-fourths vote" in order to be elected. A minister received a vote of 60%. The church board declared him elected, mistakenly believing that only a majority vote was required. Several months later, a member of the church discovered that a three-fourths vote was required, and he challenges the election in a civil court. What is the most likely result? Explain.
6. A church's bylaws require that a minister receive a "majority vote" in order to be elected. The church has 100 members, and at a business meeting at which 60 members were present, Pastor C receives 40 votes. He is declared elected, since he received more than half of the votes of those members present and voting. A disgruntled member files a lawsuit in civil court challenging the election, claiming that the minister did not receive a majority vote of all the church membership. What is the most likely result? Explain.
7. Only 35 members attend a church membership meeting that was called to select a new minister. The church's bylaws do not define a quorum. The members elect Pastor D as their minister. However, a group of members contest the election. They argue that the meeting was invalid since a quorum was not present. They note that the church is incorporated under a state nonprofit corporation law which defines a quorum as 20 percent of members. Since the church has 300 members the quorum requirement was not met. Those members who elected the pastor insist that state nonprofit corporation law can never invalidate an action taken at a church membership meeting. What is the most likely result? Explain.
8. Same facts as the preceding example, except that the church's bylaws define a quorum as 25 members. What is the most likely result? Explain.
9. A church has no constitution or bylaws, and it is not affiliated with a denomination. In the past, it has selected its ministers by majority vote of church members attending a specially called business meeting. The pastor of the church resigns, and the trustees assert that they have as much authority as the church membership to select a replacement. Are they correct? Explain.
10. A church is incorporated under a general nonprofit corporation law. The church's minister retires, and the church calls a special business meeting to vote on a new minister. The church membership was notified of the special meeting by public announcement in the course of a church service on the preceding Sunday. This procedure was mandated by the church's bylaws. During the business meeting, a church member points out that the state nonprofit corporation law calls for notice on each of the two Sundays preceding the date of the business meeting. Was the meeting legally called?
11. A church employs Pastor R as its minister. Pastor R did not sign a contract. The church's constitution and bylaws do not specify Pastor R's term of office. Pastor R maintains that he has been hired "for life". Do you agree? Explain.
12. A church employs Pastor J for a three-year term. In the second year of the term, the church membership votes to dismiss Pastor J because of recent statements in which he expressed doubts about a few fundamental doctrines of the church. Pastor J sues the church for breach of contract. Will he succeed? Explain.
13. A church employs Pastor O for a five-year term. In the third year of the term, Pastor O suffers a stroke that leaves him with a speech impediment. The church wants to dismiss Pastor O, but he insists it cannot do so until his term is completed. The employment contract does not address the problem. If the dispute goes to court, who will prevail?
14. Describe the legal remedies available to a minister who is wrongfully dismissed by a church before the end of his term of employment.

15. A church is considering the hiring of a minister. Why would it be desirable for the church and the minister to sign an employment contract?
16. A church has decided to prepare an employment contract for a new minister. Why might any of the following terms be desirable? Would there be a downside to some of them?
  - a. A job description.
  - b. An arbitration clause.
  - c. A housing allowance designation.
17. What is unreasonable compensation, and why should it be a concern to churches?
18. What is an excess benefit transaction?
19. What is an “automatic” excess benefit transaction?
20. What are “intermediate sanctions”? Why are they relevant to clergy compensation planning?
21. A church board authorizes a significant retirement gift for the senior pastor. If the IRS later determines that this gift was excessive, are the members of the church board exposed to personal liability? If so, how, and to what extent?
22. A church pays its senior pastor an annual salary of \$50,000 this year. In addition, it reimburses expenses the pastor incurs for the use of his car, out of town travel, entertainment, and cell phone use, but does not require substantiation of the amount, date, location, or business purpose of reimbursed expenses. Instead, the pastor provides the church treasurer with a written statement each month that lists the expenses incurred for the previous month. The treasurer then issues a check to the pastor for this amount. Assume that the church reimburses \$5,000 under this arrangement, and that the amount is reported as taxable income by the church on the pastor’s Form W-2 for this year. Does this arrangement expose the pastor, or the church, or members of the church board, to liability? If so, how? Assume that the senior pastor is an officer and director of the church.
23. Same facts as the previous question, except that the church did not report the \$5,000 as taxable income on the pastor’s W-2 in the year it was paid, and the pastor did not report it on his tax return (Form 1040) for that year. The church treasurer assumed that the pastor had “at least” \$5,000 in business expenses, and so there was no need to report the nonaccountable reimbursements as taxable income. Why might this be relevant?
24. Same facts as the previous question, except that the pastor is the church’s youth pastor. Assume that the youth pastor is not related to the senior pastor, or to any other officer or director of the church. Why might this be relevant?
25. Same facts as the previous question, except that the youth pastor is son of the senior pastor. Why might this be relevant?
26. A youth pastor resigns his position, and later sues his former employing church for unpaid overtime pay under the Fair Labor Standards Act. What is the most likely result of this lawsuit?
27. A “hierarchical” denomination receives complaints about Pastor G, and it conducts an investigation and hearing. The denomination revokes the ministerial credentials of Pastor G. Pastor G files a lawsuit, alleging that the denomination did not follow its disciplinary procedure in conducting its investigation and in reaching its decision to dismiss him as a minister. What is the most likely result? Explain.



28. Same facts as question 27. Would it matter if Pastor G alleged that his civil, contract, or property rights were violated by the denomination's actions?
29. Same facts as question 27. Would it matter if Pastor G alleged that the denomination's actions were based on "fraud or collusion?"
30. Same facts as 27, except that the denomination is "congregational" in polity. Would this make any difference?
31. A church conducts a special business meeting to vote on the dismissal of Pastor D. The church bylaws specify that the church must provide members with notice of any special business meeting on the two Sunday morning services immediately preceding the date of the special meeting. The special business meeting was announced only on one Sunday. Pastor D receives only 40% of the votes cast at the meeting (she needed a simple majority). Pastor D later challenges the church's actions in court. What is the most likely result? Explain.
32. A church board votes to dismiss Pastor W. The church bylaws provide that only the church members can dismiss a minister. Pastor W challenges the board action in court. What is the most likely result? Explain.
33. A church has 200 members. The church bylaws specify that a minister may be dismissed by a vote of "two-thirds of the church membership." At a special business meeting at which 80 members are present, 56 members (70% of those present) vote to dismiss the minister. The church board informs the minister that he has been dismissed. The minister files a lawsuit, alleging that he was not dismissed by a two-thirds vote of all the church's members, but rather only of those present at the meeting. What is the most likely result? Explain.
34. A church votes to dismiss a minister. The minister contests the vote on the ground that many persons who were permitted to vote in the election were not valid members of the church. What is the most likely result? Explain.
35. A pastor suffers a debilitating injury that makes it difficult for him to perform his pastoral duties. The church board meets and votes to dismiss the pastor. The pastor sues the church for disability discrimination. What is most likely outcome?
36. A church enters into a 3-year contract with Pastor L. The contract provides that Pastor L can be terminated only for doctrinal departure or incapacity. After serving for only 1 year, the church dismisses Pastor L. The basis for the dismissal was "ineffectiveness." Pastor L sues for damages. What is the most likely result? Explain.
37. A church terminates a 78-year-old custodian based on poor performance, and hires a 38-year-old to replace her. The dismissed employee sues the church for age discrimination. What is the most likely outcome?
38. Same facts as question 37. Would it matter that the dismissed employee is an ordained minister?
39. What is the "ministerial exception"? Has it been recognized by the United States Supreme Court?
40. A church dismisses an associate pastor after learning that he was a homosexual. The dismissed pastor sues the church for discrimination. Answer the following questions:
  - a. Which, if any, laws may protect against discrimination in employment based on sexual orientation?
  - b. Do these laws include an exception for the church-pastor relationship?

- c. Does the ministerial exception apply?
  - d. What if the pastor's job evaluations were always exemplary?
41. Define "EEOC."
42. A church operated school dismisses a teacher based on disability. The teacher sues the church for disability discrimination. Answer the following questions:
- a. Would the teacher be considered a "minister" for purposes of the ministerial exception?
  - b. The teacher insists that she only spent a few minutes each day on religious activities, and the rest of the time she was engaged in teaching courses from a secular perspective. Under these circumstances could she be regarded as a "minister" triggering the ministerial exception?
43. A denominational agency revokes the ordination of Pastor V, and lists Pastor V as "dismissed" in a denominational publication that is distributed to ministers. Pastor V sues the denomination for defamation. What is the most likely result? Explain.
44. A minister is dismissed by a denominational agency. She fails to pursue the appeal procedure specified in her denomination's bylaws. Two years later she sues her denomination for wrongful dismissal. What is the most likely result? Explain.
45. Explain the ruling by the United States Supreme Court in the Hosanna-Tabor case in 2012. Why is this case important?
46. Describe three definitions of the term "minister" the courts have provided in applying the ministerial exception.

## **DISCUSSION QUESTIONS**

1. This chapter describes the legal remedies that are available to a minister who is dismissed by a church prior to the expiration of a stated term of employment. Do you believe that it is ever appropriate for a minister to seek such remedies in a court of law? Explain your position. Are there any alternatives? What steps could a church take to reduce the risk of civil litigation?
2. There are several advantages to ministers entering into a contract of employment with their employing church. Yet, such contracts are rare. Why do you believe this is so?

# CHAPTER 3

## TERMS

clergy-penitent privilege  
clergy privilege  
confidential communications  
confidentiality  
conscientious objector  
customary vocation  
Defense of Marriage Act  
discipline  
duly ordained ministers of religion  
privilege  
ratification  
regular ministers of religion

## LEARNING OBJECTIVES

- Describe a minister's legal authority.
- Identify the legal requirements that clergy must follow in performing marriage ceremonies.
- Explain the status of clergy, and theology students, under the Selective Service Act.
- Understand the nature and purpose of the clergy-penitent privilege, and apply it to a variety of factual circumstances.
- Understand whether or not a minister has a legal duty to report known or reasonably suspected cases of child abuse to state authorities.
- Explain the difference between privilege and confidentiality.

## SHORT-ANSWER QUESTIONS

1. Is the senior pastor of a church legally authorized to chair church business meetings? What if a church's bylaws do not address the matter?
2. A pastor learns that a homeowner who lives next door to the church is about to sell her home for \$80,000. The pastor would like the church to buy the property for future expansion, and he immediately calls the homeowner and states that "the church will buy your home for \$100,000." The homeowner accepts this offer. At its next-meeting, the church board refuses to authorize the purchase because it feels that \$100,000 is too much to pay for the property. The seller wants to enforce the contract. Result?
3. Same facts as question 2, except that the church board takes no action approving or disapproving the sale. Title is transferred to the church, and the church begins using the property. Is the church bound by the purchase even if the church board later decides to repudiate the transaction?
4. A pastor recently performed his first wedding ceremony. He did not know that the husband and wife were second cousins, or that they had not obtained a marriage license. He also was not aware of a requirement to complete and return a marriage certificate to civil authorities. Is this marriage valid? Is the pastor subject to any legal penalties? Explain.

5. A pastor is asked to perform a wedding for a friend in another state. Is he legally permitted to do so? What steps should he take to find out the answer to this question, and when should he do so?
6. Does state law prescribe how wedding ceremonies should be conducted? Explain.
7. A church is opposed on the basis of its religious beliefs to same-sex marriages. Two men ask the pastor to marry them. Is the pastor subject to legal liability if he refuses? Explain.
8. Answer the following questions pertaining to public accommodations laws:
  - a. What is a “public accommodations law”?
  - b. Who enacts such laws?
  - c. Describe the nondiscrimination provisions in such laws.
  - d. Is a church a place of public accommodation?
  - e. What might make it more likely that a church would be viewed as a place of public accommodation?
  - f. A state public accommodations law prohibits places of public accommodation from discriminating on the basis of several grounds including sexual orientation and marital status. Two males ask the pastor of a church if they can use the sanctuary for their wedding. The pastor rejects this request. Has the church violated a public accommodations law? What factors would need to be considered?
  - g. A church is opposed on theological grounds to same-sex marriages. Does the church need to amend its bylaws to reflect this belief? Why or why not?
  - h. What was the ruling by the United States Supreme Court in the Bob Jones University case in 1983, and how is this case relevant to the legal authority of a church to refuse to perform same-sex marriages?
9. Two church members ask their pastor to marry them. However, they want a “religious” marriage rather than a marriage performed in conformity to civil law requirements. Answer the following questions:
  - a. Why might a couple prefer a “religious” marriage over a marriage that conforms to state law?
  - b. Name at least five legal consequences of a “religious marriage” that does not comply with state law.
10. In 2015 the United States Supreme Court ruled that same-sex couples have a constitutional right to marry. Some have argued that this ruling provides a legal basis for polygamous and incestuous marriages. Does it?
11. The following questions pertain to the status of ministers under the Selective Service Act:
  - a. Explain the registration responsibilities of male citizens under the Selective Service Act.
  - b. Do the registration requirements apply to ministers or students preparing for the ministry?
  - c. An 18-year-old male plans to pursue theological training at the college level immediately after graduation from high school. He is opposed to registration on the basis of his religious convictions, and believes that the registration requirement would violate the First Amendment guaranty of religious freedom. Is he correct? Explain.
  - d. Is a full-time minister of a church automatically exempt from mandatory military training and service (in the event of a draft)? Explain.

- e. Is a full-time seminary student automatically exempt from mandatory military training and service (in the event of a draft)? Explain.
  - f. A pastor is employed by a small, rural congregation. To help support himself, he works twenty hours a week as a car salesman. Is he exempt from military training and service? Explain.
  - g. Tim is an agnostic who is opposed to the current defense policies of the United States. In the event of a national draft, would he be eligible for conscientious objector status?
12. Does the employment of ordained ministers as military chaplains, at taxpayer expense, violate the constitutional prohibition of the establishment of religion? Explain.
  13. A pastor receives a notice to appear for jury service on a specified date. She has a funeral on that day. May she be excused from jury service? If so, how?
  14. A pastor receives a notice to appear for jury service. He has always assumed that pastors are exempt from jury duty in most if not all states. Is this assumption correct?
  15. Explain the concept of testimonial privilege.
  16. What is purpose for the clergy-penitent privilege?
  17. What are the four requirements that must be met in order for a conversation to be protected by the clergy-penitent privilege?
  18. In some states, a conversation must be made “in the course of discipline” to be protected by the clergy-penitent privilege. What is the meaning of this requirement? Do all states recognize it?
  19. Can the clergy-penitent privilege apply to telephone calls? Email exchanges?
  20. A man meets with a pastor for spiritual counsel. The pastor suspects that the counselee committed a highly-publicized murder in which the victim was killed with a knife. The pastor asks the counselee if he committed the murder. The counselee said nothing, but rather removed a blood-stained knife from his coat and placed it on the pastor’s desk. If the pastor is asked to testify about this incident in a murder trial, will the court permit him to do so? Why or why not?
  21. While playing golf with his pastor a church member confesses to an unsolved crime. Is this confession privileged? Explain.
  22. A church member discusses a personal problem with a deacon in the church library following a worship service. Is this conversation privileged? Explain.
  23. A church member discussed a personal problem with her minister over the telephone. Is this conversation privileged? Explain.
  24. A church member makes certain admissions to her pastor in the presence of a friend. Are these admissions privileged? Explain.
  25. A member of a church youth group confesses to an adult worker that she has committed a crime. She thinks the worker is a minister, though he is not. Is this confession privileged?
  26. A church member encourages a friend to go to his (the church member’s) pastor for counseling. The friend is not a member of the church. Are statements made by the friend to the pastor privileged? Why or why not?
  27. A person confesses to his pastor that he committed an unsolved crime. He later repeats the confession to a detective. At trial, will the clergy-penitent privilege protect the pastor from having to disclose the confession? Explain.

28. A member and her husband seek marital counseling from their pastor. Are statements made during counseling sessions privileged? Explain.
29. An adolescent female informs her youth pastor that she is being sexually abused by a relative. The youth pastor urges the victim to speak with the senior pastor. She agrees to do so, and later that day she and the youth pastor meet with the senior pastor. Does the clergy-penitent privilege apply to the conversation with the senior pastor? Why or why not?
30. Same facts as the previous example, except that the minor's parents attend the meeting.
31. A church member confesses to his pastor that he has been sexually abusing his 12-year-old stepdaughter. The pastor is a mandatory reporter under the state child abuse reporting law. Is the pastor required to report this confession to the civil authorities? If not, should he? Why or why not?
32. A church adopts a policy prohibiting the senior pastor from engaging in opposite sex counseling without the presence of a third person. Are statements made by female counselees to the pastor, in the presence of a third person protected against compelled disclosure in court by the clergy-penitent privilege?
33. A pastor suspects that the church treasurer has embezzled church funds. He calls the treasurer into his office, and confronts him with the evidence. The treasurer confesses. Are statements made by the treasurer during this meeting privileged? Why or why not?
34. Who is entitled to claim the clergy-penitent privilege? The minister? The counselee? Both?
35. A pastor receives a subpoena to appear in court to testify regarding a conversation he had with a member of his congregation. He believes that the conversation was privileged, and so he decides to ignore the subpoena. Is this a wise decision? Explain.
36. A church receives a subpoena demanding that it produce certain financial records in court. Can it refuse to respond on the basis that the documents are privileged? Explain.
37. A pastor has a confidential counseling session with a member of his congregation. The counselee later discloses the same information to lay members of the congregation. If the pastor is later asked to testify about the conversation, and the clergy-penitent privilege is asserted, what will be the likely result?
38. A counselee informs his pastor that her husband has been sexually molesting their minor child. Is the pastor legally required to report this information to the state? Explain.
39. Explain the distinction between privilege and confidentiality.
40. A man confesses to his neighbor that he murdered someone. The man urges the neighbor to speak with his pastor. The two meet with the pastor later that day, and the man repeats his confession. Can the pastor be compelled in a subsequent trial to disclose this confession?
41. A church member shares confidential information with her pastor. The pastor discloses this information to the church board and congregation. The counselee sues the pastor for this harmful and unauthorized disclosure of confidential information. What will be the most likely result?
42. A counselee confesses to a pastor that he has committed a murder. Is the pastor legally required to disclose this information to civil authorities? Why or why not?
43. What is the significance of Rule 505 of the Uniform Rules of Evidence?

44. What is the difference between the clergy-penitent privilege and the “religious privilege”?
45. A pastor counseled privately with a church member about a personal problem. In a subsequent lawsuit, he is called to the witness stand and questioned about the counseling session. He is asked to “describe the demeanor” of the church member during their conversation. The member’s attorney objects to this question on the ground that it seeks privileged information. How should the judge rule? Why?
46. A church member informs her pastor during a counseling session that her husband has been sexually abusing their minor child. Does the pastor have a legal duty to report this information to the state? Is it privileged?
47. A church member confesses to the pastor during a counseling session to moral failure. The pastor later communicates this information to the church board and to other members of the church. Have the pastor’s actions placed him in legal jeopardy? Explain.
48. A church member meets with his pastor to discuss a church project that he is coordinating. Are statements made by the member during this meeting protected by the clergy-penitent privilege? Explain.
49. Same facts as question 48, except that at the end of the meeting the member informs the pastor that he has “something else” to tell him. He recounts how he embezzled funds from the church while counting offerings over the past several months. Are these statements protected by the clergy-penitent privilege? Explain.
50. A church member is audited by the IRS, and her charitable contributions to her church are questioned. The IRS issues a subpoena to the church, requesting disclosure of the woman’s contribution records for the past three years. Are these documents protected from disclosure by the clergy-penitent privilege? Explain.
51. A church dismisses an employee. The former employee later sues the church, alleging that her dismissal was discriminatory and wrongful. She serves a subpoena on the church, demanding disclosure of her personnel file and any other internal church record pertaining to her dismissal. Are these documents protected from disclosure by the clergy-penitent privilege? Explain.
52. A pastor, along with his church and a denominational agency, are sued by a woman who claims that the pastor took advantage of her emotional vulnerability during a counseling relationship by engaging in sexual relations. The woman serves a subpoena on the denominational agency, demanding disclosure of any former disciplinary actions or allegations of misconduct involving the pastor. Are any of these documents protected from disclosure by the clergy-penitent privilege? Explain.
53. A minor is sexually molested by a volunteer church worker. The minor’s parents sue the church. They serve a subpoena on the church demanding disclosure of any screening form or application used by the church when it began using the volunteer worker, in addition to any policies the church has adopted pertaining to the screening and supervision of youth activities and workers. Are these documents protected from disclosure by the clergy-penitent privilege? Explain.
54. A woman seeks out her pastor for marriage counseling. The woman discontinues the counseling after several sessions, and later sues her husband for a divorce. The husband serves a subpoena on the church, demanding that the pastor turn over all of the counseling notes that he compiled while counseling the woman. Are these documents protected from disclosure by the clergy-penitent privilege? Explain.

## **DISCUSSION QUESTIONS**

1. Do you agree that ministers should be excused in some cases from the civil obligations of jury and military service? Why?
2. Assume that you are a minister and that a stranger visits you and confesses to a serious and unsolved crime. Would you inform the police about the conversation? Why or why not? Under what circumstances, if any, do you feel that ministers are justified in violating the confidence of those who come to them for counseling?



# CHAPTER 4

## TERMS

alienation of affections  
assumption of risk  
child abuse  
comparative negligence  
contributory negligence  
defamation  
emotional distress  
fiduciary duty  
imputed negligence  
intentional infliction of emotional distress  
invasion of privacy  
malpractice  
mandatory reporter  
*Nally* case  
negligence  
outrageous conduct  
permissive reporter  
Privacy Act of 1974  
publicity  
respondeat superior  
securities  
sexual harassment  
statute of limitations  
sunshine laws  
undue influence

## LEARNING OBJECTIVES

- Understand the legal concept of negligence, and its application to clergy and churches.
- Define the term *defamation*, and explain its application to clergy both as plaintiffs and defendants in civil litigation.
- Define the term *undue influence*, and explain its significance to churches and clergy.
- Be familiar with the concept of qualified privilege.
- Explain the four varieties of *invasion of privacy*, and their relevance to clergy.
- Define the term *malpractice*, and describe the application of the term to a variety of clergy practices.
- Understand the application of securities law to clergy who offer or sell church securities to church members as a means of raising funds.
- Describe the status of clergy under state child abuse reporting laws, and the consequences of a failure to report known or reasonably suspected incidents of abuse.
- Understand the legal consequences to a minister in the event the minister engages in sexual contact with an adult or minor.

## SHORT-ANSWER QUESTIONS

1. Define the term *negligence*. Give three examples of negligent conduct.
2. The legal system has long recognized civil liability and damages as a result of careless but unintentional conduct. Is this wise? Should the law impose liability on persons who act carelessly, but without intent to harm?
3. Pastor N, while driving home from work, is involved in an accident with another vehicle. Both drivers were issued citations for violating traffic laws. The driver of the other vehicle was seriously injured, and she sues Pastor N and Pastor N's employing church. Answer each of the following questions:
  - a. Does the conduct of Pastor N constitute negligence?
  - b. In a state that recognizes comparative negligence, would either Pastor N or the church be liable?
  - c. Is the church legally responsible for the other driver's injuries? If so, on the basis of what legal theory?
  - d. Is the church's liability affected by the fact that Pastor N reports his income taxes as a self-employed person?
4. Which of the following is not a defense to negligence:
  - a. Contributory negligence.
  - b. Respondeat superior.
  - c. Assumption of risk.
5. A church sends a group of 15 adults and 7 minor children on a short-term missions trip in Mexico. All participants sign an assumption of risk form. Answer the following questions:
  - a. Do assumption of risk forms signed by minors relieve the church of liability for injuries resulting from the church's negligence?
  - b. Do assumption of risk forms signed by parents on behalf of their minor children relieve the church of liability for injuries resulting from the church's negligence?
  - c. Do assumption of risk forms signed by adult participants relieve the church of liability for injuries resulting from the church's negligence?
6. The following questions pertain to the *respondeat superior* doctrine:
  - a. Define *respondeat superior*.
  - b. What are the 3 requirements for this rule to apply?
  - c. What is the basis for this rule?
  - d. Do the courts apply this rule to charitable organizations? Should they?
7. A pastor causes an accident while driving in his car from the church to a local hospital to visit a member of the congregation. Two occupants of the other vehicle are injured. The pastor is issued a ticket by the police for the negligent operation of his vehicle. Can the church be liable for the injuries to the occupants of the other car? If so, what would be the most likely basis?
8. A church's youth pastor is driving a church vehicle with several teenagers on board. The church vehicle is involved in an accident with another vehicle. Persons in both vehicles are injured. The police cite both drivers for reckless driving. The injured occupants of the other vehicle sue the church. What defenses could the church assert?

9. What are the four elements that must be proven to establish defamation? In what contexts must a fifth element be proven?
10. In an effort to prevent the re-election of Pastor B at a church business meeting, a member publicly asserts that "Pastor B was married and divorced on at least two occasions in the past, and was convicted for driving while intoxicated." While the member based this statement on rumors he had heard, the substance of the remark was true. Has the member defamed Pastor B? Explain.
11. Define *legal malice*. When must it be proven in a defamation case?
12. An accusation is brought to church board members that Pastor D has had an adulterous affair with a member of the congregation. The board confronts Pastor D with this rumor, and he acknowledges that it is true. The board dismisses Pastor D from his position with the church, and reads a statement to the congregation during morning worship services on the following Sunday which informs the congregation that Pastor D "is guilty of adultery." Pastor D believes that the public reading of this statement constituted defamation. Did it? Explain fully.
13. A mother informs her pastor and members of the church board that a volunteer youth worker sexually molested her son during an overnight church activity. The youth worker threatens to sue the mother for defamation. There were no witnesses to the alleged incident, however the mother took her son to a physician who confirmed that sexual molestation had occurred. The women's accusations, if true, would mean that the youth worker committed a crime (aggravated child molestation) under state law. What is the legal significance of this fact?
14. A denomination that ordains clergy has the authority to discipline and dismiss clergy for violations of church teachings. Clergy who are dismissed are identified by name under a column reading "dismissed" in a monthly denominational publication that is distributed to affiliated clergy. Could this practice constitute defamation? Why or why not?
15. A church board decides to dismiss a member on the basis of his confessed violations of the church's moral teachings. The chairman of the church board reads a prepared statement to the congregation during a Sunday morning worship service, informing the church of the nature of the member's moral indiscretions and of the board's decision to dismiss him. Answer the following questions:
  - a. Does the reading of the statement to the congregation constitute defamation? Why or why not?
  - b. Could the reading of the statement to the congregation create legal liability for the church on the basis of any other legal theory? Explain.
  - c. Assume that the member did not confess, but rather denied his guilt, and that the board determined that he was guilty on the basis of the testimony of only one other person. Would the reading of the statement under these circumstances constitute defamation? Explain.
16. An associate minister at First Church is dismissed because of conduct violating the church's moral teachings. The dismissed minister seeks a position at Second Church. The church board at Second Church writes the minister of First Church, asking for a letter of recommendation. The minister promptly writes a letter recounting the facts that led to the dismissal. Does this conduct constitute defamation of the former minister? Would it constitute invasion of the former minister's privacy? What steps should the board of Second Church have taken to reduce the risk of legal liability under these circumstances?

17. At a church board meeting, the membership of G is discussed. The board asks member A to attend, and A testifies about certain conduct on the part of G. As a result of this testimony, G is dismissed from the membership of the church. G sues A for defamation. Result?
18. A church convenes a special membership meeting, pursuant to its bylaws, to address the membership of a member who was charged with conduct in violation of the church's teachings. During this meeting, two members give testimony regarding the member's conduct. The church votes to revoke the membership of the accused. She later sues the two members who testified against her on the ground that they defamed her. What defense is available to the two members under these circumstances?
19. A church employee inadvertently discovers pornography on the youth pastor's computer. The youth pastor confesses, and is dismissed as an employee. How can the church communicate this information to the congregation in a way that will reduce or eliminate the risk of defamation?
20. J has attended a church for several months. She has an infant child, and both J and her child have tested positive to the AIDS virus. J informs the pastor of this fact during a counseling session. The pastor advises the church nursery workers that the child has AIDS. Has the pastor defamed J or her child? Has he invaded their privacy?
21. A church board decides to inspect the church-provided computers of all staff members for evidence of inappropriate use. Two board members come to the church after working hours and begin inspecting computers. They find inappropriate material on one employee's computer. If the church dismisses the employee, and the employee sues the church, what is the most likely basis of liability?
22. During a sermon, Pastor T describes the criminal activities that a church member had been engaged in prior to his conversion as an example of the ability of the Gospel to change lives. Has Pastor T defamed the member? Has he invaded the member's privacy?
23. M has attended the same church for over fifty years. She now is confined to a convalescent home. Throughout her life, she gave liberally to the church, and often stated that she wanted to leave a portion of her estate to the church. Her minister visits her each week. Shortly before her death, she signed a deed conveying her former home to the church. She did not discuss this gift with her attorney or tax adviser. Her children, who live in another state, challenge the gift on the ground that it was the product of undue influence. Answer the following questions:
  - a. Define *undue influence*.
  - b. What factors will a court consider in deciding whether or not undue influence has occurred?
  - c. Which of these factors support a finding of undue influence in this case?
  - d. Which of these factors support a finding of no undue influence in this case?
  - e. What is the likely ruling of a court?
  - f. What is the standard of proof that ordinarily is required to establish undue influence? Why is this a relevant consideration in deciding whether or not undue influence has occurred?
  - g. The woman's heirs retain an attorney who sends a letter to the pastor, threatening to sue the church for undue influence if it does not immediately renounce all claim to the gift. The pastor, fearing the negative publicity that might result from such a lawsuit, is seriously considering agreeing to the attorney's demand. Identify at least two considerations that would support a decision to reject the attorney's demand.
  - h. What steps can a church take to reduce the likelihood of undue influence claims?

24. A church member insists that the “Privacy Act” gives church members the legal right to inspect any church record. Is this a correct assumption? Explain.
25. K is a married woman who begins attending a church by herself. After several months, she becomes a member of the church. On several occasions, she counsels with Pastor R, a pastor of her church, regarding marital problems she is having, and her husband’s refusal to attend church with her. Within a year after joining the church, K divorces her husband. K’s former husband sues Pastor R, claiming that he committed clergy malpractice. Specifically, K’s former husband alleges that the content of Pastor R’s counseling directly resulted in the divorce. What is the likelihood that Pastor R will be found liable for clergy malpractice under these facts? Explain.
26. What is the significance of the *Nally* case?
27. A church employs a part-time counselor who is licensed by the state. Can counselees sue the counselor for malpractice as a result of the content of her counseling? Explain.
28. A pastor is also a licensed psychologist. Under what two situations might the pastor be liable for malpractice?
29. E is a young woman who has attended a church for several years. She is suffering from a severe emotional disorder, and she counsels at length with Pastor B, the senior pastor of her church. E eventually commits suicide, and her family sues Pastor B for malpractice. Answer fully the following questions:
- What factors would a court probably consider in deciding whether or not Pastor B is guilty of malpractice?
  - Assume that Pastor B urged E on several occasions to see a psychologist or psychiatrist, but that she rejected this advice. Would this evidence be relevant in deciding if Pastor B was guilty of malpractice?
  - Assume that Pastor B did not suggest to E that she visit a psychologist or psychiatrist, and in fact discouraged her from doing so. Would this evidence be relevant in deciding if Pastor B was guilty of malpractice?
  - What is the most likely decision of a court in this case? Give reasons.
  - Would it matter if Pastor B is a licensed counselor or psychologist who is a full-time pastoral counselor at the church?
30. Should a church obtain malpractice insurance for its clergy and counselors? Why or why not?
31. Pastor W decides that the church needs a new van, and so she enters into a contract to purchase one. She signs the contract in her own name, without any reference to the church or to the fact that she was signing on behalf of the church.
- Is Pastor W personally liable on this contract? Why or why not?
  - Is the church liable on the contract? Why or why not?
  - What steps should church leaders take to be sure that they will not be personally liable on legal documents that they sign on behalf of their church?
32. In an effort to raise \$500,000 to finance construction of a new sanctuary, a local church decides to issue promissory notes to church members. The minister encourages members to purchase the notes, and assures them of the safety of such an investment. Several members purchase notes, but they receive no prospectus or offering circular. Has the minister acted in an unlawful manner? Explain fully.

33. Describe two ways that ministers may violate state securities laws.
34. List 5 examples of securities fraud.
35. How many states have enacted laws requiring the reporting of child abuse?
36. Are pastors required to report known, and reasonably suspected, cases of child abuse to the civil authorities in all 50 states?
37. What is the difference between mandatory and permissive reporters of child abuse?
38. A pastor is a mandatory child abuse reporter under state law. He learns that a young child is being molested by her stepfather. The pastor chooses to do nothing about it because the stepfather is a prominent member of the congregation. The molestation continues for several years. As an adult, the victim learns that the pastor was informed of the abuse when she was a young child, but did nothing about it. If the victim sues the pastor, what is the most likely outcome?
39. A pastor is concerned that if he reports a case of suspected child abuse he might be sued by the alleged perpetrator, especially if the charges are dropped or the perpetrator is acquitted. Is this a legitimate concern? Could the pastor be sued by the alleged perpetrator?
40. A pastor is a mandatory child abuse reporter under state law. Name three situations in which she would not be required to report abuse.
41. Pastor Y is informed by a member during counseling that the member's husband is sexually molesting their minor child. Does Pastor Y have a duty to report this information to the state? What three factors must be considered in answering this question?
42. A church nursery attendant informs Pastor T following a morning worship service that a child has suspicious bruising. Pastor T thanks the attendant, but decides not to do anything about the information. Does Pastor T have a duty to report this information to the state? What three factors must be considered in answering this question?
43. A teenage girl informs Pastor H that her stepfather has been molesting her. Does Pastor H have a duty to report this information to the state? What three factors must be considered in answering this question?
44. Same facts as question 43. Assume that Pastor H is not a mandatory reporter under state law. Does this mean that she should not report the allegation to the state? List several factors that Pastor H should consider in making this decision.
45. Same facts as question 43. Assume that Pastor H is a mandatory reporter. List at least two legal risks that she assumes by not reporting the allegations to the state.
46. A pastor receives an anonymous accusation that a volunteer children's worker in the church is molesting a child. The pastor is not sure that he has reasonable cause to suspect that abuse has occurred, as required by the state child abuse reporting law for a duty to report to arise. Also, he is concerned about his personal liability should he report the abuse and it is not validated. Is the pastor's concern valid?
47. An adolescent female in a church youth group informs the youth pastor that she is being sexually abused by her father. The pastor wants to report the alleged abuse, but is afraid that his identity as the one reporting the abuse will be revealed by the state. Is this concern valid? Explain.
48. Assume that a minister learns of child abuse during a confidential counseling session. Does the clergy-penitent privilege excuse the minister from reporting the abuse to the state?

49. Does the First Amendment guaranty of religious freedom protect clergy from reporting (to the state) cases of child abuse that they learn of during confidential counseling sessions?
50. A local church employs an ordained minister as its “minister of counseling.” The minister is not a licensed counselor or psychologist under state law. The minister counsels in an office in the church, and counsels only with church members or with persons who attend the church. Does this practice violate state laws requiring counselors and psychologists to be licensed?
51. Pastor G sexually seduces an adult female church member during marital counseling. Answer the following questions:
- If the member sues Pastor G, what will be the most likely theories of liability?
  - Will Pastor G’s church be legally responsible for the member’s pain and suffering? Why or why not?
  - If the church is sued, will its liability policy cover an out-of-court settlement or jury verdict?
  - Pastor G insists that the woman “consented” to the relationship. Will this be an effective defense? Explain.
  - Does Pastor G face potential criminal liability? Explain.
  - Assume that the woman does not file her lawsuit until ten years after the relationship. Is she automatically prevented from any recovery on the basis of the statute of limitations?
  - Is the woman’s “consent” a defense available to the pastor and church?
52. Same facts as question 51. Can the husband sue the pastor for alienation of affections?

## **DISCUSSION QUESTIONS**

- Do you agree that a church should be held legally accountable for the negligence of its ministers and employees committed in the course of their employment? Why?
- A minister visits an elderly church member in a convalescent home on several occasions. Shortly before his death, the member executed a will leaving half of his estate to the church. Following the member’s death, one of his children informs the minister that the heirs are prepared to contest the will in court on the basis of undue influence unless the church voluntarily renounces its gift. The minister never suggested that the member make the gift, but there were no witnesses to any of his several visits with the member. It is the opinion of the church’s attorney that the church has a sixty percent chance of winning the case. The church board is considering renouncing the gift to avoid unfavorable public opinion, since it is certain that the case will be discussed in the local newspaper. Do you believe that the church should renounce the gift or defend itself in court? Why?
- A minister sells church securities without having registered as a securities salesman. He also makes a number of unfounded and incorrect representations about the securities, and encourages several members to invest even though they were not in a financial position to do so. A complaint is filed with the state securities commission. The commission investigates the charges, and threatens to prosecute the minister. Do you believe that the government should have the authority to regulate the sale of church securities? Explain.

# CHAPTER 5

## TERMS

accessory use  
church  
convention or association of churches  
integral agency  
integrated auxiliary  
qualified church-controlled organizations  
religious or apostolic associations  
religious orders  
religious organizations

## LEARNING OBJECTIVES

- Identify several references to the term *church* in the Internal Revenue Code.
- Summarize some of the more common judicial interpretations of the term *church*.
- Familiarity with the 14 characteristics of a church developed by the IRS.
- Recognize several other terms used in the Internal Revenue Code, including *conventions or associations of churches*, *integrated auxiliaries of a church*, *integral agencies of a religious organization*, *integral parts of a church*, *qualified church-controlled organizations*, and *religious orders*.
- Describe the importance of the definition of the term *church* in the context of zoning laws.
- Describe the importance of the definition of the term *church* in the context of state property tax exemption laws.

## SHORT-ANSWER QUESTIONS

1. Mention five examples of the use of the term “church” in the Internal Revenue Code.
2. How does the Internal Revenue Code define the term “church”?
3. What is the test used by the IRS in deciding if an entity is a church for federal tax purposes?
4. Can a parachurch ministry satisfy the IRS definition of a church? Explain. What difference does it make?
5. Which of the criteria in the IRS definition of a church does the IRS consider most important?
6. List two potential legal challenges to the IRS definition of a church. Explain both.
7. T, an electrician, obtains ministerial credentials after completing several correspondence school courses. He begins a Bible study group in his home. The group meets twice weekly for religious instruction and worship. Offerings are taken which go directly to T. Is T’s home a church for purposes of local zoning law? Explain.
8. J, an attorney, purchases ministerial credentials from a mail order organization. She declares her home to be a church, and begins to conduct weekly services before her family and a few friends. She contributes half of her income to the church as a charitable contribution, and excludes from her gross income a housing allowance. Will the IRS recognize J’s home to be a church? Why or why not?



9. Define “mail order church.”
10. What penalties may the IRS impose on mail order churches?
11. A church begins a private elementary school. The church separately incorporates the school. Is the school exempt from federal income taxes? Explain.
12. A tax assessor informs a church that it must pay property taxes on its parking lot. What arguments can the church make to support the exemption of its parking lot from taxation?
13. A tax assessor informs a church that it must pay property taxes on a two-acre tract of undeveloped land adjacent to the church. What arguments can the church make to support the exemption of the undeveloped land from taxation?
14. A church operates a childcare program and an elementary school at its facility. Neighbors complain to the city that the neighborhood is not zoned for school or preschool activities (it is zoned only for residential and church uses). Do the church’s childcare and school activities come within the definition of the term church? Explain.
15. Explain the significance of the term accessory use in the context of zoning law.
16. A city official informs a church that its operation of a bookstore is in violation of the property’s classification as a “church” under the municipal zoning ordinance. What arguments can the church make to support the continued operation of the bookstore on its premises?
17. A city official informs a church that its operation of a homeless shelter on its property is in violation of the property’s classification as a “church” under the municipal zoning ordinance. What arguments can the church make to support the continued operation of the shelter on its premises?

## **DISCUSSION QUESTIONS**

1. The Internal Revenue Code uses the term *church* in many contexts, yet it contains no definition of the term. Why do you suppose that Congress (which drafted the Code) failed to provide a definition?
2. Refer to the criteria developed by the IRS for determining whether a particular organization is a church. Do you think that these criteria are reasonable? Can you think of legitimate churches that might not satisfy this test?

# CHAPTER 6

## TERMS

apparent authority  
articles of incorporation  
books of account  
bylaws  
certificate of incorporation  
charter  
Church Audit Procedures Act  
church tax examination  
church tax inquiry  
civil, contract, or property rights  
common interest privilege  
congregational  
consolidation  
constitution  
corporation sole  
cy pres doctrine  
de facto corporation  
defamation  
directors  
dissolution  
employment taxes  
express authority  
good faith  
hierarchical  
implied authority  
incorporation  
inherent authority  
IRS audits  
maturity of members  
margin of civil court review  
meetings  
members  
membership corporation  
merger  
minutes  
Model Nonprofit Corporation Act  
neutral principles of law  
nonprofit  
notice  
officers  
proxy voting  
quorum  
religious activities  
resolution  
Revised Model Nonprofit Corporation Act

subpoena  
tax-exempt  
trademark  
trustee corporation  
trustees  
unfair competition  
unincorporated association  
Uniform Management of Institutional Funds Act  
Volunteer Protection Act

## LEARNING OBJECTIVES

- Understand the legal differences between an unincorporated and an incorporated church, and explain the advantages of the corporate form of organization.
- Define the terms *charter*, *constitution*, *bylaws*, and *resolution*, and explain the legal priorities among these terms.
- Describe the legal authority of church members to inspect church records.
- Explain the purpose and application of the Church Audit Procedures Act.
- Summarize several state and federal reporting requirements that apply to many churches.
- Identify several potential theories of personal legal liability for church officers and directors.
- Explain the application of charitable immunity laws to church officers and directors.
- Describe the two approaches to civil court intervention in church membership determinations.
- Explain the legal effect of church meetings that are conducted in violation of a church's bylaws.

## SHORT-ANSWER QUESTIONS

1. A church is not incorporated. G, a member, is driving a church van during a church-sponsored activity, and he negligently causes an accident injuring 2 other members in the van and the driver of another vehicle. Answer the following questions, and explain your reasoning:
  - a. Can the 2 injured members sue G?
  - b. Can the 2 injured members sue the church?
  - c. Can the 2 injured members sue other members of the church?
  - d. Can the injured driver of the other vehicle sue G?
  - e. Can the injured driver of the other vehicle sue the church?
  - f. Can the injured driver of the other vehicle sue the members of the church?
2. Same facts as question 1, except that the church is incorporated.
  - a. Can the 2 injured members sue G?
  - b. Can the 2 injured members sue the church?
  - c. Can the 2 injured members sue other members of the church?
  - d. Can the injured driver of the other vehicle sue G?
  - e. Can the injured driver of the other vehicle sue the church?
  - f. Can the injured driver of the other vehicle sue the members of the church?
3. Some pastors believe that a church will be immune from government regulation so long as the church remains unincorporated. Assess this claim
4. A pastor insists that his church is not required to withhold payroll taxes from its lay employees because the church is not incorporated. Assess the validity of this claim.

5. Are unincorporated churches required to hold title to church property in the name of trustees?
6. What are three features of the Uniform Unincorporated Nonprofit Association Act?
7. A volunteer youth worker sexually molests three children at a church. The parents retain an attorney who believes that a jury will award damages well in excess of the church's insurance. The attorney learns that the church is not incorporated. Can the attorney sue the members of the church in order to recover adequate damages for her clients? Explain.
8. Same facts as question 7. Would it matter if the state in which the church is located has enacted the Uniform Unincorporated Nonprofit Association Act? Why or why not?
9. Same facts as question 7. Would it matter if the church is a corporation rather than an unincorporated entity?
10. List 3 advantages and 3 disadvantages of the corporate form of organization.
11. What steps can a church take to confirm that it is a corporation in good standing under state law?
12. Do churches incorporate under state or federal law?
13. Some attorneys say that they would be guilty of "legal malpractice" if they advised a church not to incorporate. What is the basis for this position?
14. How does a church become an unincorporated entity?
15. Summarize the process for incorporating a church under a state law based on the Model Nonprofit Corporation Act.
16. It is sometimes said that in most states a church has more than one option for incorporating. Explain.
17. A church incorporates under a state law based on the Model Nonprofit Corporation Act. Its bylaws do not specify a quorum. What percentage of members will constitute a quorum at a church business meeting?
18. A church is incorporated under a state law based on the Model Nonprofit Corporation Act. It has not sent in its annual report to the Secretary of State's office for the past three years. What is the legal effect of this omission?
19. A religious organization (not a church) incorporates under a state nonprofit corporation law. Does this render it exempt from federal income taxes? Explain.
20. Explain the difference between tax-exempt and nonprofit.
21. Why do some churches prefer not to incorporate under the Model Nonprofit Corporation Act?
22. What is a corporate charter? Is it the same as the church constitution?
23. Some churches have a constitution and bylaws, while others have only a constitution or set of bylaws. Explain the advantages and disadvantages of both positions.
24. A church charter specifies that "all church property shall be sold in the event the church ceases to function and the proceeds distributed equally among the former members." Is this clause legally permissible? Explain.
25. Some church charters specify the church's period of duration as perpetual. Some specify a fixed number of years. Which is the better practice, and why?

26. What body of parliamentary law governs church business meetings?
27. A church charter recites the church's purpose as "religion, that is, the proclamation of the Gospel through all available means." Why might this purpose clause be inadequate?
28. What is the difference between a resolution and a bylaw?
29. This question addresses corporations sole.
  - a. What is a corporation sole?
  - b. Can churches incorporate as a corporation sole? Why or why not?
  - c. Are corporations sole immune from all government regulation?
  - d. Are corporations sole immune from civil liability?
30. A church constitution specifies that a quorum consists of one-half of the active membership. The church bylaws specify that a quorum consists of "60 members." The church board, recognizing the disparity, enacts a resolution stipulating that "the bylaws control in matters of quorums." How many members constitute a quorum?
31. A church charter specifies that the church shall have four board members. The church constitution provides for six. The church bylaws are amended to provide for one board member for each 100 church members. The church has 300 members. How many board members does the church have as a matter of law?
32. The IRS has drafted paragraphs that churches can insert in their charter. What do these paragraphs address? Can they be modified, or must the IRS version be used?
33. Where would one most likely find a church's designation of a housing allowance for its pastor: the church constitution, the church bylaws, the church charter, or a board resolution? Explain.
34. Which ordinarily has the higher priority—a church's bylaws, or the state nonprofit corporation law under which the church is incorporated? Explain.
35. A member demands to see a church's financial records. The member claims that he has a right to see the church's records, and he cites the following legal grounds for his position. Which, if any, of these grounds would support the member's claim:
  - a. The church is incorporated under the Model Nonprofit Corporation Act.
  - b. The federal Privacy Act.
  - c. The federal Freedom of Information Act.
  - d. The church has issued \$500,000 of church securities (promissory notes) to members, and the securities were registered under state securities law.
  - e. The church bylaws give members the right to inspect church records at reasonable times for reasonable purposes.
36. Same facts as question 35. What (if any) defenses are available to the church in the event it does not want to disclose the records to the member?
37. A church receives a subpoena demanding production in court of various church records. Under what circumstances, if any, may the church disregard this subpoena?
38. A church owns a large parking lot and two homes. It rents the parking lot to employees and patrons of neighboring businesses during the week, and rents the two homes on an annual lease basis. The IRS learns of the rental properties and would like to determine whether the church is engaged in an unrelated trade or business. It sends the church an inquiry notice in

which the only explanation of the concerns giving rise to the inquiry is a statement that “you may be engaged in an unrelated trade or business.” Is this inquiry notice legally sufficient under the Church Audit Procedures Act? Explain.

39. A church receives an IRS inquiry notice that does not mention the possible application of the First Amendment principle of separation of church and state to church audits. Is this inquiry notice legally sufficient under the Church Audit Procedures Act? Explain.
40. Assume that the IRS receives a telephone tip that a church may be engaged in an unrelated trade or business. Can a telephone tip serve as the basis for a church tax inquiry? Explain.
41. The IRS sends a church written notice of a church tax inquiry on July 1. As of September 15 of the same year, no examination notice had been sent. The church tax inquiry must be concluded by what date? Why?
42. The IRS sends a church written notice of a church tax inquiry on June 10. On June 20 of the same year it sends written notice that it will examine designated church records on July 15. Is the examination notice legally sufficient under the Church Audit Procedures Act? Explain.
43. If the examination notice in question 42 is not legally sufficient, what is the church’s remedy?
44. An IRS examination notice specifies that the “religious activities” of a church will be examined as part of an investigation into a possible unrelated business income tax liability. Is the examination notice legally sufficient under the Church Audit Procedures Act? Explain.
45. The IRS sends an examination notice to a church on March 20 of the current year. On June 1 of the same year, as part of its examination, the IRS requests several documents that it reasonably believes are necessary. The church refuses to disclose the documents, and the IRS seeks a court order compelling disclosure. This order is issued two years later, on July 1. Must the IRS examination be terminated on the ground that it was not completed within the 2-year statute of limitations? Explain.
46. Three years ago the IRS conducted an examination of the tax-exempt status of a local church. It concluded that the church was properly exempt from federal income taxation. During the current year the IRS initiates an examination of the same church to determine if it is engaged in an unrelated trade or business, and if it has been withholding taxes from nonminister employees. Is such an examination barred by the prohibition against repeated examinations within a five-year period? Explain.
47. The IRS initiates an audit against K, a member of a church. The audit focuses on the issue of whether or not K in fact made the substantial contributions to the church that she claimed on her tax return. The IRS contacts church officials, and asks to review contribution records. Is this inquiry subject to the Church Audit Procedures Act? Explain.
48. A church operates a separately-incorporated private elementary school. The IRS contacts the school concerning the basis for its tax-exempt status. Is this inquiry subject to the Church Audit Procedures Act? Why or why not?
49. A state attorney general suspects that a church has engaged in fraud in soliciting donations. Can the attorney general subpoena the church’s donor list?
50. Name two reporting requirements under state law that apply to churches.
51. What federal reporting requirement applies to most churches?
52. What is IRS Form 5578? Are churches required to file this form? Explain.

53. Define the legal principle of “unfair competition.”
54. A church votes to disaffiliate from a denomination. May it continue to use the denomination’s name in its title? Explain.
55. Calvary Church is an independent church that was organized in 1940. This year, another independent church calling itself “Calvary Church” opens in the same community. What, if any, legal right does the original church have to prevent the new church from using the same name?
56. Should an incorporated church hold title to property through trustees? Why or why not?
57. Briefly describe the four categories of authority of church officers, directors, and trustees.
58. Many churches use “staggered elections” of board members. What does this mean?
59. Explain the legal difference between an officer and a director of a church corporation.
60. T is a board member (not an officer) of a church. T, without express authority, signs a contract on behalf of the church to purchase a new duplicating machine for the church. Answer the following questions:
- Did T have apparent authority to execute the contract?
  - Assume that the machine is delivered to the church, and that the church accepts the machine and uses it for a month. It then finds another machine it likes better. Can it now seek to avoid T’s contract on the ground that T had no legal authority to sign the contract?
61. Five years ago Bob donated \$5,000 to his church with the stipulation that the money be used exclusively for the building program. This year the church board decides to cancel the building program. Bob demands a full refund of his contribution. If the church refuses to comply, what are Bob’s legal rights? Can he ask a court to compel the church to return his designated contribution? Explain.
62. A church asked its members to contribute toward a missions project with a budget of \$10,000. Barb donated \$1,000 to the project, but learned later that the budget had been reached before she made her contribution. She asks the church to return her contribution. If the church refuses to comply, what are Barb’s legal rights? Can she ask a court to compel the church to return her designated contribution? Explain.
63. A church plans to build a home for a low-income family. While much of the work is done by volunteer labor, and some of the materials are donated, the church still must raise \$25,000 to complete the project. Bill does not attend the church, but he learns of the project and donates \$1,000 to it. Several weeks after making his contribution Bill learns that the budget had been reached before he made his contribution. He asks the church to return his contribution. If the church refuses to comply, what are Bill’s legal rights? Can he ask a court to compel the church to return his designated contribution? Explain.
64. A mother informs a member of the church board that her minor child was molested by a volunteer youth worker at a church activity. The board member does nothing about the allegation. The same volunteer later molests another child. Is the board member legally responsible for the injuries suffered by the second victim? Explain.
65. Can a church board take action by a conference telephone call?
66. Do the civil courts ordinarily resolve internal church disputes concerning the selection or removal of board members? Explain.

67. This question addresses fiduciary duties.
- a. Define “fiduciary duty.”
  - b. Do church members have fiduciary duties?
  - c. Do church officers and directors have fiduciary duties?
  - d. What are two fiduciary duties?
68. What are three ways for a church board to discharge its fiduciary duties in the investment of church funds?
69. Tim owns a carpet business. He also serves on a church board. His church would like to recarpet several large areas, and they enter into a contract with Tim for the carpet and installation. Which fiduciary duty may be violated by such an arrangement?
70. Same facts as question 69. What, if any, steps could the church board take to avoid breaching their fiduciary duties?
71. A church’s senior pastor and treasurer agree to defer payment of withheld payroll taxes during the summer due to a slump in giving. Can either of them be personally liable for payment of these payroll taxes? Explain.
72. A church would like to make a loan to its new youth pastor to assist with a down payment on a new home. What, if any, legal issue is raised by this transaction?
73. M, a member of the board of her church, engages in conduct in violation of the church’s moral teachings. The remaining board members vote to dismiss M from the board. M has served only 1 year of a 3-year term of office. She had been elected by the church membership. Do the other board members have the legal authority to remove M from the board? Explain.
74. Same facts as previous question. Does the church membership have the legal authority to remove M from the board? Explain.
75. B is a church board member. While driving a church vehicle on church business he negligently causes an accident that injures C, an occupant of another vehicle. Can C sue B personally? Explain.
76. A child drowns during a church youth activity. The board is sued on the basis of “negligent supervision.” Do board members have personal liability?
77. A church board member is not able to attend most meetings of the board, is not familiar with the church’s financial statements or with its charter and bylaws, and does not ask questions about apparent irregularities. Has the board member violated any legal duty owed to the church?
78. A church decides to raise funds for a new building by selling church bonds that it issues. The pastor and board actively sell the bonds to church members during and after church services. Do they incur any potential legal liability for doing so?
79. Same facts as the previous question. The board members represent to potential investors that the bonds are “as safe as if your money were invested in a bank, because they are invested in God’s economy.” Do the board members incur any potential legal liability for making such statements? Explain.
80. Several members ask the church board to institute a program for screening volunteers who work with minors. The board discusses these proposals, but decides that such a program is not necessary. It bases its conclusion on the fact that no incident of child molestation has ever



occurred at the church. A few months later, three minors are molested by a volunteer worker. Answer the following questions:

- a. Why might the parents be motivated to sue the board members personally, in addition to the church?
  - b. If the board members are sued personally, what is the likely outcome?
  - c. The board members insist that they are protected against any liability by a “limited immunity” statute in their state. Are they correct?
81. Many states have enacted laws providing church board members with limited immunity from personal liability. Describe the requirements and exceptions that ordinarily are associated with these laws.
82. Summarize the two approaches the civil courts have taken when asked to intervene in internal church disputes involving discipline and dismissal of members.
83. A church member is accused of engaging in conduct that violates the church’s moral teachings. The church board investigates the matter, determines the member is guilty, and dismisses him from membership in the church. The former member sues the church on the basis of a number of alleged wrongs. Evaluate whether any of the following allegations would support civil court review of the dismissal:
- a. “I have attended this church for many years and have made substantial contributions. My church membership is a valuable right that has been denied by the church’s actions.”
  - b. “The church did not follow the procedure outlined in the church bylaws in dismissing me.”
  - c. “The church board did not have the authority to dismiss me. The church bylaws give this authority to the church membership.”
  - d. “The church bylaws do not clearly specify that what I did violated the church’s moral teachings.”
84. A church votes to expel a member, and its vote is upheld by an ecclesiastical commission of the denomination with which the church is affiliated. The member wants to challenge his expulsion in court. Under what circumstances will the civil courts review the membership determinations of ecclesiastical tribunals within hierarchical denominations?
85. A church’s bylaws specify that notice of special business meetings must be given at the two Sunday morning services preceding the meeting. A special business meeting is called for September 1. Notice is given on only the immediately preceding Sunday morning. At the meeting, the senior pastor is voted out of office. He contests the vote. Result?
86. A church’s bylaws specify that “a pastor shall be considered elected if elected by a majority of members.” At a church election at which a quorum of 52 out of 100 members is present, a pastor receives 28 votes. Is the pastor re-elected? Explain.
87. Church services and functions have been disrupted by a disgruntled member. What legal authority, if any, does the church have to exclude this individual from participating in church services and activities?
88. Explain the difference between merger and consolidation.
89. Define the term *dissolution*. What is a *dissolution clause* in a church charter?

## **DISCUSSION QUESTIONS**

1. Do you think it would be advisable to incorporate a church under a state nonprofit corporation law that regulated most areas of church procedure and administration in the absence of provisions to the contrary in the church's own charter, constitution, or bylaws? Or, would you prefer to incorporate a church under a nonprofit corporation law that left churches free to govern their own procedure and administration, and that did not "fill in the gaps" in a church's organizational documents. Explain.
2. The civil courts have struggled with the question of whether or not to intervene in internal church disputes involving membership determinations. Do you believe that the courts should have the authority to review church membership determinations in these areas? Explain. How might such disputes be avoided?

# CHAPTER 7

## TERMS

accessory use  
adverse possession  
building code  
compulsory deference rule  
condemnation  
congregational  
constructive trust  
disaffiliation  
embezzlement  
eminent domain  
Employee Polygraph Protection Act  
hierarchical  
implied trust doctrine  
invitees, licensees, and trespassers  
just compensation  
landmarking  
materialmen's liens  
neutral principles of law  
nuisance  
polity  
premises liability  
qualified privilege  
Religious Land Use and Institutionalized Persons Act  
Residential Lead-Based Paint Hazard Reduction Act  
restrictive covenants  
resulting trust  
reversion clauses  
special use permit  
*Watson v. Jones*

## LEARNING OBJECTIVES

- Understand the difference between hierarchical and congregational churches.
- Explain the compulsory deference rule.
- Explain the neutral principles of law approach to resolving church property disputes.
- Describe how the courts resolve property disputes involving congregational churches.
- Describe how the courts resolve property disputes involving hierarchical churches.
- Identify several methods of resolving potential property disputes internally without the need for civil court intervention.
- Have a basic understanding of zoning laws, and their application to churches.
- Be familiar with the Religious Land Use and Institutionalized Persons Act, and its application to churches.
- Explain eminent domain, and understand its relevance to churches.
- Explain landmarking, and understand its relevance to churches.
- Explain restrictive covenants, and understand their relevance to churches.

- Explain reversionary clauses in deeds, and understand their relevance to churches.
- Explain materialmen's liens, and understand their relevance to churches.
- Explain adverse possession, and understand its relevance to churches.
- Define premises liability, and understand its application to church property and activities.
- Be able to define embezzlement, explain how it occurs, and describe ways to prevent it.

## SHORT-ANSWER QUESTIONS

1. A church is an independent church that was started several years ago by Pastor Steve. The church charter recites the church's doctrinal positions, including the infallibility of the Bible. Pastor Steve left the church two years ago. The pastoral change resulted in a significant change in the church's membership. Many new persons began attending the church, while many long-term members left. This year, a majority of the church congregation voted to amend the charter to remove the doctrinal position of Biblical inerrancy. A minority of members protested. A schism resulted. Which faction is entitled to the church property?
2. An elderly church member dies several years ago, leaving a will in which she gave \$500,000 of her estate to her local church "to be used exclusively for the construction of a new sanctuary for so long as the church remains affiliated with [a named denomination], and, in the event the church ever disaffiliates from [the denomination], then to said denomination." The member's church constructed a new sanctuary. This year, a new minister convinces a majority of church members to vote to disaffiliate from the denomination. A minority of members claim that the majority is no longer entitled to keep the church property. The majority disagrees. What is the most likely outcome of this case?
3. A church amends its bylaws to read, in part: "In the event that the church shall ever disaffiliate from [a named denomination], its properties shall immediately revert to said denomination." A controversy within the church leads to a division of the congregation. A majority of the members vote to disaffiliate from the denomination. Immediately after taking the vote to disaffiliate, the church membership votes to amend the bylaws by deleting the reverter clause quoted above. A minority of members contend that the property now belongs to the denomination. What is the most likely outcome of this case?
4. The *deed* to a church's property vests title in the church for so long as it is affiliated with its parent denomination, and if it ceases to be so affiliated, then title reverts to the denomination. The *church bylaws* specify that if the church ever disaffiliates from its parent denomination, then title to all church property immediately reverts to the denomination. The *bylaws of the denomination* specify that the property of any church that "departs from the stated doctrines" of the denomination shall revert to the denomination. A majority of the church's members vote to disaffiliate from the parent denomination. They also (1) vote to amend the bylaws by deleting the reverter clause, and (2) authorize the church board to deed the church property back to the church without a reverter clause. A minority of members claim that the denomination's bylaw provision requires that all church property revert to the denomination. The church disagrees. What is the most likely outcome of this case?
5. A majority of the members of a local church vote to disaffiliate from a parent denomination. The denomination has an ecclesiastical tribunal that rules that title to all church property now belongs to the denomination. The church ignores this ruling on the ground that it is no longer affiliated with the denomination and therefore is not subject to its rulings. Who owns the property?

6. Give four examples of “neutral principles of law.”
7. Explain the “compulsory deference rule.”
8. Explain the difference between a hierarchical and a congregational church.
9. The membership of a small church gradually departs from several of the original doctrinal positions of the church. Only one member is left who adheres to the original doctrines. This member claims that title to the church’s property is legally vested in himself, and not in the majority. Do you agree? Explain.
10. A denomination’s bylaws contain a provision specifying that the property of a local church reverts to the denomination in the event the church “deviates from the doctrines” of the denomination. Is such a clause an effective way for the denomination to maintain control over the property? Why or why not?
11. A denomination’s bylaws contain a provision specifying that the property of a local church reverts to the denomination in the event the church “disaffiliates from” the denomination. Is such a clause an effective way for the denomination to maintain control over the property? Why or why not?
12. A church adopts a bylaw provision stating that the church is affiliated with a particular denomination. This provision further states that it is “not amendable.” Would such a clause be legally enforceable?
13. A church adopts a bylaw provision stating that the church is affiliated with a particular denomination. This provision further states that it is amendable only by a 100% vote of all active members. Would such a clause be legally enforceable?
14. A local congregational church splits, and a minority of members who continue to adhere to the original doctrine of the church are expelled from the property. They form their own church and purchase a church building. They want to take whatever steps as are necessary to ensure that those members adhering to the original doctrine of the church will never be ousted from the property. What steps would you recommend?
15. Same facts as question 14, except that the church is hierarchical in structure.
16. A denomination purchases a church building for a mission church. What steps could the denomination take to ensure that title to the property will remain with those members who desire to remain affiliated with it?
17. A national church denomination adopts a bylaw amendment specifying that the properties of affiliated churches are thereafter held “in trust” for the denomination. An affiliated church votes to withdraw from the denomination. Is the affiliated church entitled to retain its property, or will it revert to the denomination?
18. A denominational agency purchases land for a new church, pays for the construction of a church building, and installs a pastor. Several years later, the church votes to disaffiliate from the denomination. What legal principle could the denomination assert to acquire control of the church property?
19. A church purchases a tract of undeveloped land in order to construct a new facility. It learns that it is required by the local zoning ordinance to obtain a special use permit before it can begin construction. The church insists that the special use permit requirement violates its First Amendment right to freely exercise its religion. Assess the validity of the church’s claim.

20. A city council believes that the city has enough churches, so it enacts an ordinance banning any new churches. Assess the constitutional validity of such an ordinance.
21. A church's present facility has become too crowded, and the church decides to purchase an undeveloped lot in a residential zone of the city as a site for a new building. Neighboring landowners oppose construction on the ground that a church would increase traffic congestion, create additional hazards for children playing in the street, cause additional pollution and noise, and depreciate property values in the neighborhood. Will a civil court prohibit the church from constructing a new facility in the residential zone on the basis of the neighbors' arguments? Explain.
22. Can a city exclude a church from building a new facility anywhere within areas of town that are zoned for residential use? Explain.
23. A church wants to open a private elementary school and a childcare facility on its property. It is located in an area zoned for residential and church uses. Will the elementary and nursery schools be permitted uses? Explain.
24. A church is designated as a "landmark" by a local board. As a result, the church is not able to expand its present facilities. The church sues the city, claiming that this restriction violates the First Amendment guaranty of religious freedom. Will the church prevail? Is there an argument the church could make that would increase its chances of winning?
25. A state office informs a church that the construction of new highway will make it necessary to demolish the church. Is the church entitled to compensation from the state? If so, in what amount?
26. A city announces that it will use the power of eminent domain to take a church's property so that it can be demolished and replaced by a commercial building that will pay property taxes. What, if any, legal defenses would the church have in such a case?
27. Identify at least two reasons why it is important for church leaders to be familiar with the wording in deeds to church property.
28. What is a materialman's lien? How is it created? Give an example of how such a lien may be imposed on church property. What is the legal effect of such a lien?
29. Briefly describe the protections provided by the Religious Land Use and Institutionalized Persons Act.
30. A city ordinance prohibits churches and all other charitable organizations from locating in residential areas without obtaining a special use permit from city officials. A church applies for a permit, and a hearing is conducted at which several neighboring homeowners complain that their property valuations will decline if a church is allowed in their neighborhood. The church's application for a permit is denied. The church sues the city, claiming that its rights under RLUIPA have been violated. What is the most likely outcome of this case?
31. Same facts as example 30, except that the city ordinance only required religious organizations to apply for a special use permit in order to use property in residential areas for religious purposes. Several other charitable organizations are not required to obtain such a permit. Will the city's actions violate RLUIPA? The First Amendment? Explain.
32. Does a city have the legal authority to restrict the size of church signs? Explain.
33. Summarize the application of the Residential Lead-Based Paint Hazard Reduction Act to churches.

34. A church purchased a home in 1960 to use as a parsonage. The church's senior pastor moves out of the parsonage this year and purchases a home. The church decides to retain the parsonage, and later the parsonage is leased to a family with two young children. Church leaders are not familiar with the Residential Lead-Based Paint Hazard Reduction Act, and do not comply with any of its provisions. After living in the parsonage for several months the lessees' children begin to exhibit serious neurological problems. A physician diagnoses the condition as lead poisoning, and it is later determined that the children have been eating lead-based paint in the parsonage. The parents sue the church on the basis of the Residential Lead-Based Paint Hazard Reduction Act. What is the most likely outcome of this lawsuit? If a court concludes that each child's injuries amount to \$1 million, what is the total liability of the church?
35. Same facts as the previous example, except that the parsonage was constructed in 1980, and acquired by the church in 1983.
36. A church purchased a home in 1970 to use as a parsonage. This year the senior pastor moves out of the parsonage, and the church allows its youth pastor to move in. The youth pastor has three minor children. Is this transaction subject to the Residential Lead-Based Paint Hazard Reduction Act? Explain.
37. A church leases a portion of its premises to another congregation on Sunday afternoons. The other congregation conducts religious services, and education classes for adults and children. While the church is leasing its premises to the other congregation, is it subject to the provisions of the Residential Lead-Based Paint Hazard Reduction Act? Explain.
38. A church purchases three homes next to its parking lot, to accommodate future expansion. The homes were each constructed in the 1950s. The church rents the homes. Are these rental arrangements subject to the Residential Lead-Based Paint Hazard Reduction Act?
39. What is "just compensation" in the context of eminent domain?
40. A church chooses not to rent its facility to religious groups that are not Christian. Has it violated the federal Fair Housing Act? Explain.
41. Define the terms invitee, licensee, and trespasser, and summarize the duty of care that a landowner owes to each category.
42. An armed assailant enters a church during a worship service, and shoots three persons in the church lobby. Is the church legally responsible to the victims? What factors would a court consider in resolving this question?
43. Under what circumstances might a church have a legal duty to employ armed police officers or security guards on its premises during worship services?
44. What legal risks would be associated with a church's decision to employ armed security guards on its premises?
45. A church decides to manage the risk of shootings on its premises by installing metal detectors at its two primary entrances. Evaluate the pros and cons of the church's decision.
46. A church decides to manage the risk of shootings on its premises by installing video cameras in the main lobby of the church as well as in a few hallways. Evaluate the pros and cons of the church's decision.
47. A church member stumbles on a puddle of water on a tile floor in a church basement prior to a morning worship service.

- a. On the basis of what legal theory would the church most likely be responsible for the victim's injuries?
  - b. What defenses are available to the church?
  - c. Would such a risk be covered under a standard general liability insurance policy? If so, would the church have to pay for its own legal defense? Explain.
  
48. On a Saturday afternoon, several neighborhood children are playing on recreational equipment on a church's property. No church employee or member is present. One of the children is injured when she falls off of one piece of equipment. She sues the church.
  - a. On the basis of what legal theory would the church most likely be responsible for the victim's injuries?
  - b. What defenses are available to the church?
  
49. What steps could a church take to manage the risks associated with the construction of a skate ramp on its property?
  
50. What legal risks are associated with sound rooms in churches? What steps can churches take to manage these risks?
  
51. Define embezzlement.
  
52. A church bookkeeper embezzles \$10,000 in church funds, but plans on reimbursing the church as soon as she is able to do so. Is this intent to make full restitution an effective defense to a charge of embezzlement? Explain.
  
53. List three ways that embezzlement of church funds can occur.
  
54. List at least five steps that a church can take to reduce the risk of embezzlement.
  
55. Why might the IRS be interested in learning about the embezzlement of church funds?
  
56. A church treasurer confesses to the pastor that he has embezzled \$50,000 in church funds. Which of the following actions may expose the church to legal liability:
  - a. The pastor immediately informs the board.
  - b. The board notifies the police.
  - c. The treasurer is prosecuted and convicted, and sentenced to prison.
  - d. The pastor informs the congregation following a worship service.
  
57. What are "internal controls"? Identify three internal controls.
  
58. A church treasurer confesses to the pastor that she has embezzled \$10,000 in church funds. She agrees to pay back the full amount, and resigns from her position. Answer the following questions:
  - a. Has the crime of embezzlement been committed if the treasurer in fact pays back the full \$10,000?
  - b. Should the pastor inform the police or local prosecutor?
  - c. Several members of the congregation ask the pastor why the treasurer has been removed. Should the pastor disclose the reason to the congregation? If so, how?
  
59. How might a pastor or church board manage the risk associated with informing the congregation concerning the embezzlement of church funds?



## DISCUSSION QUESTIONS

1. The Supreme Court has ruled that the courts are free to disregard the rulings of the ecclesiastical tribunals of religious denominations in church property disputes when no question of religious doctrine or polity is involved. For example, courts are now free to apply the “neutral principles of law” approach in resolving church property disputes even if this produces a result contrary to the ruling of a religious denomination, so long as no question of religious doctrine or polity is involved. Do you believe that the Supreme Court has given the civil courts too much authority in this context? Should the courts always be compelled to defer to the ruling of religious denominations? Explain.
2. In 1969, the Supreme Court ruled that the courts no longer can resolve church property disputes on the basis of religious doctrine. Do you agree with this decision? Do you believe that the courts should have the authority to resolve church property disputes in those cases not involving religious doctrine? Explain.
3. A church treasurer confesses to embezzlement, pays back the embezzled funds, and resigns. Should the church turn the matter over to the local prosecutor? What considerations would be relevant in reaching a decision?

# CHAPTER 8

## TERMS

*Age Discrimination in Employment Act*

Americans with Disabilities Act

“at will” employee

Civil Rights Act of 1964, Title VII

commerce

Employee Polygraph Protection Act

employer

Fair Labor Standards Act

Family and Medical Leave Act

Form I-9

good cause

hostile environment sexual harassment

minimum wage

National Labor Relations Act

Occupational Safety and Health Act

overtime pay

preschool

qualified individual with a disability

quid pro quo sexual harassment

reference letter

sexual harassment

vicarious liability

workers compensation

## LEARNING OBJECTIVES

- Understand the meaning of workers compensation, and explain the application of workers compensation laws to religious organizations.
- Understand the application of Form I-9 to religious organizations.
- Explain the “employment at will” doctrine, and identify several exceptions to it.
- Understand the procedure employees follow when filing a discrimination claim under federal civil rights laws.
- Understand the importance of the term “commerce” in the context of federal employment and civil rights laws, and explain its meaning.
- Explain the “clergy exemption” under federal civil rights laws.
- Understand the major provisions of Title VII of the Civil Rights Act of 1964, and explain its application to religious organizations.
- Understand the major provisions of the federal Age Discrimination in Employment Act, and explain its application to religious organizations.
- Understand the major provisions of the Americans with Disabilities Act, and explain its application to religious organizations.
- Understand the major provisions of Employee Polygraph Protection Act, and explain its application to religious organizations.
- Understand the major provisions of Occupational Safety and Health Act, and explain its application to religious organizations.

- Understand the major provisions of Fair Labor Standards Act, and explain its application to religious organizations.
- Understand the major provisions of National Labor Relations Act, and explain its application to religious organizations.
- Understand the major provisions of Family and Medical Leave Act, and explain its application to religious organizations.
- Identify the legal risks associated with the use of reference letters, and explain how these risks may be reduced.
- Understand the application to religious organizations of state laws banning employment discrimination on the basis of sexual orientation.

## SHORT-ANSWER QUESTIONS

1. A church is located in a state that does not exempt churches from workers compensation coverage. A church employee stumbles down a church stairway and receives serious injuries. Answer the following questions:
  - a. If the church has workers compensation insurance, what will be the extent of the church's legal liability?
  - b. If the church does not have workers compensation insurance, will the employee's injuries be compensated under the church's general liability insurance policy? Why or why not?
  - c. Should a church obtain workers compensation insurance, even if it is not legally required to do so? Explain.
2. A church is about to hire a new secretary. What, if any, obligations does it have under federal immigration law?
3. Explain the "at will" employment rule.
4. A church hires a clerical worker. Nothing is said regarding the term of employment. Answer the following questions:
  - a. This type of employment relationship is often referred to by what term?
  - b. Historically, an employer could terminate such a relationship on the basis of what grounds?
  - c. Historically, did an employer have any recourse against an employee who terminated such a relationship?
  - d. Do the courts still recognize this rule in most states?
  - e. Are there any exceptions to the historical rule that are commonly recognized by the courts today?
5. T is a church employee who has been hired for an indefinite period. The church terminates T's employment because of a "personality conflict" with the pastor. T sues the church for wrongful termination. What is the likely outcome of this case?
6. Same facts as question 5, except that T was hired for a 3-year term, and is terminated after only one year on the job.
7. The church board failed to designate a housing allowance for Pastor B this year. At the end of the year, Pastor B instructs the church bookkeeper to prepare and "backdate" a fraudulent board resolution designating in advance a housing allowance for the entire year. The employee

refuses to do so, and is dismissed. The employee sues the church for wrongful termination. The church insists that the worker was an at will employee who could be terminated for any reason. What is the likely outcome of this case?

8. G is a church employee who is injured on the job. She has been awarded workers compensation benefits because of her injury. The church dismisses G because the disability adversely affects her ability to perform her job. G sues the church. The church's defense is that G was an at will employee who could be terminated at any time, with or without cause. Answer the following questions:
  - a. What is the likely outcome of this case?
  - b. What precautions could the church have taken to reduce the risk of litigation?
9. What is a severance agreement? Give an example of how such an agreement can reduce a church's risk of legal liability when dismissing an employee.
10. J has served as a bookkeeper at his church for more than twenty years. Pastor H learns that J has embezzled over \$10,000 of church funds. Pastor H confronts J and obtains a full confession. J's employment is immediately terminated. Members of the staff and congregation immediately notice that J is missing. She no longer shows up at work, and has quit attending the church. People begin asking questions about the reasons for J's sudden departure. Rumors spread that J was fired. In order to respond to these questions, Pastor H informs the staff (at a weekly staff meeting) that J was dismissed because of embezzlement. Pastor H makes a similar disclosure to the congregation following a morning worship service. J learns of these disclosures, and sues Pastor H and the church. Answer the following questions:
  - a. What is the likely outcome of this case?
  - b. What precautions could Pastor H have taken to reduce the risk of litigation?
11. K is a female who claims that a church did not hire her for an open position because of her sex. She sues the church for unlawful sex discrimination in violation of Title VII of the Civil Rights Act of 1964. The church has 17 employees. It insists that it is not subject to Title VII because it is not engaged in "commerce." Answer the following questions:
  - a. Must a church be engaged in "commerce" to be subject to Title VII? If so, what is the basis for this requirement?
  - b. The church occasionally purchases Sunday school literature from an out-of-state publisher; sends mail out-of-state; and employees makes out-of-state telephone calls. What is the likelihood that a civil court will conclude that the church is engaged in commerce?
  - c. In addition to the facts mentioned in paragraph (b), the church occasionally sends staff to out-of-state conferences and has a number of members who live in another state and who cross the state line to attend the church. What is the likelihood that a civil court will conclude that the church is engaged in commerce?
12. Evaluate the likelihood that each of the following churches would be deemed to be engaged in commerce by a civil court:
  - a. A church operates a private elementary school.
  - b. A church operates a preschool.
  - c. A church operates a commercial business (a restaurant).
  - d. A church occasionally purchases literature and office equipment from out-of-state vendors; sends employees to out-of-state conferences; and has some members who live in another state.

- e. A church operates a web page on the internet.
  - f. A church broadcasts a radio program.
13. M is a disabled male who claims that a church did not hire him for an open position because of his disability. He sues the church for unlawful discrimination in violation of the Americans with Disabilities Act. The church has 10 employees. What is the most likely outcome of this case? Why?
  14. Same facts as question 13, except that the church operates a preschool with 8 employees. Are the church's 10 employees and the preschool's 8 employees combined in applying the Americans with Disabilities Act's 15 employee requirement? What factors would a civil court likely consider in deciding this question?
  15. Same facts as question 14, except that some of the church's employees are part-time. Are they counted in applying the Americans with Disabilities Act's 15 employee requirement?
  16. A church dismisses Pastor K, its senior pastor. Pastor K, who is 68 years of age, believes that the church dismissed him because of his age. He retains an attorney who writes the church a letter threatening to sue for unlawful age discrimination unless the church settles with her client for \$100,000. Answer the following questions:
    - a. Has the church committed unlawful age discrimination? Assume that the main reason it dismissed Pastor K was that it wanted a younger, more dynamic minister.
    - b. How should the church respond to the attorney's letter?
    - c. How could the church have minimized the risk of this dispute?
  17. Pastor V has served as senior pastor of a church for several years. He has a stroke that permanently affects his speech, making it very slow and unintelligible. The church reluctantly dismisses him. Pastor V retains an attorney who threatens to sue the church for violating the Americans with Disabilities Act. List four defenses that may be available to the church.
  18. A church has more than 15 employees and is engaged in commerce. Answer the following questions:
    - a. An employee claims that she was discriminated against because of her race in violation of Title VII of the Civil Rights Act of 1964. Does Title VII apply to this church? Explain.
    - b. An employee claims that he was discriminated against because of his ethnic background in violation of Title VII of the Civil Rights Act of 1964. Does Title VII apply to this church? Explain.
    - c. An employee claims that she was discriminated against because of her sex in violation of Title VII of the Civil Rights Act of 1964. Does Title VII apply to this church? Explain.
  19. Same facts as question 18. Would any of your answers be different if the church has 12 employees?
  20. Same facts as question 18. Would any of your answers be different if the church was not engaged in commerce? Explain.
  21. A church has 20 employees, and is engaged in commerce. It is looking for a new youth pastor, and receives an application from an ordained minister of a different religious denomination. The church refuses to consider this application. Answer the following questions:
    - a. Has the church committed religious discrimination?
    - b. If the church has committed religious discrimination, has it violated Title VII of the Civil Rights Act of 1964? Explain.

22. A church needs a new custodian. It refuses to consider E, a qualified applicant, because E is a member of a different faith. Answer the following questions:
- Has the church committed religious discrimination?
  - If the church has committed religious discrimination, has it violated Title VII of the Civil Rights Act of 1964?
  - Is a church permitted by Title VII to engage in religious discrimination with respect to custodial positions, or other positions not involving “ministerial” duties? Explain.
23. A church operates a preschool. The pastor learns that an unmarried female employee at the preschool is pregnant. The employee is dismissed because of “pregnancy, out of wedlock.” The former employee sues the church for sex discrimination. Answer the following questions:
- What is the likely outcome of this case?
  - What precautions could the church have taken to reduce the risk of litigation?
24. Same facts as question 23, except that the church dismissed the employee for “extramarital sexual relations in violation of the church’s religious teachings.” The former employee sues the church for sex discrimination, claiming that the church discriminates against women because male employees who were guilty of extramarital sexual relations in the past were not dismissed but rather were warned to discontinue such behavior. Answer the following questions:
- What is the likely outcome of this case?
  - What precautions could the church have taken to reduce the risk of litigation?
25. Distinguish between “quid pro quo” sexual harassment and “hostile environment” sexual harassment.
26. A church has 4 employees. A female employee believes that she has been subjected to sexual harassment, and threatens to contact the EEOC. Answer the following questions:
- What civil rights laws does the EEOC enforce?
  - What federal civil rights law prohibits sexual harassment?
  - Does the federal law prohibiting sexual harassment apply to the church in this example? Why or why not?
  - Is it possible that the church could be subject to a state law banning sexual harassment?
27. Assume that a church is covered by Title VII of the Civil Rights Act of 1964. A female bookkeeper claims that a male custodian has been sexually harassing her by creating a “hostile environment.” She does not discuss the custodian’s behavior with the senior pastor or church board. She later threatens to file a complaint with the EEOC, charging the church with responsibility for the custodian’s behavior. Is the church liable for the custodian’s sexual harassment? Explain.
28. Same facts as question 27, except that the bookkeeper complained on two occasions to the senior pastor about the custodian’s behavior. The pastor delayed acting because he did not believe the matter was serious.
29. A church is subject to Title VII. It adopts a written sexual harassment policy that defines harassment, encourages employees to report harassing behavior, and assures employees that they will not suffer retaliation for reporting harassment. A male supervisory employee engages in frequent offensive remarks and physical contact of a sexual nature with a female employee. The female employee is greatly disturbed by this behavior, and considers it inappropriate in a church. In fact, she had sought church employment because she considered it

- a safe environment and her job would be a ministry. The supervisor eventually dismisses the employee because of her refusal to “go along” with his offensive behavior. Throughout her employment, the employee never informed church leadership of the supervisor’s behavior. Several months after her termination, the employee files a sexual harassment complaint with the EEOC. Will the church be liable for the supervisor’s behavior under these circumstances?
30. Same facts as the previous example, except that the employee was not dismissed and suffered no “tangible employment decision” (firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits).
  31. A church is subject to Title VII. It has not adopted a written sexual harassment policy. A female employee files a complaint with the EEOC, claiming that a supervisor has engaged in hostile environment sexual harassment. She never informed church leadership of the supervisor’s behavior before filing her complaint with the EEOC. Will the church be responsible for the supervisor’s behavior?
  32. Same facts as the previous example, except that the church had adopted a written sexual harassment policy that was communicated to all employees.
  33. A 75-year-old person applies for a secretarial position at a local church. The church hires a 35-year-old person (because of better typing skills and familiarity with computers). The 75-year-old person believes that the church practiced illegal age discrimination in not offering her the job. Answer the following questions:
    - a. Does the Age Discrimination in Employment Act apply to the church? Assume that it has 5 employees.
    - b. Does the Age Discrimination in Employment Act apply to the church? Assume that it has 30 employees.
    - c. Assume that the Age Discrimination in Employment Act does apply to the church. Did the church violate it?
    - d. Assume that instead of applying to a local church for a secretarial position, the 75-year-old applied to a denominational agency. What difference would this make? Assume that the agency engages in the publication and distribution of literature.
  34. Explain the test announced by the United States Supreme Court in the *Catholic Bishop* decision for evaluating the applicability of a governmental regulation to religious organizations.
  35. A church has at least 15 employees and is engaged in commerce. It needs to hire a new custodian, and two persons apply. One is a nondisabled member of the church, and the other is a disabled nonmember who could perform the essential functions of the job with reasonable accommodations by the church. The church hires the nondisabled member. Has it violated the Americans with Disabilities Act? Explain.
  36. Same facts as question 35, except that the church has only 5 employees.
  37. A church has at least 15 employees and is engaged in commerce. It needs to hire a secretary who will need to be able to work with a computer. K, a blind female, applies for the position. The church informs K that she is not qualified for the position since she cannot type, and hires someone else. Has the church violated the Americans with Disabilities Act? Explain.
  38. A church has at least 15 employees and is engaged in commerce. It needs to hire a custodian. One of the essential functions of the position is the ability to lift boxes weighing up to 50 pounds. This requirement is noted in a job description for the position. T, who suffers from

multiple sclerosis, applies for the job. T is not able to lift 50-pound boxes. The church decides not to hire T. Has it violated the Americans with Disabilities Act?

39. A church has at least 15 employees and is engaged in commerce. It has an opening for a bookkeeper. The job description requires that the individual be a college graduate with a degree in accounting. A blind applicant satisfies these requirements. She can perform all the essential functions of the job if she is provided with a part-time reader. Is the church required to hire a part-time reader to accommodate this applicant and enable her to perform the job? Explain.
40. A church has at least 15 employees and is engaged in commerce. A member who uses a wheelchair insists that the church is required by the Americans with Disabilities Act to install an elevator and wheelchair ramps. Is this true?
41. A church receives charitable contributions from recipients of federal welfare programs. Do these contributions make the church a recipient of "federal financial assistance" for purposes of the Civil Rights Restoration Act? Explain.
42. A church receives direct grants from the federal government for its childcare program. The childcare program is conducted in the church building (not in a geographically separate facility). Answer the following questions:
- Do the provisions of the Civil Rights Restoration Act apply under these circumstances?
  - Assuming that the Civil Rights Restoration Act does apply, what federal antidiscrimination laws are made applicable to the childcare facility?
  - Do any of these antidiscrimination laws prohibit discrimination on the basis of homosexuality? AIDS? Alcoholism? Addiction to narcotic drugs?
  - Assuming that the Civil Rights Restoration Act applies, is the church subject to the federal antidiscrimination laws or just the childcare facility?
  - What if the childcare facility was geographically separate from the church sanctuary? Would this make any difference?
43. A local church has 3 employees--a minister, an office secretary, and a custodian. Must the church pay the minimum wage and overtime pay to its secretary and custodian? Explain.
44. A local church operates a childcare facility that is primarily custodial rather than educational in nature. However, the facility does attempt to teach the children stories and principles from the Bible. The church employs 6 persons to work at the facility. Are these persons covered by the federal minimum wage and overtime pay requirements? Explain?
45. A local church operates a private elementary school. Are school employees covered by the federal minimum wage and overtime pay requirements? Explain.
46. A church pays its nursery workers \$3 per hour for working in the church nursery during Sunday morning worship services. Some workers accept the pay, while others volunteer their services. Has the church violated the federal minimum wage law with respect to either category of worker? Explain.
47. A church decides to pay its entire staff, including custodians, bookkeeper, and secretaries, a salary in order to avoid the overtime pay requirements. Will this arrangement work?
48. A 10-year-old child informs her mother that a volunteer Sunday school teacher improperly touched her. The mother informs her pastor, who confronts the teacher. The teacher adamantly denies any wrongdoing. The church board is not sure how to proceed. One member



suggests that the teacher be asked to take a polygraph exam. The board agrees that this would be a good idea. Answer the following questions:

- a. The church has only 3 employees. Is it subject to the Employee Polygraph Protection Act?
  - b. Assume that the church is subject to the Employee Polygraph Protection Act. Would it violate the Act by requiring that the teacher “prove” his innocence by taking a polygraph exam?
  - c. Assume that the church is subject to the Employee Polygraph Protection Act. Would it violate the Act by suggesting that the teacher take a polygraph exam?
  - d. Assume that the church is subject to the Employee Polygraph Protection Act. Would your answers be different if the teacher were a paid employee of the church? Why?
49. A former member sues a church, alleging that the pastor seduced her in the course of a counseling relationship a few years ago. The pastor adamantly denies any wrongdoing. The woman’s attorney has her submit to a polygraph exam, which indicates that the woman is telling the truth. The woman’s attorney says that she will drop the lawsuit if the pastor is tested by the same polygraph examiner and is found to be telling the truth. The pastor refuses to do so, insisting that he does not need a test to prove that he is telling the truth. The church board urges the pastor to reconsider, and to take the exam. Assuming that the church is subject to the Employee Polygraph Protection Act, has the church violated the Act? Explain.
50. A church board suspects the church’s volunteer treasurer of embezzling several thousands of dollars of church funds. The treasurer is called into a board meeting, and is told “you can clear your name if you submit to a polygraph exam.” Does this conduct violate the Employee Polygraph Protection Act? Explain.
51. Same facts as the previous example, except that the church suspects a full-time secretary of embezzlement. What steps can the church take to qualify for the “ongoing investigation” exception under the Employee Polygraph Protection Act?
52. A church is opposed, on the basis of its interpretation of the Bible, to hiring homosexuals. B and C are homosexual men. B applies for a volunteer position as a Sunday school teacher, and C applies for a paid staff position as a business administrator. The church rejects both applications because B and C are homosexuals. B and C retain an attorney who threatens to sue the church. Answer the following questions:
- a. Has the church violated B’s rights under Title VII of the Civil Rights Act of 1964? Explain.
  - b. Assume that the church is in a state with a civil rights law that bans discrimination in employment on the basis of sexual orientation. Has the church violated B’s rights under this law? Explain.
  - c. Has the church violated C’s rights under Title VII of the Civil Rights Act of 1964? Explain.
  - d. Assume that the church is in a state with a civil rights law that bans discrimination in employment on the basis of sexual orientation. Has the church violated C’s rights under this law? Explain.
53. A church hires a full-time office secretary in July of 1999. The pastor has learned of the new hire reporting rules, but assumes that the church is exempt. Is this assumption correct? Explain.

## **DISCUSSION QUESTIONS**

1. Some local churches are not covered by the federal minimum wage and overtime compensation requirements, and they rely on this exemption to pay less than the minimum wage to their workers and avoid overtime pay for hours worked in excess of 40 each week. Other churches feel strongly that they have a moral duty to honor the minimum wage and overtime compensation rules. What is your opinion? Would you, as a senior pastor, be willing to pay less than the minimum wage to church workers? Why or why not?
2. Many Americans are opposed to the “enforcement of morality” by the government. Yet, is not this what federal civil rights and employment laws seek to do? To illustrate, are federal laws that prohibit discrimination in employment on the basis of race, ethnicity, religion, sex, age, or disability examples of the enforcement of morality by government? And, could it not be argued that such laws are enforcing religious values as well?
3. Some church leaders sincerely believe that the government should not have the authority to force churches to comply with employment and civil rights laws. Do you believe that the government should, or should not, have this authority? Why? What if a law violates a church’s religious tenets, such as a law prohibiting employers (including churches) from discriminating in employment decisions on the basis of sexual orientation?

# CHAPTER 9

## TERMS

charitable solicitation  
copyright  
copyright notice  
derivative work  
infringement  
publication  
securities fraud  
security  
testamentary gift  
Uniform Securities Act

## LEARNING OBJECTIVES

- Recognize that churches are not immune from all forms of government regulation.
- Understand the application of various financial regulations to churches, including regulation of charitable solicitations, limitations on charitable giving, and securities law.
- Understand the basic elements of copyright law, and their application to church practices.
- Understand the application of the Charitable Contribution and Charitable Donation Act to churches.

## SHORT-ANSWER QUESTIONS

1. Are churches immune from all forms of government regulation? Explain.
2. Under what circumstances may a state regulate a person's religious beliefs?
3. Laws regulating religious organizations may be upheld by the courts if they meet what four requirements?
4. A church operates a preschool. The preschool is subject to health and safety standards under a state law that is designed to protect children. A state agency learns that the preschool is in violation of a number of safety standards, including the fact that exit doors open inward rather than outward. The agency orders the church to comply with these standards, but the pastor refuses. He insists that the church is subject to the "lordship" of Jesus Christ, and not the state. Is he correct? How would a civil court evaluate the pastor's position?
5. A church is considering the use of a professional fund-raiser to assist in raising funds for a new building. What two kinds of state regulation may apply?
6. A state law requires all religious organizations that solicit over half of their financial support from non-members to register with the state. Is this law constitutional? Explain.
7. M, a widow, executes a will on July 1st of this year, leaving \$500,000 to her church. She dies on September 15th of this year, and her children contest the gift to the church. The minister of the church asks for your opinion concerning the legal validity of this gift. What would you say?

8. Same facts as the previous question except that M had no surviving children or grandchildren. Would this change your opinion?
9. Summarize the United States Supreme Court's ruling in *Larsen v. Valente*.
10. Summarize the United States Supreme Court's ruling in the *Village of Schaumburg* case.
11. Define *mortmain law*.
12. How many states have mortmain laws?
13. What was the purpose of mortmain laws? Do you believe this purpose is legitimate?
14. An elderly man dies, leaving a will that was executed 25 days prior to his death that leaves half of his estate to his church. Is this will valid? Explain.
15. To raise funds for a new building, a church sells bonds through its minister and board members to church members. The church assumes that it is exempt from any legal restrictions. Is this a prudent assumption? Explain.
16. How many states have enacted securities laws?
17. Identify two common forms of security that are issued by churches for fund-raising purposes.
18. Are churches automatically exempt from registering their securities under state law? Are they required to "register" those persons who will be promoting and selling church securities?
19. Under what circumstances will a church be exempt from the prohibition of fraudulent activities in the sale of securities?
20. A church wants to raise \$500,000 for a new building by issuing promissory notes. The pastor learns that churches are exempt from registering their securities under state law, and so he assumes that the church can proceed to issue the notes. Is this a prudent assumption? Explain.
21. A church wants to raise \$500,000 for a new building by issuing promissory notes. The securities are not exempt from registration under state law, and so the church retains an attorney who registers the securities. The pastor actively encourages church members to purchase securities. On one occasion, he met with G, an elderly widow of modest means, and persuades her to purchase a \$10,000 note. Evaluate the propriety of this transaction.
22. A church issues \$1 million in 10-year promissory notes to its members and spends all of the proceeds on a new education building. Has the church committed securities fraud? Explain.
23. A church issues 10-year, 10 percent promissory notes to several of its members. No prospectus, offering circular, or other literature is filed with the state securities commission or made available to investors. Has the church committed securities fraud? Explain.
24. To help promote the sale of church notes, a minister assures his congregation during a sermon that the notes are as safe "as the Rock of Gibraltar" since they were issued on behalf of the church. Is this statement legally appropriate? Explain.
25. A local church plans to issue \$1 million in promissory notes. It prepares a prospectus describing the securities, the history of the church, and the church's financial condition. The prospectus also contains the following five statements. Indicate whether each statement is legally permissible.
  - a. "The membership of the church has increased during each of the past ten years, so it can be expected that membership growth will continue to occur."

- b. "These securities have been exempted from registration by the state securities commission and thus you are assured that they have been carefully studied and approved by the state."
  - c. "A copy of this prospectus shall at all times be maintained in the church office for the benefit of any prospective investor."
  - d. "Interest on these obligations is guaranteed."
  - e. "The church was established in 1935."
26. Same facts as the previous question. The church decides *not* to include the following information in its prospectus. Indicate after each statement whether its omission is legally permissible.
- a. A lawsuit is pending against the church alleging that the church is liable on the basis of negligence for the injuries suffered by two minors who were sexually molested by a volunteer church worker. The lawsuit is asking for \$5 million.
  - b. The total dollar value of securities to be offered.
  - c. A statement that no sinking fund reserve exists.
  - d. A statement that for three of the past five years the church's expenses exceeded revenues.
  - e. A statement that for two of the past three years the church's attendance has declined.
  - f. A statement that the pastor was installed one year ago.
27. Can a church be liable for securities fraud if it in good faith did not know that its activities were fraudulent? Explain.
28. To raise funds for a remodeling project, a church solicits three-year pledge commitments from church members. Is this practice subject to state securities law?
29. Are churches subject to the federal Securities Act of 1933? Explain.
30. Define *pyramid scheme*.
31. Define *Ponzi scheme*.
32. What is the Berne Convention? How did it affect copyright law in the United States?
33. A church choir director sees a piece of sheet music that she would like to duplicate for members of the choir. The sheet music contains no copyright notice. Does this necessarily mean that it is in the public domain? Explain.
34. Which of the following is a requirement of current copyright law: (a) affixation of a copyright notice to publicly distributed copies of a copyrighted work first published since March of 1989; (2) registration; (3) deposit of 2 copies with the Copyright Office.
35. Pastor L is minister of music at his church. He composes a religious work during office hours at the church, using church equipment and supplies. Answer the following questions:
- a. Who owns the copyright in this work? Explain.
  - b. What is the name used by the Copyright Act for this kind of work?
  - c. How could the copyright ownership have been vested in another party?
  - d. What is the term of copyright protection for this work?
  - e. Define *inurement*, and explain the relevance of this term to a church's tax-exempt status.
  - f. Does the transaction in this example constitute inurement? Why or why not? If it does, how can this conclusion be avoided?
36. D composes a religious song this year. How long will the copyright last in the work? Are any renewals necessary?

37. List the five exclusive rights of a copyright owner.
38. What is copyright infringement?
39. During morning worship services at a church the following activities occur. Explain whether or not each activity constitutes copyright infringement:
  - a. The church congregation sings two copyrighted hymns in the church hymnal.
  - b. The church choir sings a copyrighted song.
  - c. The choir director purchased only one copy of the song the choir performed, and made copies for every member of the choir on church duplicating equipment.
  - d. A vocalist sings a copyrighted song as a solo, making a copy of the music for an accompanist.
  - e. The church prints the lyrics (not the music) of a religious song in the bulletin.
  - f. The church makes an audio recording of the worship service
  - g. The church makes a video recording of the worship service.
  - h. The lyrics of a copyrighted religious song are displayed on a screen using an overhead projector (a church employee typed the lyrics on a transparency).
  - i. A minister reads a chapter from a copyrighted translation of the Bible.
40. Would the so-called “fair use guidelines” excuse any of the activities described in the previous question?
41. The music minister of a local church displays chorus lyrics on a wall during worship services by means of an opaque projector. Is this practice legally permissible? Explain.
42. The music minister of a local church composed a new arrangement of a copyrighted hymn and had the choir perform it during worship services. Has the minister, or the church, violated the copyright law? Explain.
43. A church prints the lyrics of a copyrighted song on a bulletin insert and on an overhead transparency. Does either practice constitute “fair use”? Explain.
44. A church conducts a Saturday evening concert featuring a musical group. The church does not charge an admissions fee, but it does pay a fee to the musical group. Does the “nonprofit performance” exemption to copyright infringement apply? The religious services exemption?
45. A church shows videos to its youth group. Some of the tapes were purchased by the church, and others were rented at a local video store. Does the showing of these videos to the youth group constitute copyright infringement? What if no admissions fee is charged?
46. A church purchases the current version of a popular word processing program for use on the church computer. A staff member enjoys the program so much that she takes it home and copies it onto her personal computer. Is this permissible?
47. A church secretary is assembling the church bulletin for next week. She comes across a poem that she would like to include. Since the poem does not contain a notice of copyright, she assumes that it is in the public domain. Is this a safe assumption?
48. Using university copyright policies as a guide, how might a church ensure that its pastor owns the rights in his own sermons without jeopardizing the church’s tax-exempt status?
49. A pastor writes a book. What is the duration of the copyright in this work?
50. Must copyright owners register their works with the United States Copyright Office? Explain.

51. Is it legally permissible to paraphrase another's copyrighted work, so long as verbatim copying is avoided?
52. What are three common church practices that a CCLI copyright license will permit? What are three practices that a CCLI copyright license will not permit?
53. Evaluate the likelihood that a civil court would intervene in each of the following church disputes:
- A minister claims that her dismissal violated the church bylaws.
  - A minister claims that his dismissal was based on fraud and collusion.
  - A church dismisses a member on the basis of doctrinal deviation. The member challenges the dismissal in court.
  - A church splits, and both factions claim title to the church's properties.
  - A church member sues a minister on the basis of malpractice.
  - A church is sued for copyright infringement.
  - A minister challenges a congregational vote to dismiss him, arguing that the meeting was not called in accordance with church bylaws.
54. J has attended a church for many years. For the past three years, her contributions to the church have averaged \$100 per week, or about \$5,000 per year. J's gross annual income for the current year is about \$50,000. On July 15 J files for bankruptcy. A bankruptcy trustee demands that the church turn over all contributions made by J during the year prior to the date she filed for bankruptcy. How should the church respond?
55. Same facts as the previous example, except that in addition to her weekly giving J made a one-time gift to the church's missions fund of \$10,000. Does this change your answer? Explain.
56. T believes strongly in giving to her church, and for each of the past several years has given 20 percent of her income. On July 1 of the current year she files for bankruptcy. A bankruptcy trustee demands that the church turn over all contributions made by T for the year prior to the date she filed for bankruptcy. How should the church respond?
57. D has attended church occasionally over the past several years. For the past few years, his contributions to his church have averaged less than \$2,000 per year. D's gross annual income for the current and previous year is about \$50,000. D wants to declare bankruptcy, but he has a \$20,000 bank account that he wants to protect. He decides to give the entire amount to his church in order to keep it from the bankruptcy court and his creditors. He gives the entire balance to his church on June 1. On July 1, D files for bankruptcy. A bankruptcy trustee demands that the church turn over the \$20,000 contribution. How should the church respond?
58. B files a chapter 7 bankruptcy petition. B's plan states that he will use all available "disposable income" to pay his creditors during the three year period following the approval of his plan. But the plan permits B to continue making contributions to his church, which in the past have averaged 10 percent of his income. Some creditors object to the plan, and demand that the court reject it, since B will be making contributions to his church rather than using these funds to pay off his lawful debts. What is the likely outcome of this case? Will the court accept B's bankruptcy plan?
59. Same facts as the previous example, except that B's plan proposes to pay contributions to his church in the amount of 25 percent of his gross annual income. B would rather that his church receive all available income than his creditors. Several creditors object to this plan. What is the likely outcome of this case? Will the court accept B's bankruptcy plan?

## **DISCUSSION QUESTIONS**

1. Persons often uncritically jump to the conclusion that churches should never be subject to government regulation, under any circumstances. Do you agree? If not, what arguments could you make to oppose such an absolutist view? Construct a rule that in your opinion strikes an appropriate balance between legitimate government regulation and a church's right to be free of undue governmental interference.
2. Many churches are offended when they learn that a publisher of religious music has prosecuted a church for copyright infringement. Should Congress amend the Copyright Act to exempt churches from the prohibition against copyright infringement? Explain.
3. The Bankruptcy Code permits debtors to obtain bankruptcy relief even though they make payments of up to 15 percent of their annual income to their church. Some believe that such a rule facilitates stealing from creditors, or, as one court concluded, "makes Jesus Christ a priority creditor." Can this rule be justified ethically or scripturally? Explain.



# CHAPTER 10

## TERMS

agency  
arbitration  
apparent agency  
ascending liability  
assumption of risk  
charitable immunity  
common interest privilege  
comparative negligence  
contributory negligence  
course of employment  
“discovery” rule  
fiduciary duty  
intervening cause  
invitee  
joint and several liability  
licensee  
Megan’s laws  
negligence  
negligent retention  
negligent selection  
negligent supervision  
punitive damages  
qualified privilege  
ratification  
references, institutional  
references, personal  
respondeat superior  
scope of employment  
statute of limitations  
trespasser  
vicarious liability

## LEARNING OBJECTIVES

- Define the term negligence.
- Define the term respondeat superior, and explain its relevance to churches.
- Understand the potential legal liability of churches for failing to exercise reasonable care in the selection of workers.
- Understand the potential legal liability of churches for failing to exercise reasonable care in the supervision of workers and activities.
- Understand the potential liability of churches for retaining an employee or volunteer after being made aware of information suggesting that the person represents a risk of harm to others.
- Explain the concept of “fiduciary duty,” and its relevance to churches.
- Identify several legal defenses to negligence.

- Understand the legal status of “release forms” that purport to relieve a church of liability for the negligence of its employees and volunteers.
- Explain the concept of risk management, and identify risk management strategies that can reduce the risk of church liability based on negligent selection, negligent retention, and negligent supervision.
- Define “defamation,” and explain defenses that are available to churches that are sued for alleged defamation.
- Identify legal risks associated with counseling activities, and explain how those risks may be reduced.
- Describe the potential legal liability of religious denominations for the conduct of affiliated churches and clergy, and identify several defenses that are available to denominations.

## SHORT-ANSWER QUESTIONS

1. Define the term respondeat superior, and explain its relevance to churches.
2. Pastor B fails to stop at a red light and collides with another vehicle while driving from the church to visit a church member in the hospital. The driver of the other vehicle was seriously injured. Pastor B has not been charged with a traffic violation in more than ten years. Answer the following questions:
  - a. On the basis of what legal theory would the church most likely be responsible for the victim’s injuries?
  - b. What is the justification for the legal liability of the church for the victim’s injuries?
  - c. What would the victim have to prove in order for the church to be liable?
  - d. What if the minister reports his income taxes as a self-employed person? Would this affect the liability of the church? Explain.
  - e. What if the accident occurred on a Friday evening while Pastor B was on his way to buy groceries? Would this affect the liability of the church? Explain.
  - f. What if the accident occurred while Pastor B was on his way to watch his daughter participate in a sporting event? Would this affect the liability of the church? Explain.
  - g. What if the accident occurred while Pastor B was on his way home from church? Would this affect the liability of the church? Explain.
  - h. Assuming that the church is sued by the victim, what legal defenses could the church assert?
  - i. Can the victim sue Pastor B personally? Explain.
3. A church hires D to mow its lawn on a weekly basis. D spends about three hours at the church each week during the mowing season. While mowing the yard one day, D’s tractor runs over a rock that is thrown across the street and strikes a neighbor. The neighbor sues the church, claiming that it is responsible for her injuries on the basis of respondeat superior. How will a court likely rule? Explain.
4. Some courts refuse to apply the principle of respondeat superior to churches and other charities. Why?
5. G is a volunteer youth worker at a church. He sexually assaults an adolescent female while driving her home following a church activity. The victim sues her church, claiming that it is legally responsible for G’s actions on the basis of respondeat superior. Answer the following questions:

- a. Will a court find the church liable for G's actions on the basis of respondeat superior? Why or why not?
  - b. What other theories of liability could be asserted against the church?
6. The text states that sexual molestation of minors and adults is one of the greatest legal risks facing churches today. Why? Do you agree or disagree?
7. The text lists several risks associated with incidents of sexual misconduct in churches. List five of them.
8. After attending a church for 2 weeks, M volunteers to work as a Sunday school teacher. He begins teaching a class a few weeks later. The church did not ask M to complete any application form and did not ask for or contact any references. Shortly after beginning to teach the class, M is accused of molesting a child on church premises following a class. The child's parents sue M and the church. It is later discovered that M was convicted of the sexual molestation of a minor in another community five years previously. Answer the following questions:
  - a. On the basis of what legal theory would the church most likely be responsible for the victim's injuries?
  - b. Church leaders claim that they had no knowledge of the previous conviction, or of any other information suggesting that M would pose a risk of harm to anyone. Would this constitute an effective defense? Why or why not?
  - c. List ways that the church could have reduced the risk of this incident occurring.
  - d. Will the church's liability insurance policy cover the church? What about M?
8. Assume the same facts as the previous question, except that M had not been convicted in the past of sexually molesting a minor. Answer the following questions:
  - a. Would the church be legally responsible for the child's injuries? Explain.
  - b. How should church leaders respond to inconclusive or unresolved criminal records on the part of applicants for youth work in the church?
9. What is the difference between a personal and an institutional reference? Which is more effective? Why?
10. A church decides to implement a procedure for "screening" persons who work with children. One aspect of its screening procedure is an application form to be completed by all workers. Answer the following questions:
  - a. Should such a form be completed by current workers? Or, should it be completed only by those workers hired in the future?
  - b. Should such a form be completed by paid employees? Uncompensated volunteers? Both?
  - c. Should the church ask applicants whether or not they have been arrested or convicted of a crime? If so, which crimes should be included?
  - d. What other questions would be appropriate on a screening application form?
11. A church decides to begin screening volunteers who work with minors in any capacity. Church leaders decide to streamline the process by only doing criminal records checks. They believe that such checks are the most effective and important screening tool, and so no other procedures are necessary. How would you evaluate this approach?
12. An individual begins attending a church and expresses interest in working with the children's program. He mentions that he was convicted of sexually molesting a child and served a 3-year term in a state penitentiary. However, he insists that he no longer presents a risk of harm

because of a religious conversion that he experienced while in prison. He is interviewed by several church leaders, who all agree that he seems to have experienced a genuine conversion. They would like to give the person the benefit of the doubt and use him in a volunteer capacity in a children's program. Answer the following questions:

- a. Should the church use this person in a children's program? Why or why not?
  - b. Would it matter how long ago the previous conviction occurred? What if the criminal conviction was 10 years ago, and the person has had no other charges or convictions? What if the person was released from prison within the past year?
  - c. Are there any other alternatives available to the church in responding to such a person's desire to volunteer his services?
13. Assume that you have been asked by your church to recommend procedures to reduce the risk of child molestation occurring on church premises or in the course of church activities. How would you respond?
14. Many churches use adolescents to assist with children's programs. Can a church be liable on the basis of negligent selection for sexual assaults committed by such persons on younger children? If so, how might this risk be reduced?
15. Many incidents of child molestation have occurred in church restrooms. What are some steps that church leaders can take to reduce this risk?
16. Answer the following questions regarding criminal records checks:
- a. What is a criminal records check?
  - b. Has a church ever been found liable for not obtaining a criminal records check on an employee or volunteer?
  - c. Should a church ever obtain a criminal records check on an employee or volunteer? If so, under what circumstances, and what kind of check?
  - d. Summarize the Volunteers for Children Act and its significance to churches.
17. What are the advantages and disadvantages of each of the following kinds of criminal records checks:
- a. County records checks.
  - b. State records checks.
  - c. Sex offender registry checks.
  - d. FBI database checks.
18. A church conducts criminal records checks, in addition to other procedures, for every volunteer who wants to work with minors. K applies for a volunteer youth worker position, but a criminal records check reveals a 10-year-old conviction for resisting arrest. Does this disqualify the applicant from any position involving access to minors? Explain.
19. Same facts as the previous question, except that applicant had been convicted of embezzlement ten years ago.
20. Which of the following crimes should disqualify a person from working as a volunteer in a church youth program:
- a. Embezzlement.
  - b. Possession of a narcotic drug.
  - c. Burglary.

- d. Forgery.
  - e. Driving while intoxicated.
  - f. Rape of an adult.
  - g. Armed robbery.
21. A church performs a criminal records check on an applicant for a children's ministry position, and learns of two 30-year-old convictions for sexually molesting young children. The individual served a brief prison sentence for his offenses, and has lived an exemplary life ever since. Can the church disregard the prior convictions due to the fact that they happened so many years ago? Explain.
  22. A church board member insists that the church cannot use known homosexuals as volunteers in the church's youth ministry, since they are pedophiles. Evaluate this claim.
  23. A church selects Pastor J as its minister. Church leaders do not investigate the background of Pastor J, and do not discover that Pastor J was guilty of sexually seducing a church member in a previous church. Pastor J sexually seduces a member of his current church during marital counseling. The member sues the church as well as Pastor J. Answer the following questions:
    - a. On the basis of what legal theory would the church most likely be responsible for the member's alleged injuries?
    - b. Church leaders claim that they had no knowledge of the previous incident of misconduct, or of any other information suggesting that Pastor J would pose a risk of harm to anyone. Would this constitute an effective defense? Why or why not?
    - c. How could the church have reduced the risk of this incident occurring?
  24. Same facts as the previous question. Assume that Pastor J's denomination was aware of the previous misconduct, but did nothing to advise the church at the time it employed Pastor J, and did nothing to supervise or monitor Pastor J's activities.
    - a. On the basis of what legal theory would the denomination most likely be responsible for the member's alleged injuries?
    - b. What steps could the denomination have taken to reduce its risk of liability?
  25. A church lets D drive several members of the church youth group in a church vehicle on a church-sponsored activity. D's reckless driving results in an accident that injures some of the members of the youth group. The victims sue the church, as well as D. They reveal that D had been convicted of several traffic offenses in the year preceding the accident, and that his driver's license had been suspended. Answer the following questions:
    - a. On the basis of what legal theory would the church most likely be responsible for the victims' injuries?
    - b. Church leaders claim that they had no knowledge of D's poor driving record, or of any other information suggesting that D would pose a risk of harm to anyone. Would this constitute an effective defense? Why or why not?
    - c. How could the church have reduced its risk of liability?
  26. Several courts have refused to find churches liable on the basis of negligent selection or negligent supervision for the sexual misconduct of ministers. Why?
  27. Churches can be liable on the basis of negligent supervision for the sexual molestation of children on church premises. Name five precautions that a church can adopt that will reduce this risk.

28. What is negligent retention? Give an example of how a church may be liable on this basis for the molestation of a child by volunteer church worker.
29. An adolescent boy is injured while playing in a church-sponsored basketball game. The minor's parents sue the church, claiming that it is responsible for their child's injuries on the basis of negligent supervision. They claim that the injuries never would have occurred had the church exercised proper supervision over its workers and activities. What factors will a jury consider in reaching a decision in this case?
30. A 10-year-old boy is injured when he falls off a cliff while participating in a church-sponsored camping trip. The minor's mother sues the church, claiming that it is responsible for her child's injuries on the basis of negligent supervision. She claims that the accident never would have occurred had the church exercised proper supervision over its workers and activities. What factors will a jury consider in reaching a decision in this case?
31. Pastor S, a youth minister at First Church, takes 23 children swimming at a nearby lake. There were no other adult supervisors and no life guards were on duty. One of the children drowns. Answer the following questions:
- On the basis of what legal theory would the church most likely be responsible?
  - What is the probable outcome of such a lawsuit?
  - What steps could the church have taken to reduce its risk of liability?
32. A church operates a preschool. Children often are taken to a neighboring park for recreation. A four-year-old child is injured when she falls off a slide while her class is at the park. Is the church responsible for her injuries? Explain.
33. A church's organized children's activity ("children's church") is released prior to the end of the adult worship service. A 6-year-old child wanders out of the church building and is struck by a car while crossing a nearby street. Answer the following questions:
- On the basis of what legal theory would the church most likely be responsible for the victim's injuries?
  - What is the probable outcome of such a lawsuit?
  - What steps could the church have taken to reduce its risk of liability?
34. A church operates a nursery during morning worship services. During one service, the nursery is staffed by two 13-year-old girls. An infant breaks her leg when she falls off a diaper changing table during a diaper change. Answer the following questions:
- On the basis of what legal theory would the church most likely be responsible for the victim's injuries?
  - What is the probable outcome of such a lawsuit?
  - What steps could the church have taken to reduce its risk of liability?
35. A youth pastor takes his church youth group to an activity in another city. The group travels in a bus. On the way, the group stops at a fast food restaurant for lunch. A few of the children ask if they can go to another restaurant across the street where they will not have to wait so long to be served. The youth pastor agrees. As they cross the street, one of the children is struck by a car. The child's parents sue the church. What is the most likely basis of liability? Explain.
36. A mother brings her infant child to the church nursery before a morning worship service. During the service, an adult male comes to the nursery and asks a teenage nursery attendant for the same child. The attendant is reluctant, because she has never seen the man before. He

assures her that he is an “uncle” visiting from out-of-town. The attendant is satisfied with this explanation and gives the child to the man. Following the morning service the mother goes to the nursery and is shocked to learn that her child is not there. It is later determined that the “uncle” in fact was a former husband who was seeking custody of the child. Answer the following questions:

- a. On the basis of what legal theory would the church most likely be responsible for the victim’s injuries?
  - b. What is the probable outcome of such a lawsuit?
  - c. What steps could the church have taken to reduce its risk of liability?
37. A church has a policy requiring two adults to work in the nursery. However, the policy does not prohibit children from being in the custody of less than two adults. On a Sunday morning during worship services, one adult temporarily leaves the nursery for ten minutes to speak with another church member. A few days later the parents of one of the infants in the nursery suspect that their child has been molested. Suspicion is focused on the church nursery. Since the two nursery workers cannot prove that they both were present with the child throughout the entire worship service, they cannot “prove their innocence.” The worker who was present in the nursery while the other worker was temporarily absent is suspected of wrongdoing, even though she is completely innocent. What steps could the church have taken to prevent this from happening?
38. A pastor learns that a registered sex offender is attending the church. Should the person be barred from attending the church? If not, should his activities be limited, and if so, how?
39. A church sponsors several small groups that meet in members’ homes. Parents of young children often bring their children with them to such meetings. Children typically are placed in a room separate from their parents, and supervised by a teenage worker. On one occasion, a five-year-old child is molested by a teenage supervisor at a small group meeting. Answer the following questions:
- a. Can the church be liable for the victim’s injuries? If so, what is the most likely theory of church liability?
  - b. What steps could the church have taken to prevent this incident from occurring?
40. T was a Sunday school teacher for several years. T resigned his position and had no further position in the church involving minors. A few years later it is disclosed that T invited a child from the church to his home and molested her. Church leaders were not aware that T had ever invited a child to his home, or that he ever had any social contacts with children from the church. The child’s parents sue the church, claiming that it was negligent in supervising T. What is the probable outcome of such a lawsuit?
41. Same facts as the previous example, except that T had been asked to resign as a Sunday School teacher after the pastor learned that he had engaged in inappropriate sexual conduct with another minor. Church leaders were not aware of any contacts or socializing between T and children from the church. What is the probable outcome of the lawsuit?
42. A church adopts a policy requiring reference checks on all persons who volunteer to work in any youth program. B is allowed to work as a volunteer in a youth activity without any reference checks. If B engages in inappropriate sexual contacts with a minor and the church is sued, what is the most likely basis of liability?

43. Pastor J accepts a position as pastor of a church. He plans on counseling church members in his office, but is concerned about reducing the risk of false allegations of inappropriate behavior during counseling sessions. What precautions can Pastor J take to reduce or eliminate the risk of inappropriate behavior and false allegations?
44. A church wants to start a counseling ministry that will be staffed by volunteers. The volunteers are not licensed counselors or psychologists, but they have attended a 3-day training event. List several legal concerns that are associated with this counseling ministry.
45. A 30-year-old woman sues a church, claiming that when she was a 15 years old a youth pastor sexually molested her on church premises. Answer the following questions:
- On the basis of what legal theory would the church most likely be responsible for the victim's injuries?
  - What is the most likely legal defense available to the church? What is the likelihood that this defense will be successful?
46. Same facts as the previous question. Assume that the woman claims that she has suffered severe emotional problems since being molested by the youth pastor, but that she did not "discover" that her problems were caused by the youth pastor's misconduct until she went to a counselor shortly before filing her lawsuit. Will these allegations affect the outcome of the case? Explain.
47. Same facts as the previous question, except that the woman claims that the molestation occurred when she was 3 years old, and that she had "repressed" all memory of it until she went to a counselor shortly before filing her lawsuit. Will this allegation affect the outcome of the lawsuit? Explain.
48. What is "ratification"? Give an example of how a church might be liable on this basis.
49. A pastor announces to the congregation following a worship service that the church board dismissed T from membership in the church because of adultery. T sues the church for defamation. How would a court most likely resolve this case under each of the following assumptions:
- T was guilty of adultery.
  - T was not guilty of adultery.
  - There were nonmembers present in the congregation when the pastor made the announcement.
  - There were no nonmembers present in the congregation when the pastor made the announcement.
50. A denominational publication lists ministers who have been "dismissed" as a result of discipline. A dismissed minister sues the denomination for defamation. What is the likely outcome of such a case? Explain.
51. Explain the "qualified privilege" defense that may be available to churches that are sued for defamation.
51. What is charitable immunity? Is it recognized in any states? Explain.
52. A church requires all parents to sign a "release form" before their children can participate in swimming and other sports activities and out-of-town trips. Answer the following questions:
- What is a release form?
  - Assume that the youth group goes on a trip to another city in a church-owned vehicle, and that several children are injured when the driver loses control because of a



- tire blowout. It is later determined that the tire had been driven for 70,000 miles and had little if any tread left. Several parents threaten to sue the church on behalf of their injured children. Would the release form prevent them from doing so?
- c. How do the courts generally view release forms? Why?
53. What is comparative negligence? Why would this concept be relevant in the event someone is injured on church property or during a church activity?
54. A parent informs two board members at her church that her 5-year-old child was sexually molested by a volunteer children's worker during a church activity. The board members share this information with the entire board, and the board removes the accused worker from his position. However, no one notifies the church's liability insurance company of the potential claim. Two years later, the parent sues the church. The lawsuit claims that the victim has suffered severe psychological problems as a result of the molestation, and that the church is legally responsible for the injuries on the basis of negligent selection and negligent supervision. The church sends the lawsuit to its insurance agent. The insurance company refuses to provide the church with a defense of the case, or pay any judgment or settlement, on the ground that the church failed to provide it with timely notice of the potential claim after the incident occurred. The church asks a court for a ruling on the coverage of this claim under its insurance policy. What is the likely outcome of such a claim?
55. A minister of a local church injures the driver of another car while driving negligently. Answer the following questions:
- On the basis of what legal theory would the church most likely be responsible for the victim's injuries?
  - On the basis of what legal theory would a parent religious denomination most likely be responsible for the victim's injuries?
  - What defenses are available to the denomination in the event it is sued by the victim?
56. What are punitive damages? Why should church leaders be familiar with this term?
57. The legal doctrine of joint and several liability is being restricted or eliminated in several states. Why is this development of interest to denominational agencies?
58. A woman who is sexually seduced by a minister sues a denomination with which the church is affiliated. The woman argues that the denomination is liable for the conduct of affiliated churches and clergy, since they are all "one big family." Specifically, she alleges that the denomination "held out" affiliated churches to be its agents through (1) local church use of the denominational name, (2) ordination of ministers by the denomination, and (3) denominational authority to discipline clergy. Answer the following questions:
- On the basis of what legal theory would the church most likely be responsible for the victim's injuries?
  - On the basis of what legal theory would a parent religious denomination most likely be responsible for the victim's injuries?
  - What defenses are available to the denomination in the event it is sued by the victim?
59. A minister confesses to sexual relations with a church member. The minister is disciplined by his denomination, but he is allowed to remain in the active ministry. The minister accepts a call at a church in another community. Does this situation impose any risk for the denomination? Explain.

60. Same facts as the previous question, except that the minister is dismissed by his denomination. He applies for ordination in another denomination, which ordains him. The other denomination did not ask the minister if he had previously been ordained with another church, and did not discover that he had been dismissed for inappropriate sexual relations with a church member. Assume that the minister engages in inappropriate sexual relations with a member of his new church. Answer the following questions:
- The woman sues the former denomination, claiming that it negligently failed to warn the other denomination of the minister's misconduct. What is the likely outcome of such a claim? Explain.
  - The woman sues the second denomination. What is the most likely basis of liability? Explain.
  - Identify any legal defenses that may be available to the second denomination.
  - What steps could the second denomination have taken to reduce the risk of liability in such a case?
61. A parent informs church leaders that her child was molested by a volunteer youth worker at the church. The church leaders remove the volunteer from his position, but do not inform the church insurance company. Answer the following questions:
- Is the church's failure to promptly notify the insurer of any legal significance? Explain.
  - The church's liability insurance policy excludes any intentional or criminal acts. Does this mean that the church is uninsured if the victim or her parent decides to sue the church? Explain.
62. Explain the difference between "claims made" and "occurrence" insurance policies.
63. Answer the following questions about arbitration:
- What is arbitration?
  - What is the difference between arbitration and mediation?
  - What are the advantages of arbitration?
  - Should churches adopt arbitration policies? If so, for what disputes, and on what terms?
  - On what grounds might the validity of an arbitrator's award be legally challenged?

## **DISCUSSION QUESTIONS**

- Why do you suppose that churches once were immune from legal liability in many states? Do you agree with the prevailing view that churches should be responsible like any other organization for injuries caused by their employees or by dangerous conditions on their premises?
- Some argue that the existence of liability insurance only encourages lawyers to file lawsuits, and that the lack of insurance will discourage litigation. Do you agree with this logic? Should churches be uninsured? Explain.
- Some male clergy have adopted a policy of not counseling with unaccompanied females without a third person being present. Evaluate the effectiveness of such a procedure in reducing the risk of seduction, as well as the risk of false claims of seduction. Is such a procedure going too far? Are there less restrictive means that would be as effective?

4. Many courts have ruled that churches and denominational agencies cannot be liable on the basis of negligent selection or negligent supervision for the sexual misconduct of clergy, since any attempt by the civil courts to resolve such claims would violate the First Amendment religion clauses. Do you agree with this position? What considerations support the opposite view?
5. How should church leaders respond when they learn that one or more registered sex offenders is attending the church? Should such persons be permanently excluded? Should they be allowed unrestricted access to church property and activities? How are the principles of mercy and protection reconciled?

# CHAPTER 11

## TERMS

benevolent neutrality  
Congress  
establishment clause  
free exercise clause  
incorporation doctrine  
judicial review  
*Marbury v. Madison*  
state

## LEARNING OBJECTIVES

- Understand the original purpose of the First Amendment’s “nonestablishment of religion” clause.
- Explain the way the US Supreme Court’s 2022 decision in *Kennedy v. Bremerton* changes the analysis courts should use for First Amendment “nonestablishment of religion” clause cases.
- Understand the significance of the Supreme Court’s decision in *Marbury v. Madison*.
- Understand what is meant by the *incorporation doctrine*.

## SHORT-ANSWER QUESTIONS

1. The manager of a large apartment complex prohibits non-residents from entering the premises for evangelistic purposes. The minister of a neighboring church contacts the manager, and suggests that the manager’s behavior violates the First Amendment right of religious freedom. Is the minister correct? Explain.
2. How can the First Amendment, which prevents “Congress” from establishing a religion, be relied on by the courts in striking down the actions of state legislatures and public school boards that promote religion?
3. The author of this text states that the nature of the American system of government was altered by the Supreme Court’s 1803 decision of *Marbury v. Madison*. Do you agree or disagree with this statement? Explain.
4. Explain the “incorporation doctrine.” What is its relevance to churches?
5. What do you believe was the original purpose for the First Amendment religion clauses?
6. Massachusetts was the last state to disestablish an established religion. This occurred nearly a half a century after the ratification of the First Amendment. How is this fact relevant in interpreting the original purpose of the First Amendment’s nonestablishment of religion clause?
7. The Supreme Court has called for a “benevolent neutrality” on the part of government toward religion. What does this mean, and why is this necessary?

## **DISCUSSION QUESTIONS**

1. How would the framers of the Constitution and Bill of Rights have viewed the “incorporation doctrine”? Do you believe that it is relevant today to determine the intention of the framers?
2. The Supreme Court has observed that an emphasis on one of the First Amendment’s two religion clauses inevitably leads to a clash with the other. What did the Court mean?

# CHAPTER 12

## TERMS

historical practices and understandings  
neutral law of general applicability  
primary effect  
Religious Freedom Restoration Act

## LEARNING OBJECTIVES

- Explain the current meaning of the First Amendment’s nonestablishment of religion clause.
- Explain the current meaning of the First Amendment’s free exercise of religion clause.
- Apply the current meaning of both of the First Amendment’s religion clauses to a variety of circumstances.

## SHORT-ANSWER QUESTIONS

1. Based on the US Supreme Court’s 2022 decision in *Kennedy v. Bremerton*, what will courts reference in order to determine if a law or governmental practice is consistent with the First Amendment’s “establishment clause”?
2. What factors must a court consider in determining whether a particular law or governmental action violates the First Amendment’s “free exercise of religion clause”?
3. A public university denies Christian students the right to use campus facilities for group meetings. It permits several other non-religious organizations to use such facilities. Has the university violated the First Amendment’s free exercise of religion clause? Explain.
4. A taxpayer is opposed to war on the basis of religious convictions. As a result, she refuses to pay that portion of her federal income taxes that will be allocated to defense. The IRS compels the taxpayer to pay her full income taxes. Has it violated the First Amendment’s free exercise of religion clause? Explain.
5. The Supreme Court has observed that the concept of free exercise of religion is fundamentally incompatible with the philosophy of disestablishment contained in the establishment clause. What did the Court mean?
6. A bookstore owner sells a wide variety of books and publications, but he refuses to sell any religious literature. Has he violated the free exercise of religion clause? Explain.
7. A public school permits students to meet on school premises before regular school hours to participate in religious exercises. Does this practice violate the establishment clause? Explain.
8. A new religious sect espouses child sacrifice under certain circumstances. A court grants an injunction prohibiting such a practice. The sect complains that its right to freely exercise its religion has been violated. Evaluate the merits of the sect’s claim.
9. A small Jewish sect in New York reintroduces animal sacrifice. The Humane Society seeks a court order prohibiting the practice. The sect counters by claiming that it has a constitutional right to practice its religion. How will the court rule?

10. A person charged with the unauthorized possession and use of narcotic drugs claims that his use of such drugs is a religious exercise that is protected by the First Amendment. He cites as authority Genesis 1:29, which states, "And God said, 'Behold, I have given you every plant yielding seed which is upon the face of the earth.'" How will a court rule on the religious freedom defense?
11. In 1990, the Supreme Court rendered a highly controversial interpretation of the First Amendment's free exercise of religion clause. What did the Court say that was so controversial? Did the decision, as some have suggested, effectively "repeal" the concept of religious freedom? Explain.

## **DISCUSSION QUESTIONS**

1. The courts have ruled that it is permissible to inscribe the national motto "In God We Trust" on all of our coins and currency, but that it is not permissible to post a copy of the Ten Commandments in public school classrooms. Can you think of a rational basis for this distinction?
2. The courts have relied on the establishment clause in outlawing most collective prayers in public elementary and secondary schools. But does not the prohibition of such prayers violate the First Amendment freedom of certain students to exercise their religion? How should a court balance these competing interests?

# CHAPTER 13

## TERMS

discretion  
proselytize  
public safety, convenience, peace and order  
religion  
Sunday closing law  
time, place, and manner restrictions

## LEARNING OBJECTIVES

- Understand the extent to which religious “witnessing” is a constitutionally protected practice.
- Understand the extent to which prayer is a permissible activity on public property.
- Distinguish between those religious displays on public property that are permissible under the establishment clause, and those that are not.
- Describe under what circumstances public property can be used for religious purposes.
- Explain the current status of Sunday closing laws.
- Identify those situations in which the state has the legal authority to mandate medical treatment over the religious objections of the patient or the patient’s family.
- Define the terms *religion* and *religious*.

## SHORT-ANSWER QUESTIONS

1. A city ordinance requires all outdoor public meetings in city parks to be approved by the parks commissioner. The ordinance does not give the commissioner any criteria to follow. A religious group requests permission to conduct a meeting in a park, but the commissioner denies the request. Is the city ordinance legally valid?
2. A city ordinance permits city officials to deny parade permits if the public safety, convenience, peace, and order would be materially jeopardized. A controversial religious group applies for a parade permit, and its application is rejected on the ground that the proposed parade would be “disruptive of public peace and quiet, and might cause hostilities.” The religious group challenges the permit denial in court. How will the court rule?
3. Can a city pass an ordinance prohibiting door-to-door religious evangelism in residential neighborhoods? Explain.
4. A city council opens each session with prayer. Does this practice violate the establishment of religion clause of the First Amendment? Explain.
5. A public courthouse lobby contains a statue of Moses holding the Ten Commandments. Does this display constitute a violation of the establishment of religion clause of the First Amendment?
6. A city maintains the lighted cross on top of city hall during the Christmas season. Is this practice permissible?



7. A city decorates street lamps during the Christmas season with wreaths and colored lights, and it places a large display consisting of Santa Claus, a sleigh, and six large reindeer, on the city hall lawn. Is this practice permissible?
8. Same facts as question 7, except that the display contains a nativity scene showing Mary, Joseph, and the baby Jesus. Does the inclusion of the nativity scene affect the constitutionality of the display?
9. A church's sanctuary is lost in a fire. The congregation would like to use a public school gymnasium for Sunday worship services while its sanctuary is being rebuilt. Determine the constitutionality of this use in each of the following situations:
  - a. The school board offers the gymnasium to the congregation without charge.
  - b. The school board charges the church the same rental fee it charges other community groups that use the gymnasium.
  - c. The school board charges the church more than the rental fee it charges other community groups that use the gymnasium, in order to avoid any violation of the First Amendment's nonestablishment of religion clause.
10. A church's sanctuary becomes too small to accommodate its growing congregation. The church rents public school facilities for worship services and educational classes on Sunday mornings. At first, the church had plans to build a larger sanctuary. However, after several months, the congregation becomes accustomed to using the school facilities, and loses interest in building a new sanctuary. Evaluate the constitutionality of this arrangement.
11. A public high school would like to begin basketball games involving both its boys' and girls' teams with a prayer recited by a local minister. Evaluate the constitutionality of this practice.
12. A church would like to invite a popular Christian author to give a speech on family values as depicted in the Bible. Since the church's sanctuary is too small to accommodate the expected crowd, the church asks public school officials if it can rent a public high school gymnasium for a one-night meeting. School officials reject this request. Evaluate the constitutionality of the school's position in each of the following situations:
  - a. The school has allowed a variety of community organizations to rent its gymnasium in recent years, including some religious groups.
  - b. The school has never rented its gymnasium to any outside group.
  - c. The school permits non-religious community organizations to rent its gymnasium.
13. A group of Christian students at a public high school asks school officials for permission to conduct a Bible study club after school hours in a vacant classroom. The school permits several other student groups to use classrooms after hours for meetings. School officials refuse to permit the Bible study club since it would violate the First Amendment's ban on the establishment of religion. Do the Christian students have any recourse? Explain.
14. Federal employees are given a paid holiday at Thanksgiving and at Christmas. Is this practice permissible? Explain.
15. A young woman is seriously injured in an accident. She refuses to receive potentially life-saving medical treatment because of her religious convictions. Can the state compel her to receive medical treatment?
16. Same facts as problem 15, except that the woman's four year old son is also injured in the same accident. Can the woman refuse the administration of medical treatment to her son? Explain.

17. Has the Supreme Court held that secular humanism is a religion?
18. Do the courts restrict the term *religion* to those faiths maintaining a belief in a Supreme Being?

### **DISCUSSION QUESTIONS**

1. Do you agree with the Supreme Court's definition of religion, or do you find it too expansive or too restrictive? Formulate your own definition.
2. Can you think of a rational basis for permitting public university students to conduct group worship and Bible study in school facilities, but denying the same right to students in public elementary and secondary schools?
3. A city enacts an ordinance banning door-to-door religious evangelism because of the disturbance it causes homeowners. Is disturbance to homeowners a sufficient reason for banning door-to-door evangelism? Should it be?