

ASSEMBLIES OF GOD THEOLOGICAL SEMINARY
Legal Issues for Churches and Clergy
PTH 628-01
Fall 2001

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Office Hours: by appointment
Class Time: Wednesday/Friday
8:55-10:10 AM

COURSE SYLLABUS

COURSE DESCRIPTION

A course designed to acquaint the student with the application of civil law to churches and clergy.

COURSE OBJECTIVE

This course is designed to provide students with: (1) a basic understanding of many of the substantive legal principles that apply to churches and clergy; (2) an ability to recognize circumstances that require professional legal counsel; (3) a recognition that many pastoral decisions must be considered and rendered in the light of their legal consequences; (4) familiarity with the more common forms of church and clergy legal liability; (5) an understanding of the legal rights and responsibilities of clergy; (6) a familiarity with the structure and workings of our legal system and with the legal remedies available under that system; and (7) a basic understanding of several risk management principles and strategies that can help churches and clergy lower their risk of liability.

TEXTBOOKS

Required

R. Hammar, *Pastor, Church & Law*, 3rd edition (Christian Ministry Resources 2000)

Optional

R. Hammar, *The Church & Clergy Tax Guide* (Christian Ministry Resources 2001)

R. Hammar, *Church Law & Tax Report* (bimonthly newsletter--Christian Ministry Resources) (selected excerpts may be distributed in class or placed on reserve in the library)

R. Hammar, *Church Treasurer Alert!* (monthly newsletter--Christian Ministry Resources) (selected excerpts may be distributed in class or placed on reserve in the library)

J. Cobble, R. Hammar, *2002 Compensation Handbook for Church Staff* (Christian Ministry Resources 2001)

J. Cobble, R. Hammar, *Risk Management Handbook for Churches and Schools* (Christian Ministry Resources 2001)

BASIC OUTLINE

Set forth below is a tentative schedule, on a week-by-week basis, of the materials that will be covered in class and the corresponding assignments and examinations. This schedule is subject to change. The materials covered are demanding, and most students should expect to spend approximately 2 hours in preparing for each class session.

Week 1 August 31

Introduction

Week 2 September 5 and 7

- Objectives:
- (1) Understand the legal difference between the terms *pastor*, *clergyman*, and *minister*.
 - (2) Explain why it is important to define the terms *pastor*, *clergyman*, and *minister*.
 - (3) Name several statutes that use the terms *pastor*, *clergyman*, or *minister*.
 - (4) Explain how the civil courts determine the definition of a “minister” when a church’s definition differs from the definition in a statute.
 - (5) 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.
 - (6) Understand the legal significance of the term *ordained*, *commissioned*, or *licensed*.
 - (7) Understand the legal aspects of the selection of clergy.
 - (8) Understand under what circumstances the civil courts will intervene in internal church disputes involving the selection of clergy.
 - (9) Explain why clergy and churches should enter into a contract of employment, and identify several important items to cover in such a contract.
 - (10) Define *unreasonable compensation*, and explain the significance of this concept to churches and clergy.
 - (11) Identify those circumstances in which the civil courts may intervene in internal church disputes involving the dismissal of a minister.

Subjects: Law and the pastor--definitions and status
Law and the pastor--the pastor-church relationship

Assignments: *Pastor, Church & Law (third edition)*, chapter 1
Pastor, Church & Law (third edition), chapter 2

Week 3 September 12 and 14

- Objectives:
- (1) Continuation of Week 2.
 - (2) Describe a minister’s legal authority.
 - (3) Identify the legal requirements that clergy must follow in performing marriage ceremonies.
 - (4) Explain the status of clergy, and theology students, under the Selective Service Act.
 - (5) Understand the nature and purpose of the clergy-penitent privilege, and apply it to a variety of factual circumstances.
 - (6) Understand whether or not a minister has a legal duty to report known or reasonably suspected cases of child abuse to state authorities.

Subjects: Law and the pastor—authority, rights, and privileges
Assignments: *Pastor, Church & Law (third edition)*, chapter 2 continued
Pastor, Church & Law (third edition) chapter 3

Week 4 September 19 and 21

- Objectives:
- (1) Continuation of Week 3.
 - (2) Understand the legal concept of negligence, and its application to clergy and churches.
 - (3) Define the term *defamation*, and explain its application to clergy both as plaintiffs and defendants in civil litigation.
 - (4) Define the term *undue influence*, and explain its significance to churches and clergy.
 - (5) Define the four varieties of *invasion of privacy*, and their relevance to clergy.
 - (6) Define the term *malpractice*, and describe the application of the term to a variety of clergy practices.
 - (7) Understand the application of securities law to clergy who offer or sell church securities to church members as a means of raising funds.
 - (8) 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.
 - (9) Understand the legal consequences to a minister in the event the minister engages in sexual contact with an adult or minor member of the congregation.
- Subjects: Law and the pastor--authority, rights, and privileges
Law and the pastor—liabilities, limitations, and restrictions.
- Assignments: *Pastor, Church & Law (third edition)*, chapter 3 continued
Pastor, Church & Law (third edition), chapter 4

Week 5 September 26 and 28

- Objectives: (1) Continuation of Week 4.
- Subjects: Law and the pastor--authority, rights, and privileges (continued)
Law and the pastor--liabilities, limitations, and restrictions
- Assignments: *Pastor, Church & Law (third edition)*, chapter 3 continued
Pastor, Church & Law (third edition), chapter 4 continued

Week 6 October 3 and 5

Exam #1 (*Pastor, Church & Law, third edition, chapters 1-4*)

Week 7 October 10 and 12

- Objectives:
- (1) Understand the legal differences between an unincorporated and an incorporated church, and explain the advantages of the corporate form or organization.
 - (2) Define the terms *charter*, *constitution*, *bylaws*, and *resolution*, and explain the legal priorities among these terms.
 - (3) Describe the legal authority of church members to inspect church records.
 - (4) Explain the purpose and application of the Church Audit Procedures Act.
 - (5) Summarize several state and federal reporting requirements that apply to many churches.
 - (6) Identify several potential theories of personal legal liability for church officers and directors.
 - (7) Explain the application of charitable immunity laws to church officers and directors.
 - (8) Describe the two approaches to civil court intervention in church membership determinations.

(9) Explain the legal effect of church meetings that are conducted in violation of a church's bylaws.

Subjects: Law and the church—organization and administration

Assignments: *Pastor, Church & Law (third edition)*, chapter 6

Week 8 October 17 and 19

Objectives: (1) Continuation of Week 7.

Subjects: Law and the church--organization and administration

Assignments: *Pastor, Church & Law (third edition)*, chapter 6

Week 9 October 24 and 26

Objectives:

- (1) Understand the meaning of workers compensation, and explain the application of workers compensation laws to religious organizations.
- (2) Understand the application of Immigration and Naturalization Service Form I-9 to religious organizations.
- (3) Explain the "employment at will" doctrine, and identify several exceptions to it.
- (4) Understand the procedure employees following when filing a discrimination claim under federal civil rights laws.
- (5) Understand the importance of the term "commerce" in the context of federal employment and civil rights laws, and explain its meaning.
- (6) Explain the "clergy exemption" under federal civil rights laws.
- (7) Understand the major provisions of Title VII of the Civil Rights Act of 1964, and explain its application to religious organizations.
- (8) Understand the major provisions of the federal Age Discrimination in Employment Act, and explain its application to religious organizations.
- (9) Understand the major provisions of the Americans with Disabilities Act, and explain its application to religious organizations.
- (10) Understand the major provisions of Employee Polygraph Protection Act, and explain its application to religious organizations.
- (11) Understand the major provisions of Occupational Safety and Health Act, and explain its application to religious organizations.
- (12) Understand the major provisions of Fair Labor Standards Act, and explain its application to religious organizations.
- (13) Understand the major provisions of National Labor Relations Act, and explain its application to religious organizations.
- (14) Understand the major provisions of Family and Medical Leave Act, and explain its application to religious organizations.
- (15) Identify the legal risks associated with the use of reference letters, and explain how these risks may be reduced.
- (16) Understand the application to religious organizations of state laws banning employment discrimination of the basis of sexual orientation.

Subject: Law and the church—the church as employer

Assignments: *Pastor, Church & Law (third edition)*, chapter 8

Week 10 **October 31 and November 2**

- Objectives: (1) Continuation of Week 9
- Subjects: Law and the church—the church as employer
- Assignments: *Pastor, Church & Law (third edition)*, chapter 8

Week 11 **November 7 and 9**

- Objectives: (1) Recognize that churches are not immune from all forms of government regulations.
(2) Understand that application of various financial regulations to churches, including regulation of charitable solicitations, limitations on charitable giving, and securities law.
(3) Understand the basic elements of copyright law, and their application to church practices.
(4) Understand the application of the Charitable Contribution and Charitable Donation Act to churches.
- Subject: Law and the church—government regulations of churches
- Assignments: *Pastor, Church & Law (third edition)*, chapter 9

Week 12 **November 14 and 16**

Exam #2 (*Pastor, Church & Law, third edition*, chapters 6-8, and 9)

Week 13 **November 21 (no class on Friday, November 23 – Thanksgiving Break)**

- Objectives: (1) Define the term *negligence*.
(2) Define the term *respondeat superior*, and explain its relevance to churches.
(3) Understand the potential legal liability of churches for failing to exercise reasonable care in the selection of workers.
(4) Understand the potential legal liability of churches for failing to exercise reasonable care in the supervision of workers and activities.
(5) 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.
(6) Explain the concept of “fiduciary duty,” and its relevance to churches.
(7) Identify several legal defenses to negligence.
(8) Understand the legal status of “release forms” that purport to relieve a church of liability for the negligence of its employees and volunteers.
(9) 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.
(10) Define “defamation,” and explain defenses that are available to churches that are sued for alleged defamation.
(11) Identify legal risks associated with counseling activities, and explain how those risks may be reduced.
(12) 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.
- Subjects: Law and the church--church legal liability

Assignments: *Pastor, Church & Law (third edition)*, chapter 10

Week 14 **November 28 and 30**

Objectives: (1) Continuation of Week 13.

Week 15 **December 5 and 7**

Objectives: (1) Understand the original purpose of the first amendment’s “nonestablishment of religion” clause.
(2) Explain the three factors that have led to the enormous expansion and revision of the original intent of the first amendment’s “nonestablishment of religion” clause.
(3) Understand the significance of the Supreme Court’s decision in *Marbury v. Madison*.
(4) Understand what is meant by the *incorporation doctrine*.
(5) Explain the current meaning of the first amendment’s nonestablishment of religion clause.
(6) Explain the current meaning of the first amendment’s free exercise of religion clause.
(7) Apply the current meaning of both of the first amendment’s religion clauses to a variety of circumstances.
(8) Understand the extent to which religious “witnessing” is a constitutionally protected practice.
(9) Understand the extent to which prayer is a permissible activity on public property.
(10) Distinguish between those religious displays on public property that are permissible under the establishment clause, and those that are not.
(11) Describe under what circumstances public property can be used for religious purposes.
(12) Explain the current status of Sunday closing laws.
(13) 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.
(14) Define the terms *religion* and *religious*.

Subjects: Church and state--a summary of constitutional history
Church and state--the present meaning of the first amendment religion clauses
Church and state--significant first amendment issues

Assignments: *Pastor, Church & Law (third edition)*, chapter 11
Pastor, Church & Law (third edition), chapter 13
Pastor, Church & Law (third edition), chapter 14

Week 16 **December 12 and 14**

FINAL EXAM – Friday, December 14, 7:30 – 10:00 AM (*Pastor, Church & Law, third edition*, all assigned sections in chapters 10, 11, 13, 14)

METHODOLOGY

This course is designed to give students a practical, rather than an academic or theoretical, understanding of the materials presented. Students will be encouraged to apply what they have learned to practical situations both in assigned homework problems and class discussions. Special emphasis will be placed on addressing the questions at the end of each chapter. Lectures will be presented on each assigned chapter to explain difficult materials, emphasize major points, and present additional materials and insights not covered in the texts. Free discussion is encouraged. However, students are discouraged from participating in class discussion unless they have studied the assigned materials.

GRADING PROCEDURE

Exams. There will be 3 exams worth 100 points each (as noted above). Each exam will be of equal weight in determining the final course grade. Each exam will consist of approximately 40-50 multiple choice questions. Exams will be given on the scheduled date only (as listed above, subject to change by announcement of your professor). No student will be permitted to take an exam before or after the scheduled time, unless they have advance written permission from the Dean's office. In no event will a late exam be given more than 1 week following the scheduled examination date. "Difficulty points" may be added to exam scores, depending on the difficulty of a particular exam.

Quizzes. Unannounced quizzes occasionally may be given. They generally will be worth 10 points.

Other. Class attendance and class participation will be considered in resolving close cases.

Grading scale. 90-100% = A; 80-89% = B; 70-79% = C; 60-69% = D; 0-59% = F.

ABOUT YOUR INSTRUCTOR:

Richard R. Hammar is an attorney, CPA, and author specializing in legal and tax issues for churches and clergy. He is a graduate of Harvard Law School, and attended Harvard Divinity School. He is the author of more than 40 books, including *Pastor, Church & Law*, the annual *Church and Clergy Tax Guide*, and *The Church Guide to Copyright Law*. He also writes *Church Law & Tax Report*, a widely-circulated bimonthly newsletter reviewing significant legal and tax developments for churches and clergy, and the *Church Treasurer Alert!*, a monthly newsletter for church treasurers. He has contributed articles to numerous journals and publications; is a frequent speaker at legal and tax conferences; has taught church law at a number of seminaries; and is frequently asked to consult with attorneys, CPAs, and church leaders on church and denominational legal and tax issues. He has been a lecturer at the annual Washington Nonprofit Tax Conference since 1992; and has addressed a National Institute of the American Bar Association, and continuing education programs at New York University, Princeton, and Emory University. He is a member of the Missouri and Illinois Bar Associations, the American Institute of Certified Public Accountants, the Christian Legal Society, and is admitted to practice before the United States Tax Court.

SELECTED BIBLIOGRAPHY

Students interested in further reading are directed to the following resources by Richard Hammar:

title	description
Pastor, Church & Law (3rd ed. 2000)	The definitive treatise on American church law. Extensive coverage of virtually every legal issue that will confront a religious congregation. Issues include the clergy-penitent privilege, clergy malpractice, child abuse reporting, sexual misconduct by clergy and lay workers, incorporation, church records, selection and removal of church officers and members, charitable immunity, membership meetings, church property, zoning, discrimination in employment, termination of employees, copyright, securities, and church liability. The book is filled with helpful examples, tables, and checklists, and includes instructional aids at the end of each chapter that make the book useful as a textbook.
Risk Management Handbook for Churches and Schools (1st ed. 2001)	Addresses 33 specific property and liability risks, and provides congregational leaders with specific recommendations on managing those risks. This book is used in a course offered by Cambridge University leading to a certificate in risk management for church leaders. An invaluable resource in identifying and managing most risks.
Church Law & Tax Report	A bimonthly newsletter apprising churches and clergy of all legal and tax developments affecting them. Contains feature articles, summaries of recent developments, and a tax calendar highlighting significant

title	description
	tax dates for both clergy and church treasurers. Issues covered in recent issues include the legal liability for incidents of sexual misconduct, minister's housing allowance, political activities by churches, liability of church board members, child abuse reporting, confidentiality, employee dismissals, clergy malpractice, inspection of church records, and much more. For church leaders wishing to remain fully informed on all legal and tax developments affecting them and their churches, this publication is indispensable.
Church Treasurer Alert!	A monthly newsletter designed specifically to assist the church treasurer. Articles are short and easy to comprehend, and are targeted to the unique and often complex legal and tax rules of particular interest to church treasurers. Topics included in recent issues include federal reporting requirements, how long to keep church records, detecting and preventing embezzlement, retirement plans for church staff, and complying with the new charitable contribution substantiation requirements.
Church and Clergy Tax Guide	The most authoritative and comprehensive tax guide available today for both clergy and churches. Comprehensive coverage of all significant tax issues. The book was designed to assist clergy in preparing their annual federal income tax returns, and to apprise churches of their federal reporting obligations. The book features over 100 illustrations and examples, and several problems including filled-in tax forms. Coverage includes employee or self-employed status, estimated taxes, withholding, social security options, housing allowances, business expenses, automobiles, contributions, retirement plans, church reporting obligations, plus much more.
The Church Guide to Copyright Law (3rd ed. 2001)	A complete and practical copyright reference designed for churches, clergy, and church musicians. Covers dozens of issues, including overhead transparencies, computer programs, chorus booklets, audio tapes, radio broadcasts, educational activities, and performances.
The Compensation Handbook for Church Staff (published annually)	This practical handbook provides a current and reliable picture of church compensation practices across the United States for nine separate staff positions within the local church. Included are compensation breakdowns according to church size, budget, denomination, and geographical setting. In addition to salary, data is provided on the availability and amount of several fringe benefits, including housing allowance, retirement plans, life insurance, health insurance, vacation pay, paid sick days, and auto allowance. Personal factors such as years employed, gender, and educational training also are taken into account. The handbook also includes a chapter on important tax issues that impact compensation planning. This resource can help your church determine appropriate levels of salary and fringe benefits for all clergy and staff positions.
Reducing the Risk of Child Sexual Abuse in Your Church	A kit containing the following items: (1) <i>Reducing the Risk of Child Sexual Abuse in Your Church</i> (book); (2) <i>Reducing the Risk of Child Sexual Abuse Training Manual</i> (book); (3) <i>Reducing the Risk of Child Sexual Abuse in Your Church</i> (25-minute video); and (4) a 1-hour audio tape. More than 60,000 churches are using this kit.
4-hour Legal Training Tape for Church Boards	This 4-hour audio tape series fills a critical need--providing church board members with an introduction to key legal issues. In 8 easily understood 30-minute presentations, church board members are introduced to such vital topics as fiduciary duties, personal liability, church records, and personnel issues. Every board member needs to be aware of the information in this set. We recommend that churches provide a set to every board member.
Selecting and Screening Ministers Kit	All you need to screen pastoral applicants--in one convenient kit. The kit includes an employment application, a questionnaire, more than 200 sample interview questions, reference check forms, plus much more.
Selecting and Screening Nonminister	All you need to screen nonminister employees--in one convenient kit. The kit includes an employment application, a questionnaire, interview questions, reference check forms, plus much more.

title	description
Employees Kit	
Selecting and Screening Volunteers Kit	All you need to screen volunteer workers--in one convenient kit. The kit includes an application, interview questions, reference check forms, plus much more.

SPECIFIC DATA

This syllabus was prepared by Richard Hammar in July 2001.