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Legal Issues for Churches: From Employment and Taxes to Trademarks and Cemeteries

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J. Doe v. Church

Churches are not as “special” to outsiders, whether those outsiders are

- cyber squatters
- copyright holders
- banks or
- slip-and-fall victims

Churches often will be treated as equal to businesses or other “legal entities” for purposes of

- contract law
- trademarks
- copyrights and
- negligence, among others.

How can churches be protective and proactive when engaging with the world?

Legal Threats

State action versus Private action
(government enforcement compared to civil
litigation)

State Action

What about the government going after a church?

US Constitution - Bill of Rights - First Amendment - Freedom of Religion - "Free exercise" clause:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...

http://www.law.cornell.edu/wex/free_exercise_clause

Free Exercise Clause

The Free Exercise Clause reserves the right of American citizens to accept any religious belief and engage in religious rituals. The clause protects not just those beliefs but actions taken for those beliefs. Specifically, this allows religious exemption from at least some generally applicable laws, i.e. violation of laws is permitted, as long as that violation was for religious reasons. In 1940, the Supreme Court held in *Cantwell v. Connecticut* that, due to the Fourteenth Amendment, the Free Exercise Clause is enforceable against state and local governments.

http://www.law.cornell.edu/wex/free_exercise_clause

Extra credit: Famous example of the Amish using the Free Exercise Clause?

Wisconsin v. Yoder

http://en.wikipedia.org/wiki/Wisconsin_v._Yoder

Wisconsin v. Yoder, 406 U.S. 205 (1972), is the case in which the United States Supreme Court found that Amish children could not be placed under compulsory education past 8th grade. The parents' **fundamental right to freedom of religion outweighed the state's interest in educating its children**. The case is often cited as a basis for parents' right to educate their children outside of traditional private or public schools.

1st Amendment Protections: Post-Yoder

Although the 1st Amendment may prevent government from infringing upon religious beliefs, 1st Amendment protections are not absolute. The courts may apply different legal tests depending on the “type” of law and who the infringer is (state or federal government).

Employment Division v. Smith (494 U.S. 872)–

Neutral and generally applicable laws, even if they incidentally burden religion, will be upheld unless **a plaintiff** can show that the law is not rationally related to protect a legitimate government interest.

However, if the law discriminates against religion “on its face,” **the government** must show that the law serves a compelling interest and must be narrowly tailored to advance that interest.

Despite the Supreme Court’s efforts to apply a lower standard of scrutiny to neutral laws, Congress swiftly responded to *Smith* by passing...

The Religious Freedom Restoration Act

The Religious Freedom Restoration Act (RFRA), which applies to the Federal Government, provides even greater protections for religious freedom—under the RFRA, the federal government must satisfy the compelling interest test when a federal law substantially burdens the exercise of religion.

Several states have passed their own versions of the RFRA.

Other statutes may apply depending on the claim involved. The Religious Land Use and Institutionalized Persons Act provides religious protections for those who worship in prison and for churches that face burdensome zoning law restrictions.

Ministerial Exception

- Separates Church and State
- Prohibits the courts from reviewing the decisions of the church that relate to church doctrine and inner workings of the church
- Court cannot review employment decisions related to ministerial staff
 - A church's decisions regarding its ministers are exempt from many state and federal employment laws
 - Claims of discrimination by a minister based upon a refusal to hire or promote, demotion and termination are all excluded from state oversight

Ministerial Exception, cont.

- A minister is an individual who is charged with duties that involve preaching, teaching, or caring for church members, and may include pastors, missionaries, worship leaders, teachers, and those who provide counseling or care to church members, as well as those occupying executive functions within a church conference

Who is the “Church”?

How does a church appear to the public or to potential plaintiff attorneys or the state?

Pennsylvania nonprofit organization?

Unincorporated Association?

Recognized by the IRS as exempt from tax?

Board-based or Members-based governance?

A plaintiff’s attorney, when going after a Church, is asking “who do I sue?”

Unincorporated Nonprofit Associations

But isn't incorporation a requirement for limited liability?

Surprisingly, no.

“A debt, obligation or other liability of a nonprofit association, whether arising in contract, tort or otherwise, is solely the debt, obligation or other liability of the nonprofit association.”

“A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation or other liability of the nonprofit association solely by reason of being or acting as a member or manager.”

15 Pa.C.S. § 9117 (a) (1) – (2)

* However, like with any entity structure, a member is always responsible for his or her own conduct (e.g., intentional acts) **and the organization should always be respected as a separate entity even if the law doesn't require corporate formalities.**

Private Plaintiffs suing Churches (civil litigation)

Legal claim basis // example of prospective plaintiff (J. Doe)

- contract law // e.g. banks, service providers such as photocopier leasing companies
- trademarks // e.g. trademark holders and online claimants [cyber squatters]
- copyrights // e.g. copyright holders online sending C&D notices and
- negligence // e.g. slip-and-fall victims, child abuse victims, among others.

Contracts

Contract law // e.g. banks, service providers such as photocopier leasing companies

Contracts most typically are written agreements with duties and an exchange of value.

Contracts

Charting a contract breach action

- notice of breach
- small claims court (Township) or Common Pleas Court (County)
- typically a hassle, usually not an entity threat
- if church loses and must pay sizable claim to the point this is an entity's existence threat — bankruptcy possible?

Does your church need a trademark?

- Identity issue —> exclusive right to use a trademark (e.g. the Church name) in the given services niche in the US
 - if using a name/phrase mark when engaging in “financial services” in the form of fundraising, such as for missions efforts or church programs
 - if seeking to prevent others from using the same mark, or to protectively “cover the field” staking a claim to that mark, and be able to continue using that mark

Trademark battles of Church vs Church?

Trademarks

Trademarks // e.g. trademark holders and online claimants [cyber squatters]

A trademark holder has an exclusive right to use a designation of origin of goods or services in a given niche of commerce. That "designation of origin" is a trademark.

Trademarks protect consumers, by allowing them to know the origin of the goods or services they purchase.

The measure of trademark infringement is whether a consumer would be confused, and mistake one trademark for that of another.

The internet has substantially increased the incidence of trademark infringement and resulting liability.

Trademarks

Cybersquatting - The improper use of a trade mark as a domain name without the trademark owner's consent.

Occupying a web domain for financial gain NOT for a bonafide business conducted or advertised at that domain, but rather to extort the otherwise valid holder of that domain name.

A USPTO registered trademark holder can defeat a cybersquatter using a simplified arbitration process set up by the World Trade Organization. The Uniform Domain Name Dispute Resolution Policy established by the Internet Corporation for Assigned Names and Numbers.

So if a Church has a USPTO trademark, the Church can also get the domain name for that trademark name by taking it back from a cybersquatter.

.Church

Domain names are not just limited to .com, .net, or .org.

In the fall of 2014, the domain name .Church was made available for use and has since increased in popularity.

Securing a domain name is far less costly and time-consuming than raising a trademark infringement claim or paying a cyber squatter for use of the name.



Trademarks

Charting a trademark infringement action:

- notice of trademark infringement, usually an e-mail or letter to “Cease & Desist”
- federal court if USPTO registered trademark
- possibly a major hassle, e.g. church must change name
- unlikely insurance coverage
- usually capable of settlement
- risk of \$150,000 statutory damages and attorneys fees of plaintiff if infringement was “willful”

Copyrights

Copyrights // e.g. copyright holders online sending C&D notices

Copyrights are rights to creative works. The US Copyright office federally registers creative works, in a notice filing system (allows others to get notice of who owns what works).

Copyright infringement is using/copying/selling/modifying someone's copyrighted work without written permission in advance.

The internet has substantially increased the incidence of copyright infringement and resulting liability.

Copyrights

Charting a copyright infringement action:

- notice of copyright infringement, usually an e-mail or letter requiring payment of a “License Fee” or threatening dollar damages
- possible insurance coverage
- federal court if federally-registered copyright
- possibly a major hassle, e.g. “License Fee” may be a considerable sum. Typical license fee for an infringed image/photo is several hundred to several thousand dollars.
- usually capable of settlement
- risk of \$150,000 statutory damages and attorneys fees

Torts - Negligence

Negligence // e.g. slip-and-fall victims, child abuse victims, among others.

Torts - Negligence

Charting a negligence action:

- demand letter from plaintiff's attorney
- Church's insurer reviews potential claim, and insurer may take over defense or settle
- state or federal court litigation
- if uninsured claim, possibly a threat to continued existence as a legal entity → bankruptcy/dissolution

Update to Child Protective Services Law

A package of child protection legislation amending this Law was enacted in 2014 and then in 2015. Twenty four bills were signed into law.

The new law:

- Redefines Child Abuse (includes now 10 types of abuse),
- Clarifies which paid and unpaid persons working with children must undergo background checks,
- Expands the categories of persons required to report suspected child abuse (aka “Mandated Reporters”),
- Explains how reports should be made, and
- Outlines the organization’s duties when a Mandated Reporter suspects abuse.

Update to Child Protective Services Law (cont.)

- The Law's requirements apply to paid and unpaid (aka volunteer) folks who, on the basis of the individual's role as an integral part of a regularly scheduled program, activity or service, is a person responsible for the child's welfare or has direct contact with children.
- The law mandates three specific background checks:
 - Pennsylvania State Police Criminal Record Check
 - Pennsylvania Child Abuse History Clearance Form
 - FBI Criminal Background (fingerprint set) Check

“Prospective Volunteers” must submit all required clearances prior to the commencement of the service.

Update to Child Protective Services Law (cont.)

The term “Mandated Reporter” has been expanded to include “an individual, paid or unpaid, who, on the basis of the individual’s role as an integral part of a regularly scheduled program, activity, or service, is a person responsible for the child’s welfare or has direct contact with children.”

- The above definition would include any adult who works with infants, children, or youth during a church’s regularly scheduled activities or services.
- After a Mandated Reporter makes a report of suspected abuse, he or she must immediately thereafter notify the person in charge of the organization that she has done so. The law then imposes a duty on the organization to cooperate with any investigation of the abuse by child welfare authorities and state police.
- The organization has a duty to protect the identity of a Mandated Reporter. No data may be released that would identify who made a report of suspected abuse.

Update to Child Protective Services Law (cont.)

- Reports can be made electronically through KeepKidsSafe.pa.gov.
- Training on child abuse recognition and reporting and information related to clearances are also available.

How to reduce or eliminate harm from potential claims?

- Change practices to reduce liability (e.g. register a trademark, train newsletter staff on copyrights, use diligence and care in property maintenance)
- Impose policies to eliminate blind spots (e.g. whistleblower policies, conflict of interest policies, child protective policies and training)

How to further reduce claim harms?

Lessons learned from businesses and wealthy individuals:

1. legal entity creation and appropriate use (e.g. multi-tier companies, abiding by governing documents of Articles & Bylaws)
2. contracts (e.g. provisions to shift liability away)
3. insurance (insurer become primary payor)

Insurance

Watch out for territorial exclusions in your coverage:

- Going on a missionary trip?
 - Consider a temporary policy that covers employees and volunteers who will travel internationally
 - Foreign travel insurance policies can include:
 - Liability coverage
 - Personal Property coverage
 - Medical Expense coverage

Periodically review your General Liability Coverage and consider increasing your coverage with an Umbrella policy.

Workers' Compensation Insurance

Church employers are also subject to Pennsylvania's Workers' compensation Laws.

If the church has even one employee, workers' compensation insurance coverage is necessary. It doesn't matter if the employee is only part time.

Be careful how you classify! An organization cannot simply characterize an employee as an independent contractor—so long as the church controls the manner in which a person works—that person is an employee. Other factors may determine a worker's status, but the right to control work is the key factor.

Workers' Compensation Insurance can be obtained through a number of private sector carriers or through the State Workers' Insurance Fund.

Health Insurance

The Affordable Care Act applies to churches with 50 or more employees.

Churches employing 50 or more employees are required under the law to provide health insurance.

Churches should speak with their benefits provider.

Unemployment Compensation

Churches and related entities, including schools affiliated with churches, do not participate in unemployment compensation insurance.

No employee of the church is eligible for unemployment compensation benefits.

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QUESTIONS & ANSWERS

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