

# Parsing Liabilities – Dioceses, Religious Institutes, & Others



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# What We Will Cover

- Importance of sorting out “the Responsible Party” as litigation gets more complex.
- Principles for Civil Liability: Agency and Employment
- Limits of Constitutional Protections
- Applications
  - Clergy Misconduct
  - Assignment of Clergy & Religious in Different Settings
  - Successor Liability

# Illustrative Example

- Priest in Entrusted Parish accused of assault committed in the Parish School.
- Lawsuit names – priest, pastor, parish, school, principal (woman religious), bishop, diocese, institute, etc. Status of Accused – Diocesan vs. Religious Clergy?
- Variety of Legal Claims – including negligent supervision, negligent retention, respondent superior, etc. Failure to supervise the Institute? [Canon law issue?]
- Which is the proper defendant? Could there be more than one?
- How can we get consensus on “the proper defendant”?

# Civil Liability

- Background Study – counting cases and rationales. Why do some claims succeed and others fail?
- Published – B.C. Law Review, BYU Law Review, Hornbook
- Finding the Right Defendant – Entity with juridic authority and civil duty to respond to matter in dispute. Not Everybody!
- Organizing principles in civil law
  - Civil control?
  - Denominational control?
  - The Risks of Meddling!



# Supervision vs. Employment vs. Agency

- Sources of Law – Civil vs. Canon
- Civil Law Factors – State Law Issues
  - Principles of employment
  - Principles of agency (actual and implied)
- Actual vs. Theoretical Control
- Agency vs. “Canonical Agency”

# Constitutional Law Primer

- Protection for Religious Institutions -- Origin in 19th Century US law of private associations... *Watson v. Jones* (1872)
- Recognized structural and doctrinal differences in American religions and Limits of Civil Court Authority.
- “Consent” and “Competence”
  - Consent – organizations framed by consent of persons to set of rules and principles. Guide allocation of internal responsibility through common understanding.
  - Competence – not just “knowledge” but “power to decide” questions. Can’t force (or allow) civil courts to decide religious questions.

# Constitutional Limits on Civil Suits

- Avoidance of religious interpretation (Serbian).
- Avoidance of control issues (Kedroff).
- Allowance of litigation of civil issues on “neutral secular principles”
- Reasonable decisions & strengthen “deference” on employment issues
- Protection? If we properly plan for it.....

“Which Entity Had Actual Control and Authority  
Over Person or Activity That Created the  
Liability?”



# Diocese vs. Institute

- Focus on Clergy Misconduct Cases
- Limits on Episcopal Oversight and Supervision
- Grant of Faculties – Religious vs. Civil Act?
  - Actual vs. Potential Control
  - Civil vs. Canonical Law
- Service in Diocesan Ministry (e.g., Vicar for Clergy, etc.)
- Parish Employment?

# Diocese vs. Parish

- Division of control over matters – property vs. personnel
  - Administration of grounds and buildings/ diocesan policies vs. actual control
  - Is the parish a suable entity? (or are we still in a Corporation Sole)
- Clergy vs. Lay personnel
  - Supervisory claims
  - Anti-discrimination/wage claims
- Religious (Clergy vs. Brothers/Sisters)
  - Clergy Supervision
  - Employment Status of Brothers/Sisters in Parish?

# Entrusted Parish

- Diocese → Parish ← Institute
- Identity of Accused.
  - Priest.
  - Religious (Employed? Assigned?).
  - Lay Employee/Volunteer.
- Adherence to Diocesan Policies (e.g., child protection policies and certifications). Control Creep

# Incorporated Ministry of Institute

- Limited Role of Bishop/Diocese in operations of Institute ministry:
  - Catholicity -- Adherence to Doctrine -- Spiritual Life
- Role/Status of Accused - Which entity has the knowledge *and* control?
- Implication of canonical sponsor into liability of sponsored ministry
  - What's the actual role and authority of the sponsor?
  - How is the sponsor involved in governance/administration?

# Legacy Liabilities – Who Is Responsible?

- New unified canonical province – ancient claims.
- “Legacy” Gifts?
- New Civil Entity – no successor liability? Can we make the claims stick against a legacy entity?
- What about Canon 121? (“[N]ew juridic person obtains the goods and patrimonial rights ... and assumes the obligations with which they were burdened.”)

# Summary

- Civil law, not canon law, is the operative benchmark.
- Canon law can be *applied*, not interpreted.
- Key Concept: The proper defendant is the one which has actual control.
- Each responsible for own sphere; pay attention to places where the spheres intersect (entrustment, assignment, etc.)
- No meddling – stay in your lane!

# Prevention Points

- Clarity about Roles and Responsibilities within Dioceses and between Dioceses and Institutes (especially around parishes!)
- Foster Personal relationships, cordial communications:  
BUT - PLEASE TELL YOUR LAWYERS!
- Written understandings/agreements (even if everyone agrees that “absolutely nothing can go wrong”)
- Civil courts cannot resolve disputes about canonical authority – there are (imperfect) processes.

# DISCUSSION





**Thank you.**

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