



Civil Law and Religious Organisations

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Structure of Today's Session

- Introduction-What do we mean by Civil Law and why is it important?
- Relevance of different Church/State models and different juridical traditions to this context.
- Some specific Civil Law issues in respect of tort.
- Conclusions.





What do we mean by Civil Law and why is it important? (I)

Three possible meanings of term:

Civil law as opposed to criminal;

Civil Law/Roman Law based systems, as opposed to Common Law systems;

Civil/Secular Law as opposed to Canon Law. On this occasion, we are discussing Civil/Secular Law as opposed to Canon Law.

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What do we mean by Civil Law and why is it important? (II)

Civil Law determines:

- How religious organisations can exist/obtain legal personality
- Whether religious organisations enjoy special benefits and have special responsibilities-and whether this is contingent on registration.
- *Therefore, the way in which religious organisations operate in a practical way is determined by Civil Law.*

What do we mean by Civil Law and why is it important? (III)

- Civil law determines the services that religious groups can lawfully provide for their members, and the wider population.
- It also sets out the parameters within which this can happen, e.g.
 - Whether/how faith groups can conduct legally binding marriages
 - Whether faith communities have a special role in the provision of education.



What do we mean by Civil Law and why is it important? (IV)

- Civil law also determines the obligations and liabilities that religious organisations and their members may face, e.g.:
 - Whether paid ministers enjoy employment rights or contractual protection.
 - Regulation of contracts, property ownership, insurance and other issues which faith groups need to address in order to manage their day to day affairs.
 - Setting boundaries for operation in terms of tortious and criminal liability - i.e. what types of conduct may give rise to third party claims for harm, and/or punitive state action?



What do we mean by Civil Law and why is it important? (V)

- Civil law is backed by the coercive power of the State.
- Imprisonment-most drastic exercise of state power.
- Forcible deprivation of money or property.
- In other words, state law is not optional.
- Sometimes, individuals or faith groups do opt to disobey Civil Law for conscientious reasons, but there are consequences to that choice.



Different kinds of Church/State paradigms (I)

- Establishment/National Church systems-e.g. England
- Cooperationist, e.g. Spain
- Separatist, e.g. France



Different kinds of Church/State paradigms (II)

- Some commentators have questioned the helpfulness of these traditional models.
- Doe and Sandberg-in practical terms, most contexts are de facto cooperationist.
- Garcia Oliva and Hall-the usefulness of the categorisation depends on the reasons for asking. There remains symbolic importance to the model adopted, and this influences the behaviour of actors and decision-makers on the ground.



Different Types of Legal Tradition

- As we previously discussed, England and Wales sit within the Common Law family. This has significance for approaches to:
- case law and codification.
- The understanding of “family” and responsibilities/rights.
- The conceptualisation of individual versus collective responsibility.



Specific issues in relation to tort-Trespass (I)

- Trespass to the person:
- Non-consensual touching.
- There does not have to be harm involved, but the touching must go beyond the norms of accepted behaviour in order to be unlawful-*Collins v Willcock* [1984]
- What are the boundaries to socially accepted behaviour, and to what extent are they context specific? Are individuals assumed to have consented to some practices by entering a particular space?



Specific issues in relation to tort-Trespass (II)

- *Pleasant Glade Assembly of God v Schubert* (2008)





Specific issues in relation to tort-Trespass (III)

- Trespass and infant baptism:
- The operation of trespass in relation to young children is complex.
- Usually, physical contact with children is lawful either because: 1) It is within the realm of normal social interaction; or 2) A defence of necessity would apply.
- If a baptism took place and one of the parents was unaware, and afterwards objected, what would the position be?

Specific issues in relation to tort-Negligence (I)



- Basic elements
- Duty
- Breach
- Causation
- Damage

Specific issues in relation to tort- Negligence (II)

Duty of Care

Arises in one of two situations:

1) D has created a risk of harm to third parties.

2) D has taken on responsibility for C's welfare.

Specific issues in relation to tort-Negligence (III)



- Breach.
- The duty of care is only to do what is reasonable, it is not to shield individuals for all possible risk of harm.
- In some circumstances a clear warning sign might be enough, e.g. cakes sold at a church bazaar might contain nuts, or have been baked in a kitchen where cross contamination was a real risk. Alerting people to this risk is sufficient to avoid liability in most situations.

Specific issues in relation to tort-Negligence (IV)

- Causation- D must have actually caused whatever harm C suffered.
- Damage- Physical injury; Psychiatric injury-only covered if C suffers a mental illness diagnosable by a doctor; Property damage; Economic damage-only applicable in VERY limited circumstances. D must have assumed a specific duty of care for C's financial wellbeing-unlikely in the context of most faith groups.



Specific issues in relation to tort-Defamation

- Liability for false statements that harm a person's reputation.
- Slander and libel- transient versus permanent expressions.
- Need only be published to one person other than C, although in most cases the statement will be spread more widely.
- Websites, social media posts, emails, text messages, parish magazines, notice sheets could all potentially contain defamatory statements.





Specific issues in relation to tort-Vicarious Liability (I)

- This is the mechanism that makes the torts which we have discussed such a serious concern with faith groups.
- It applies to ANY tort.
- Tortfeasor (T'or) commits a tort.
- D2 is liable NOT because of anything that D2 has done or failed to do. VL=Strict liability
- D2 is liable because of their relationship with T'or.

Specific issues in relation to tort-Vicarious Liability (II)

- Origins of Vicarious Liability.
- Modern VL makes more sense if you are aware of its evolution since 2001.
- VL used to require:
 - T'or commits a tort.
 - T'or was an employee of D2.
 - T'or was acting in the course of their employment.



Specific issues in relation to tort- Vicarious Liability (III)



Contemporary VL



T'or commits a tort



T'or is in a “qualifying relationship” with D2



The tort is “closely connected” to that qualifying relationship.



There is a huge amount of uncertainty as to what this actually means and attempts from appellate court to resolve the chaos have only made matters worse.

Specific issues in relation to tort- Vicarious Liability (IV)



There is no doubt, however, that intentional torts-including trespass to the person ARE covered by VL and may be “closely connected”.



Lister v Hesley Hall (2001)

Specific issues in relation to tort-Vicarious Liability (V)

- Qualifying relationships include:
 - RC priests and their diocese
 - Members of religious communities
 - Foster parents and local authority
 - Prisoners and prison authorities



Specific issues in relation to tort-Vicarious Liability (VI)

- It appears religious ministers will almost always be covered.
- Unpaid volunteers in religious contexts are at least sometimes included, even when not in leadership positions.
- Members of religious communities are covered-even though married couples are not.



Specific issues in relation to tort-Vicarious Liability (VII)

- What constitutes a close connection is especially complex with religious ministers, given that their role is often a matter of vocation/lifestyle.
- The difficulty in defining boundaries makes it particularly challenging to discern what will be construed as a close connection.

