

## CHURCH AND LAW

Summary Course Prospectus -- Schools of Divinity and Law – Wake Forest University  
Spring 2010 – M 3:30–6:00 p.m. -- Professor Steve Nickles – [snickles@wfu.edu](mailto:snickles@wfu.edu)

Arguably, the Church<sup>+</sup>--and each person's own church--is the most important institution of society, culture, and life. Most people, however, do not realize that every church in the United States is generally, largely subject to secular law. The Free Exercise Clause of the U.S. Constitution is fairly limited; and the Establishment Clause limits federal and state governments from providing discriminatory benefits to religion.

The activities of a church that secular law governs is large, and the secular law that applies to a church is vast. In some respects, this law is applied differently to churches, but the immunity and exceptions the Constitution provides are relatively small. So, knowing only Canon law and the constitutional law of the First Amendment means knowing very little about how and the extent to which government regulates and limits church activities.

A church, as a going enterprise, is akin to a business. Not in terms of purpose or importance but in terms of many activities, a church is similar to the nearby McDonald's restaurant. \* A church organizes as a legal entity; gathers income and works to reduce costs; owns property; employs workers; provides services to the public; advertises; makes contracts with suppliers of goods and services; accounts to government; and is accountable to strangers who are injuriously affected by the church's management of its property and the conduct of its clergy.

In all of these activities, the McDonald's Corporation--and every McDonald's restaurant--is highly regulated by secular law. The success of the business and the personal success of its managers depend to a significant degree on understanding and complying with this law.

The same is true for a church and its managers. The pastor and staff of a church cannot help congregants get through the gates of Heaven without getting the congregants through the church doors and into the pews. Keeping the doors open and the pews filled requires, in significant part, that the pastor and her staff know and satisfy the law. The same is true for other clergy having other roles in fully succeeding in their vocations. And, of course, the managerial responsibilities and the legal duties and risks imposed on a clergy person are often wider and heavier than those borne by a McDonald's manager.

So, business and all other areas of secular law generally, typically apply fairly equally to for-profit and non-for-profit enterprises, including churches. This course explores the most important pieces of this law as applied to churches. An equal purpose is to expose and examine how this law treats churches and clergy differently -- more or less demandingly. It is here--at the points of legal difference--that we can see how society truly values religion in relation to other interests that compete for the attention, primacy, and recourses of people and government.

It's important but fun stuff; the conduct of the course is informal; and no "offering" is solicited.

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<sup>+</sup> For purposes of this course, Church means any body of religious believer who organize, however loosely, to practice their religion; and, religion includes Abrahamic and Indian religions, Buddhism, and (to use a very traditional definition) any other system of faith and worship.

\* When Ray Kroc began building his hamburger empire, he would select sites for new stores by flying over communities and identifying suitable properties close to churches. The church feeds peoples' souls; the nearby McDonald's feeds their stomachs. Don't laugh. It obviously worked! Maybe it's a good metaphor for the interdependence of faith and economics.