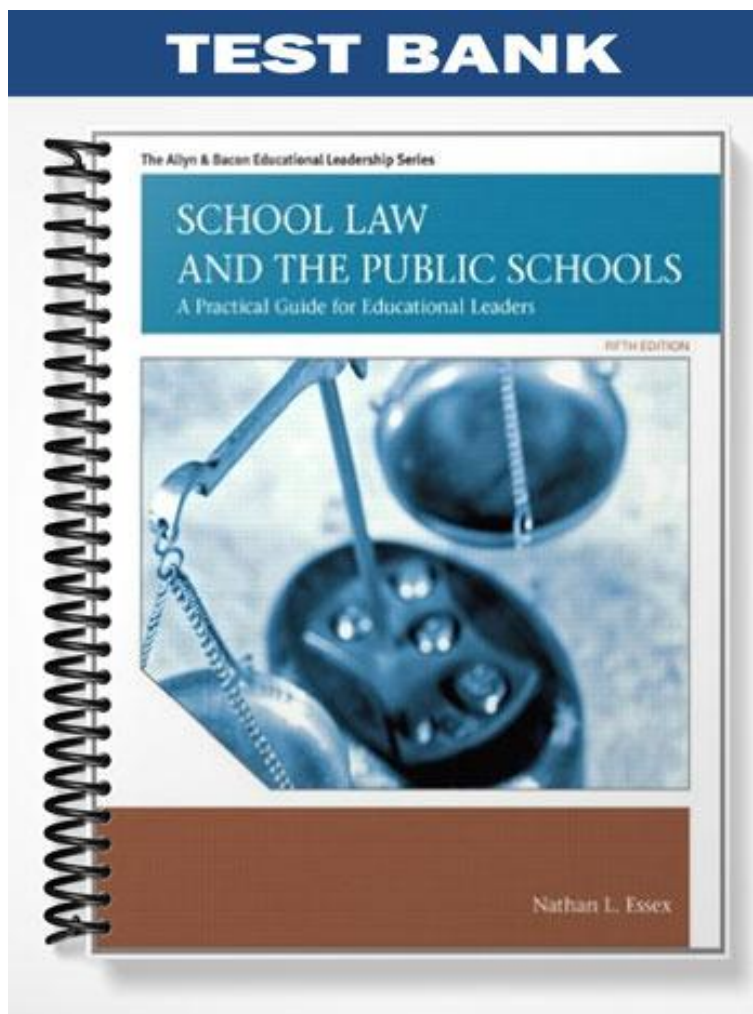


TEST BANK



The Allyn & Bacon Educational Leadership Series

SCHOOL LAW AND THE PUBLIC SCHOOLS

A Practical Guide for Educational Leaders

FIFTH EDITION



Nathan L. Essex

*Instructor's Manual with Test Bank
to accompany*

School Law and the Public Schools
5th Edition

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CHAPTER 1

LEGAL FRAMEWORK AFFECTING PUBLIC SCHOOLS

The Constitution, which is over 200 years old, continues to serve as the plan for American Government. It is considered to be the supreme law of the land. One of the most significant aspects of the Constitution is the Bill of Rights which provides information regarding the individual rights of U.S. Citizens. The Constitution also places restrictions on the powers of the government in relation to citizens' rights.

Students of school law should gain an understanding of the legal system that affects the operation of public schools. Since schools are considered governmental agencies, they are impacted by federal and state constitutions, federal and state statutes, and court decisions.

This chapter covers the basic sources of law and the relationship of each source of law to the operation of public schools. Each state has the responsibility to provide a free public school education for all children who reside within the state. The ultimate goal is to produce an educated citizenry that will benefit society.

Topical Outline of this Chapter

Sources of Law

State Agencies

Local Boards of Education

The U.S. System of Courts

Analysis of an Appellate Court Opinion

The Supreme Court

Legal Information Retrieval System

State Agencies

State legislatures in virtually all states have created administrative agencies to execute various laws and policies that affect public schools. One such agency is the State Board of Education. State Boards of Education govern the State Department. They have the responsibility for the development and management of public schools within their respective states. State legislatures who represent the legal authority in determining educational policy may delegate specific legal responsibilities to state boards.

Points of Emphasis:

1. State boards are often involved in setting certain standards for public schools.
2. State boards are closely involved in accreditation of state educational programs.
3. State boards may promulgate graduation requirements.
4. State boards may be responsible for implementing state testing and assessment programs.

Local Boards of Education

School boards are corporate bodies who are responsible for implementing legislative policy as well as formulating local policies governing schools as long as they do not conflict with state statutes. Board members are state officers who act as a body when conducting official business of the state. Most of their power is derived from the legislature either expressed or implied through proper delegation. Individual board members have no power beyond that which is provided to the board as a corporate body.

Points of Emphasis:

1. Local boards are responsible for formulating policies that facilitate the goals of their respective districts.
2. Their powers are granted by the legislature.
3. School boards in most jurisdictions are responsible for selecting a local superintendent.
4. The superintendent is accountable to the board and is responsible for executing board policy.
5. The board-superintendent relationship is best described as a legislative executive relationship.

Sources of Law

The organization and administration of public schools are determined by constitutions, statutes, case law, state agencies, and school board policies which are derived by state statute. This chapter discusses how the various sources of law shape the administration of schools and enable public schools to operate within the boundaries of the law. Students should understand the legal framework in which public schools operate and the significant role that all of these sources of law play in the successful management of public schools.

Beginning on page 3 of the text, there is a discussion of the primary sources of law followed by an analysis of the U.S. System of Courts on pages 7, 8, and 9. It is important that students understand the critical role the courts play in interpreting the law. An understanding of the powers and functions of the courts will enhance students' knowledge of the legal framework and how it impacts the management of public schools.

The U.S. System of Courts

Students must understand the hierarchy of the system of courts in the United States as well as their prescribed powers and functions to gain greater insight into the legal dimensions of school law. Since public schools are considered agents of the states, particular attention should be focused on the role of state courts in school matters that do not involve a federal question. Consequently, many education cases are heard in state courts for this reason. Students should pay attention to the map on page 7 which includes the federal circuit courts of appeal and understand that circuit court decisions only affect schools which are located in the particular circuit where the decision is rendered.

Analysis of an Appellate Court Opinion

This section covers the basic components of court opinions and is designed to facilitate an understanding of the court's ruling. A summary is presented of case citations, procedures by which a case reaches the courts, the facts of the case, the court's ruling, and justification as well as the disposition of the court.

A discussion of the U.S. Supreme Court's review process is presented on page 9 to enhance the student's understanding of the means by which cases are heard by the highest court in the land.

This Supreme Court Ritual section on page 10 briefly describes the inner workings of the highest court outlining voting procedures and the day to day duties of the Supreme Court justices.

The Supreme Court

This chapter ends with interpretation of U.S. Supreme Court decisions which enables students to readily identify Supreme Court rulings based on parallel citations as well as the sources by which a Supreme Court decision may be located for research purposes. Finally, a listing of all Supreme Court Justices is found on pages five and six. These listings may assist students in examining the court's ruling in light of the social and philosophical views of society. For example, patriotism was a high priority among most Americans during World War II. Many post World War II cases focused on civil rights issues as the country began to become concerned with individual rights and

freedoms. Additionally, some courts were more liberal while others were more conservative based on the composition of the court as reflected by the President's appointment of them and the Congress that confirmed the President's nomination.

Legal Information Retrieval System

Students who desire to research and retrieve law cases may do so using two primary legal retrieval systems: Westlaw and LexisNexis. Westlaw contains case law, state and federal statutes, administrative codes, and law journal reviews. It is the most comprehensive source and contains 40,000 data bases which are indexed to the West Key Number System. The Supreme Court Reporter, the Federal Reporter, and the Federal Supplement can be accessed through Westlaw's website, <http://www.westlaw.com/>.

LexisNexis is not as comprehensive as Westlaw but does contain legal information derived from newspapers, magazines, and legal documents. Public records, unpublished opinions and legal news are found in LexisNexis. One website, <http://www.Lexis.com>, is sought for legal research while the other, <http://www.Nexis.com>, is used by corporations, local, state and federal government as well as by academicians.

Multiple Choice

1. The primary source of individual rights stems from the:
 - a. 14th Amendment
 - b. Bill of Rights
 - c. 5th Amendment
 - d. State Constitutions

2. The U.S. Constitutional amendment that reserves the power of education to the state is the:
 - a. 5th
 - b. 10th
 - c. 1st
 - d. 14th

3. The Fourteenth Amendment was adopted in:
 - a. 1878
 - b. 1886
 - c. 1866
 - d. 1868

4. The U.S. Constitution is not:
 - a. A framework of law in which orderly governmental processes operate
 - b. The primary source of law
 - c. Subordinate to state constitutions, local regulations, and case law
 - d. The basic law of the land

5. Which key U.S. Constitutional amendment has a bearing on the operation of public schools?
 - a. First
 - b. Fourth
 - c. Fifth
 - d. Fourteenth
 - e. All of the above

6. State constitutions perform a number of functions with one exception:
 - a. Establishes a system of public education
 - b. Guarantees absolute personal rights
 - c. Prescribes funding and operational schemes for public schools
 - d. Restricts power of legislative bodies

7. A statute represents:
 - a. An act of the legislative branch of government
 - b. The most abundant source of law
 - c. The most viable source of new laws or revisions of existing law
 - d. All of the above

8. Case law is not based on:
 - a. Judge-made or common law
 - b. Local ordinances
 - c. Judgments, opinions, and decisions of courts
 - d. Frequent reliance on precedents

9. Common law precedents are driven by:
 - a. State constitutions
 - b. Legislatures
 - c. Federal constitution
 - d. Courts

10. State agencies are created by:
 - a. State legislatures
 - b. State constitutions
 - c. Federal statute
 - d. Chief state school officer

11. State boards of education generally do not:
 - a. Establish certification standards for teachers and administrators
 - b. Review and approve local school district budgets
 - c. Establish high school graduation requirements
 - d. Establish state accreditation standards for school districts

12. Local school boards:
 - a. Develop school district policies
 - b. Provide a vision for the district
 - c. Formulate goals to support the district's mission and vision
 - d. All of the above

13. Courts in the United States do not:
 - a. Settle controversies through applying basic law principles to merge factional circumstances
 - b. Interpret legislative enactments
 - c. Determine policies, and regulations affecting public schools
 - d. Determine the constitutionality of statutes

14. U.S. Supreme Court decisions may be derived from:
 - a. United States Reporter
 - b. Supreme Court Reporter
 - c. United States Supreme Court Reporter—Lawyers' Edition
 - d. All of the above

15. The U.S. Supreme Court justices spend their time:
 - a. Listening to lawyer arguments
 - b. Discussing court business
 - c. Reviewing the U.S. Constitution
 - d. All but C

True or False Questions

1. The powers of the Federal Government are not delegated but are inherent powers. (Powers are delegated and are not inherent powers.)
 True False

2. Article VII of the Constitution declares the national government supreme. (Article VI).
 True False

3. The U.S. Constitution stipulates that no state shall enforce any law which abridges the privileges or immunities of citizens of the United States.
 True False

4. The Fourteenth Amendment is enforced by state or federal courts operating within their proper jurisdiction.
 True False

5. Federal Courts had no authority to enforce a State Bill of Rights that was under the jurisdiction of state courts prior to 1868.
 True False

6. The judicial system primarily includes federal courts.
 True False
7. Federal Courts address cases involving constitutional issues.
 True False
8. Courts are limited to cases or legal conflicts presented to them for resolution.
 True False
9. There are 11 (eleven) Federal Circuit Courts of Appeal.
 True False
10. There are 98 Federal District Courts in the United States.
 True False
11. A State Department of Education is an arm of the Chief State School Officer?
 True False
12. Local boards of education execute board policy.
 True False
13. Local board meetings are closed to the public except by invitation.
 True False
14. News media may be present during local school board executive sessions.
 True False

Fill in the Blank Questions

1. _____ represents the primary source of individual rights and freedoms under the U.S. Constitution.
2. _____ to the _____ are considered to represent fundamental liberties of free people.
3. The _____ represents the basic law of the land.
4. _____ represent the most abundant source of law affecting public schools.
5. In many instances, _____ decisions rely on past court decisions which are called _____.
6. State Boards of Education are agencies created by state _____ to execute various laws and policies governing public schools.
7. _____ are relied on by school personnel as a basic source of law for the operation and management of schools.
8. _____ are professional arms of states that provide consultation and technical support to local school districts.
9. _____ may not abrogate responsibilities delegated to them by state statute.

10. _____ is a judicial process where a case is moved from a lower court to a higher court.
11. The _____ is the party who initiates a legal suit.
12. Courts of general jurisdiction are often referred to as _____.

Essay Questions

1. What specific constitutional amendments pertain to education? Discuss the importance of each to the effective operation of public schools.
2. Discuss the significance of the separation of powers as prescribed by the Constitution. What are the ramifications of this concept to the management and operations of public schools?
3. Discuss the concept of “precedent” and its implication for court decisions affecting public schools.
4. What are the three essential functions of courts in the United States and what is the relevance of these functions to the administration of public schools as agents of the state?
5. Identify the two primary legal information retrieval systems and discuss how they may support legal research initiatives.

CHAPTER 2

RELIGION AND THE PUBLIC SCHOOLS

Religion is one of the most emotional and controversial issues facing public schools as there are strong advocates for the inclusion of prayer and Bible reading in the nation's schools as well as those who vehemently oppose their inclusion. This chapter provides a comprehensive discussion of religious issues that impact public schools with an emphasis on separation of church and state, the principle of neutrality, and the basic intent of the First Amendment to the U.S. Constitution regarding religion.

Page 15 provides an overview of the omission of religious liberties in the constitution as defended by Madison along with Jefferson's view that a religious provision in the Bill of Rights was needed. These actions led to a series of proposals that included amendments aimed at preventing encroachment by the government into the rights and liberties of all citizens. These proposals eventually became the Bill of Rights. Noticeable among these rights was the separation of church and state. It is interesting to note that the composition of the U.S. Supreme Court may affect how separation of church and state is defined. Strict interpretation of this principle is found in the *Lemon v. Kurtzman* and *Early v. Dicenso* cases on page 21. A more liberal view is found in the *Agostini* case on page 20.

In a rather unusual move, the U.S. Supreme Court reversed its decision in the 1985 *Aquilar v. Felton* case which disallowed federal funds to cover salaries for public school teachers who teach in parochial schools. In a 5-4 decision, the court held that it was an unconstitutional establishment of religion for public school teachers to provide remedial classes in religious schools. Justices Powell, Marshall, Brennan, Blackmun, and Stevens voted against providing aid to parochial schools while Justices Rehnquist, O'Connor, Burger and White supported aid to parochial schools. Interestingly, the *Agostini* case was also a 5-4 decision. Justices O'Connor, Scalia, Rehnquist, Kennedy, and Thomas constituted the new majority that supported aid to parochial schools. Justices Souter, Stevens, Breyer, and Ginsberg voted against aid to parochial schools.

School sponsored prayer and Bible reading are emotional issues that permeate public schools today as the Congress, legislators, and President Bush advocate the return of prayer and Bible reading to public schools. A number of states have passed legislation calling for silent prayer and meditation in public schools. These efforts have largely been unsuccessful. In spite of a lack of success, states continue their efforts to achieve this goal.

Topical Outline of this Chapter

School Sponsored Prayer

Engle v. Vitale

School Sponsored Bible Reading

Abington School District v. Schempp

Wallace v. Jaffree

Lemon v. Kurtzman and *Early v. Dicenso*

Prayer at School Events

Chandler v. Siegleman

Santa Fe Independent School District v. Jane Doe

Aid to Parochial Schools

Use of School Facilities by Religious Student Groups

Bronx Household of Faith v. Community School District No. 10

Religious Activities and Holiday Programs

Teaching the Bible in Schools

Gibson v. Lee

Wiley v. Franklin

Intelligent Design

Kitzmiller v. Dover Area School District

Theory of Evolution

Epperson v. Arkansas

People of State of Illinois ex rel and McCollum v. Board of Education of District No. 71, Champaign County, Illinois

Zorach v. Clauson

Pledge of Allegiance

Religious Rights of Teachers in the School Environment

May v. Evansville

School Sponsored Prayer

School sponsored prayer is clearly prohibited in public schools. It violates the Establishment Clause of the First Amendment. In spite of the landmark ruling by the U.S. Supreme Court in *Engle v. Vitale*, prayer in public schools remains at the center of controversy as law makers across the country seek to find ways to include prayer in public schools.

Engle v. Vitale

Discussion: New York state law mandated a brief non-denominational daily prayer to be recited aloud by each class in the public schools in the presence of a teacher. Children who did not wish to recite the prayer were excused from this exercise. This practice was challenged by parents on constitutional grounds as an impermissible accommodation to religion.

Points of Emphasis:

1. The state's encouragement of daily recitation of prayer in public schools is unconstitutional.
2. Any statute authorizing prayer recitation in the public schools is in direct violation of the First Amendment which prohibits the establishment of religion by a state.
3. The court stressed that neither the state nor the federal government can constitutionally force a person to profess a belief or disbelief in any religion nor can it pass laws which aid all religions against non-believers.
4. The court used a test which later became the first two prongs of the Lemon test.

School Sponsored Bible Reading

School sponsored Bible reading in public school is illegal and in violation of the Establishment Clause. The U.S. Supreme Court ruled against school sponsored Bible reading. Students, however, may read their Bibles during non instructional times. The Bible may also be included as a component of history literature or philosophy courses. The Bible may also be taught so long as it does not violate the Establishment Clause.

Abington School District v. Schempp

Discussion: This case challenging daily Bible reading emerged in Pennsylvania. A companion case, *Murray v. Curlett* also challenged the practice of daily Bible reading in the public schools in Baltimore. Both cases reached the Supreme Court during the same time period and were consolidated. These practices were obviously held to be unconstitutional by an 8-1 decision of the Supreme Court.

Points of Emphasis:

1. The primary effect test was invoked by the court to determine the impact of the statute and practice relating to each case.
2. If the primary effect of a law or practice has the effect of advancing or inhibiting religion or creating excessive entanglement between church and state, then it is not permissible.
3. The principle of neutrality is breached when there is no clear line of separation between church and state.
4. The Establishment Clause of the First Amendment was made applicable to the states by virtue of the 14th Amendment.
5. The court did not suggest that the use of the Bible as a historical literary, ethical or philosophical document is impermissible if a secular purpose is clearly served.

Wallace v. Jaffree

Discussion: The Alabama legislature passed a statute authorizing a daily one minute period of silence for meditation or voluntary prayer in the public schools. The court held that a silent meditation statute which does not demonstrate a clearly secular purpose does violate the Establishment Clause of the First Amendment.

Points of Emphasis:

1. The statute in *Jaffree* failed the first prong of the tripartite test which found that no secular purpose was served.
2. There was a clear legislative intent to re-establish prayer in the public schools as evidenced by the sponsor of the bill.
3. The inclusion of the phrase “voluntary prayer” suggested that the statute was enacted to convey state approval of a religious activity which again violated the first prong of the *Lemon* test and the First Amendment Establishment Clause.

Aid to Parochial Schools

Public aid to parochial schools has created numerous legal questions and conflicts. School districts have been challenged on issues involving the awarding of free textbooks, transportation, tax credits, and auxiliary services. Many of these issues have received mixed reviews by the courts.

In cases where evidence reveals that the aid directly benefited the child rather than the parochial school, courts have been permissive in allowing certain types of aid under the *child benefit theory*. This theory is valid if parochial children are the primary beneficiaries of a public-supported service provided for all children. Conversely, if the aid serves to benefit primarily parochial schools, it will be deemed impermissible and a violation of the First Amendment. When state activities cannot be clearly separated from religious activities, excessive entanglement occurs, thus preventing a clear line of separation between the two.

Lemon v. Kurtzman* and *Early v. Dicenso

Discussion: These two cases are among the most significant early cases involving state aid to parochial schools. The U.S. Supreme Court invalidated a Pennsylvania statute that provided state funds to finance the operation of parochial schools.

Simultaneously, the court also considered a Rhode Island case, *Early v. Dicenso*, which involved a statute calling for a fifteen percent salary supplement to parochial school teachers who taught non-religious subjects that were offered in public schools utilizing only public school teaching material.

The Supreme Court held that a law providing state subsidy for non-public teachers is unconstitutional even when the funds are paid only to teachers who teach secular subjects. Similarly, a law providing for state reimbursement to nonpublic schools for expenses incurred in teaching secular subjects is also unconstitutional.

Points of Emphasis:

1. The tripartite test requires that a statute must have a secular legislative purpose. It must have a principal effect that neither advances nor inhibits religion and lastly must not foster an excessive governmental entanglement with religion.
2. Although both statutes advocated a secular purpose, they both created excessive entanglement and fostered religion.
3. Programs of this nature have a tendency to expand with time and create larger demands on public funds thus creating greater concern for maintaining a clear line of separation between church and state.

Prayer at School Events

Student led prayer at school events have received increased attention during the decade of the 90's and into the twenty-first century. At issue is the constitutionality of student-led prayers in public schools. Is it a freedom of expression right afforded students or is it a violation of the Establishment Clause of the First Amendment?

Chandler v. Siegleman

Discussion: The American Civil Liberties Union challenged religious practices on behalf of Michael Chandler, an educator in DeKalb County, Alabama. Challenging the practice of offering student-led prayer at athletic events, the Eleventh Circuit Court upheld the students and suggested that students do not shed their rights when they enter the school house door. The court rejected the argument that prayer is forbidden by the First Amendment and supported the concept of free speech as guaranteed by the First Amendment.

Points of Emphasis:

1. The First Amendment does not expressly prohibit student-initiated prayer.
2. Student-led prayer must be strictly voluntary. The school can play no role in encouraging or prohibiting student-initiated prayer. School personnel must remain completely neutral.
3. There is nothing in the constitution that prohibits prayer.

Santa Fe Independent School District v. Jane Doe

Discussion: In a contrasting case, the U.S. Supreme Court held in a 6-3 decision that banned student-led prayer at athletic contests, graduation, and other school-sponsored events. The court stated that the delivery of a message by a student, such as an invocation on school property, is illegal. It is particularly troublesome when it occurs on school property under the sponsorship of the school. A critical aspect of this ruling involved school policy that implicitly encouraged public prayer. Thus, it was difficult for school officials to argue that speech by a student was indeed private speech.

Points of Emphasis:

1. The primary difference in the rulings in the *Chandler* case versus the *Santa Fe* case is the school's involvement based on school policy.
2. The principle of neutrality was violated when student-led prayer was sanctioned and encouraged by school faculty.
3. The school implemented a policy in the *Santa Fe* case that allowed the school's student council chaplain to deliver a prayer over the public address system before each home varsity football game.
4. The fact that the school altered its policy to authorize student elections to determine whether invocation should be delivered and to also select the spokesperson to deliver did not alter the court's ruling.
5. The revised policy violated the Establishment Clause of the First Amendment.
6. The Fifth Circuit Court held in *Jones v. Clear Creek Independent School District* and *Adler v. Duval County School Board* that voluntary student-initiated prayer without involvement of school personnel was not an Establishment Clause violation.
7. The Sixth Circuit Court disallowed prayer at school board meetings in stating that prayer at such meetings was potentially coercive to students who attended. Further, it has the tendency to endorse Christianity while excessively entangling the board in religious matters.

Use of School Facilities by Religious Student Groups

Congress attempted to minimize conflict between school officials and student groups when it passed the Equal Access Act in 1984 for the expressed purpose of providing student religious clubs equal opportunities to access high school facilities. Under this statute, it is unlawful for any public secondary school that receives federal financial assistance that has created a "limited open forum" to deny access to student-initiated groups on the basis of religion, political or philosophical content of their speech.

Points of Emphasis:

1. A limited open forum exists when one or more non-curricular-related student groups are allowed to meet on school premises during non-instructional time.
2. Review *Mergens v. Board of Education of the Westside Community Schools* where a district judge ruled that an Omaha district did not create an open forum for student speech and need not allow a Bible student club to meet at high school.
3. In a 1987 case, *Garnett v. Renton School District*, a U.S. district judge ruled that a Seattle district did not have to accommodate a prayer club at the high school. The judge further ruled that the Equal Access Act did not apply in Washington State because the state's constitution contained stricter language regarding separation of church and state than was found in the First Amendment. The appellate court unanimously affirmed the lower court's ruling.
4. When public secondary school officials allow one non-curricular-related student group to meet on school property during non-instructional times, they trigger the requirements of the Equal Access Act. Thus, they may not deny other clubs equal access to meet on school premises during non-instructional time based on the content of their speech.
5. Criteria, rules, and regulations governing access by student clubs should be carefully drawn and communicated to all students.

Legal challenges regarding facility use usually stem from community-based religious groups. The courts generally rely on the free speech test in addressing church/state issues. A leading case, *Lamb's Chapel v. Center Moriches School District* involved a closed forum. An Evangelical Christian Church applied on four occasions seeking approval to use public facilities of a local high school for various non-secular functions including family oriented movies. School officials relied on a New York State law that bars the use of district facilities for religious purposes. The minister of the church brought legal action against the district claiming First and Fourteenth Amendment violations based on state law. The fundamental issue raised is whether state law violates the free speech clause of the First Amendment by denying access to school facilities by the church.

Points of Emphasis:

1. The district, like a private owner of property, could have preserved its property for the use to which it was dedicated and need not have permitted any after-hour use of its property.
2. Once the district voluntarily made its facilities available for use by after-hours groups, it could not enforce rules designed to exclude expression of specific points of view.
3. In effect, the State of New York and the school district created a "limited" open forum.
4. The film in question actually included clips on child rearing and family values which was viewed by the district as having religious connotations.
5. The Supreme Court unanimously held that the district's rule was unconstitutional as applied to the film series.
6. The court concluded that to permit Lamb's Chapel to use the facilities would not violate the Establishment Clause because it would have neither the purpose nor primary effect of advancing or inhibiting religion and would not foster excessive entanglement with religion.

Bronx Household of Faith v. Community School District No. 10

Discussion: This case was distinguished from Lamb's Chapel by ruling that: (1) the use of school facilities by community groups created an open forum rather than a traditional public forum; (2) under the First Amendment, government restrictions on speech in a public forum are held to a very strict scrutiny; (3) in a limited open forum such as a public school, the government can restrict speech if it makes reasonable and viewpoint neutral distinctions among speeches; and, (4) public school officials reasonably might wish to avoid the appearance of sponsoring religious services.

Points of Emphasis:

1. The use of public school facilities may be used for religious discussions if a school district has a limited open forum.
2. Religious services may be disallowed even though the district has a limited open forum to avoid the appearance of sponsoring religious services.
3. The use of school facilities by community groups created an open forum rather than a traditional forum.

Religious Activities and Holiday Programs

Releasing public school students for religious instruction has not been a major issue in recent years. Landmark cases emerged in 1948 when the U.S. Supreme Court held that excusing students to attend religious classes for a part of their secular schedule is unconstitutional.

People of State of Illinois ex rel and McCollum v. Board of Education of District No. 71, Champaign County, Illinois

Discussion: An Illinois school board permitted representatives of several religious groups to teach classes to students in grades four through nine whose parents signed permission slips to allow them to do so. Classes were held during school hours inside the school building. Class attendance records were maintained by religious instruction resulting in a close relationship between the school and religious organizations. The state supreme court affirmed the trial court's decision upholding this practice. The U.S. Supreme Court reversed that decision by concluding that "the state may not permit religious teaching on tax-supported public school property during regular school hours." This practice aids religion through the implementation of compulsory attendance laws and is deemed to be a violation of the First Amendment which created a wall of separation between church and state that must be respected.

Points of Emphasis:

1. The First Amendment prohibits state establishment of religion.
2. The use of school buildings for religious instruction is unconstitutional because it fails to meet the separation of church and state requirement.
3. The use of public school personnel to monitor attendance is tantamount to state support of religious class attendance.

Zorach v. Clauson

Discussion: This case involved the same subject matter—released time for religious instruction but had a slightly different twist. This New York City case permitted public schools to release students during the school day to attend religious instruction at religious centers at locations around the city. All administrative activities were coordinated by religious organizations which assumed responsibility for transportation and attendance reporting. The U.S. Supreme Court upheld this practice based on non-compulsory attendance and no use of public school resources.

Points of Emphasis:

1. While both programs were voluntary in nature, *McCollum* involved public school resources while *Zorach* did not.
2. Public school classrooms were used during the day in *McCollum*.
3. Religious centers were used in *Zorach* rather than classrooms.
4. Public school services were provided in *McCollum* in the form of attendance reporting and monitoring of students attending religious services.
5. All administrative services including attendance, transportation, etc. were provided by the religious center in *Zorach*.
6. The primary difference in the two cases involved the use of school resources in one and an absence of school resources in the other.

Teaching the Bible in Schools

It has been established by the courts that the Bible may be used in a secular context. The U.S. Supreme Court held in the *Schempp* case and in *Stone v. Graham* that the Bible may be used constitutionally as an appropriate study of history, civilization ethics or comparative religion. The American Association of School Administrators (AASA) has also endorsed the teaching of the Bible in public schools. In spite of support for Bible teaching in schools, there is also opposition which leads some school officials to be reluctant to pursue this issue for fear of legal challenges. There is tension between church and state as reflected by the following cases:

Gibson v. Lee

Discussion: Plaintiffs challenged the practice of teaching the Bible in public school by alleging that the specific curricula adopted by the school board did not present the Bible objectively as a part of a secular education. The court held for the school district in ruling that the district satisfied the secular purpose requirement by adopting a curriculum which was modified on the advice of the school board's legal counsel. The court noted further that teachers had been properly trained on how and what to teach and what not to teach.

Wiley v. Franklin

Discussion: The court held in this case that the account of the resurrection of Jesus Christ as presented in the New Testament constitutes the central statement of the Christian religious faith. The court also noted that the only reasonable interpretation of the resurrection is a religious interpretation. The court concluded that it was difficult to conceive how the resurrection might be taught as secular literature or history.

Points of Emphasis:

1. An infringement of plaintiffs' First Amendment rights guaranteed by the Establishment Clause even for minimal periods of time constitutes irreparable injury.
2. This is no First Amendment conflict with separation of church and state when the Bible is used appropriately in a secular context in the study of history, ethics, literature, etc.
3. Proselytization of students by teachers of the Bible violates the Establishment Clause of the First Amendment.
4. The role of religion in the development of western civilization may not receive proper treatment based on apprehension among school officials to allow Bible teaching in public schools.

Intelligent Design

Intelligent Design has generated considerable controversy as it has been integrated into public school curricula by a number of school officials. Opposition has emerged from parents and some teachers who rejected intelligent design as a viable scientific alternative to the Theory of Evolution. Parents have challenged its inclusion into school curricula on Constitutional grounds by suggesting that Intelligent Design is a means of inserting Christian beliefs into science classes which constitutes a violation of the First Amendment's requirement regarding separation of church and State. This challenge is reflected in the case below.

Kitzmiller v. Dover Area School District

Discussion: Eleven parents, in conjunction with the American Civil Liberties Union of Pennsylvania, filed suit challenging the school district for its policy which requires students to be introduced to the Intelligent Design Theory along with the Theory of Evolution in 9th grade biology classes. Based on the policy, four paragraphs would be read to biology students describing Evolution as not being factual while simultaneously introducing Intelligent Design. Plaintiffs argue that the theory is not a science and should not be taught in public schools because it violates the Constitution. The U.S. District Judges agree in ruling that it is unconstitutional to teach Intelligent Design, a concept which is critical of Darwin's Theory of Evolution. The judge held that Intelligent Design has religious connotations.

Points of Emphasis:

1. Intelligent Design is the belief that certain aspects of human and animal life depict signs of having been formed by an unnamed guiding force.
2. Supporters of Intelligent Design attempted to demonstrate that the concept has scientific legitimacy.
3. The vast majority of scientists have rejected Intelligent Design as a scientific theory.
4. Plaintiffs argued that Intelligent Design is not a scientific concept but rather a faith based belief similar to biblically based creationism.
5. A U.S. District Court rejected the scientific legitimacy and held that the theory has religious connotations.

Theory of Evolution

The Theory of Evolution advances the view that all life is related and descended from a common ancestor. There have been numerous legal challenges regarding the inclusion of this theory in public school curricula. A number of states banned evolution from public school curricula in the past based on the view that it was in direct conflict with the Biblical version of creation. An early case based on this view is discussed below.

Epperson v. Arkansas

Discussion: The Supreme Court examined the constitutionality of an Arkansas law that made it illegal for teachers to teach the Theory of Evolution. The court held that Arkansas law could not be defended as an act of religious neutrality. The court found that the law did not attempt to ban curricula in schools and universities regarding all discussion of the origin of man but rather a particular theory because it was thought to conflict with the Biblical account.

The *Epperson* ruling was in striking contrast to the famous “Scopes Monkey Trial” of Tennessee in 1927 in which the Tennessee courts upheld a law that prohibited the teaching of any theory that conflicted with the Genesis version of creation.

Points of Emphasis:

1. Legislatures in a number of states have sought to discount the Theory of Evolution in supporting the teaching of creationism in public schools.
2. Recent attempts by legislatures to insert creationism into public school curriculum have been reflected in their attempts to incorporate Intelligent Design as a legitimate scientific theory.
3. In 1987, the Supreme Court invalidated Louisiana’s statutes that called for equal time for creationism science during times in which evolution was introduced into the curriculum in the *Edwards v. Aquillard* case.
4. The court further concluded that the law’s intent was to discredit a scientific focus in order to advance religious beliefs which violate the establishment clause of the First Amendment.
5. The First Amendment does not allow the state to require that teaching and learning be tailored to the principles or prohibitions of any religious sect or dogma according to the Supreme Court in *Keyishian v. Board of Regents*.

Pledge of Allegiance

The daily ritual of reciting the pledge was heard by the Ninth Circuit Court in California. The plaintiff, Michael R. Newdow, an atheist, filed a suit on his daughter's behalf challenging the inclusion of "under God" in the pledge. Newdow did not have custody of his daughter. Interestingly, the Ninth Circuit Court held in a 2-1 ruling that the inclusion of "under God" was an unconstitutional establishment of religion by the government. A larger panel of Ninth Circuit judges heard the case and supported the prior decision of the three judge panel. The Supreme Court on June 14, 2004, overturned the Ninth Circuit decision on technical grounds thus preserving the contested phrase "under God we trust" in the pledge. The court further held that Newdow as a non-custodial parent had no legal standing to challenge the pledge since he was not the custodial parent of his ten-year-old daughter.

Points of Emphasis:

1. The U.S. Supreme Court fell short of addressing whether the inclusion of the reference to God was an impermissible practice regarding an unconstitutional blending of church and state.
2. The case, since the court did not rule on the merits of this ruling, does not prevent a similar lawsuit in the future on this very same issue. Another challenge has emerged by other plaintiffs and Newdow.
3. Forty-nine states filed briefs supporting the Pledge of Allegiance.
4. "In God we trust" found on U.S. coins, has been held to be a national slogan rather than the government's endorsement of religion.

Religious Rights of Teachers in the School Environment

The First Amendment guarantees religious freedom to all citizens. Title VII of the Civil Rights Act of 1964 further prohibits any forms of discrimination based on religion. Teachers, like all citizens, possess religious rights that must be respected. As with all rights, religious rights are not without reasonable limits. Restrictions may be imposed on teachers where the exercise of their religious rights infringe upon others in the school environment and adversely affect teaching the prescribed curriculum or create excessive entanglement.

May v. Evansville

Discussion: This case arose regarding the use of school facilities by teachers for religious meetings. A teacher brought suit against the school board, its members, and the superintendent seeking an injunction to prohibit banning religious meetings by teachers on school property. The U.S. district court granted summary judgment for the school board. The teacher appealed. The court of appeals held for the school district

Points of Emphasis:

1. The court held that teachers had no right under the First Amendment free speech clause to hold prayer meetings on school property before the school day begins and students arrive.
2. This prohibition does not preclude teachers holding such meetings at facilities away from the school before the school day begins; thus, their religious rights may be exercised but not in public school facilities.
3. School officials in this case had consistently applied a policy of prohibiting the use of school facilities for religious activity. Thus, the school district did not have an open forum as the teacher contended.

Multiple Choice

1. School sponsored prayer may be permitted if:
 - a. Students are not required to participate
 - b. Students are allowed to enter the building after prayer is offered
 - c. The community strongly support it
 - d. None of the above
2. Student initiated prayer in public schools is permitted if:
 - a. The school allocates a special time for students to pray
 - b. The school develops policies governing time and place in which prayer occur
 - c. Prayer is strict voluntary
 - d. None of the above
3. The Bible may be used as a:
 - a. Literary document
 - b. Historical document
 - c. Ethical and/or a philosophical resource
 - d. All of the above
4. Silent prayer and meditation is prohibited based on:
 - a. The *Engel* case
 - b. The *Schempp* case
 - c. The *Jaffree* case
 - d. None of the above
5. Silent prayer and meditation may be offered in public schools if:
 - a. Students are not coerced to participate
 - b. Only one minute is set aside
 - c. Students elect to pray voluntarily
 - d. None of the above
6. The Child Benefit Theory was established in:
 - a. *Cochran v. Louisiana*
 - b. *Lemon v. Kurtzman*
 - c. *Early v. Dicenso*
 - d. *Aguilar v. Felton*
7. Which of the following is not included in the *Lemon v. Kurtzman* criteria?
 - a. School practices must have a secular purpose
 - b. School practices must not coerce students to participate
 - c. School practices must neither advance nor inhibit religion
 - d. School practices must not create excessive entanglement
8. Which of the following examples are legally permissible as determined by the courts?
 - a. Free public transportation for parochial school students
 - b. Tuition reimbursement to parents or parochial school children
 - c. Shared time and community education programs for parochial school students
 - d. State financing of auxiliary services and direct loans for instructional equipment and materials for parochial schools

9. Public schools may use religious symbols if:
 - a. They are discussed in conjunction with various holidays
 - b. They are placed on the bulletin board during various holidays
 - c. They are used to explain various cultural and religious groups
 - d. None of the above

10. Which of the following practices was held to be permissible by a court?
 - a. Posting the Ten Commandments in public schools
 - b. Placing the Ten Commandments in a conspicuous location in every classroom
 - c. Allowing a monument that was erected in 1962 to remain on state property for historical and educational purposes
 - d. Posting a religious motto in a public school building

11. Prayer at athletic contests are permissible if:
 - a. The coaches do not participate
 - b. Students are not compelled to attend
 - c. The school does not encourage prayer at these events
 - d. None of the above

12. The Equal Access Amendment was passed to:
 - a. Allow outside religious groups to use school facilities during non-instructional time
 - b. Allow student religious clubs in all schools the opportunity to access school facilities during non-instructional time
 - c. Allow student religious clubs in high schools to access school facilities
 - d. Allow any student organization to use school facilities during non-instructional time

13. Release time for religious instruction off school grounds involving students was ruled unconstitutional in:
 - a. *Cochran v. Lawson*
 - b. *McCullum v. Board of Education*
 - c. *Everson v. New Jersey*
 - d. *Zorach v. Clauson*

14. Distribution of religious material in public school is permissible if:
 - a. Students are not coerced to accept religious materials
 - b. Parents consent to allow their child to accept these materials
 - c. Materials are distributed after school hours
 - d. None of the above

15. Which cases did address the Pledge of Allegiance in public schools?
 - a. *Newdow v. United States* and *West Virginia State Board of Education v. Barnette*
 - b. *Meltzer v Board of Public Instruction of Orange County* and *Tudor v. Board of Education of Borough of Rutherford*
 - c. *Garnett v. Renton School District* and *Clark v. Dallas Independent Schools*
 - d. *Lanner v. Winner* and *Johnson-Loehner v. O'Brien*

True or False Questions

1. The Establishment Clause is intended to establish a clear separation of church and state.
 True False

2. The Bible cannot be used in public schools.
 True False

3. Free textbooks and transportation cannot be provided to students who attend parochial schools.
 True False
4. Students can be released to attend religious instruction in public schools with parental consent.
 True False
5. Students may be disciplined for refusing to recite the Pledge of Allegiance.
 True False
6. The use of public funds to provide instruction for Title I students does not violate the Establishment Clause.
 True False
7. The inclusion of the phrase “under God” found in the pledge is unconstitutional.
 True False
8. High school students in religion clubs may be denied access to meet on school property if the school does not have a limited open forum.
 True False
9. School officials may disallow religious groups to use school facilities in an effort to avoid a conflict of church and state even though other nonreligious groups use the facilities.
 True False
10. A student may be disallowed from distributing religious literature in public schools.
 True False
11. Religious displays in public schools violate the Establishment Clause of the First Amendment.
 True False
12. The Lemon test suggests that certain practices in public schools must have a sectarian purpose.
 True False
13. Public school students in some jurisdictions may initiate student-led prayer in schools.
 True False
14. Public schools may observe holidays through school sponsored programs, if they do not create a devotional atmosphere.
 True False
15. Public school teachers may use religious exhibits to discuss various holidays.
 True False
16. A teacher may refuse to teach certain subjects that conflict with his/her religious beliefs.
 True False
17. Teachers’ religious rights are covered under Title VII of the Civil Rights Act of 1964.
 True False

Essay Questions

1. Discuss the Establishment Clause and the Free Exercise Clause and illustrate by example how a school administration may violate each. (Be specific)
2. You have just been appointed principal of a high school of 1200 students in a conservative community. You discover on your very first day that prayer is recited over the intercom, a scripture is read and blessings are given before some students eat.
 - A. What specific components of the First Amendment are involved here?
 - B. Discuss these violations with your faculty in the context of the following:
 - a. Establishment Clause
 - b. Free Exercise Clause
 - c. Excessive entanglement
 - d. Principle of neutrality
 - e. Devotional atmosphere
 - C. What steps should be taken to address the violations cited above?

