

STUDY GUIDE - I

Legal Issues of Religious Counseling

COU431

- 1) Identify the three particular categories of behavior for which religious counselors are being sued.
- 2) Make a distinction between statutory law and case law.
- 3) What are the two religious clauses of the First Amendment to the Constitution of the United States?
- 4) Identify two federal statutes that state the right not to be discriminated against on the basis of religion.
- 5) What is meant by the doctrine of religious immunity?
- 6) What is meant by “compelling state interest?” Give an example.
- 7) What are the three aspects of the “Lemon Test?”
- 8) What is a “tort?” What is the purpose of tort law? How does tort law differ from criminal law?
- 9) What is the essential difference between negligence and malpractice?
- 10) To prevail in a negligence action, one must prove four things. What are they?
- 11) What were the three counts of the suit brought by Kenneth Nally’s parents against Grace Community Church?
- 12) What was the final verdict of the Nally Case, and how did the church as a whole view this decision?
- 13) Concerning the future of clergy malpractice, it is unlikely that the courts will answer the questions raised by malpractice. However, the courts likely will find ministers liable under what three basic torts?
- 14) What is the purpose of a professional code of ethics?
- 15) What is the difference between a civil suit and a criminal charge for sexual misconduct?
- 16) State statutes regulating behavior of counselors criminalize two classes of sexual misconduct. What are these two classes?
- 17) In sexual misconduct cases, what is meant by “therapeutic deception?”
- 18) What is transference and how can this lead to sexual involvement between a counselor and a client?
- 19) What position does the AACC code of ethics take concerning sexual contact between a counselor and his/her client? Sexual contact with a former client?
- 20) What is the role of an expert witness in a malpractice suit? What constitutes an expert witness?
- 21) What is meant by defamation? What are two aspects of defamation? Give a brief description of each.
- 22) What is the most well-known form of legal action against an abusing counselor?
- 23) Name four blocks to winning a negligence suit against a counselor.
- 24) Why can a counselor no longer use the defense of consensual sex when accused of sexual impropriety? What constitutes true consent?
- 25) What is meant by a breach of fiduciary duty?

- 26) What particular element of the Texas Exploitation Statute could have serious implications for the religious counselor?
- 27) What is the requirement mandated upon employers, including the church, under the Texas Exploitation Statute concerning an employee's sexual misconduct history?
- 28) The criminalization of sexual misconduct has led to various reporting schemes regarding adult victims. Identify three models for reporting and give a brief description or requirement of each.
- 29) What did the *Tarasoff* case relate to?
- 30) There were two major objections of the counseling profession toward the imposed duty to warn third parties. What were these objections and how did the court address these objections?
- 31) Designated professionals are required to warn third parties where counselees threaten physical violence against a "reasonably identifiable" third person. Name two ways that this duty can be discharged.
- 32) If a counselee is known to have AIDS, and the counselor has knowledge that the counselee has had sex with a third party, what is the counselor's responsibility toward that third party? What three criteria must be met in dispensing this responsibility?
- 33) Name four reasons one should be familiar with the state licensure laws of his/her state.
- 34) What is the primary purpose for licensure?
- 35) Generally, the religious counselor's exemptions from licensure requirements rest on four factors. What are they?
- 36) Criminal sanctions for violation of the state licensing requirements generally cover two types of infractions. What are these two types?
- 37) Identify two reasons for religious counselors *not* to pursue licensure.
- 38) What are the basic educational requirements for licensure in the state of Georgia?
- 39) Identify the three categories of exemptions for religious counselors in the state of Georgia.

True or false

- 40) The First Amendment embraces two concepts, freedom to believe and freedom to act. The freedom to believe is absolute but the freedom to act is not.
- 41) If a counselor takes no payment for counseling services, he is not held to the same legal standard of conduct imposed for all counselors.
- 42) Statutory law is an interpretation of case law.
- 43) Case law is highly fact-driven.
- 44) A pastor may raise the doctrine of religious immunity in his defense if he gets sued.
- 45) According to the Constitution of the United States, a person may not be put to the proof of his religious doctrines or beliefs.
- 46) The Supreme Court has always maintained that religious conduct posing a substantial threat to public safety, peace, or order may be regulated.
- 47) To date, no one has been found liable for clergy malpractice.
- 48) Transferences distort both religious and therapeutic judgment.
- 49) The counselor has a special relationship with his/her counselee, and this special relationship creates special obligations and duties that the counselor owes to the counselee.
- 50) The religious counselor should never express or imply that he/she possesses the titles (L.P.C., pastoral counselor, etc.) reserved by statute unless he/she is permitted to do so.