The Establishment of Religion Clause

Three theories of the Establishment clause:

1) **Strict Separation**
   - The “wall” of separation
   - The courts have rejected any such far-reaching approach that would prohibit any government assistance of religious organizations.

2) **Neutrality**
   - Government can support religious organizations, but merely cannot support one religion over the other or religion over lack of religion.
   - Symbolic endorsement test

3) **Accommodation**
   - The most favorable to religion, this would mean that the Establishment Clause is only violated if the government establishes a church or coerces religious participation.
County of Allegheny v. ACLU

- Facts:
  - The county allowed the erection of religious symbols in public places, including:
    - A nativity scene
    - A Christmas tree with a Menorah

- Issue:
  - May the government constitutionally allow religious symbols to be put on public property?

- Holding:
  - Only if it also has cultural significance.
    - The Christmas tree with a Menorah was allowed because it has cultural and pluralism significance.
    - The nativity scene was disallowed because it has no meaning other than an endorsement of Christianity.
**Lemon v. Kurtzman**

**Facts:**
- State rules provided public funding for church run schools. These included:
  - Reimbursement for teacher salaries, textbooks and instructional materials.

**Issue:**
- Can a state constitutionally provide funding for a religiously run school or institution?

**Answer:** Only if it meets the following three-part test:
- The statute must have a **secular purpose**
- The **primary effect** must not be to advance or inhibit religion.
- The statute must not foster and “**excessive entanglement**” with religion or religious groups.
The Lemon Test - Application

- **Secular Purpose**
  - Posting the 10 Commandments on school and court walls have been ruled to be unconstitutional.
  - Moments of prayer and even of silent prayer are unconstitutional at public schools.
    - But moments of silence are okay.

- **Secular Effect**
  - A Connecticut law that required employers to give employees their Sabbath off was unconstitutional.
  - But certain exemptions from laws given to religions to avoid requiring them to violate the religions have been upheld.

- **Excessive Entanglement**
  - Paying teacher’s salaries for religious schools was struck down.
  - But paying for secular textbooks and food programs and religious schools was upheld.
Santa Fe Independent School Dist. v. Doe

- **Facts:**
  - Public high school allowed a student council chaplain to say a prayer over the public address system before each football game.

- **Issue:**
  - Does allowing a student led prayer any public school’s football game violate the Establishment Clause?

- **Answer: Yes!**
  - A school allowing a prayer at a public event is an endorsement of religion.
  - Even though the person delivering the prayer is not a school official, allowing it to take place is an implicit endorsement of the prayer and thus the religion.
McCreary County v. ACLU of Kentucky

- **Facts:**
  - Copies of the Ten Commandments were posted on courthouse walls.
  - Defendant claimed that they were there not for religious purposes but as an artifact to help trace the development of the law.

- **Issue:**
  - Does the posting of the Ten Commandments have enough of a secular purpose to avoid violating the Establishment Clause?

- **Answer: No!**
  - To an objective observer, it is clear that the posting of the Ten Commandments has a primarily religious purpose.
  - The secular purpose has to be genuine and not merely secondary to the religious purpose.
Mitchell v. Helms

Facts:
- Federal law delivers federal funds and other aid to parochial schools including various secular materials, textbooks, equipment and the like.

Issue:
- Can the government indirectly help a religious entity’s religious purpose by funding its secular expenses?

Answer Yes!
- To determine whether the funding advances religion, the following factors should be taken into account:
  - Whether the statute results in government indoctrination
  - Whether the statute defines its recipients by reference to religion
  - Whether the statute creates excessive entanglement
- As long as these tests are surpassed, aid to a religious school does not violate the Establishment Clause.
Zelman v. Simmons-Harris

Facts:
- State school voucher program allows parents to send their children to private schools of their choice with the state paying your tuition.
- Some parents naturally chose to send their children to religious schools.

Issue:
- Does the fact that some parents are going to use state voucher dollars to pay tuition for religious schools constitute a violation of the Establishment Clause?

Answer: No!
- This government program does not provide aid directly to religious schools and in no way did the government favor the religious schools over secular parochial schools.
- The voucher program was neutral with respect to religion.