

Anabaptist Business and the Law

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What makes an Anabaptist business different from a non-Anabaptist one?¹ Can customers tell a difference when they walk into a place of business? Operating with a high level of legal and moral integrity is the standard to which we all should aspire. Because our business dealings are a part of our testimony, we strive to represent Christ faithfully in all areas of business (1 Timothy 4:12). There is no “off switch” to our testimonies on the way to work on Monday morning.

Living out our Anabaptist principles will likely cost us something, even during times of peace and prosperity, if we persevere in them. If our principles never cost us anything over the course of our lives, perhaps we should examine them in the light of scriptural truth. Let’s consider some common examples in which our principles can be applied to areas of business and law.

Conflict

The teaching and application of nonresistance is rarely found these days. This means that we Anabaptists will

sometimes be defrauded or cheated. Remembering that we’re only stewards of God’s property can help take away our natural inclination to fight with others (1 Corinthians 6:7). Further, commitment to “resist not” helps maintain a heart of reliance on the living God for provision and protection regardless of the kinds of conflicts we encounter.

Arbitration

The world’s value system uses litigation every day to inflict harm on others. The best defense to litigation is to follow the Golden Rule in Matthew 7:12² and treat everyone the way you would like to be treated. Going above and beyond to make peace with an angry customer can leave a Christian witness and resolve an explosive situation without going to court.

Sometimes all attempts at privately making peace are unsuccessful, and it is helpful to involve a mediator. A mediator is a neutral third-party who tries to facilitate agreement between two parties. In many conflicts, mediation is an excellent tool to help the parties reach agreement. A mediator can provide a calm and objective voice in an emotional disagreement, and can help the

¹ This article speaks of, and to, the descendants (including the Mennonites and Amish) of the “re-baptizers” who separated from the state churches in Europe beginning in the late 1500s and then immigrated to the United States. Their focus has been to closely and literally follow the life and teachings of Jesus Christ, and to witness of Him through their businesses, as through all other aspects of their lives.

² Matthew 7:12 “Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.”

parties find common ground. Using mediation more frequently can result in fewer lawsuits.

Because mediation is voluntary in nature, the mediator cannot force the parties to reach agreement. Sometimes the other party refuses to make peace and wants to take the dispute to court. One way to limit the possibility of being wrongfully sued is using arbitration clauses in written agreements with customers, business partners, and employees.

Anabaptists rely heavily on the honor and trustworthiness of the people with whom they contract. The problem is, not everyone is trustworthy. The most well-written contract is only as good as the people signing it. Including arbitration clauses in contracts can help lessen this vulnerability. An arbitration clause states that the parties will not take each other to court, and it provides another method of resolution. The parties may also agree to allow a Christian organization to handle the arbitration, rather than an expensive, secular organization.

Arbitration is comparable to mediation in that it involves two disagreeing parties who agree to meet with an independent person or panel to bring resolution to a matter. The difference between mediation and arbitration is that an arbitrator can make a legally binding decision. In mediation, if one party chooses to abruptly terminate the mediation meeting, progress ends because cooperation is voluntary. In arbitration, each party has an opportunity to be heard, and then the arbitrator renders a ruling that is legally enforceable. Of course, our focus is not just protecting our interests, but to give more even than is expected or considered just. Jesus calls us to give more than asked, even to those considered our enemies,³ and even heaping “coals of fire”⁴ made up of undeserved blessing upon them.

Liability Planning

The gap between Christian living and the world’s way of living is getting wider. Despite your best efforts to live out the teachings of Jesus, a lawsuit may still find its way to your doorstep. When your business is sued, you have two options under the law: (1) respond to the suit or (2) lose by default. Federal courts provide 21 days to respond to a

suit. Failure to respond can result in losing by default. This is especially tragic because many cases aren’t grounded in law or facts and are used as tools for dishonest gain. Losing by default can result in a judgment being entered against a business, which can turn into a lien on property and a forced sale.

Many Anabaptist business owners have been threatened with litigation at some point by customers trying to get a discount, by dishonest personal injury attorneys, or by regulatory authorities. Despite these challenges, we can approach difficult situations with knowledge and wisdom found in the Word of God.

Matthew 5:25 teaches us to “Agree with thine adversary quickly, while thou art in the way with him; lest at any time the adversary deliver thee to the judge, and the judge deliver thee to the officer, and thou be cast into prison.” In some cases, especially if there is a degree of fault involved, you may have an opportunity to settle a matter promptly. This can lift a heavy burden off your shoulders and leave a Christian testimony at the same time. Plaintiffs can be taken by surprise when prompt restitution or settlement is made.

Estate Planning

Anabaptist principles can also be applied in estate planning. Questions like these are important to ask: Who is going to take on the business after I die? Will my wife be financially secure? Who is going to care for my minor children? How should I divide the family farm? What about the child with a disability?

Passing away without preparing a will or trust can cause significant problems. Without a will or trust, the secular court system can decide where your children will go, who will get the business, and how the family farm will be divided. If no heirs can be located, the court will give your assets to the state government through a process called escheat. This can be avoided by having a will or trust.

Estate planning provides an incredible opportunity to leave a legacy of faith to your loved ones rather than a legacy of extra paperwork and stress. The Anabaptist principle of stewardship should be practiced in all areas of life, well in advance of what we think may be our last minute on earth. Remember that tomorrow is not promised (James 4:13–14).

³ Matthew 5:40-44

⁴ Romans 12:20

For example, a young father passed away in a tragic car accident in Virginia. His dad had begun the process of working with the probate court to establish disbursement to the children, but before the process was complete, he was also killed. Neither the young father nor his dad had a will or trust, resulting in a lengthy and complex process that could have been avoided with a basic estate plan.

It is encouraging to remember that our contributions on earth don't need to cease when we pass away. We can leave a legacy of faith that lives on. For example, an Anabaptist business owner recently decided that he wanted his business to continue working for the kingdom of God after his death. He set up a trust for the business. The trustees were permitted to continue operating the business after the owner's death, with 100% of net proceeds designated for charity.

This same creativity can be applied to giving during life. Estate planning is not reserved for giving upon death. Giving during life can minimize the amount of paperwork and property left for your family to handle. Giving during life can also maximize your tax savings. For example, someone who owns property in Pennsylvania may have purchased the property in 1975 for a fraction of its current value. If it's sold before death, the capital gains tax on the property could be significant. If it's *not* sold before death, the inheritance tax rate for Pennsylvania is 4.5% for transfers to children, 12% for transfers to siblings, and 15% for transfers to other heirs (not including spouses). A person in this situation may have to pay capital gains tax if he sells the property before his death, and his heirs may have to pay inheritance tax if he does not sell. Giving the property to children or to the church can become an attractive option.

Further, it is not needful to fully gift an asset. A partial sale–partial gift can offset most or all of the capital gains tax, while preserving the balance when it is needed by the donor for future use. Regardless of which direction you take, always check with your accountant or attorney in making tax decisions.

If an asset, such as land, is properly given to a charity, such as a church, the owner receives three benefits: the owner (1) avoids all capital gains tax, (2) receives a tax deduction for the value of the land, and (3) receives the blessing of advancing the kingdom of Christ. We didn't bring any property with us into this world, and we won't take any with us when we depart, but we can leave a legacy

of faith and stewardship for those left behind. However, it is prudent to fully consider the needs of owners during their lifetimes. Some legal counsel, without consideration for Biblical integrity, uses elder law to shield assets so they pass through their estate as inheritance, potentially leaving parents dependent upon government assistance programs.

Employment Law

Anabaptist principles should also be practiced in employment. It's easy to forget that our lives are a testimony to our employees. Many employees

don't follow the Biblical principles we do. Employees can claim discrimination, harassment, retaliation, breaches of employment contracts, and many other things. Selecting employees carefully and treating them with integrity is the best defense against future difficulties.

Part of a good employee experience is ensuring that employees know what is expected of them. Having a clear employee handbook to relay the expectations and details of employment is a useful resource. Maintaining clear verbal and written communication with employees is a key component of employee contentment.

Be generous with praise and reward diligence. Employees are much more likely to be satisfied with their work experience if their employer regularly thanks them for their accomplishments. If you treat employees the way you would want to be treated, there will be less room for arguments and dissatisfaction (Matthew 7:12). Some employees have never been encouraged or affirmed in their homelives, and it means a great deal to them when their employer commends them. Everyone has a deep desire to be needed and to matter. Affirmation for work



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well done is a critical element in building a healthy and prosperous employee culture. Some businesses even go further, providing teaching in the workplace to strengthen their respective roles at home.

Sometimes the difficult decision to terminate an employee becomes necessary. This should seldom come as a surprise to the failing employee. As opposed to secular “fire quickly” business counsel, a brotherhood-based approach makes every effort to instruct, train, match job requirements, and giving the employee every opportunity to succeed. When termination must occur, it should be done as carefully and peacefully as possible.

It is often recommended to hire employees “at will.” This means that your business maintains the freedom to hire and fire employees without contractual obligations. It also means that an employee may leave at will. The advantage to the employer is avoiding a scenario in which you are required to keep an underperforming or unhappy employee because of a long-term agreement. Handling a problematic employee promptly can avoid infecting other employees.

When terminating high-level employees, long-term employees, or employees likely to react negatively to termination, consider providing a severance payment for at least several weeks’ worth of work to give them time to find another job. Sometimes going the second mile can prevent going five or six miles down to the courthouse if the employee becomes litigious.

Always maintain a culture where reporting abuse and wrongdoing is welcomed. If someone is suffering or being abused, be sure they have a clear method of reporting it within your company. Employers must also be diligent to flee temptation and misconduct. “Keep thy heart with all diligence; for out of it are the issues of life” (Proverbs 4:23). Few things are more destructive to a business, spiritually and legally, than sexual misconduct in the workplace. Avoiding improper relationships with employees can protect you from both legal and moral loss.

Vicarious Liability

An employer can be held liable for an employee’s actions through a legal doctrine known as vicarious liability. Remember this before sending a risky or reckless employee out on the job. Every time you put a dangerous driver on

the road, they become a rolling liability. Every time you put a careless worker on the jobsite, they become a walking liability. Every time someone is working or driving on your time clock, their liability can become your liability. Injured parties often look for the deep pockets and may ignore the employee’s actions and try to pin blame on the company in a lawsuit. This reemphasizes the need to select and supervise employees carefully and avoid keeping risky employees.

Independent Contractors

The Internal Revenue Service warns employers about misclassifying employees. While treating employees as independent contractors is financially tempting, it’s important to ensure that all workers are classified correctly.

The Equal Employment Opportunity Commission (EEOC) has published 16 factors to evaluate in determining whether a worker is an employee or an independent contractor. States like Pennsylvania have also passed strict legislation to require construction workers to have written contracts for each job, as well as other requirements, in order to qualify as independent contractors. In determining whether your workers are employees or independent contractors, consider questions such as these, which would be asked by government agencies regarding proper work classification:

1. Does the worker have the ability to control when, where, and how the job is performed?
2. Does the job require a special level of expertise?
3. Does the worker provide his own tools?
4. Does the worker own his/her own business?
5. Does the worker set his/her own hours and fees charged?
6. Can the worker be fired?
7. Does the worker believe there is an employer-employee relationship?

In the eyes of labor regulators, what an employee is led

to believe can outweigh the employer's rights. There is a cost to having employees because of payroll taxes, workers' compensation, and OSHA compliance. However, if the workers on a jobsite are "independent contractors" in name only, regulators can assess stiff penalties and try to classify everyone in the business as employees. In addition, misclassifying employees exposes workers to jobsite dangers without the protection of workers' compensation if they would suffer injury or lifelong disability.

Pennsylvania, in particular, has been aggressively auditing Anabaptist construction companies that do not classify their workers as employees. Regulators assume when they audit a business that everyone is an employee. The burden of proof then lies on the business owner to convince the regulator that the workers are truly independent contractors. When establishing the structure of a business, seek to build it on a firm foundation with solid legal footing. "Provide things honest in the sight of all men" (Romans 12:17).

Besides legal ramifications, a lack of respect or regard toward workplace safety regulations can be irresponsible. A conscientious commitment to operate safely is a moral duty for employers and employees. In addition to preventing hurt or loss, which the owner may find himself liable for, this manifests regard for the workers involved and the governmental authority imposing the regulations.

Partners

Partnerships face similar challenges from some governmental agencies. For example, the Occupational Safety and Health Administration (OSHA) is beginning to look skeptically at Anabaptist partnerships. Such agencies have fined numerous Anabaptist partnerships for workplace safety violations, even when the partnership claimed lack of jurisdiction because everyone was a "partner." In several recent cases in Pennsylvania, courts have ruled against Anabaptist partnerships that primarily used minority partners to operate.

If a business is structured as a partnership, the following are some example questions that some regulators may use to determine legitimacy:

1. Are there one or two majority partners directing and controlling most of the business, which gives the appearance of employment rather than a partnership?
2. Does the partnership hold regular meetings and votes with all partners?
3. Does the partnership keep minutes of meetings?
4. Does the partnership maintain an updated, written partnership agreement?
5. Does each partner understand the partnership structure, their ownership percentages, and the documents they signed when they joined?
6. Are there minor partners under the age of 18? If those partners were asked, would they agree that they contribute to company decisions and direction as a business owner?
7. Does the partnership use low capital contribution or buy-in amounts such as \$100, or does the partnership use a substantial buy-in amount to show the value of each partner's ownership?
8. Does the partnership cleanly share profits and losses with an easily traceable line to business profitability?
9. Does the partnership share equal voting rights? If not, is the method of voting fair and balanced to avoid concentrated control similar to employment?
10. Are the workers partners in name only, or does the partnership spread out authority to enable joint decision-making as a unit?
11. Does the partnership give check-writing authority to multiple partners, and not just one person?
12. Does the partnership try to "hire" or "fire" partners, or does it only add or remove partners by properly holding a partnership vote and updating the partnership paperwork?

Some partnerships have transitioned to an employee structure to avoid legal risks with the partnership model. Whatever direction is taken, we should seek to operate with legitimacy.

May God grant us wisdom in serving Him in business, including the way we relate to the law. May that wisdom guide us to properly discern our place as pilgrims and strangers in this world, and to humbly yield in a manner that honors our Lord, allows us to live in peace, and shines the light of the gospel in this world.⁵

⁵ Romans 13:1-7 "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? do that which is good, and thou shalt have praise of the same: For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain: for he is the minister of God, a revenger to *execute* wrath upon him that doeth evil. Wherefore ye must needs be subject, not only for wrath, but also for conscience sake. For this cause pay ye tribute also: for they are God's ministers, attending continually upon this very thing. Render therefore to all their dues: tribute to whom tribute *is due*; custom to whom custom; fear to whom fear; honour to whom honour!"

This article has been prepared for general education and information purposes only. It is not intended to constitute legal advice or opinions on any specific matters. Contact an attorney licensed in your state if you have specific legal questions about your business.



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