

## Sample Quiz

You are the Assistant Dean of Students and the chief Judicial Affairs Officer at Last Chance College. You are a private institution that accepts federal funding. Your President has asked you to advise her regarding the writing of a new student handbook. She has questions about what rights students should have in their relationship with the University and she wants to enumerate these in the new Student Code. Furthermore, she wants you to prepare a ten-minute presentation for the Board of Trustees regarding this issue.

## Answer

I would indicate to the President that there are some significant differences between the public school and private school environments relative to legal issues. I would point out that the legal parameters that apply are contractual, and codes. The triggers or threshold issues that create these parameters are the offer, acceptance, and consideration for contracts and the acceptance of federal funding for codes. The parameters that do not apply include constitutional (there is no obvious state action as we are a private institution), constitutional torts (while there is an allegation of the deprivation of rights, immunities and privileges, there is no activity under color of state law), and contracts (no duties were breached).

I would continue to explain these concepts using relevant, classic case law to illustrate. I would point out that in order for the constitution to apply, state action is necessary. Courts determine state action by “sifting the facts and weighing the circumstances” of each case as noted in *Burton v. Wilmington Parking Authority* and discussed further in *Powe v. Miles* and *Grossner v. Trustees of Columbia University*. I would point out that the courts would use a three-pronged test to determine state action. The three prongs include: public function, government contracts, and delegated authority. I would further point out that the Supreme Court stated in *Burton v. Wilmington Parking Authority* that the “constitution erects no shield to purely private behavior”, thus the constitution does not apply in our purely private relationship with our students.

Students do, however, have a contractual relationship with our institution. Our offer of an education, their acceptance of our offer by applying for admission and the benefit/detriment (consideration) of the exchange of tuition funds for classroom attendance created a contractual relationship between the student and the institution. Tangible examples of our contracts include our housing contract, our catalog, and our student handbook. The terms of our contract include the statements defining our room search procedures and the conditions under which students may be suspended or expelled. These terms are appropriate and we did, indeed, follow our own procedures.

While the receipt of federal funding does require our institution to abide by the codes (federal statutes), no statute applies to this set of facts. Since we are not a state institution and we are (in my opinion) not involved in state action (the courts would have to ultimately decide that issue), then the constitutional issues raised by the student’s attorney are simply not applicable to this case. Constitutional rights such as free speech (1<sup>st</sup> amendment), unreasonable search and seizure (4<sup>th</sup> amendment), due process and equal protection (14<sup>th</sup> amendment) are not afforded students at private institutions unless the institution includes these as part of their contract.

In summary, these students had no constitutional rights in their relationship with our institution. Thus, it would be impossible for us to violate them.