Questions & Answers

Constitutional Law
To Patrick—You’ll always be a part of me
P.E.M.

To Madelyn—For all that she is and all that she will become
To Joan—My touchstone
L.S.E.

To David “the Godfather” Guinn—My inspiration
To Marcie and Mason—My life’s greatest treasures
R.R.
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About the Authors

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Preface

As we publish this third edition, the future directions of Constitutional Law are uncertain. Our first edition arrived at a time of remarkable stability — the Supreme Court’s membership had not changed for over a decade (a modern record!). Our second edition arrived shortly after the birth of the Roberts Court, which, with a few notable exceptions, generally continued along the constitutional path charted by the Rehnquist Court. But this edition hits after the passing of Justice Scalia and the political uncertainty with respect to his replacement. Depending on the views of the new justice, many of the 5-4 decisions decided over the last twenty years conceivably could be narrowed, distinguished, modified, or even overruled. With so much at stake, lively debate and uncertainty are likely to be the rule, rather than the exception.

This book is written for students taking the basic survey course in Constitutional Law. In drafting questions, we have pitched the breadth, depth, and level of difficulty to those studying the subject for the first time. This approach led to several choices regarding coverage as well as the form of the questions and answers. To help the reader better understand our approach, and thus how best to use this study tool, we offer the following observations.

First, unlike hornbooks and treatises, our coverage is not encyclopedic. We expect that our readers will take a final exam in a general survey course, and so our coverage is that of virtually every introductory Constitutional Law course. Specialized issues within each topic are hit upon lightly, and esoteric wrinkles are omitted entirely.

Second, our topic selection is further influenced by the growing tendency to shrink the coverage of the basic Constitutional Law course. With the Supreme Court’s revival of its federalism jurisprudence, and with many schools reducing their Constitutional Law survey courses from six to four hours, it has become impracticable to cram all of the structural and individual rights material into a single course. Consequently, many schools have shifted some topics from the basic survey course to upper level electives. For example, the First Amendment is increasingly covered in a separate course. Similarly, the Takings Clause is often covered in the Property survey course. For this reason, we offer only the type of broad-brush coverage of free speech, religious freedom, and takings that one might expect in the Constitutional Law survey course. More detailed coverage of those subjects appear in other volumes in the Q&A series.

Third, we caution the reader that this volume differs somewhat from others in the Q&A series. Users of other volumes will notice that our answers are longer than those in some of the other books. This is because most of the Constitutional Law questions worth asking, and thus worth your study time, cannot be answered and explained in a short space. So, while our multiple choice questions each list four (A), (B), (C), (D) one-sentence answer choices, the true answers — and the
ones we would expect to see students produce on our exams—are the explanations we supply in the second half of the volume. Further, our “short answers” are likely longer than those you will find in other volumes in the series. Again, the reason is that the types of questions that will best prepare you for a Constitutional Law exam are rarely susceptible to one-paragraph answers. In the end, we have tried to balance brevity with the need to provide the student with realistic, useful questions. Our practice has been to err on the side of usefulness, resulting in somewhat longer discussions.

While the answers to our short answer questions vary in length, none is more than three paragraphs. Unless otherwise indicated, the question can be answered in one paragraph. Do not fret if your answer comes in slightly longer or shorter than our answer. As long as the substance is the same, we would give full credit on an exam. If your answer is longer, however, our answer may show how to convey the same substance in fewer words. On time pressure exams, such brevity can be an asset.

Several of the questions in this volume do not have easy answers. When this is the case, we identify the question as a close call and then suggest which answer we believe is best. That does not mean our preferred answer is the “correct” one. Indeed, you or your professor may disagree with our chosen answer, and in a few instances we disagree between ourselves as to the better response. That said, we believe each answer discusses all of the relevant arguments, and this is what counts on our constitutional law exams. More important than merely choosing the “correct” or “best” answer is understanding why one answer is better than the others. If you reach this understanding and disagree with our choice, so be it.

As with all the subjects in the Q&A series, Constitutional Law undergoes periodic change. When those changes reach a critical mass, we will produce yet another volume. In the interim, we will make updates available on the book’s webpage at www.cap-press.com.

Last, as many of the questions are difficult and contestable, we are interested in hearing from you—our readers. We welcome any and all suggestions about alternate analyses, confusing discussions, or twists on various questions. We are grateful for the comments and questions that helped improve this edition, so please keep the feedback coming. You can reach us at the e-mail addresses listed below.

Best of luck in your studies!

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