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CASES AND MATERIALS ON CONSTITUTIONAL LAW

Sixth Edition

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Preface to Sixth Edition

Organization and Methodology. This book is mostly traditional in approach. It begins with judicial review, deals next with legislative and executive powers, and contains coverage of individual rights in the latter half. The landmark cases, from Marbury v. Madison to Brown v. Board of Education to Bush v. Gore to United States v. Lopez and beyond, are present, and coverage in this volume extends through the Court’s term ending in July, 2013. Our goal is to provide a comprehensive, traditionally organized set of materials that is presented in a concise and manageable format.

Special Features. However, there is more to the book than traditional organization and approach. The following is a description of some of the special features that we have included.

SPECIAL FEATURES

“Applied” Constitutional Law: Study of Actual Litigation Documents. In addition to traditional case materials, the book includes documents from actual litigation. Complaints and answers, motions, briefs, orders, and record excerpts, all are reproduced for the student to see and study. In Chapter 1, testimony of Professors Tribe and Wright in a legislative hearing concerning the Pennzoil-Texaco dispute is reproduced to show the legislative function in enforcing the Constitution. An Appendix to Chapter 3 contains litigation documents from an actual preemption case; and Chapter 11 is followed by an appendix entitled, “The Story of a First Amendment Case.” Finally, Chapter 7, which is entitled “The Anatomy of a Constitutional Case,” is unique among constitutional law casebooks: it reproduces major documents from start to finish in a single constitutional case, so that students may see how such a case is developed in the real world. We believe that these materials will give the student a feel for the strategies required to litigate constitutional issues. In addition, they show that constitutional law is not made only by the Supreme Court, but also in legislatures, state and federal trial courts, and intermediate appellate courts. And these “real world” materials will help the student to understand the theory of constitutional law better, because each example contains a knotty constitutional question—in its procedural context.

Encouraging Reading of the Constitution: Constitutional Theory and History. We have placed the Constitution at the beginning of the book, not at the end. We want to encourage the student to read the Constitution. Toward that end, we also have inserted reading assignments, with specific references to constitutional text, throughout the book. And in the preface that contains the Constitution, we have included source documents and commentary that will introduce the student to constitutional history. Finally, in Chapters 1 and 9, we have inserted appendices that emphasize constitutional theory.

A “User Friendly” Book. Above all, we have tried to produce a book that makes the fundamentals easy for the student to grasp. Complex chapters (such as those on federalism, equal protection, and the first amendment) are introduced by text that gives the student a “road map” of the issues. The cases are edited with student comprehension in mind, and explanations of difficult principles are inserted in brackets. Our notes and questions are self-contained; they do not require the student to consult outside sources. We know that constitutional law requires intense work in class, and it generates questions that can be appreciated only through Socratic dialogue—but our philosophy is that it is
Preface to Sixth Edition

best for the student to come to class having actually understood the material in the book. The class then does not need to consist solely of helping get across the basics, and the professor can raise more interesting issues.

Problems Taken From Actual Litigation Situations. Most of the Chapters contain from one to a dozen problems. In almost every instance, the problems are taken from actual litigation situations, such as controversies decided by lower courts. The problems are real. For example, the abortion cases are followed by a problem on forced cesarean sections, which have generated court decisions in more than a dozen states. In the speech chapter, a problem about rap music that allegedly encourages violence, based upon pending litigation, is included. Also included is a problem about the notorious “Hit Man” case, in which a hired assassin followed a manual called “Hit Man,” written so as to give directions to Killers. Professor Crump was involved in this case, writing an amicus brief. There are also materials from the “Beef Check Off” case, showing the importance of preserving the record on appeal. Professor Day was part of the trial here.

State Constitutional Law. One chapter contains coverage of state constitutional law. As the chapter indicates the former Supreme Court Justice William J. Brennan Jr. has called state constitutionalism the “most important” development in constitutional law of recent years. Our coverage is very brief, because few professors will have time for more. But it should serve at least to introduce the student to the length and breadth of state constitutional law.

The “Embarrassing” (or Frightening?) Second Amendment. Our book has a chapter covering the militia clauses and second amendment right to bear arms. The second amendment makes an excellent exercise in interpretation. Guns and violence are, moreover, an important societal issue.

Careful Case Selection and Edition to Produce a Comprehensive, but Compact Book. We have included “major” cases in more complete text, “squib” cases (or paragraph cases) that are more heavily edited, and note cases. Our objective is to produce a book in which major cases can be read and discussed in depth, squib cases provide additional points—and notes provide detail in compact form. We have attempted to provide a “comprehensive” set of materials.

For this Sixth Edition, several Chapters have been partially modified and streamlined. Chapters 1, 2, 3, 10, 11 and 14 have been changed to reflect current doctrinal developments. Other Chapters have received minor modifications and consolidations. Many Notes have been added. The new reference Notes enhance the opportunities for students to pursue topics further.
Preface to Sixth Edition

It remains our hope that we have produced a book that will be particularly useful to counteract the constitutional law professor’s occupational frustration in not having sufficient time to develop this complex area of law.

We hope that you will enjoy the book as much as we and our students have.

David Crump
University of Houston

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The University of South Dakota
School of Law

The Late Eugene M. Gressman
University of North Carolina (Emeritus)
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