

EXAMPLES & EXPLANATIONS

ASPEN PUBLISHERS

Constitutional Law

Individual Rights

Fifth Edition

Allan Ides and Christopher N. May



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Constitutional Law

Individual Rights

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For Cindi and Barbara

Preface

Most of us arrive at law school with at least a minimal awareness of our constitutional system of government. We know generally that the national government is divided into three branches and that the Bill of Rights protects our fundamental freedoms. That awareness probably began with elementary school Thanksgiving Day pageants, developed substance through various American history and government classes in high school, and finally, for some of us, is topped by an undergraduate course in constitutional law. Outside the educational setting, constitutional law issues ripple through the popular media with frequent references to abortion, free speech, religion, racial and gender discrimination, gay rights, and so forth.

As law students, however, we learn very quickly that the study of constitutional law is anything but a meditation on the commonplace. And therein lies the treachery. The familiar quickly blends with the arcane, and we are forced to grapple with a tumult of doctrines, distinctions, and qualifications. Indeed, the familiar may soon disappear as we trek through justiciability, the commerce power, state action, and various other subjects that never seem to make the headlines. Even those topics that strike a common chord are presented with a treatment that is most uncommon. Add to this a bevy of wavering doctrines, concurring or opposing opinions, and the changing personnel of the Supreme Court, and the complexity can become overwhelming.

We're here to help. We have written two volumes designed to give you a foundation in the doctrines and methods of constitutional law and constitutional argument. The first, *National Power and Federalism*, covers the powers of the federal courts, Congress, and the President; the doctrines of separation of powers and federalism; and some of the limitations that the Constitution imposes on state power. The second volume, *Individual Rights*, covers the provisions of the Constitution that protect us against the government, including the Takings and Contracts Clauses; the Due Process and Equal Protection Clauses; and the Speech, Press, and Religion Clauses of the First Amendment.

These books try to provoke you into thinking about the larger issues of constitutional law with some depth and perception. They are not outlines. Nor are they research treatises on all the nuances of constitutional law. Rather, they present a problem-oriented guide through the principal doctrines of constitutional law—those covered in typical constitutional law courses—with an emphasis on how one might think about issues that

Preface

arise within the various contexts in which these doctrines operate. Lawyers, after all, are problem solvers. These books are tools for constitutional law problem solvers (and students confronted with the reality of final exams).

We must include the usual caveat. Our books are not a substitute for your constitutional law class or for a basic casebook. Nor are they a substitute for reading those cases. We hope, however, that they will make the classroom experience richer and more accessible. In fact, our experience is that students who have read these materials along with traditional cases have found the cases more understandable and more easily digested. They have also found that class participation is less threatening and more fruitful. We are confident that you will have the same experience.

The approach we suggest is quite simple. As you begin a new topic in your constitutional law course, read the related chapter in either *National Power and Federalism* or *Individual Rights*. This will give you an overview of the area and a preliminary sense of how doctrines are applied within the area. In reading the chapters, however, don't just *read* the problems—*do them!* In other words, consider the problem and try to anticipate how it will be solved before you read the accompanying explanation. This will develop your analytical skills. Next, as you read your cases, refer back to the related chapters and chapter sections and assess how each case fits into the overall framework developed by the Court. See if the case comports with the problems and explanations. Be critical. Finally, when you complete the coverage of a topic, review the chapter again. This will give you confidence that you know the material. Students have also found these materials useful as study aids when preparing for their final exams. After all, finals are simply problems to be solved. In any event, don't just read these books; use them to develop your understanding and your skills.

Good luck in your studies and in your careers as problem-solving students of the Constitution.

Allan Ides
Christopher N. May
September 2009

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