

CIVIL RIGHTS

CASES AND MATERIALS

Charles F. Abernathy

American Casebook Series



CIVIL RIGHTS CASES AND MATERIALS

By

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AMERICAN CASEBOOK SERIES

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- Uniform Land Transactions Act, Uniform Simplification of Land Transfers Act, Uniform Condominium Act, 1978 Official Text with Comments, 462 pages, 1978
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- Van Hecke, Leavell and Nelson's Cases and Materials on Equitable Remedies and Restitution, 2nd Ed., 717 pages, 1973 (Casebook)
- York and Bauman's Cases and Materials on Remedies, 3rd Ed., 1250 pages, 1979 (Casebook)

REVIEW MATERIALS

- Ballantine's Problems
- Smith's Review

SECURITIES REGULATION

- Ratner's Securities Regulation: Materials for a Basic Course, 2nd Ed., approximately 1062 pages, December, 1979, with 1979 Supplement (Casebook)
- Ratner's Securities Regulation in a Nutshell, 300 pages, 1978 (Text)

SOCIAL LEGISLATION

- Brudno's Income Redistribution Theories and Programs: Cases-Commentary-Analysis, 480 pages, 1977 (Casebook)—reprint from Brudno's Poverty, Inequality and the Law, 1976
- Cohen's Cases and Materials on Law and Social Control: The Processes of Deprivation of Liberty, approximately 825 pages, December, 1979 (Casebook)
- Cooper and Dodyk's Cases and Materials on Income Maintenance, 2nd Ed., 449 pages, 1973 (Casebook)—reprint from Cooper et al. Cases on Law and Poverty, 2nd Ed., 1973
- LaFrance's Welfare Law: Structure and Entitlement in a Nutshell, 455 pages, 1979 (Text)

LAW SCHOOL PUBLICATION—Continued

SOCIAL LEGISLATION—Continued

Malone, Plant and Little's *Cases on the Employment Relation*, 1055 pages, 1974, with 1977 Supplement (Casebook)

See also Poverty Law

SURETYSHIP

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Keeton and Keeton's *Cases and Materials on Torts*, 2nd Ed., 1200 pages, 1977 (Casebook)

Kionka's *Torts in a Nutshell: Injuries to Persons and Property*, 434 pages, 1977 (Text)

Malone's *Torts in a Nutshell: Injuries to Family, Social and Trade Relations*, 340 pages, 1979 (Text)

Prosser's *Hornbook on Torts*, 4th Ed., 1208 pages, 1971 (Text)

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See also Products Liability

TRADE REGULATION

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Jean's *Trial Advocacy (Student Edition)*, 473 pages, 1975 (Text)

McElhaney's *Effective Litigation*, 457 pages, 1974 (Casebook)

TRUSTS

See Wills, Trusts and Estates

WATER LAW

Trelease's *Cases and Materials on Water Law*, 3rd Ed., 828 pages, 1979 (Casebook)

See also Natural Resources & Environmental Law

WILL, TRUSTS AND ESTATES

Atkinson's *Hornbook on Wills*, 2nd Ed., 975 pages, 1953 (Text)

Averill's *Uniform Probate Code in a Nutshell*, 425 pages, 1978 (Text)

Bogert's *Hornbook on Trusts*, 5th Ed., 726 pages, 1973 (Text)

Clark, Lusky and Murphy's *Cases and Materials on Gratuitous Transfers*, 2nd Ed., 1102 pages, 1977 (Casebook)

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WILL, TRUSTS AND ESTATES

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- Gulliver's Cases and Materials on Future Interests, 624 pages, 1959 (Casebook)
Gulliver's Introduction to the Law of Future Interests, 87 pages, 1959 (Casebook)
Halbach (Editor)—Death, Taxes, and Family Property: Essays and American Assembly Report, 189 pages, 1977 (Text)
Mennell's Cases and Materials on California Decedent's Estates, 566 pages, 1973 (Casebook)
Mennell's Wills and Trusts in a Nutshell, 392 pages, 1979 (Text)
Powell's Cases on Trusts and Wills, 639 pages, 1960 (Casebook)
Simes' Hornbook on Future Interests, 2nd Ed., 355 pages, 1966 (Text)

WILL, TRUSTS AND ESTATES

—Continued

- Turrentine's Cases and Text on Wills and Administration, 2nd Ed., 483 pages, 1962 (Casebook)
Uniform Probate Code, 5th Ed., Official Text With Comments, 384 pages, 1977

WOMEN AND THE LAW

- Davidson, Ginsburg and Kay's Text, Cases and Materials on Sex-Based Discrimination, 1031 pages, 1974, with 1978 Supplement (Casebook)
See also Employment Discrimination

WORKMEN'S COMPENSATION

- See Social Legislation

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To F.M.J., Jr., whose
generation brought first
laurels to civil rights
and
my son Chip and my students,
whose generations cannot
sit on those laurels

PREFACE

As with most publication efforts, these materials began with the search for a book which did not exist. As a new professor preparing to teach civil rights, I found excellent casebooks on constitutional law and challenging new works on topical issues such as race and sex discrimination. Along with these grand books on substance I also considered the grand book of federal practice and procedure, Hart and Wechsler's *The Federal Courts and the Federal System*.

None of these superior books, prepared for other courses, fit my conception of what a book for a course in civil rights ought to be. Civil rights is more than constitutional law because statutory considerations play such an important role. Civil rights is broader than race or sex discrimination, broader of course, in the topical sense, especially with Congress' newer legislation. More importantly, focusing on a single topic fails to disclose the similarities which many civil rights topics share—and the pertinent differences which so shape policies and decisions. The topical approach also sometimes produces students long on policy but short on the skills necessary to implement policy, and if there is anything the civil rights area needs it is attorneys as skilled as they are committed. Procedural skills alone, however, even the specialized knowledge of federal practice which serves a civil rights attorney so well, cannot win a case when substantive knowledge is lacking.

The civil rights course I wanted to teach would treat the area as a major body of federal law as sophisticated and as important as Labor Law, Securities Regulation, or Taxation. At the core of those courses, and at the core of this book, are major statutory frameworks around which issues of interpretation and policy swirl. Civil rights, moreover, is even more complex because the statutes interplay so often with constitutional considerations, yielding a much more overtly active judicial role than can be found in other areas of federal law.

The apparent statutory focus of these materials may therefore be grossly misleading. It does, however, serve real pedagogical purposes. The statutes provide a comfortable framework for orienting the subject matter because they give students a clear set of choices on how to proceed when they encounter a civil rights case. More importantly, however, each statute raises certain specific constitutional and policy issues so that the statutory framework creates its own parallel constitutional framework. The division of statutes

PREFACE

between Part One and Part Two also shows clearly the respective active roles of the Judiciary and Congress in promoting civil rights.

I should perhaps add a few points relating to use of this book in teaching. First, I realize that many of us who teach in this area are former civil rights attorneys or persons with specific experiences in civil rights. The materials which many of us have privately assembled in the past show substantial personal experience and commitment. I do not deny the value of the contribution made by such experiences: this book searches for common elements in our respective experiences so that we may begin to convey systematically and more certainly our knowledge of civil rights. I have planned the book to encourage individual professors to go beyond this common and systematic foundation. The statutory framework of the book lends itself to supplementation, and I have regularly in the past handed out problem sets to my classes on specific topical problems on which I have worked, including prisoner's rights, sex discrimination, and school desegregation.

Second, the statutory framework of this book, especially the division into Parts One and Two, makes it possible to teach only part of the material in a course. Several persons with whom I have shared these materials in the past have used Part One to teach a course in traditional civil rights which emphasizes the importance of the judicial role in lawmaking. One person has used Chapter 1 alone as the core material for a course on § 1983 and litigation against state officials. Of course you may want to use the entire book: I have five times taught almost the entire set of materials to dedicated—and challenged—classes at Georgetown, usually for only two credits.

Third, I have tried to eliminate as much bias as possible from these materials, even to the point of occasionally suggesting that holdings I supported—or even litigated—as an attorney may have been wrongly decided. My goal was not particularly to accommodate conservative students or professors, although I believe that every law student should learn civil rights law regardless of his political persuasion. Rather I firmly believe that civil rights law can be advanced permanently and regularly only when we bring the same rigor, the same willingness to ask hard questions, the same hard-headedness to this area of law as we apply in all others. The whirling of active minds is to be preferred over the click of knees jerking in unison.

I wish to thank my research assistants who have for four years hunted cases, cut and pasted them, and helped me catch my repeated mistakes: Ellen Miyasato, Pamela Perry, Kathy Russo, Jim Conner, and Carrie Schnelker. Also, I thank Tony Taylor, Judy Byrd,