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# Constitutional Law

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Robyn Scheina Brown ■ Kelly A. Koermer



Wolters Kluwer  
Law & Business

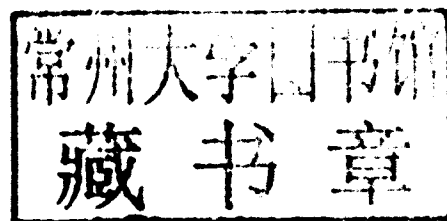
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# Constitutional Law: Laying Down the Law

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*Robyn Scheina Brown*

*Kelly A. Koermer*



Wolters Kluwer

Law & Business

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# Introduction

This book is a workbook and not a textbook. It is not designed to instruct you on every nuance of the Constitution. As such, this book is not meant to be your *only* source on constitutional law. Instead, you should be using this *with* other sources on constitutional law, whether they are classroom discussions, a textbook, power points, or the like. Using this workbook, your textbook, and information provided by your instructor will enable you to master fully constitutional law and analysis.

Each chapter deals with a single constitutional provision or Amendment. With the exception of the introductory chapter on levels of constitutional scrutiny, each chapter is formatted in exactly the same way, containing eight separate sections: the Chapter Introduction; Student Checklist; Supreme Court Cases; Case Questions; Hypothetical with Accompanying Analysis; Hypothetical for Student Analysis; Discussion Questions; and Test Bank. It is designed to be user-friendly, to let you work through issues and scenarios dealing with constitutional powers and limitations to reinforce the concepts and to practice critical thinking skills that are necessary in analyzing every constitutional question.

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## HINTS TO FULLY UTILIZE THIS WORKBOOK

1. **Sometimes, there is no right answer . . .** Several of the issues you will tackle, whether in case questions, discussion questions, or hypothetical scenarios, do not have answers. The hypotheticals may be based upon cases that are currently pending in the courts or have not even been entertained by the courts. So, you may not find any binding precedent or persuasive authority on the issues. As such, you may be faced on occasion with what's called an "issue of first impression." When challenged by a case of first impression, your ultimate answer of whether the government's action is constitutional or not is not the most important part of your answer. What is critical is your thorough analysis of the problem and applying the known law to the facts. In some ways, it is like a math problem, in which it is important to show how you reached your answer. Many times when it comes to the law, the "winner" is not necessarily the person who has the stronger case. Rather, it may be the person who can make the stronger argument. Therefore, it is important to be thorough and explicit in reaching your conclusion.

2. **Sometimes there is a right answer, but you may personally disagree with it . . .** Students of the law are often confronted with laws and court decisions with which they do not personally agree. Your position may be very compelling. However, it is important when analyzing constitutional problem that you do not supplant the law with your personal beliefs. Recognizing that many of the issues in this book trigger very personal beliefs, some analysis questions will ask you to state your personal position. However, you will usually be asked to explain your legal rationale as to why you believe your personal position is correct.
3. **Appreciate the opposing argument . . .** Understanding and analyzing constitutional law requires a student to be able to understand the strengths and weaknesses of each side's positions. Anticipate counterarguments to your position, appreciate that argument, and formulate a well-reasoned refutation to the counterargument.
4. **Practice reading and analyzing constitutional law . . .** Being able to understand and analyze constitutional law is not always an innate skill. Many of the issues in this book are extremely complicated; so complicated, in fact, that at times the Supreme Court justices do not even agree on what the law should be. Consider the Supreme Court cases included in each chapter along with the cases you read in your main textbook in formulating your overall understanding of constitutional law. Use this body of knowledge and the steps used by the Court in its analysis in solving the hypotheticals in this book. There are a total of 24 hypotheticals in this book—12 that are analyzed for you, so you can practice, and another 12 without an analysis so you can test your skills. The more hypotheticals you work through, the easier they will become to analyze.
5. **Use plain English . . .** When analyzing the issues within this book, learn to express your thoughts in a clear, concise manner. Students frequently get more wrapped up in using “legalese” and not focusing on the substance of their answers.
6. **Cite to your legal authority . . .** It is critical to cite to the authority for any statements that you make about the law or that support your legal analysis. Citation illustrates that the concepts you are advancing are reliable. From an academic standpoint, citation will protect you from committing plagiarism. It is obvious that one must cite to the authority when quoting from that authority. It is also important to cite to the authority from which you extracted a legal concept.
7. **Employ the checklist . . .** The Student Checklist is designed as a road-map to assist you in breaking down very complicated, multifaceted issues. Each checklist will take you through a step-by-step analysis of whichever constitutional provision about which you happen to be reading. You will find key vocabulary or “buzz words” in these checklists so you can analyze issues using the proper terms. Follow the checklist not only in your thought process but in your writing as well. Your analysis of an issue will not only be more thorough and comprehensive, but it will also be more accurate.
8. **Remember the ultimate constitutional question . . .** In almost every instance, the ultimate question in every constitutional case is “Does the government have the power to \_\_\_\_\_?” In fact, this phrase is often a very appropriate way to frame the overarching constitutional issue from which subissues may be derived. In conducting your analysis, be sure to explore if the body of the Constitution empowers the

government to act in a specific manner and that one or more of the Amendments do not restrict or take away such power.

9. **Professionalism is key . . .** This book focuses on very *real* application to a very *real* world. Some of the topics may make you passionate, disturbed, or uncomfortable. It is appropriate to advance an argument with zeal and refute the opposition. It is never appropriate to make arguments personal or be disrespectful to classmates or colleagues.
10. **Enjoy your studies . . .** The Constitution is an amazing document. Some scholars and Supreme Court justices believe that it is a living, breathing document that evolves with our society, while others believe it should be interpreted in the exact context in which it was written. Whichever way you consider the Constitution, it is impossible to ignore that it created the most stable and powerful democracy in history and is still relevant more than 200 years after its inception. It has guided us through more than two centuries of challenges, including civil strife, domestic unrest, and wars abroad. It has spurred great political debate and scholarly analysis. Even we authors grow more in awe of the Constitution as we continue to study the document. We hope that you enjoy the Constitution and constitutional law and debate as much as we do.

—R.S.B. & K.A.K.





# I

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## The Government and Its Powers