

Preface

This new edition includes full coverage of the Supreme Court’s term that ended in July 2023, in which the most important decision was the *Students for Fair Admissions* case, nullifying race-conscious university admissions preferences. The edition covers this and other Supreme Court decisions from that term, including:

- ❑ *Students for Fair Admissions v. Harvard College*, holding that universities *may no longer take race into account* in making admissions decisions and thus *nullifying traditional affirmative action* in admissions.
- ❑ *Biden v. Nebraska*, a separation-of-powers decision holding that the Biden administration’s *cancellation of up to \$400 billion of student loan debt* was *invalid* under the “*major question*” doctrine. Under that doctrine, a federal agency may act on a major question of *economic or political significance* only if there is “*clear direction*” from Congress allowing that action.
- ❑ *Nat’l Pork Producers Council v. Ross*, a decision reaffirming that even where a state law was not enacted with an intent to discriminate against interstate commerce, the Court will still perform a *rough balancing test*, under which it will find a *dormant Commerce Clause violation* if the *burden* imposed on commerce is *clearly excessive* compared with the *local benefits*.
- ❑ *Counterman v. Colorado*, a free-speech case reaffirming that *threats of violence* are *not protected by the First Amendment* but holding that to treat the making of such a threat as a crime, the prosecution must prove that the speaker acted “*recklessly*,” i.e., that the speaker “*consciously disregarded*” a substantial *risk* that the speech would *cause harm to another*.
- ❑ *Moore v. Harper*, a decision about the meaning of the “*Elections Clause*,” which gives each state legislature the power to determine the “*times, places and manner*” of congressional elections. The Court rejected the “*independent state legislature*” theory, which contended that a state legislature’s power to regulate federal elections was absolute, and not, say, subject to state-court judicial review for violations of the state constitution.

Here are some of this book’s special features:

- “**Casebook Correlation Chart**” — This chart, located just after this Preface, correlates each section of the main Outline with the pages covering the same topic in the four leading Constitutional Law casebooks.
- “**Capsule Summary**” — This is a 132-page summary of the key concepts of Constitutional Law, specially designed for use in the last week or so before your final exam.
- “**Quiz Yourself**” — Either at the end of the chapter or after major sections of a chapter I give you short-answer questions so that you can exercise your analytical muscles. There are over 115 of these questions, each written by me.
- “**Exam Tips**” — These alert you to the issues that repeatedly pop up on actual Constitutional Law exams, and to the fact patterns commonly used to test those issues. I created these Tips by looking at literally hundreds of multiple-choice and essay questions asked by law professors and bar examiners.

I intend for you to use this book both throughout the semester and for exam preparation. Here are

some suggestions about how to use it:

1. The book seems (and is) *big*. But don't panic. The actual text includes over 75 pages of *Quiz Yourself* short-answer questions and answers, plus lots of *Exam Tips*. Anyway, you don't have to read everything in the book — there are lots of special features that you may or may not decide to take advantage of.
2. During the semester, use the book in preparing each night for the next day's class. To do this, first read your casebook. Then, use the *Casebook Correlation Chart* to get an idea of what part of the outline to read. Reading the outline will give you a sense of how the particular cases you've just read in your casebook fit into the overall structure of the subject.
3. If you make your own outline for the course, use the *Emanuel*[®] to give you a structure, and to supply black letter principles. You may want to rely especially on the *Capsule Summary* for this purpose. You are hereby authorized to copy small portions of the *Emanuel*[®] into your own outline, provided that your outline will be used only by you or your study group, and provided that you are the owner of the *Emanuel*[®].
4. When you first start studying for exams, read the *Capsule Summary* to get an overview. This will probably take you about one day.
5. Either during exam study or earlier in the semester, do some or all of the *Quiz Yourself* short-essay questions. You can find these quickly by looking for *Quiz Yourself* entries in the Table of Contents. Remember that the only way to get good at writing essays is to write essays.
6. Three or four days before the exam, review the *Exam Tips* that appear at the end of each chapter.
7. The night before the exam: (1) do some *Quiz Yourself* questions, just to get your thinking and writing juices flowing, and (2) re-scan the *Exam Tips* (spending about 2-3 hours).

My deepest thanks go to my editorial colleagues, Barbara Lasoff and Barbara Roth, who have helped greatly to assure the quality of this edition. Warm thanks also to the excellent publishing team at Aspen Publishing, Nicole Pinard, Joe Terry and Natalie Danner.

By the way, the **full text of this book**, plus the full text of many other study aids, is available **online** as part of a single low-cost monthly subscription at **www.EmanuelAYCE.com**. “AYCE” stands for “All You Can Eat” — we named it that way because you get **unlimited access** to the full-text of:

- This and the other **9 Emanuel Law Outlines** titles that I write;
- All **9 Emanuel CrunchTime** titles that I write;
- Emanuel Law in a Flash** flash-card titles in **13** subjects;
- Casenotes Legal Briefs** for **50** of the leading casebooks; and
- Over 1300 **multiple-choice questions and answers**.

Good luck in your ConLaw course. If you'd like any other Aspen publication, you can find it at your bookstore or at **www.AspenPublishing.com**. If you'd like to contact me, you can email me at **semanuel@westnet.com**.

Steve Emanuel
Larchmont, NY
March 2024