

## PREFACE

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Like other important moments in history—the Japanese attack on Pearl Harbor, the assassination of JFK, 9/11—many if not most of us will remember where we were on March 13, 2020, when everything seemed to shut down for Covid. Like most days, I took the bus to campus that day, from Wilsonville to Salem. Walking across the capitol grounds on our way to campus, a colleague stressed that we needed to shut everything down. “Look at Iran, look at Italy,” she said. If we don’t shut everything down there will be mass infections and death. I was dubious. “Really? We’re going to shut down schools and businesses for a virus?” What about education? What about the economy? My mind could not quite grasp what would shortly become reality. Later that day, President Trump declared a “national emergency.” The president of Willamette University, Steve Thorsett, convened an ad hoc meeting of the law faculty at which I was one of a handful in attendance in person. Unlike most of my colleagues, I had class on Friday and was in the building. A senior colleague and former dean sat next to me, also skeptical that the shutdown the president was announcing might be an overreaction. But there we were. Be ready to teach remotely on Monday, we were told. Little did we know that we would not be allowed back into the building until at least May, and that I would not walk through the halls of my law school maskless until March 2022, and not teach a maskless class until August 2022. “Fifteen days to slow the spread” became more than two years of upheaval.

My older son, Amos, was finishing up fifth grade and was eagerly looking forward to the rites of passage associated with such, including BizTown and a special trip to an aquatic theme park. Our local Little League had just begun “spring training.” Religious school was in full swing, having just celebrated the Purim carnival a weekend before. Soon, no more. With only two days to train (Saturday and Sunday), I proceeded to teach my Property class on Monday remotely (that semester I had class on Monday/Thursday/Friday), learning quickly how to conduct classes over Zoom. I quickly realized that our home Internet system would need an upgrade, with two adults “working from home” every day and two children soon attempting to learn from a teacher on a screen. This being Oregon, spring break even in a pandemic remained sacrosanct (the vast majority of the state’s K-12 schools and colleges observe spring break at the same time). So I taught for one week remotely before spring break came, but there was nowhere to go and not much to do. The governor closed parks soon after the first weekend after the local media cried foul at the large numbers of people crowding outdoor trails with most indoor activities closed or limited. We didn’t know yet that outdoor activity

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was far safer than indoor, and that hiking was probably the best thing for someone to do during Covid.

I immediately dived into the topic of gubernatorial emergency rule. “The governor can just shut down a business?” I wondered. “The governor has authority to close my kids’ schools for the entire remainder of the school year?” I dug deep into the Oregon emergency statutes, publishing frequently on my personal blog and engaging with an increasing number of followers over Twitter. The entire topic hit on so many of my academic interests and courses I had taught for years: state and local government, public health law, and state constitutional law. My incoming dean at the time, Brian Gallini, on his way from Arkansas Law, suggested that I create a class for fall 2020 that focused on the pandemic. “Great idea!” I responded, and away I went. I proceeded to teach that class, or something like it, five times and counting at both Willamette and Lewis and Clark law schools. I learned a lot from the students, and eagerly brought in guest speakers to cover gaps in my personal knowledge. What has emerged from that experience, including continuing refinement and ample feedback from students, is the corpus of this book, *The Law of Covid-19*.

Like public health law itself, the law of Covid-19 is necessarily trans-substantive. No one law professor could ever have personal expertise in all of the areas of law touched by the pandemic. I have endeavored to organize the materials that follow in a way that can support a standalone class, or that can be used to supplement any number of courses, including constitutional law, legislation and regulation, administrative law, public health law, and health law. I attempt to highlight the biggest issues during Covid—e.g., emergency authority, vaccination mandate litigation—while also touching on areas that the response to Covid affected, like the right to a jury trial and to cross-examine adverse witnesses. For reasons of manageability more than priority, I did not include everything. Some may want more about how some states used Covid to attempt to curtail abortion rights, or the ability to purchase firearms, or more on the extensions of unemployment insurance provided by Congress and facilitated to different degrees by states.

The material is mostly case law with some statutory text and secondary-source memoranda. I spent a lot of time thinking about how to organize the material, and while I offer my template, there is no right order in which to teach this material. With frequent cross-references to different parts of the book, students should find jumping around manageable.

I sincerely hope that you and your students enjoy covering this material and find it illuminating. Clearly, we have a lot to learn as a society about how we handle emergencies like pandemics. With the Covid emergency now in the rearview mirror, but only recently, we can begin to take stock and decide how to prepare for the next pandemic or significant emergency, which is sure to come one day. I hope this text can better prepare future lawyers, policymakers, and leaders for this challenge.

Paul A. Diller  
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