## CONTENTS

Preface Acknowledgi	nents	xvii xix
PART I.	STRUCTURAL FRAMEWORK FOR THE COVID-19 RESPONSE	1
Chapter 1.	Introduction and Background on Public Health Authority in the United States A. Basics of Federalism: State Police Power and	3
	Congress's Commerce Clause Authority Jacobson v. Massachusetts	7 7
	Notes and Questions	14
	B. Federal Commerce Clause Authority Gonzales v. Raich Notes and Questions	17 17 25
	C. The Federal Health Bureaucracy	25
	D. State Health Agencies	27
	E. Local Health Agencies	29
	F. The World Health Organization Notes and Questions	30 31
Chapter 2.	State Police Power and Emergency Framework	33
1	A. Emergency Statutes	33
	Conn. Gen. Stat. Ann. § 28-9 (2021)	34
	Elkhorn Baptist Church v. Brown	35
	Notes and Questions	43
	B. State Constitutional Limits on Delegation	44 45
	Wisconsin Legislature v. Palm Midwest Institute of Health, PLLC	40
	v. Governor of Michigan (In re Certified	
	Questions from the U.S. District Court,	
	Western District of Michigan)	52
	Notes and Questions	59
	C. Changes to State Emergency Laws in Response to Covid	62

## Contents

	D. The Intersection of State Emergency Powers and	
	Local Governance	64
Chapter 3.	Federal Emergency and Rulemaking Powers	67
	A. Emergency Statutes	67
	<ol> <li>Public Health Service Act (PHSA)</li> <li>Public Readiness and Emergency Preparedness</li> </ol>	67
	Act (PREP Act)	68
	3. Food, Drug, and Cosmetic Act (FDCA)	68
	4. National Emergencies Act (NEA)	69
	5. Stafford Act	70
	6. Summary	70
	B. Administrative Rulemaking	71
	National Federation of Independent Business v. Department of Labor, Occupational	
	Safety & Health Administration	72
	Notes and Questions	79
	Health Freedom Defense Fund, Inc. v. Biden	81
	Notes and Questions	95
PART II.	INDIVIDUAL CONSTITUTIONAL RIGHTS IN A PANDEMIC	97
Chapter 4.	First Amendment: Religion, Association, and Speech	99
-	Roman Catholic Diocese of Brooklyn v. Cuomo	100
	Notes and Questions	111
Chapter 5.	Criminal Prosecution	115
	A. Speedy Trial	115
	United States v. Reese	116
	Notes and Questions	120
	B. Confrontation	121
	United States v. James	121
	Notes and Questions	124
Chapter 6.	Voting	127
	Merrill v. People First of Alabama	128
	Notes and Questions	130
Chapter 7.	Right to Travel	133
	Page v. Cuomo	134
	Notes and Questions	140

## Contents

Chapter 8.	Right to an Education, and Related Rights	143
_	Danville Christian Academy, Inc. v. Beshear	144
	Notes and Questions	147
Chapter 9.	Comparative Constitutional Approaches to Covid	
-	Litigation	151
	Grounded Kiwis Group, Inc. v. Minister	
	of Health	153
PART III.	SOCIAL SAFETY NET, EQUITY, AND COVID'S IMPACT ON THE ECONOMY	157
<b>C1</b> 10		
Chapter 10.	Rent and Eviction Moratoria	159
	Elmsford Apartment Associates, LLC v. Cuomo	160
	Notes and Questions Alabama Association of Realtors	166
	v. Department of Health and Human	
	Services	168
	Notes and Questions	175
		1//
Chapter 11.	Pandemic Aid to Businesses and Individuals	177
	Vitolo v. Guzman	177
	Great Northern Resources, Inc. v. Coba	185
	Notes and Questions	188
Chapter 12.	Enforcement of Contracts During Covid	191
1	Dakota Ventures, LLC v. Oregon Mutual	
	Insurance Co.	191
	Notes and Questions	201
Chapter 13.	Business and Entity Tort Liability During Covid	203
PART IV.	SPECIAL SETTINGS: WORKPLACES,	
	UNIVERSITIES, AND THE MILITARY	205
	Regulatory Framework for Vaccines, Medicines, and Devices	205
Chapter 14.	Workplace Vaccination Mandates: At-Will Employment	209
-	U.S. Department of Justice, Office of Legal	
	Counsel: Whether Section 564 of the	
	Food, Drug, and Cosmetic Act Prohibits	
	Entities from Requiring the Use of a	
	Vaccine Subject to an Emergency Use	210
	Authorization	210

## Contents

Bridges v. Houston Methodist Hospital Notes and Questions	218 220
Chapter 15. Workplace Vaccination Mandates: Government	
Employees and Unions	223
A. Government Employees	223
Johnson v. Brown	224
Notes and Questions	232
B. Public Sector Employee Union Issues	234
Civil Service Employees Association, Inc.,	
Local 1000 v. New York State (Unified	
Court System)	234
C. Federal Employees	241
Chapter 16. Workplace Vaccination Mandates: Government Contractors, Healthcare Workers, and Public	
Accommodations	243
A. Federal Contractors	243
Georgia v. President of the United States	243
B. Federal Regulation of Healthcare Workers	255
Biden v. Missouri	255
Notes and Questions	264
C. Public Accommodations: Vaccination Mandates for	
Customers and Guests	265
Chapter 17. University and Military Vaccination Mandates	267
A. University Vaccination Mandates	267
Klaassen v. Trustees of Indiana University	267
Notes and Questions	269
B. Military Vaccination Mandates	272
Austin v. U.S. Navy Seals 1-26	272
Oklahoma v. Biden	277
Notes and Questions	285