

Contents

Preface	ix
1. Public Management and Understanding Public Law	3
A Government Founded in Law	4
Governance and the Rule of Law Philosophy	6
Principles of the Rule of Law	7
Administrative and Legal Complexity	8
<i>Notes on Courts and Public Law</i>	8
<i>Administrative Purpose</i>	9
<i>Government Legitimacy</i>	10
Democratic Values and Administration	11
Plan of This Book	12
Discussion Questions	13
2. Constitutional Concerns: Government Powers and Individual Rights	14
Constitutional Law and the Courts	14
Governmental Power and Authority	16
Constitutional Functions	18
Constitutional Constraints and Public Accountability	19
Individual Constitutional Rights	22
<i>Due Process Generally</i>	24
<i>Substantive Due Process</i>	25
<i>Procedural Due Process</i>	25
<i>Equal Protection and Classifications</i>	26
<i>Other Fifth Amendment Considerations</i>	29
<i>Protections Against Search and Seizure</i>	29
<i>First Amendment Protections</i>	31
Conclusion	32
Cases	32
<i>Albert O. Hesse v. Fred J. Rath</i>	33
<i>McMillen v. Anderson</i>	33
Discussion Questions	35

3. Policy, Administration, and Legislation	37
Policy Focus	37
Politics and Administration	39
Policy Process and Studies	39
Enacting Statutes	40
Types of Statutes	41
Delegation and Discretion	43
<i>Techniques to Control Discretion</i>	44
<i>Multiple Sources of Authority</i>	45
Agencies and Courts Make Laws	46
<i>Agencies Determine What the Law Is</i>	46
<i>Courts Decide What the Law Is</i>	47
<i>Typical Steps in Statutory Interpretation</i>	47
<i>Other Approaches to Statutory Interpretation</i>	48
Conclusion	49
Cases	49
<i>McBoyle v. United States</i>	50
<i>Federated Distributors v. Johnson</i>	51
Discussion Questions	58
4. Courts and Dispute Resolution	60
Role of Courts	60
<i>Judicial Rational Decision-Making</i>	61
<i>Court Systems</i>	62
The Process of Conflicts, Claims, and Cases	63
Trials and Appeals	67
<i>Procedural Limits on Cases</i>	67
<i>Trials Emphasize Facts</i>	69
<i>Appeals</i>	70
<i>Opinions and Law Making</i>	71
<i>Legal Authority and Advocacy</i>	72
Alternative Dispute Resolution	73
Judicial Review of Government Actions	74
Democratic and Judicial Values	76
Conclusion	78
Cases	78
<i>Buckley v. New York</i>	79
<i>Ethredge v. Hail</i>	81
Discussion Questions	85

5. Administrative Practice and Administrative Law	87
Administrative Activities and Regulation	88
Historic Transition from Administrative Law to	
Administrative Procedure	90
Rules and Regulations	93
<i>Three Types of Rules</i>	93
<i>The Rulemaking Process</i>	94
<i>Contrasting Promulgating Regulations to Enacting Legislation</i>	98
Administrative Enforcement and Adjudication	98
<i>Enforcement and Inspections</i>	99
<i>Benefit or License Actions</i>	100
Administrative Adjudication	100
<i>Formal Adjudication or on the Record Adjudication</i>	101
<i>Follow-up to Administrative Hearings</i>	102
Comparing Rulemaking and Enforcement	103
Information Aspects of Administrative Law	103
Conclusion	106
Cases	106
<i>Ezell v. Bowen</i>	107
<i>Lauger v. Shalala</i>	109
Discussion Questions	111
6. Property Law: Public and Regulatory Aspects	113
Property Law Generally	114
<i>Elements of Ownership</i>	115
<i>Conditions and Limits on Ownership</i>	116
<i>Preferences and Ownership Attributes</i>	116
<i>Private Nuisance</i>	117
<i>Deed Restrictions and Ownership Associations</i>	117
Government Regulating Property—Generally	118
Local Government Land Use Regulations	119
Property Issues and Constitutional Rights—Generally	121
Constitutional Rights and Eminent Domain	122
Government as Property Owner	125
Community Preference and Individual Rights	127
Conclusion	129
Cases	129
<i>Lawrence School v. Lewis</i>	130
<i>Campbell v. Champaign</i>	133
Discussion Questions	136

7. Contracts and Contracting	138
Contract Law	138
<i>Elements of a Contract</i>	139
<i>Stages and Enforcement of a Contract</i>	141
<i>Statutes and Common Law</i>	142
Management Approach of Contracting	142
<i>Essential Considerations for Contracting-Out</i>	143
<i>Contract Administration and Operation</i>	144
Special Considerations for Government	147
Conclusion	148
Cases	148
<i>Space Master v. Worcester</i>	149
<i>Miami v. Kory</i>	153
Discussion Questions	158
8. Tort Actions and Government Considerations	160
Tort Law Principles	161
Government Bringing Tort Actions	163
Sovereign Immunity	164
<i>Federal Immunity and Tort Claims Act</i>	164
<i>State and Local Immunity</i>	166
Limits and Alternatives to Tort Lawsuits	167
Constitutional Torts	169
Conclusion	170
Cases	171
<i>Schiffman v. Spring and Bright</i>	171
<i>Gonzalez v. Avalos</i>	173
Discussion Questions	182
9. Dynamic Public Administration and Law	183
Governing Mechanisms	183
Gaining Specific Legal Knowledge	186
Public Perceptions and Administrative Practices	187
Seek Change Through Democratic Process	190
Dynamic Public Administration	193
Case	194
<i>Jones v. Carlisle</i>	194
Discussion Questions	199
Notes	201
Index	211
About the Author	223