

TABLE OF CONTENTS

FOREWORD	iii
SUMMARY OF CONTENTS	vii
TABLE OF CASES	xxi
TABLE OF AUTHORITIES	xxix
EXPLANATORY NOTE.....	xli
ACKNOWLEDGEMENTS	xli
PERMISSION TO REPRINT	xli
CHAPTER I	
INTRODUCTION.....	1
CHAPTER II	
DUAL SOVEREIGNTY: THE INTERRELATION OF THE STATE AND FEDERAL CONSTITUTIONS	7
A. INTRODUCTION	7
B. THE SOURCES AND NATURE OF FEDERAL AND STATE POWERS	7
1. Exclusive Federal Powers	7
<i>GONZALES v. RAICH</i>	8
NOTE.....	20
<i>NFIB v. SEBELIUS</i>	21
<i>CITY OF BOERNE v. FLORES</i>	26
2. Exclusive State Powers	32
3. Overlapping and Shared Powers	33
<i>UNITED STATES v. LOPEZ</i>	35
C. LIMITATIONS ON FEDERAL POWER	39
1. The Anti-Commandeering Principle	39
<i>PRINTZ v. UNITED STATES</i>	39
NOTE.....	43
2. Immunity from Suits under Federal Law	44
<i>ALDEN v. MAINE</i>	44
<i>FRANCHISE TAX BOARD OF CALIFORNIA v. HYATT</i>	52
D. FEDERAL LIMITATIONS ON STATE POWER.....	58
1. Article VI – The Supremacy Clause	58
<i>U.S. TERM LIMITS, INC. v. THORNTON</i>	58
<i>GREGORY v. ASHCROFT</i>	63
2. Article IV	67
<i>COYLE v. SMITH</i>	68
NOTE.....	71
<i>LUTHER v. BORDEN</i>	72
<i>PACIFIC STATES TELEPHONE & TELEGRAPH CO. v. OREGON</i>	76
NOTE.....	78
<i>ARIZONA STATE LEGISLATURE v. ARIZONA INDEP. REDISTRICTING COMM’N</i>	79
CHAPTER III	
THEORIES BY WHICH STATE COURTS MAY CONSTRUE STATE CONSTITUTIONS DIFFERENTLY FROM THEIR FEDERAL COUNTERPARTS... 91	
A. SIMILARLY WORDED GUARANTEES.....	92
<i>SITZ v. DEPARTMENT OF STATE POLICE</i>	94
NOTES.....	97
<i>STATE v. HEMPELE</i>	98
NOTE.....	102
<i>BLUM v. MERRELL DOW PHARMACEUTICALS, INC.</i>	102
NOTES.....	106
B. DIFFERENTLY WORDED PROVISIONS.....	107

<i>RACING ASSOCIATION OF CENTRAL IOWA v. FITZGERALD</i>	108
NOTES.....	111
<i>STATE v. JORDEN</i>	112
C. STATE GUARANTEES MAY OFFER MORE OR LESS PROTECTIONS THAN THEIR FEDERAL COUNTERPARTS	114
<i>STATE v. SCOTTIZE DANYELLE BROWN</i>	114
NOTE.....	116
D. INDEPENDENT AND ADEQUATE STATE GROUNDS: STATE COURT RULINGS THAT ADDRESS FEDERAL AND STATE BASES FOR DECISION.....	117
<i>OHIO v. ROBINETTE (Ohio 1995)</i>	118
<i>OHIO v. ROBINETTE (U.S. 1996)</i>	121
<i>OHIO v. ROBINETTE (Ohio 1997)</i>	123
NOTES.....	127
E. SEQUENCING: THE ORDER IN WHICH STATE COURTS RESOLVE RELATED STATE AND FEDERAL CLAIMS AND THE PRIORITY GIVEN TO EACH	127
Jeffrey S. Sutton, <i>What Does—and Does Not—Ail State Constitutional Law</i>	130
CHAPTER IV	
EQUALITY	137
A. INTRODUCTION	137
Jeffrey M. Shaman, <i>Equality and Liberty in The Golden Age of State Constitutional Law</i>	137
B. RACIAL CLASSIFICATIONS	138
<i>SHEFF v. O'NEILL</i>	138
NOTE.....	146
<i>MALABED v. NORTH SLOPE BOROUGH</i>	147
NOTES.....	153
C. GENDER-BASED CLASSIFICATIONS	154
<i>COMMONWEALTH v. PENNSYLVANIA INTERSCHOLASTIC ATHLETIC ASSOCIATION</i>	154
NOTE.....	157
<i>STATE v. RIVERA</i>	158
NOTES.....	160
D. AGE-BASED CLASSIFICATIONS	160
<i>DRISCOLL v. CORBETT</i>	160
NOTES.....	165
<i>ARNESON v. STATE</i>	167
<i>D.P. v STATE</i>	171
E. CLASSIFICATIONS BASED ON SEXUAL ORIENTATION	175
<i>TANNER v. OREGON HEALTH SCIENCES UNIVERSITY</i>	175
NOTE.....	179
<i>GARTNER v. IOWA DEPARTMENT OF PUBLIC HEALTH</i>	180
F. ECONOMIC RIGHTS.....	183
<i>BENSON v. NORTH DAKOTA WORKMEN'S COMPENSATION BUREAU</i>	184
<i>COLLINS v. DAY</i>	188
<i>CHURCH v. STATE</i>	192
<i>TULLY v. CITY OF WILMINGTON</i>	197
NOTE.....	202
<i>AFSCME IOWA COUNCIL 61 v. STATE</i>	202
NOTE.....	216

G. THE RIGHT TO VOTE	217
<i>WEINSCHENK v. STATE</i>	217
NOTES.....	222
<i>LEAGUE OF WOMEN VOTERS OF PA. v. PENNSYLVANIA</i>	223
NOTES.....	233
CHAPTER V	
DUE PROCESS OF LAW	237
A. INTRODUCTION	237
B. REPRODUCTIVE AUTONOMY	239
<i>DAVIS v. DAVIS</i>	239
NOTE.....	245
<i>In re T.W.</i>	245
NOTE.....	250
<i>REPRODUCTIVE HEALTH SERVICE OF PLANNED PARENTHOOD OF</i> <i>ST. LOUIS REGION, INC. v. NIXON</i>	251
<i>HODES & NAUSER, MDs, P.A. v. SCHMIDT</i>	251
NOTE.....	265
C. THE RIGHT OF INTIMATE ASSOCIATION.....	265
<i>STATE v. SAUNDERS</i>	265
NOTE.....	271
<i>COMMONWEALTH v. WASSON</i>	272
NOTE.....	282
D. CIVIL UNION AND MARRIAGE	283
<i>BAKER v. STATE</i>	283
NOTES.....	291
<i>GOODRIDGE v. DEPARTMENT OF PUBLIC HEALTH</i>	292
NOTES.....	310
E. THE RIGHT OF BODILY INTEGRITY	313
<i>Matter of FARRELL</i>	313
<i>KRISCHER v. McIVER</i>	317
<i>RAVIN v. STATE</i>	321
NOTES.....	325
F. PROCEDURAL DUE PROCESS	326
<i>STATE v. VEALE</i>	326
<i>M.E.K. v. R.L.K.</i>	330
CHAPTER VI	
CRIMINAL PROCEDURE	335
A. RIGHT TO JURY TRIAL	335
<i>CLAUDIO v. STATE</i>	335
NOTES.....	344
B. SELF-INCRIMINATION.....	346
<i>COMMONWEALTH v. MOLINA</i>	346
<i>WASHINGTON v. GREGORY</i>	353
NOTES.....	356
<i>ELLIOTT v. GEORGIA</i>	357
C. RIGHT TO COUNSEL	362
<i>STATE v. McADAMS</i>	362
NOTES.....	366
D. CONFRONTATION – FACE TO FACE.....	366
<i>COMMONWEALTH v. LUDWIG</i>	366
NOTES.....	369
E. DUTY TO PRESERVE EVIDENCE	369

<i>HAMMOND v. STATE</i>	369
NOTES.....	377
F. DOUBLE JEOPARDY	377
<i>PEOPLE v. ARANDA</i>	377
NOTES.....	381
G. CRUEL AND UNUSUAL PUNISHMENT	381
<i>STATE v. SANTIAGO</i>	381
NOTES.....	387
H. POST-CONVICTION RELIEF	388
<i>BROWN v. BOOKER</i>	388
NOTES.....	390
CHAPTER VII	
SEARCH AND SEIZURE	391
A. INTRODUCTION	391
B. PROBABLE CAUSE	391
<i>PEOPLE v. GRIMINGER</i>	391
<i>STATE v. TUTTLE</i>	394
NOTES.....	400
C. GOOD FAITH EXCEPTION TO WARRANT REQUIREMENT	400
<i>STATE v. KOIVU</i>	400
<i>COMMONWEALTH v. EDMUNDS</i>	405
NOTES.....	418
D. AUTOMATIC STANDING	419
<i>STATE v. LAMB</i>	419
<i>STATE v. BULLOCK</i>	420
NOTE.....	425
E. WARRANT REQUIREMENT.....	425
<i>STATE v. EARLS</i>	425
<i>STATE v. BRYANT</i>	431
NOTES.....	436
F. PHYSICAL SEIZURE OF INDIVIDUAL BY POLICE	437
<i>STATE v. BEAUCHESNE</i>	437
NOTES.....	442
G. WARRANTLESS AUTOMOBILE SEARCH.....	443
<i>STATE v. CORA</i>	443
NOTES.....	447
H. MIRANDA VIOLATION – PHYSICAL EVIDENCE EXCLUDED	447
<i>STATE v. PETERSON</i>	448
NOTES.....	453
CHAPTER VIII	
PROPERTY RIGHTS	455
A. INTRODUCTION	455
B. TAKINGS PROVISIONS AND THE <i>KELO</i> STORY	455
<i>CITY OF NORWOOD v. HORNEY</i>	456
<i>BD. OF CTY. COMM’RS OF MUSKOGEE CTY. v. LOWERY</i>	464
<i>GOLDSTEIN v. NEW YORK STATE URBAN DEV. CORP.</i>	469
NOTES.....	478
C. OTHER PROPERTY-RELATED RIGHTS UNDER STATE CONSTITUTIONS	479
<i>PATEL v. TEXAS DEPT. OF LICENSING</i>	479
CHAPTER IX	
RELIGION CLAUSES	495

A. FREEDOM OF RELIGION	495
<i>EMPLOYMENT DIVISION v. SMITH</i>	496
NOTES.....	498
<i>CITY OF BOERNE v. FLORES</i>	499
NOTES.....	500
<i>HUMPHREY v. LANE</i>	501
<i>ATTORNEY GENERAL v. DESILETS</i>	503
NOTES.....	505
<i>BARR v. CITY OF SINTON</i>	506
<i>CATHOLIC CHARITIES OF THE DIOCESE OF ALBANY v. SERIO</i>	511
NOTES.....	514
B. ESTABLISHMENT OF RELIGION.....	514
Mark Edward DeForrest, <i>An Overview and Evaluation of State Blaine</i> <i>Amendments: Origins, Scope, and First Amendment Concerns</i>	515
<i>TRINITY LUTHERAN CHURCH OF COLUMBIA, INC. v. COMER</i>	519
<i>FREEDOM FROM RELIGION FOUND. v. MORRIS CTY. BD. OF CHOSEN</i> <i>FREEHOLDERS</i>	522
<i>TAYLOR v. TOWN OF CABOT</i>	526
NOTES.....	529
<i>ZELMAN v. SIMMONS-HARRIS</i>	530
<i>JACKSON v. BENSON</i>	531
NOTE.....	533
<i>TAXPAYERS FOR PUBLIC EDUCATION v. DOUGLAS COUNTY SCHOOL</i> <i>DISTRICT</i>	534
<i>CAIN v. HORNE</i>	540
<i>MEREDITH v. PENCE</i>	542
NOTES.....	545
<i>MOSES v. RUSZKOWSKI</i>	546
CHAPTER X	
SCHOOL FUNDING CLAUSES	553
A. INTRODUCTION	553
B. EQUAL PROTECTION DECISIONS	555
<i>HORNBECK v. SOMERSET COUNTY BOARD OF EDUCATION</i>	556
<i>HORTON v. MESKILL</i>	558
<i>VINCENT v. VOIGHT</i>	561
NOTE.....	564
C. ADEQUACY DECISIONS	565
<i>EDGEWOOD INDEPENDENT SCHOOL DISTRICT v. KIRBY</i>	566
<i>DeROLPH v. STATE (Ohio 1997)</i>	569
<i>DeROLPH v. STATE (Ohio 2001)</i>	573
NOTE.....	576
<i>COLUMBIA FALLS ELEMENTARY SCHOOL DISTRICT NO. 6 v.</i> <i>STATE</i>	576
<i>ABBOTT v. BURKE</i>	578
NOTES.....	580
<i>CITIZENS FOR STRONG SCHOOLS, INC. v. FLORIDA STATE BOARD OF</i> <i>EDUCATION</i>	581
NOTES.....	585
D. SCHOOL UNIFORMITY CLAUSES.....	585
<i>BUSH v. HOLMES</i>	586
E. TEACHER TENURE	590
<i>VERGARA v. CALIFORNIA</i>	590
F. REMEDY	595

<i>HOKE COUNTY BOARD OF EDUCATION v. STATE</i>	595
<i>CLAREMONT SCHOOL DISTRICT v. GOVERNOR</i>	600
<i>NEELEY v. WEST ORANGE-COVE CONSOLIDATED INDEPENDENT SCHOOL DISTRICT</i>	606
NOTE.....	608
CHAPTER XI	
THE RIGHT TO A REMEDY AND OPEN COURTS	609
A. INTRODUCTION AND HISTORICAL BACKGROUND.....	609
Shannon M. Roesler, <i>The Kansas Remedy by Due Course of Law Provision: Defining a Right to a Remedy</i>	609
<i>KENTUCKY v. CLAYCOMB</i>	611
B. CASES DEFINING THE RIGHT	619
<i>MELLO v. BIG Y FOODS</i>	619
<i>ARBINO v. JOHNSON & JOHNSON</i>	621
<i>McINTOSH v. MELROE CO.</i>	625
<i>IEROPOLI v. AC&S CORP.</i>	631
NOTES.....	635
<i>LANEY v. FAIRVIEW CITY</i>	635
<i>TINDLEY v. SALT LAKE CITY SCHOOL DISTRICT,</i>	643
NOTES.....	646
C. AN AFFIRMATIVE RIGHT TO A STATE REMEDY?.....	647
<i>KATZBERG v. REGENTS OF THE UNIV. OF CALIFORNIA</i>	647
NOTES.....	651
CHAPTER XII	
OTHER STATE INDIVIDUAL RIGHTS	653
A. PRIVACY.....	653
<i>YORK v. WAHKIAKUM SCHOOL DISTRICT NO. 200</i>	653
NOTE.....	658
B. FREE SPEECH AND EXPRESSION	658
<i>FASHION VALLEY MALL v. NLRB</i>	659
NOTE.....	664
<i>STATE v. STUMMER</i>	665
NOTES.....	670
C. CIVIL JURY TRIAL	670
<i>SOFIE v. FIBREBOARD CORP.</i>	671
NOTE.....	675
<i>McCOOL v. GEHRET</i>	675
NOTES.....	679
D. RIGHT TO BEAR ARMS.....	679
<i>JANE DOE v. WILMINGTON HOUSING AUTHORITY</i>	679
NOTES.....	687
E. ENVIRONMENTAL RIGHTS	689
<i>PENNSYLVANIA ENVIRONMENTAL DEFENSE FOUND. v. COMMONWEALTH</i>	689
NOTES.....	694
F. CRIME VICTIMS' RIGHTS.....	695
<i>STATE v. STROM</i>	695
<i>STATE v. DAMATO-KUSHEL</i>	697
NOTES.....	701
G. RIGHT TO HUNT AND FISH	702
<i>CABOT v. THOMAS</i>	702
NOTE.....	706

H. NATURAL OR INALIENABLE RIGHTS.....	707
I. UNENUMERATED RIGHTS.....	707
CHAPTER XIII	
STATE CONSTITUTIONAL PROVISIONS WITH NO FEDERAL	
COUNTERPARTS	709
A. INTRODUCTION.....	709
B. SINGLE SUBJECT AND CLEAR TITLE RULES.....	710
Martha Dragich, <i>State Constitutional Restriction on Legislative Procedure: Rethinking the Analysis of Original Purpose, Single Subject, and Clear Title Challenges</i>	710
GREGORY v. SHURTLEFF.....	717
BURNS v. CLINE.....	721
NOTE.....	723
TURNBULL v. FINK.....	724
NOTE.....	728
C. PUBLIC PURPOSE REQUIREMENTS.....	729
MAREADY v. CITY OF WINSTON-SALEM.....	729
HOPPER v. CITY OF MADISON.....	736
TOWN OF BELOIT v. COUNTY OF ROCK.....	740
D. UNIFORMITY CLAUSES.....	746
ALLEGHENY PITTSBURGH COAL v. WEBSTER COUNTY.....	746
NORDLINGER v. HAHN.....	749
LEONARD v. THORNBURGH.....	752
ALLEGRO SERVICES, LTD. v. METROPOLITAN PIER AND EXPOSITION AUTHORITY.....	754
CHAPTER XIV	
ORGANIZATION OF STATE GOVERNMENTS.....	
A. INTRODUCTION.....	761
B. LEGISLATIVE POWER.....	761
1. Introduction.....	761
2. Term Limits for State and Local Officials.....	761
HOERGER v. SPOTA.....	762
TELLI v. BROWARD COUNTY.....	764
NOTES.....	766
C. EXECUTIVE POWER.....	766
1. The Selection and Organization of the Executive.....	766
PERDUE v. BAKER.....	768
2. The “Line Item” Veto Power.....	774
ST. JOHN’S WELL CHILD & FAMILY CTR. v. SCHWARZENEGGER.....	775
JACKSON v. SANFORD.....	778
HOMAN v. BRANSTAD.....	780
NOTES.....	784
D. JUDICIAL POWER.....	784
1. The Selection of Judges.....	785
Judith L. Maute, <i>Selecting Justice in State Courts: The Ballot Box or the Backroom?</i>	785
NOTES.....	789
2. Justiciability: Standing, Mootness, and Political Questions.....	790
GREGORY v. SHURTLEFF.....	790
COUEY v. ATKINS.....	799
In re GUARDIANSHIP OF TSCHUMY.....	804
BERRY v. CRAWFORD.....	811

3. Advisory Opinions	816
<i>STATE OF KANSAS ex rel. MORRISON v. SEBELIUS</i>	817
<i>In re OPINION OF THE JUSTICES</i>	822
NOTE.....	824
4. Certified Questions	824
<i>LEHMAN BROTHERS v. SCHEIN</i>	824
<i>HALEY v. UNIVERSITY OF TENNESSEE-KNOXVILLE</i>	827
E. SEPARATION OF POWERS	829
<i>In re PETITION OF GOVERNOR</i>	829
<i>In re REQUEST FOR ADVISORY OPINION FROM HOUSE OF</i> <i>REPRESENTATIVES</i>	833
CHAPTER XV	
ADMINISTRATIVE LAW.....	837
A. INTRODUCTION	837
B. NONDELEGATION	838
<i>A.L.A. SCHECHTER POULTRY CORP. v. UNITED STATES</i>	838
NOTE.....	842
<i>GUNDY v. UNITED STATES</i>	842
NOTES.....	846
<i>McNEILL v. STATE</i>	846
<i>ASKEW v. CROSS KEY WATERWAYS</i>	848
NOTE.....	852
<i>GUILLOU v. STATE OF NEW HAMPSHIRE, DIVISION OF MOTOR</i> <i>VEHICLES</i>	853
<i>TEXAS BOLL WEEVIL ERADICATION FOUNDATION, INC. v. LEWELLEN</i>	854
NOTE.....	860
<i>N.Y. STATEWIDE COAL. OF HISPANIC CHAMBERS OF COMMERCE v.</i> <i>N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE</i>	860
<i>In re PETITION TO TRANSFER TERRITORY FROM HIGH SCHOOL</i> <i>DISTRICT NO. 6, LAME DEER, ROSEBUD COUNTY, TO HIGH</i> <i>SCHOOL DISTRICT NO. 1, HARDIN, BIG HORN COUNTY</i>	864
C. JUDICIAL DEFERENCE TO ADMINISTRATIVE AGENCIES	865
<i>CHEVRON v. NATURAL RESOURCES DEFENSE COUNCIL</i>	866
NOTE.....	868
<i>TETRA TECH v. WISCONSIN DEPARTMENT OF REVENUE</i>	868
NOTE.....	875
<i>KING v. MISSISSIPPI MILITARY DEPARTMENT</i>	875
<i>PUBLIC WATER SUPPLY CO., INC. v. DIPASQUALE</i>	877
NOTE.....	880
CHAPTER XVI	
AMENDMENT AND REVISION OF STATE CONSTITUTIONS.....	881
A. INTRODUCTION	881
B. ALTERING STATE CONSTITUTIONS.....	883
Anne Permaloff, <i>Methods of Altering State Constitutions</i>	883
C. INITIATIVE	895
Ronald M. George, <i>The Perils of Direct Democracy: The California</i> <i>Experience</i>	895
NOTES.....	898
D. CONSTITUTIONAL CONVENTION – REQUIRED FOR COMPLETE REVISION.....	899

<i>CITIZENS PROTECTING MICHIGAN'S CONSTITUTION v. SECRETARY</i>	
	<i>OF STATE</i> 899
E. PROCEDURAL REQUIREMENTS	..... 904
	<i>STATE ex rel. VOTERS FIRST v. OHIO BALLOT BD.</i> 904
	<i>SAVE OUR VOTE v. BENNETT</i> 909
F. CONSTITUTIONAL COMMISSIONS	..... 913
	Peter J. Galie & Christopher Bopst, <i>The Constitutional Commission in New</i>
	<i>York: A Worthy Tradition</i> 913
	NOTE..... 919
G. LEGISLATING BY VOTER INITIATIVE	..... 919
	<i>CARTER v. LEHI CITY</i> 919
	<i>ARIZONA STATE LEGISLATURE v. ARIZONA INDEP. REDISTRICTING</i>
	<i>COMM'N</i> 926
CHAPTER XVII	
THE FRAMING OF STATE CONSTITUTIONS AND THEIR HISTORY	..... 931
PREFACE	..... 931
A. STATE CONSTITUTIONS' NASCENCY	..... 931
B. FIRST STATE CONSTITUTIONAL FORAYS	..... 937
C. NEW NATION BEGINS	..... 949
D. STATEHOOD ADMISSION REQUIREMENTS	..... 950
E. STRUCTURES OF GOVERNMENT	..... 953
F. NINETEENTH CENTURY DAWNS	..... 955
G. ANTEBELLUM STATE CONSTITUTIONS	..... 961
H. ANTEBELLUM INDIVIDUAL RIGHTS	..... 968
I. RECONSTRUCTION REVISIONS	..... 969
J. FOURTEENTH AMENDMENT	..... 971
K. RECONSTRUCTION AND BEYOND	..... 973
L. PROGRESSIVE ERA POTPOURRI	..... 977
M. INCORPORATION DOCTRINE'S IMPACT	..... 982
N. NEW DEAL CHALLENGES	..... 984
O. COLD WAR REVISIONS	..... 985
P. PATTERNS AND MODELS	..... 986
INDEX	..... 991