

CASES, PROBLEMS, AND MATERIALS
FOR USE WITH
THE LAW OF HIGHER EDUCATION: ESSENTIALS FOR LEGAL AND
ADMINISTRATIVE PRACTICE (2024)

Preface

A. The Scope and Purpose of these Materials

This volume, *Cases, Problems, and Materials* (“CPM”), complements William Kaplin’s, Barbara Lee’s, Neal Hutchens’, and Jacob Rookby’s text, *The Law of Higher Education Essentials for Legal and Administrative Practice* (Jossey-Bass, Inc., Publishers, 2024) (“text”). (Note: throughout this volume of materials, we often use the shorthand reference, text, to refer to *The Law of Higher Education: Essentials for Legal and Administrative Practice*.) Designed for instructional use by both instructors and students, CPM’s purpose is to facilitate and enrich the teaching and learning of education law and educational administration in law schools, graduate schools of education, and professional workshops for both attorneys and administrators.

Earlier versions of these materials, published by NACUA in 1995, 2001, 2007, 2013, and 2020 were designed for use with previous editions of the authors’ treatise, *The Law of Higher Education* and its *Student Version*. This 2024 edition of CPM-SV includes various new cases with notes and questions, various new problems with answer guidelines, and one new problem-solving exercise with review guidelines, as well as updates and revisions of the materials retained from the 2020 edition.

B. Organization of these Materials

This version of *Cases, Problems, and Materials* is divided into two Parts. Part I contains three types of materials: edited judicial opinions¹ illustrating selected facets of the law’s development; notes and questions to enhance understanding of the cases and their broader law and policy implications; and narrowly focused practice problems (with answer guidelines) that explore the law’s concrete applications to colleges and universities. This Part is divided into 12 sections corresponding to the 12 chapters in the text. The particular section(s) of the text that relates to each case and problem in Part I is indicated on the top of the first page of the case or problem. Particular section or page references to the text frequently are included in the notes

¹ Small deletions of text from these opinions are indicated by ellipses; large deletions are indicated by asterisks. Most internal citations have been deleted. Deletions of footnotes are usually made without indication, but can be detected by noting missing footnote numbers. (The court’s original footnote numbering is retained, so when a footnote number is missing, it means that the authors have deleted that footnote.)

after the cases and in the answer guidelines for the problems. More general references for further study are included only occasionally with these cases and problems, since such references already appear in the text in the discussions, the footnotes, and the Bibliography at the end of the book.

Part II of *CPM-SV* is a series of “large-scale” problem-solving exercises whose issues are not confined to a single section or chapter of the text. The various sections that are most directly related to each problem exercise are identified in the answer guidelines in Appendix B (see below). In a formal course, these problem-solving exercises may be used periodically to integrate knowledge or to practice professional roles in problem-solving; or they may be used for end-of-course review and synthesis, for independent study, or as the basis for research and writing assignments or examinations. In a workshop, these problem-solving exercises (along with the smaller problems in Part I) may become the central focus of workshop activity. Preceding the first of the large-scale problem-solving exercises is a proposed set of directions for working through the problems and a proposed set of basic questions for problem review. Guidelines for working through each problem-solving exercise are contained in Appendix B at the end of *CPM-SV*. (Instructors may wish to defer student access to particular sets of these guidelines until students have completed the pertinent problem-solving exercise.)

C. How to Use These Materials

Cases, Problems, and Materials, used in conjunction with the text, combines the best features of a casebook, a problems and exercises manual, and a narrative explication and synthesis of higher education law.

There are two basic ways in which instructors may use *CPM* in conjunction with the text:

(1) The instructor may use the text as the primary resource and *CPM* as a secondary resource. The text would then be the main source of assigned readings and the main support for class (or workshop) presentations and discussions, while selected materials from *CPM* would be used for illustrating particular points of presentations and discussions, for problem solving practice² and writing assignments, and for independent study. *CPM* is published in electronic format to

² For more information on the pedagogical values of problem-solving exercises, see, e.g., Kurtz, Wylie, and Gold, “Problem-Based Learning: An Alternative Approach To Legal Education,” 13 *Dalhousie L.J.* 797 (1990); Nathanson, “The Role of Problem Solving in Legal Education,” 39 *J. of Legal Educ.* 167 (1989); and Moskovitz, “Beyond the Case Method: It’s Time to Teach with Problems,” 42 *J. of Legal Educ.* 241 (1992); Cockrell, Caplow, & Donaldson, “A Context for Learning: Collaborative Groups in the Problem-Based Learning Environment,” 23 *Review of Higher Education* 347 (Spring 2000). These articles draw upon the psychology of learning and would be useful guides whether the setting is a law school, a graduate school of education, or a professional workshop.

facilitate this type of selective use and to allow the instructor to integrate other teaching materials with those in *CPM*.³

(2) The instructor may use *CPM* as the primary resource and the text as a parallel or secondary resource. *CPM* would then be a regular source of assigned readings and the main support for class discussions, case analysis, simulations, or other problem-solving exercises.⁴ The text would be a source for assigned background readings, for independent study of particular topics, for assistance with or review of problems and questions in *CPM*, and for general review and synthesis. In addition, either the text or the *LHE* 6th treatise (2019) (see above) could be a basic resource for students doing research papers, memos, or other projects.

Instructors could, of course, also devise variants of these two basic approaches to suit their particular pedagogical styles and goals, or – having adopted the text for a course (or workshop) – may simply use *CPM* as a personal resource for planning purposes or a resource for exam questions.

In any course or workshop using the 2024 text as a required text, the instructor may reproduce and distribute this version of *CPM*, or selected portions of it, to participants in the course or workshop. No other reproduction or distribution is permitted.

Whenever administrators, educators, policy makers, attorneys, or other active practitioners use *CPM*, an important precaution is in order. These materials are not a substitute for the advice of legal counsel, nor a substitute for further research into the particular legal authorities and factual circumstances that pertain to any legal problem that such practitioners may face in their professional roles. Nor is *CPM* necessarily the latest word on the law, since the law moves especially fast in its applications to postsecondary education. Instructors therefore may wish to find ways to keep abreast of ongoing developments concerning the legal sources and issues in *CPM*. Various aids that are available for such a purpose are described on pp. xxv-xxvi of the text.

D. Use of these Materials by Persons without Legal Training

Cases, Problems, and Materials is designed for use not only by law students and lawyers, but also by education students, educators, and others who may not have prior training or background in law. The General Introduction to the text is directed to both groups. (Nonlawyers should pay particular attention to the suggestions and cited resources in section F of this General

³ The electronic version of *Cases, Problems, and Materials for Use with The Law of Higher Education: Essentials for Legal and Administrative Practice*, is available free-of-charge from the National Association of College and University Attorneys (<https://www.nacua.org/resource-library/resources-by-type/the-law-of-higher-education>); for information on how to download these materials, please see the website.

⁴ See note 2 above.

Introduction.)⁵ The cases in Part I of *CPM* are edited, and the notes and questions are crafted, to accommodate the needs and perspectives of both groups. The problems also are designed so that they may be addressed from the perspective of either group – or from the perspectives of both, allowing for comparison and accommodation of viewpoints as well as collaborative problem-solving experiences.

In courses or workshops for education students and educators, and in courses or workshops that mix education students or educators together with law students or lawyers, instructors and workshop leaders will want to differentiate the educator’s and administrator’s roles from the lawyer’s role. In this respect, educators and administrators need not learn to know the law like lawyers know the law, or to analyze problems like lawyers do, or to perform the functions that lawyers perform. In real-world settings, there are (or should be) lawyers available to perform these functions. Educators and administrators (and public policy-makers as well) have different roles to play – roles in which it is more critical to know about law than to know the law; more critical to know how to analyze problems from their own discipline’s perspective, against the backdrop of law, than to analyze problems from the lawyer’s perspective; and more critical to know how to work with lawyers in performing their own functions, than to perform the lawyers’ functions for them.

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⁵ Earlier versions of this General Introduction appeared in earlier versions of *CPM*, including the 2006 *CPM* for the two-volume treatise. The General Introduction does not appear in this volume of *CPM*, however, since the authors have revised it for inclusion in the text (pp. xxxiii-xxxl).