CASES, PROBLEMS, AND MATERIALS
FOR USE WITH
THE LAW OF HIGHER EDUCATION FIFTH EDITION:
STUDENT VERSION

Preface

A. The Scope and Purpose of these Materials


Earlier versions of these materials, published by NACUA in 1995, 2001, and 2007 were designed for use with previous editions of the authors’ treatise, The Law of Higher Education and its Student Version. This 2013 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 2007 edition. The authors have also published a version of CPM keyed to the 5th edition of the two-volume treatise.

B. Organization of these Materials

This version of Cases, Problems, and Materials: Student Version 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 Student Version. The particular section(s) of the Student Version 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

1 Small deletions of text from these opinions are indicated by ellipses; large deletions are indicated by asterisks. 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.)
Student Version frequently are included in the notes 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 Student Version in the textual 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 Student Version. 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: Student Version, used in conjunction with the Student Version of the 5th edition, 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-SV in conjunction with the Student Version:

(1) The instructor may use the Student Version as the primary resource and CPM-SV as a secondary resource. The Student Version 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-SV would be used for illustrating particular points of presentations and discussions, for problem solving practice and writing assignments, and for independent study. CPM-SV is

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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.
published in electronic format to facilitate this type of selective use and to allow
the instructor to integrate other teaching materials with those in CPM-SV.³

(2) The instructor may use CPM-SV as the primary resource and the
Student Version as a parallel or secondary resource. CPM-SV 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 Student
Version 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-SV, and for general review and synthesis. In addition, either the Student
Version or the LHE 5th treatise (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 Student Version as a course
(or workshop) text – may simply use CPM-SV as a personal resource for planning purposes or a
resource for exam questions.

In any course or workshop using the Student Version as a required text, the instructor
may reproduce and distribute this version of CPM-SV, 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-SV, 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-SV 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-SV. Various aids that are available for such a purpose are
described on pp. xxii-xxiii of the Student Version.

D. Use of these Materials by Persons without Legal Training

Cases, Problems, and Materials: Student Version 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 Student Version is directed
to both groups. (Nonlawyers should pay particular attention to the suggestions and cited

³ The electronic version of Cases, Problems, and Materials for Use with The Law of Higher Education, 5th
Edition: Student Version is available free-of-charge from the National Association of College and
University Attorneys (http://www.nacua.org/publications/lohe/index.asp); for information on how to
download these materials, please call 202-833-8390 or e-mail: publications@nacua.org.

⁴ See note 2 above.
resources in section F of this General Introduction.) The cases in Part I of CPM-SV 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 Student Version.