Contents

	Preface	ix	
1.	Introduction	1	
Part 1. Structural Features of the Separation of Powers			
2.	Synopsis of the Advantages of the Separate Branches of Government	19	
3.	Rules of the Legislative Process	29	
4.	Statutory Construction: The Courts Review the Work of the Legislature	51	
5.	Stare Decisis: The Self-Imposed Constraint by the Judicial Branch Not Shared by the Other Branches	68	
Part 2. Case Illustrations of the Separation of Powers			
6.	The Proper Roles of Government: The Case of Obnoxious Speech	87	
7.	The Exclusionary Rule: When Is a Matter Constitutional, When Is It Only Policy?	101	
8.	Affirmative Action: The Use of Race by Government	120	
9.	The Fiesta Bowl: Unintended Consequences of Judicial and Legislative Activism	133	

viii Contents

10.	Defining Constitutional Rights: Roe v. Wade	143
11.	The Civil Rights Act of 1992: The Burden of Proof as a Judicial Function Used to Achieve a Legislative Result	159
12.	Two Statutes, a Hundred Years Apart: When Court Interpretation Changes between and after Two Separate Legislative Acts	172
13.	When the Supreme Court Does Not Do Its Job: The Second Amendment	178
14.	Methods of Solving Disputes between (and within) the Branches of Government	185
15.	Another Method of Solving Interbranch Disputes: Legislators Going to Court to Sue the Executive Branch	193
	Index	223