

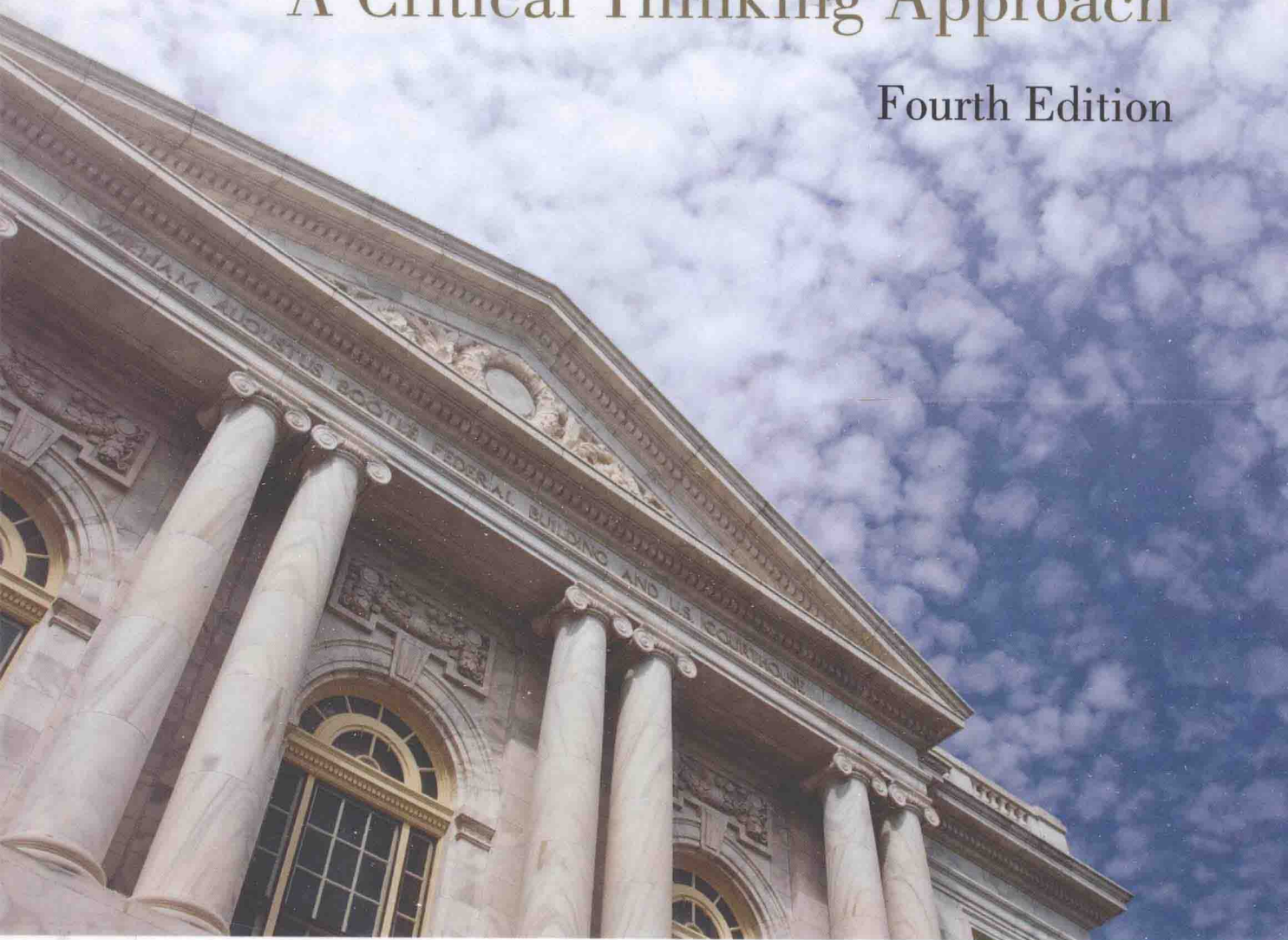
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The Study of Law

A Critical Thinking Approach

Fourth Edition



Katherine A. Currier • Thomas E. Eimermann



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ASPEN COLLEGE SERIES



The Study of Law

A Critical Thinking Approach

Fourth Edition

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About the Authors

Katherine A. Currier, J.D., served as the Elms College Paralegal and Legal Studies program director for many years. Currently, she coordinates the Department of Criminal Justice and Legal Studies. She has developed and taught many law-related courses, including Legal Reasoning, Research, and Writing; Introduction to Legal Studies I and II; Law Office Computer Literacy; Law Office Applications; Interviewing, Counseling, and Negotiating; and Law and Literature. In addition to the three texts she has coauthored with Professor Eimermann, Professor Currier has publications in the areas of legal ethics as applied to paralegals and law office computing.

Professor Currier is actively involved in the development of undergraduate legal education at both the regional and the national levels, particularly through her work with the American Association for Paralegal Education (AAfPE) and the American Bar Association Approval Commission on Paralegals. Professor Currier has served on the national board of AAfPE, first as its parliamentarian and then later as the elected representative of four-year paralegal programs. She served many years as the AAfPE publications chair, charged with the final responsibility for overseeing the *Journal of Paralegal Education and Practice* and *The Educator*. Professor Currier frequently speaks at both the AAfPE Northeast regional meetings and the annual AAfPE conferences on topics as diverse as the use of computer shareware, paralegals and the unauthorized practice of law, creative teaching techniques, and conducting legal research on the Internet. Professor Currier also chaired the American Bar Association Approval Commission on Paralegals, the body charged with conducting site visits of paralegal programs that are seeking their initial ABA approval or reapproval. Currently, she has also served on the Board of Directors of the International Assembly for Collegiate Business Education (IACBE), an organization dedicated to promoting excellence in business education.

Prior to teaching at Elms College, Professor Currier taught at Suffolk Law School and Western New England College School of Law. She graduated magna cum laude with her B.A. in Political Science from Crelton College, with her M.A. in Political Philosophy from the University of California, Berkeley, and with her J.D. from Northeastern University Law School.

Thomas E. Eimermann is Emeritus Professor of Political Science and a former Director of the Legal Studies Program at Illinois State University. Dr. Eimermann helped establish the paralegal program there in 1976 and served as director until 2005. He has taught Introduction to Paralegal Studies, Legal Research and Writing, and Constitutional Law courses.

Professor Eimermann was a member of the American Association for Paralegal Education's Board of Directors from 1986 to 1993 and served as president of that organization in 1991-1992. He has also served on the Certification Board and Specialty Task Force of the National Association of Legal Assistants, as a member of the Illinois State Bar Association Committee on the Delivery of Legal Services, and as a member of the Inquiry Board, the Hearing Board, and the Oversight Committee of the Illinois Attorney Registration and Disciplinary Commission. As a consultant for the Illinois Department of Corrections, he designed its Uniform Law Clerk Training Program, to train selected inmates to assist other inmates doing legal research for appeals or challenging the conditions of their incarceration.

In addition to the three paralegal texts he has coauthored with Professor Currier, Professor Eimermann's publications include *Fundamentals of Paralegalism*, *Fundamentals of Criminal Practice: Law and Procedure* (co-authored with Thomas McClure), and journal articles on paralegals, jury behavior, and free speech issues. He earned his B.A. in Political Science at North Central College and an M.A. and a Ph.D. in Political Science from the University of Illinois-Urbana/Champaign campus.

Katherine Currier and Thomas Eimermann have also coauthored *Introduction to Law for Paralegals: A Critical Thinking Approach* and *Introduction to Paralegal Studies: A Critical Thinking Approach*.

*To our spouses and children
For their understanding and support*

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Preface

NEW TO THIS EDITION

For this fourth edition, we have updated the law, the Netnotes, and the Web Exercises, added new Discussion Questions and Critical Thinking Exercises, and incorporated two new features at the beginning of each chapter: “Chapter Objectives” and a short hypothetical to focus students’ on the issues to be discussed in that chapter.

The overall organizational structure of the book remains the same, with the exception that we divided what had been Chapter 12 “Criminal Law and Procedure,” into two separate chapters (Chapter 12 “Criminal Law” and Chapter 13 “Criminal Procedure”). We separated the materials on substantive criminal law from those on criminal procedure to break up what had previously been the longest chapter in the book.

The most significant updating occurred in the following:

- Chapter 3, Classification of the Law: used Boston Marathon bombing case to illustrate issues of federal versus state law and civil versus criminal law; discussion of recent U.S. Supreme Court decision regarding the constitutionality of the Affordable Care Act; and the effect of preemption on state efforts to control immigration.
- Chapter 5, Civil Litigation and Its Alternatives: expanded discussion of e-filing and e-discovery.
- Chapter 6, Constitutional Law: focus narrowed to Civil Rights and Civil Liberties (material on division of powers that was included in this chapter in previous editions moved to Chapters 2 and 3); new hypothetical case on First Amendment rights as applied to students; and new discussion questions relating to *Citizens United* and Koch brothers spending on political campaigns, what constitutes an exercise of religion, and discrimination against LGBT individuals.
- Chapter 7, Torts: new case excerpts on the intentional infliction of emotional distress, products liability, punitive damages and damage caps.
- Chapter 8, Contracts: new case excerpts on counteroffers, unjust enrichment, and anticipated lost profits.
- Chapter 9, Property Law: new case excerpts on adverse possession and undue influence along with enhanced discussion of intellectual property, including trademark issues involving the Washington Redskins.

- Chapter 10, Laws Affecting Business: new case excerpt on liability of LLC members for their own actions and new section on statutory protections for workers.
- Chapter 11, Family Law: new case excerpts and discussion related to same-sex marriage and custody disputes over pre-embryos.
- Chapter 12, Criminal Law: new case excerpts on the crimes of unauthorized access of computer data and “up skirting.”
- Chapter 13, Criminal Procedure: excerpts from U.S. Supreme Court decision regarding warrantless searches of cell phones.

APPROACH

As the title indicates, in this book we use a critical thinking approach to introduce readers to the study of law. We designed this book for use in introductory law courses for students in any major, but particularly for those in business, criminal justice, paralegal, prelaw, and political science.

Rather than taking an approach that emphasizes the memorization of definitions and rules, *The Study of Law: A Critical Thinking Approach* focuses on the basic foundations of the law and on the legal reasoning process. In addition to presenting an overview of the legal system, this book teaches the basic skills necessary to read and understand statutes and court cases.

We use this critical thinking approach because we believe it is the best way for students to learn the fundamental principles of law. By learning how to read and interpret statutes, cases, regulations, and court documents, students will be better able to learn how the American legal system functions. Therefore this book emphasizes careful reading for detail, analytical thinking, and presentation of arguments. The hypothetical cases, Discussion Questions, and Critical Thinking Exercises incorporated throughout the text all serve to help develop students’ critical thinking skills.

ORGANIZATION OF THE BOOK

Part 1, The American Legal System, introduces students to the study of law and the organization of the legal system. It covers such topics as sources of the law, the different ways in which law is classified, and various stages involved in litigation.

Part 2, Substantive Law and Ethical Issues, introduces students to basic concepts and terminology used in the most prominent substantive areas of law. This section leads off with a chapter on constitutional law, because constitutional law stands at the top of the hierarchy of law and establishes the framework within which the legal system operates. We then go on to cover key fundamental concepts in torts, contracts, property and estate law, business law, family law, and criminal law. In each chapter we blend traditional case law with a discussion of cutting-edge developments to give students a solid foundation in traditional concepts and an appreciation of the dynamic nature of law. The final chapter probes the ethical dilemmas attorneys face in the context of our adversary system.

Instructors may wish to alter the sequence in which they cover the chapters, or even skip parts when time is limited. However, it is best if instructors plan on covering Part One before selecting from the substantive law chapters contained in Part Two.

KEY FEATURES

Among the many features that set this book apart are

- the nature of the included cases
- marginal definitions of key terms
- NetNotes
- Critical Thinking Exercises
- Discussion Questions integrated into each chapter
- Web Exercises
- Review Questions

Because this book stresses the critical thinking approach, we illustrate our points with hypothetical situations and with real case decisions that students will understand and to which they can relate. The cases cover such topics as AIDS-infected blood transfusions, battered woman's syndrome, same-sex marriage, flag burning, the insanity defense, search and seizure of automobiles, sexual harassment, surrogate motherhood, and spousal immunity. We have also included such "classics" as *McBoyle v. United States*, *Palsgraf v. Long Island Railroad*, *Brown v. Board of Education*, and *Mapp v. Ohio*. Our philosophy in editing these and other cases was to retain enough of the court's wording to give students a realistic feel for how judges actually write and to allow students to develop their critical thinking skills. We deleted nonessential information in order to keep each case a reasonable length.

Furthermore, the cases are fully integrated into the text. Many times, these cases are cross-referenced in other cases and used to show how the courts build on precedent and modify it in response to changing societal conditions. Discussion Questions and Critical Thinking Exercises call on students to carefully analyze these cases and apply them to hypothetical situations.

Also of special note are the appendixes. Appendix A includes a complete copy of the U.S. Constitution and Appendix B contains a convenient listing of websites for legal resources.

An instructor's manual that includes suggested answers for all the Discussion Questions, Review Questions, and Critical Thinking Exercises, as well as teaching tips, is available to help teachers make the most effective use of this book. Also available are PowerPoint slides to assist with classroom lectures and a computerized test bank.

RELATIONSHIP TO THE AUTHORS' OTHER TEXTS

Those familiar with *Introduction to Law for Paralegals: A Critical Thinking Approach* and *Introduction to Paralegal Studies: A Critical Thinking Approach*

will recognize many similarities to this text. All three books emphasize the “critical thinking approach” to understanding the law. All three include excerpts from court cases, discussion questions, NetNotes, and references to ethical questions. Topics such as sources of law, classification of the law, structure of the court system, overviews of civil and criminal litigation, overviews of torts, contracts, property law, and criminal law, and analysis of statutes and cases are also covered in all three books.

However, where the other two books are specifically designed for paralegal students, this book is directed at a more general audience. In *The Study of Law* we have dropped appendices on legal research and writing and references to tasks performed by paralegals. To better serve the needs of a more general audience, we have increased our coverage of constitutional law and placed more emphasis on general education goals.

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We would also like to thank the staff at Wolters Kluwer Law & Business for the excellent support we have received on the books we have done with them. We especially want to thank Betsy Kenny for the key role that she played in handling this fourth edition.

Finally, a special thanks goes to our spouses and children for their continued support and understanding of our professional activities.

Katherine A. Currier
Thomas E. Eimmermann
August 2015

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Photograph of the U.S. Supreme Court Justices, Steve Petteway, Collection of the Supreme Court of the United States.

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