

美国法律微型百科全书

牛津大学出版社独家授权

推开 美国法律 之门

Everything You Need to Know About
the American Legal System

[美]杰伊·M·费曼 (Jay M. Feinman) 著
孙新强 注

你想知道的
美国法律体系的一切

美国法律微型百科全书 牛津大学出版社独家授权

推开美国法律之门

你想知道的美国法律体系的一切

[美]杰伊·M·费曼 (Jay M. Feinman) 著

孙新强 注



法律出版社
LAW PRESS · CHINA

图书在版编目 (CIP) 数据

推开美国法律之门：你想知道的美国法律体系的一切 /
(美) 费曼著；孙新强注. —北京：法律出版社，
2004. 1
ISBN 7 - 5036 - 4655 - 1

I. 美... II. ①费... ②孙... III. 法律 - 基本知识
- 美国 - 英文 IV. D971. 2

中国版本图书馆 CIP 数据核字 (2003) 第 107291 号

Law 101—Everything You Need to Know About the
American Legal System

Copyright © 2000 by Jay M. Feinman

This translation of Law 101, originally published in English in 2000,
is published by arrangement with Oxford University Press, Inc.

《推开美国法律之门》中文翻译版权由牛津大学出版社

授权法律出版社独家享有

版权所有 侵权必究

著作权合同登记号：01 - 2002 - 3831

©法律出版社·中国

责任编辑/袁 方

装帧设计/孙 杨

出版/法律出版社

编辑/对外合作出版中心

总发行/中国法律图书有限公司

经销/新华书店

印刷/北京中科印刷有限公司

责任印制/张宇东

开本/787×960 毫米 1/16

印张/22.75

版本/2004 年 1 月第 1 版

印次/2004 年 1 月第 1 次印刷

法律出版社/北京市丰台区莲花池西里法律出版社综合业务楼 (100073)

电话/010 - 63939796

电子邮件/info@lawpress.com.cn

传真/010 - 63939622

网址/www.lawpress.com.cn

对外合作出版分社/北京市丰台区莲花池西里法律出版社综合业务楼 (100073)

电子邮件/copyright@lawpress.com.cn

读者热线/010 - 63939614

传真/010 - 63939701

中国法律图书有限公司/北京市丰台区莲花池西里法律出版社综合业务楼 (100073)

传真/010 - 63939777

客服热线/010 - 63939792

网址/www.chinalawbook.com

电子邮件/service@chinalawbook.com

中法图第一法律书店/010 - 63939781/9782

中法图北京分公司/010 - 62534456

中法图上海公司/021 - 62071010/1636

中法图苏州公司/0512 - 65193110

书号：ISBN 7 - 5036 - 4655 - 1/D · 4373

定价：38.00 元

编者的话

《推开美国法律之门》是一本颇具特色的法律读物。“LAW 101”不是一部法律的名称，也不是101部法律；美国大学课程经常用数字“101”指基础性课程，在学完“101”课程后会进入“202”。因此“法律101”意为法律入门、法律基础。

《推开美国法律之门》可以看作是一本美国法的微型百科全书，正如其副标题所写的：“你想知道的美国法律体系的一切”，在此书中您都会找到答案。它为大学法学院的学生及每一个想更好地掌握法律问题的人提供了一个丰富的信息资源库——完整的、清晰的、生动的美国法律体系全貌。

本书有以下三个特点：一是内容全面充实。它涵盖了美国大学法学院一年级学生需要学习的所有课程的内容，从宪法、诉讼程序法到侵权法，从合同法、财产法到刑法等。每一节都以一个简短的问题为标题，重点突出，提纲挈领，读者可以了解到美国司法制度的方方面面。

二是案例丰富典型。作者在阐述其观点时引用了大量典型案例，或可笑有趣、或令人愤怒、或臭名昭著，如麦当劳因咖啡烫伤事件赔偿50万美元；发生在维多利亚时期伦敦的一起骇人听闻的谋杀案，此案的审判使法律对精神病作出界定；马伯里诉麦迪逊一案划时代的判决赋予了美国最高法院违宪审查的权力，等等。

三是语言清晰易懂。作者对美国法律体系的介绍清晰明朗，语言生动，使原本枯燥晦涩的法律知识变得深入浅出，引人入胜。通过阅读原汁原味的英文来学习美国法律对提高法学专业学生法律英语水平大有裨益，通过界定法律词汇的概念，有助于扩充读者的法律词汇量，比如宪法上“正当程序”与“平等保护”，刑法上“谋杀”与“误杀”。

本书不仅向你介绍法律知识，更重要的是，本书通过向你提出一些耐人思索的难题，或法官和律师处理的棘手案例，让你身临其境地了解立法的整个过程。读过此书之后，当再听到法律争议问题时，你会对其背景和问题的复杂性有更好的理解，而且对事实真相独立做出更正确的判断。面对生活中遇到的法律问题你

也会有更充分的准备，无论是购置房产还是起诉他人以确保自己的权利等等，都会使读者从法律的角度思考问题。如果你是学生，无论读法律还是其它专业，本书能让你对所法律学科有一个全面了解，而通过其它方式则难以做到。

阅读本书，你会感到其乐无穷，受益匪浅，因为法律处理的实际问题有时令人捧腹大笑，有时令人深恶痛绝，总的感觉则是妙趣横生。读完此书，你会感到法律原本并非晦涩难懂、可望不可及，而是亲切可近、与我们息息相关。由于这些特点，这本书受到了无数美国读者的青睐，相信它也能赢得国内读者的欢迎。

法律出版社对外合作出版分社

2003 年 12 月

Contents

Preface

- 1 There Are No Secret Books:
You Can Understand the Law 3**
- 2 Constitutional Law and Constitutional Politics:
Interpreting and Applying the Constitution 11**
 - What is constitutional law? 11
 - Why do we need constitutional law? 14
 - How does the Supreme Court decide what the Constitution means? 18
 - Where does the Supreme Court get the authority to interpret the Constitution? 24
 - When can the Supreme Court hear constitutional cases? 29
 - What powers does constitutional law give to the rest of the federal government? 33
 - What powers do the states have under constitutional law? 40
- 3 First Freedoms: Constitutional Rights 45**
 - What rights does constitutional law protect? 45
 - What is due process? 47
 - Does constitutional law require that everyone be treated equally? 52
 - How does the Constitution protect freedom of speech? 59
 - What speech is not protected by the First Amendment? 64
 - How does the Constitution protect freedom of religion? 70
 - What other rights are protected by the Constitution? 77
- 4 Your Day in Court: The Litigation Process 87**
 - What is civil procedure? 87
 - Why do we need civil litigation and civil procedure? 90
 - Where do court cases come from? 92
 - Where can a lawsuit be brought? 94
 - When can you make a federal case out of it? 96
 - If you can sue in different places, what law will apply in each place? 100
 - How does a lawsuit begin? 102
 - What can the defendant do to respond to a lawsuit? 104
 - What if there are more than two parties to a lawsuit? 107
 - What if there are many parties to a lawsuit? 110
 - How do the parties discover the facts about their case? 113
 - What else happens before the trial? 117
 - What happens at trial? 119
 - What evidence can be presented at trial? 122
 - What about the jury? 124
 - What happens after trial? 129
- 5 Auto Accidents, Scalding Coffee, and Medical
Malpractice: Personal Injuries and Tort Law 133**
 - What is tort law? 134
 - Why do we need tort law? 135

Contents

| | |
|---|-----|
| Is it a tort when you hit someone? | 139 |
| Is it a tort when you injure someone by not being careful? | 143 |
| What does the law mean by reasonable care? | 148 |
| How does a plaintiff prove that a defendant has been negligent? | 151 |
| What if the victim is partly at fault for an accident? | 155 |
| Suppose someone does not intend to injure someone else and acts with reasonable care. Can they still be liable in tort? | 157 |
| Is a manufacturer strictly liable for injuries caused by its products? | 158 |
| What damages can a plaintiff get in a tort case? | 164 |
| When are damages awarded to punish the defendant? | 167 |

6 When Is a Deal a Deal?:

Businesses, Consumers, and Contract Law 171

| | |
|---|-----|
| What is contract law? | 171 |
| Why do we need contract law? | 172 |
| What is a contract? | 177 |
| How do you make a contract? | 179 |
| Does a contract have to be in writing to be enforceable? | 184 |
| Can anyone make a contract? | 186 |
| Once two people make an agreement, is it always enforceable? | 187 |
| If a contract is unfair, can a court refuse to enforce it? | 191 |
| Once you make a contract, can you ever get out of it? | 193 |
| What happens if one party's performance depends upon something happening and it doesn't happen? | 196 |
| Will a court order someone to perform a contract? | 200 |
| How much does someone have to pay for not keeping a promise? | 202 |

7 You Are What You Own: The Law of Property 205

| | |
|--|-----|
| What is property law? | 205 |
| Why do we need property law? | 209 |
| What kinds of property are there? | 213 |
| How do people own property collectively? | 215 |
| How is property ownership divided over time? | 219 |
| How else can ownership of property be shared? | 222 |
| How can someone acquire property? | 223 |
| How is property transferred on death? | 227 |
| What is a trust? | 233 |
| How is property sold? | 234 |
| What are the property rights of a landlord and a tenant? | 238 |
| When can the government take your property? | 241 |
| What is zoning? | 245 |

8 From Insanity to In Cold Blood:

Criminal Responsibility and Criminal Law 249

| | |
|---|-----|
| What is criminal law? | 249 |
| Why do we need criminal law? | 253 |
| What is a criminal act? | 257 |
| Does someone have to mean to commit a crime to be guilty? | 260 |
| When is self-defense justified? | 264 |
| In what other circumstances is someone justified in committing a crime? | 270 |
| Why are criminals allowed to plead insanity as a defense? | 273 |

| | |
|---|-----|
| What other defenses are available? | 279 |
| Can someone be convicted for almost committing a crime? | 281 |
| What is homicide? | 286 |
| Why is rape law so controversial? | 292 |

9 Protecting the Innocent, Freeing the Guilty:

Criminal Procedure 297

| | |
|---|-----|
| What is criminal procedure? | 297 |
| Why do we need criminal procedure? | 299 |
| What are the steps in the criminal process? | 302 |
| When can the police conduct a search and seizure? | 305 |
| What is the privilege against self-incrimination? | 310 |
| What happens if police violate a defendant's rights? | 313 |
| What is plea bargaining? | 316 |
| Why do we have juries? | 319 |
| What is the adversary process? | 324 |
| How does sentencing work? | 326 |
| What about the death penalty? | 329 |
| Why does it seem that criminal appeals go on so long? | 333 |

Conclusion 337

Index of Legal Cases 339

Index 343

Preface

Law is everywhere. Listen to the television news any evening and you'll hear about a notorious criminal trial, a massive lawsuit, or a new constitutional claim. And it all seems so complicated. Why are there legal technicalities that trip up the police and allow criminals to get off? Why does litigation take so long and cost so much? How do the courts figure out how the words of the Constitution apply to situations the framers never dreamed of?

Lawyers are trained to understand issues like these, and there are plenty of resources to help them. The library at my law school has over 400,000 volumes in which lawyers can find statutes, judicial opinions, and learned commentary on the law. This book is for everybody else. *Law 101* is a basic explanation for the nonlawyer of the rules and principles that lawyers and judges use. The premise of the book is straightforward: It's not easy to decide legal questions, but anyone can acquire a basic understanding of what the questions involve.

Each of the substantive chapters of the book covers one of the basic subjects that every lawyer learns during the first year of law school: constitutional law, civil rights, civil procedure and the litigation process, torts, contracts, property, criminal law, and criminal procedure. In each chapter you will learn the fundamental principles that underlie the subject, acquire a legal vocabulary, and see how the rules are applied in ordinary and unusual situations. The book not only tells you about the law—more importantly, it engages you in the process of lawmaking by asking you to think about the tough questions and troubling cases that lawyers and judges face. You will have some fun along the way as well, because the situations the law deals with are sometimes amusing or outrageous, and always interesting.

After reading this book, when you hear about controversial legal issues you will have a better sense of the background and the complexity of the issues and you will be better able to make your own judgments about what the law should be. You also will be better prepared to think about the legal problems that you may encounter in everyday life, from owning a home to suing someone to asserting your constitutional rights. If you ever have considered going to law school, *Law 101* will give you a taste of what it is like. And if

- 刑事审判
- 大规模的诉讼 (常指集团诉讼或共同诉讼)
- 宪法请求权, 宪法上的权利主张
- 法律细节

- 民事权利
- 民事诉讼, 民事程序
- 诉讼程序
- 刑事诉讼

- 主张

Preface

you are a student, either in law school or elsewhere, it will give you the big picture of basic legal subjects that otherwise can be hard to obtain.

Although I am a lawyer and law professor, writing this book has been as much of an education for me as I hope it will be for its readers. I have had to rethink many subjects that are not my specialties, and I have freshly examined areas I have studied for years. I am very grateful to all of those who helped me in the process. Carl Bogus, Ed Chase, Thomas LeBien, Earl Maltz, Stanislaw Pomorski, Mike Sepanic, Rick Singer, and Allan Stein gave me excellent comments. Elizabeth Boyd, Sheryl Fay, Nicole Schrot, Amy Newnam, and Beth Pascal provided helpful research assistance. Chris Carr and Bill Lutz gave important support. Rutgers School of Law, Camden, and its deans provided an environment in which work of this kind could be done. Most of all, thanks to John Wright, who made it happen.

There Are No Secret Books

You Can Understand the Law

Americans are fascinated by the law. And why not? The law is important, intellectually challenging, and sometimes outrageous. Consider some cases that have made front page news:

- Stella Liebeck, seventy-nine years old, bought a cup of coffee for forty-nine cents at the drive-through window of a McDonald's in Albuquerque, New Mexico. As she placed the cup between her legs to remove the lid to add cream and sugar, she spilled the coffee, scalding herself. Liebeck's injuries sent her to the hospital for seven days for burn treatment, including skin grafts, so she sued McDonald's, alleging that the coffee was dangerously hot. A jury awarded her \$160,000 to compensate her for her injuries and \$2.7 million to punish McDonald's, an amount the jury calculated was equal to two days of coffee sales for McDonald's. (The trial judge later reduced the punitive damage award to \$480,000.) Was this an outrageous example of a tort system run amok, or a fair judgment for an injured victim against a wrongdoer? See Chapter 5.

• 惩罚性损害赔偿金

- Pennzoil Company wanted to acquire a major interest in Getty Oil Company. After several weeks of negotiations between Pennzoil and Getty's board of directors, the Getty board accepted Pennzoil's plan to purchase three-sevenths of Getty's stock for about \$112 per share. Pennzoil's attorneys and Getty's board members shook hands, and both companies issued identical press releases announcing the deal. The next day Texaco approached the Getty board with an offer to buy 100 percent of the company for \$125 per share. The board backed out of the deal with Pennzoil and accepted Texaco's offer. Pennzoil sued Getty for breach of contract and Texaco for inducing the breach. In the latter suit, a jury awarded Pennzoil \$7.53 billion in

actual damages, \$3 billion in punitive damages (reduced by the appeals court), and \$590 million in interest. The judgment ultimately led to Texaco's bankruptcy. Was there a \$10 billion dollar breach of contract here? See Chapter 6.

- Lorena Bobbitt suffered years of abuse from her husband John. One night, John tried to rape Lorena, and then passed out drunk. Lorena severed his penis with a kitchen knife. At her trial for malicious wounding, Lorena's lawyer successfully argued that she suffered from battered woman's syndrome that triggered a brief psychosis; the jury found her not guilty by reason of insanity. Has the "abuse excuse" gone too far in cases like Lorena Bobbitt's, or is this an appropriate judgment about the limits of criminal responsibility? See Chapter 8.
- Two Supreme Court decisions issued almost twenty years apart transformed the modern political landscape. In 1954 the Court in *Brown v. Board of Education* held that racial segregation in schools violates the constitutional right to equal protection. In 1973 in *Roe v. Wade*, the Court limited the ability of states to regulate or prohibit abortions because of the constitutional right of privacy. Both decisions ignited waves of legal actions and social protest that are not likely to settle anytime soon. How do the Supreme Court justices decide what the Constitution says about major public issues like race relations and abortion? See Chapter 2.

Most of the law is not about important cases like *Roe v. Wade* or titillating cases like Lorena Bobbitt's. Law penetrates our everyday life in many ways. Critics charge that in recent years we have become plagued with "hyperlexis"—too much law and too many lawyers—but law has pervaded our society from the beginning. Even before the Pilgrims landed in Massachusetts they formulated the Mayflower Compact, a legal document that governed their settlement of the new world. In colonial times, legal regulation of the economy, public conduct, and social morality was at least as extensive as it is today. Common human failings such as fornication, drunkenness, and idleness were legally—and frequently—punished, and laws closely regulated economic affairs, prescribing the size of loaves of bread and the time and place at which goods could be sold. Ordinary litigation provided an occasion for public gathering, with great orations by the lawyers and much comment by the public. Today the law affects us individually when we rent apartments or own homes, marry, drive cars, borrow money, purchase goods, belong to organizations, go to school or work, and obtain health care, and collectively when the gov-

• 蓄意伤害

• “以遭受虐待为借口”

- 清教徒
- 五月花号公约 (1620 年一批英国清教徒在移民美洲所乘坐的五月花号船上订立的自治纲领)
- (一方未婚或双方均未婚者之间的) 私通

ernment taxes, regulates the airwaves and cyberspace, polices crime, and controls pollution.

For all our endless fascination with the law, it is hard for most people to learn much about its substance. The law is so complex and voluminous that no one, not even the most knowledgeable lawyer, can understand it all. Moreover, lawyers and legal scholars have not gone out of their way to make the law accessible to the ordinary person. Just the opposite: Legal professionals, like the priests of some obscure religion, too often try to keep the law mysterious and inaccessible.

But everybody can learn something about the law. That is what *Law 101* is for. It explains the basics of the law—the rules, principles and arguments that lawyers and judges use. Not all the law is here; there is just too much law for anyone to learn more than a few pieces of it here and there. That's one reason that most lawyers specialize, so that they can learn in depth the law of medical malpractice in New Jersey or federal tax law relating to estate planning, for example. But all lawyers do know pretty much the same things when it comes to basic subjects and basic concepts because they all go through a similar law school experience.

• 医疗失当，
医疗错误

The public seems to be morbidly fascinated by law school as much as by law. Books and movies such as *One L* and *The Paper Chase* have fed the folklore of the first year of law school as an intellectually stimulating but grueling and dehumanizing experience. Because the first year of law school is the near-universal training ground for lawyers, this book focuses on the substance of what law students learn there as the core of knowledge that is useful and interesting to nonlawyers as well.

The first-year curriculum in nearly every American law school looks alike. A few topics are fundamental, and this book explores those topics. Constitutional law involves the structure of government (Chapter 2) and personal liberties protected from government action (Chapter 3). Civil procedure concerns the process of litigation (Chapter 4). Tort law concerns personal injuries (Chapter 5). Contract law is the law of private agreements (Chapter 6). Property law governs relationships among people with respect to the ownership of things (Chapter 7). Criminal law defines wrongful conduct for which the state can deprive a person of life or liberty (Chapter 8). Criminal procedure prescribes the process of criminal adjudication and the rights of defendants (Chapter 9).

• 刑事审判程序
• 被告的权利
• 司法意见，
司法见解(指
法官在判决
中对案件所
表达的意见)
• 成文法，制
定法

Nearly every law school offers courses in constitutional law, contract law, and the rest, and the courses taught in different schools resemble each other to a considerable degree in the materials used and the topics covered. Schools in New Jersey, Iowa, and California all teach basic principles of national law, often using the same judicial opinions and statutes. If you attend law school after reading this book, you will find much of

the first year will be familiar to you. Every course is taught by a different professor, however, and every professor has a different perspective. Some of those differences in perspective are trivial, but some are crucial. One professor may be a political liberal, another a conservative. One may favor economic analysis as a key to understanding the law, while another takes a natural law approach. Each of these differences in perspective, and the many others that occur, leads to a very different understanding of what the law is. So while law students and lawyers all understand the same law in principle, they understand it in different ways.

This book has a perspective, too. It couldn't be any other way. The perspective of this book is informed by much of the best legal scholarship of the past twenty years. Some of the elements of the perspective are widely accepted, and others are more controversial. The perspective can be summed up in a few insights about the law, as follows.

Law is not in the law books. Books are one of the first things that come to mind when we think about law: fat texts almost too heavy to lift; dust-covered, leather-bound tomes of precedents; law libraries filled with rows and rows of statutes and judicial opinions. While books tell us a lot about the law, they are not the law. Instead, law lives in conduct, not on the printed page; it exists in the interactions of judges, lawyers, and ordinary citizens.

Think, for example, about one of the laws we most commonly encounter: the speed limit. What is the legal speed limit on most interstate highways? Someone who looked only in the law books might think the answer is 65 m.p.h., but we know better. If you drive at 65 m.p.h. on the New Jersey Turnpike, be prepared to have a truck bearing down on you, flashing its lights to get you to pull into the slow lane. The speed limit according to drivers' conduct is considerably higher than 65. And legal officials act the same way. The police give drivers a cushion of 3–5 m.p.h., never giving a speeding ticket to someone who is going 66. If they did, the judges would laugh them out of traffic court. As a practical matter, the court doesn't want to waste its time with someone who violated the speed limit by 1 or 2 m.p.h., and as a matter of law, the police radar often isn't accurate enough to draw that fine a line anyway. So what is the law on how fast you can drive? Something different than the books say.

• 作为一个法律
问题案
(亦可译为:
在法律上)

To understand the law, then, we have to examine events as they occur in the world. We can generalize from those events and create theories and concepts to inform our understanding of the law, but the touchstone is always the world and not the idea. One way this is done in law school is to focus on individual fact situations that give rise to litigation and on the judicial opinions that resolve the situations, known as *cases*, like *Pennzoil* and Getty's \$10 billion promise or *Roe v. Wade*. Each of these cases starts

out as a real-world event and becomes the vehicle for thinking about many related events in a way that allows us to go back and forth between the particular fact situation and a general principle of law. This book follows that model and uses many interesting cases to explore legal principles.

Law is not secret. Along with the mistaken notion that the law resides in the books goes the equally mistaken idea that law is secret, or at least inaccessible to the ordinary person. To understand and apply the law at the advanced, technical level that lawyers do requires professional knowledge, but to understand the basic substance of the law does not. Law reflects life. The principles and issues embodied in the law are not different from those that we experience in other aspects of our lives. Contract law, for example, is a commentary on the way people make, interpret, keep, and break their promises in commercial and noncommercial settings. Few nonlawyers can describe the objective theory of contract formation or the Statute of Frauds (you will be able to after you read Chapter 6), but they have thought a lot about contracts and promises. If you cross your fingers when you make a promise, does it mean that the promise doesn't count? If you promise to take your children to the movies, are you off the hook if an important business meeting comes up in the meantime? What about if you just don't feel like it? If your newly purchased television doesn't work, can you return it to the store? And so on.

These are the kinds of issues that we all confront every day. The law provides a different forum for the discussion of these issues and the exploration of the principles, and the basic ideas involved are wholly accessible to the nonlawyer.

There are no simple answers. Law reflects life, and life is complicated. Therefore, legal problems defy simple solutions.

Life is complicated in two ways. First, things are often messy, so it is hard to define a legal issue and construct an appropriate solution. Should we require that contracts be in writing? If we formulate a clear rule, in this instance "every contract must be in writing," we will inevitably end up with a large number of exceptions, such as "where it is clear the parties made a contract, one party has already begun to perform, and it would be unjust not to require the other party to perform, the contract is enforceable without a writing." If we formulate a fuzzy rule—"a contract is enforceable even without a writing if the parties intended to make a contract"—we will engender arguments in every case about whether and how the rule should apply (Getty, Texaco, and Pennzoil).

Second, life is complicated because we often are of two minds about an issue. We would like to have clear legal rules to ensure consistency, fair-

- 关于(合同)成立的客观说
- 反欺诈法, 书面规划 (指关于合同在何种情形下应使用书面形式以防止利用口头合同进行欺诈的法律规定)

ness, and predictability. But we want to make room for the equities of individual cases in which the application of a rule would produce an unfair result, in order to relieve a particular party of the hardship of the rule.

Politicians often would like us to think that there are simple answers to tough legal questions. Over the past few years we have become accustomed to sound bite politics and simplistic ideologies that assert that all our problems can be solved by lifting government off the backs of the people, getting tough on crime, making people responsible for their actions, or adhering to some other slogan. From the perspective used in this book, it's just not so.

Law is a battleground of political conflict. The complex questions with which law deals and our conflicting responses to them are the stuff of political controversy. This is not politics in the Republican-Democratic, electoral sense, but a struggle over social resources and social values just the same. At stake in legal decisions are the most fundamental kinds of questions with which any society has to grapple: Who gets what? Who lives and who dies? What is right and what is wrong? Everyone can see this in major constitutional issues like the abortion controversy, but it applies to all other legal issues, too. The tort rule that manufacturers have to pay for the injuries their products cause even if they have been careful in manufacturing them has caused a major reorientation of the standards of the marketplace in protecting consumers by imposing new burdens on manufacturers, for example. We have to see all legal decisions like this as political in a broad sense.

People make the law. Often, the law appears to be part of the natural order of things. The law and legal decisions can be seen as inevitable, based on immutable principles of justice, hardly the product of human action at all. Lawyers and judges speak as if the law itself were acting, free from their intervention: "The law requires that . . ." or "The precedents determine a result. . . ." Nonsense. Law is made by people, and "the law" or "the precedents" never control anything; we control them. All this view does is let a small group of people—the privileged, the politically powerful, and the legal professionals—control the legal system while they deny their responsibility for doing so. Whether the issue is abortion, manufacturers' liability, or the enforceability of handshake agreements, all of us—not just the lawyers and judges—have to decide what we think is a fair and useful result.

This book strips away the mystery of the law to allow the nonlawyer to understand the rules of law and the principles and conflicts that are behind them. It doesn't tell you how to be your own lawyer. You won't learn how to file for divorce, sue in small claims court, or draft your own

will. Other books convey that kind of advice; this one deals with issues that are more important, if less immediate. It explores the big issues that are fundamental to law, not the mechanics of particular transactions. Later, whether you use a how-to manual or go to a lawyer to deal with a legal matter, you will have a better sense of what is going on behind the rules and mechanics. And there is one other difference between this book and the manuals: This one is fun to read. Nobody reads guides to home repair or will drafting for their entertainment value, but *Law 101*, like the law itself, is full of puzzles, challenges, interesting tidbits, and intellectual stimulation. • 遗嘱

Each chapter is organized in question-and-answer format. The questions provide guideposts to the development of the chapter, and they make it possible to read selectively by dipping into particular topics of interest. At many points there are more questions than answers, and issues are left unresolved. Students of the law—and now you are one of them—experience this frequently and find it very frustrating. But that's the way it has to be. The law doesn't clearly answer some questions, and some issues are never finally settled. The courts cannot decide everything; figuring out the just solution to hard problems is the right and duty of every informed person. After reading this book, you should be in a better position to participate in the process.