

Aspen College Series

# An Introduction to the American Legal System



Fourth Edition



John M. Scheb II ★ Hemant Sharma



Wolters Kluwer

ASPEN COLLEGE SERIES

# AN INTRODUCTION TO THE AMERICAN LEGAL SYSTEM

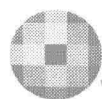
**Fourth Edition**

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*This book is dedicated to  
Judge John M. Scheb, who passed away on November 17, 2010.  
He is sorely missed by his family, his many friends, and by the entire judiciary  
and legal profession in the state of Florida.*

# PREFACE

This book is designed as an introductory text on American law and the legal system. It is meant for undergraduate students in political science, sociology, criminal justice, and legal studies, as well as students in paralegal programs. Our goal is to introduce students to basic legal concepts, principles, and procedures. Of necessity, we have painted with a broad brush, as American law and legal procedures are extremely complex and highly dynamic, and vary considerably across jurisdictions.

The first two editions of this book were coauthored by Judge John M. Scheb, a distinguished member of the legal profession and judiciary in the state of Florida. During his long career, Judge Scheb served as an attorney, a municipal judge, an appellate judge, a city attorney, a mediator, a law professor, and a reserve officer in the Judge Advocate General's Department of the United States Air Force. Judge Scheb was a living encyclopedia of the law, and he loved sharing his knowledge with students and colleagues. He enjoyed working on this book precisely because it introduces the American legal system and the broad scope of the law. Judge Scheb believed that all citizens should have at least a rudimentary understanding of the law.

Judge Scheb passed away in November 2010 and is sorely missed by his family and his many friends, former students and colleagues. We were pleased to carry on Judge Scheb's legacy with the third edition of *An Introduction to the American Legal System*, which was published in 2013. We are now pleased to offer the fourth edition of this textbook, which we dedicate to Judge Scheb's memory.

## Organization

We have maintained the structure of the book from its previous editions and have concentrated our efforts on updating and clarifying the material. Part I sets forth the fundamental concepts and concerns of the law, examines the historical development of the American legal system from its English common law roots, and surveys the structures of the American legal system as well as the legal profession. Part II provides an overview of the substantive law, including constitutional law, criminal law, torts, property law, contracts and business law, and family law. Part III surveys the procedural law, covering civil and criminal procedure, the rules of evidence, and the appellate process. Finally, Part IV looks at two very important areas of modern law: legislation and administrative law and procedure. Because this book will be many students' first encounter with legal studies, we have included an extensive glossary of legal terms (see Appendix B).

## Special Features

To the beginning student, an introduction to the law can be somewhat overwhelming. To make the book more accessible and useful to the student, every chapter contains a list of learning objectives, a chapter outline, a chapter summary, and a set of boldfaced key terms, all of which are defined in the glossary. To make the book more provocative, each chapter also contains a set of questions for thought and discussion. For the student who wishes to learn more about the topics addressed in the book, each chapter also contains a list of additional reference materials.

Because judicial decisions are central to the development of the law, we have incorporated two features into the text designed to alert students to especially important cases. One of these features, entitled "Case in Point," is a

short summary of a significant court decision. There are multiple Case in Point features in each chapter. A related feature, “Opinion of the Court,” appears in each chapter and provides substantial excerpts from landmark opinions of the U.S. Supreme Court.

Another special feature, entitled “The Law in Action,” focuses on practical applications of the law and real-world controversies involving legal issues. Topics addressed in this feature range from “Civil Disobedience and the Struggle for Civil Rights” (Chapter 1) to “Purchasing a House” (Chapter 6). Students will also find a set of “Sidebar” features throughout the book. These features provide miscellaneous information relevant to chapter topics. For example, see the Sidebar in Chapter 5, “The Infamous McDonald’s Coffee Case,” which is of interest to every student of tort law. Other Sidebar features focus on such topics as canons of judicial conduct (Chapter 2), warranty deeds (Chapter 6), and the law regarding employment discrimination (Chapter 11). We hope that all these features will make the text more informative and more interesting.

## Acknowledgments

Previous editions of this book relied on the excellent assistance of a number of able persons, whose efforts we gratefully acknowledge once again:

- Richard R. Garland, Esq., an attorney in Sarasota, Florida, who is certified in appellate practice.
- Robert P. Scheb, Esq., an attorney in Sarasota, Florida, who practices in the field of estates and trusts.
- Rebecca A. Rider, Esq., an attorney in Sarasota, Florida, who practices in the field of domestic relations.
- William T. Brown, an attorney and lecturer in the Political Science Department and College of Law at the University of Tennessee, Knoxville.
- Dr. Mark D. Welton, Professor in the Department of Law at the United States Military Academy, West Point.

Finally, we extend our appreciation to the editorial staff at Wolters Kluwer Law & Business for their encouragement and support throughout this project.

Of course, we assume full responsibility for any errors of commission or omission contained in these pages.

*John M. Scheb II*

*Hemant Sharma*

*January 2015*

# ABOUT THE AUTHORS

**John M. Scheb II** is Professor of Political Science at the University of Tennessee, Knoxville, where he specializes in public law and the judicial process. He attended the University of Florida from 1974 to 1982, receiving the B.A., M.A., and Ph.D. in political science. Professor Scheb has authored numerous articles in professional journals, including *Social Science Quarterly*, *Justice System Journal*, *Political Behavior*, *American Politics Quarterly*, *Judicature*, *Journal of Politics*, *Law and Policy*, and *Tennessee Law Review*. He is the coauthor of several other textbooks, including: *American Constitutional Law*, 6th ed. (Cengage Learning 2015); *Criminal Law & Procedure*, 8th edition (Cengage Learning 2014), and *Law and the Administrative Process* (Thomson/Wadsworth 2005).

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# FOUNDATIONS OF THE LEGAL SYSTEM

## PART I

- Chapter 1: Development of American Law
- Chapter 2: Structures of American Law

