

ELEVENTH EDITION



INTRODUCTION TO
**LAW AND THE
LEGAL SYSTEM**

Frank August Schubert





Introduction to Law and the Legal System

ELEVENTH EDITION

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*To the memories of the late Elizabeth Josephine Neal
and Ethel L. Neal.
F. A. S.*



Preface

Welcome to the eleventh edition of *Introduction to Law and the Legal System*! The first edition was published 38 years ago.

Suited for undergraduate or graduate programs, this text is a survey of the American legal system and can be used in a variety of courses such as Survey of Law, Introduction to Law and the Legal System, Law and Society, Legal Environment and Business, and Legal Process. This text could be an integral part of business, criminal justice, political science, interdisciplinary, paralegal, or other similar courses in an institution of higher learning.

From its first edition to the present, the goal has been to provide readers with a general understanding of American substantive and procedural law. The premise is that this kind of knowledge is basic to a well-rounded education. Because this book is used in a wide variety of academic settings and disciplines, it is expected that instructors will select topics and cases that are appropriate to the course and students. The length and complexity of cases varies from case to case because it is difficult to reduce a fifty-page opinion to three or four pages and still include all the fodder for class discussion. While it is true that many topics included in the text are fundamental to the typical law school's curriculum, this is not a textbook for law students. This book explains in a few pages fundamental principles that law students study for an entire semester. Law students study law so that they can become practitioners. Undergraduate students—and graduate students in fields other than law—study law in order to obtain a basic understanding of law. This presentation's strength is that it provides readers with a brief peek at what are inherently complex concepts without getting students in over their heads.

Because this is an undergraduate- and graduate-level text, it also tries to show readers connections between law and topics typically covered in more detail in undergraduate or graduate courses taught in history, philosophy, political science, sociology–anthropology, and business departments. Thus, the text includes some legal and cultural history, jurisprudence, ethics, and similar topics in the hope that

students will get a taste of the bigger picture and perhaps enroll in a corresponding course. Showing these connections helps to promote a better understanding of the role law plays in a complex modern society. From this understanding, students can decide for themselves whether lawmaking institutions—the legislative, judicial, and administrative agencies—are adequately addressing our society’s problems.

By reading cases and studying statutes in this text, students will learn to exercise their own powers of reasoning. Because the cases are continuously updated in every edition, students read about real-world problems and study appellate court discussions about how the problems should be resolved. This promotes class discussions about the relative strengths and weaknesses of the competing arguments made by the parties.

New to the Eleventh Edition

The eleventh edition has been updated with 34 new cases including many recent, controversial cases such as the 2012 U.S. Supreme Court case, *National Federation of Independent Business v. Sebelius*, related to whether Congress had the constitutional authority to establish an individual mandate within the Patient Protection and Affordable Care Act (ACA, popularly known as “Obamacare”); the 2013 U.S. Supreme Court case *United States v. Windsor*, concerning the Defense of Marriage Act’s constitutionality; and the 2013 U.S. Supreme Court case *Hollingsworth v. Perry*, in which the court ruled on whether California was violating the Fourteenth Amendment rights of same-sex couples by restricting marriage to heterosexual couples.

Comments from reviewers and users have been carefully considered as decisions were made with respect to the replacement or retention of particular cases. As always, the goal has been to select cases that are interesting, teachable, and controversial, and that illustrate the theory being discussed in the corresponding chapter section. Some of the retained cases are classics and have proven to be useful for many years. *Katko v. Briney*, *Strunk v. Strunk*, and *Campbell Soup Company v. Wentz*, for example, have appeared in all eleven editions. Other older cases have been included because they better illustrate the legal principle being addressed in the text than did the removed case.

Some instructors will be pleased to find the return of a long-standing favorite case, *E. I. DuPont de Nemours & Co., Inc. v. Christopher*, which now appears in an appendix after having been removed from the tenth edition. Other favorites that have been “retired” from the textbook can be found on the textbook’s website, along with additional cases, statutes, and materials that could not be included in the textbook because of space limitations. This website will be updated periodically with new and relevant cases, and often will include concurring and dissenting opinions that would be too lengthy to be included in the textbook. Additionally, students will find open access to learning objectives, tutorial quizzes, chapter glossaries, flash cards, and crossword puzzles, all correlated by chapter, as well as additional cases on the website. Instructors also have access to the Instructor’s Manual which includes chapter objectives, court cases, and

answers to chapter questions. The test bank available to instructors has been updated with a large array of well-crafted true-false, multiple choice, and essay questions, along with their answers and page references.

Teaching and Learning Aids

The text includes a glossary that was substantially expanded in the ninth edition. Please note that it focuses on terms as they are used in the text and is not intended to be as comprehensive as a legal dictionary. The Constitution of the United States is also reprinted for easy reference.

All cases have been edited to frame issues for classroom discussion and for length and readability. Most case footnotes have been deleted. Most citations similarly have been omitted, as well as less important portions of majority opinions. Ellipses have been inserted to indicate such omissions. Academic works that were relied upon as sources within each chapter have been acknowledged with endnotes. Case citations are provided occasionally so that interested students can consult the official reports for unedited cases.

Acknowledgments

This revision would not have been possible without the valuable contributions of many people. The following reviewers were instrumental in shaping the eleventh edition:

Russell J. Ippolito, Westchester Community College

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Stephanie Delaney, Seattle Central Community College

I am most pleased and proud that my daughter, Tracy, has again prepared the index for this text. Her excellent assistance has made the eleventh edition both better and more memorable. Finally, I'd like to thank my wife, Barbara. Once again she has adjusted to life with a husband who is deeply involved in the long process of researching and writing another edition of this textbook. Barbara has always encouraged me and shown patience and steadfastness as I have labored away. I could not have completed this work without her constant love and support. This edition is dedicated to the memories of my late mother, Elizabeth Josephine Neal and my maternal grandmother, Ethel L. Neal.

F.A.S.



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