

INTRODUCTION TO THE LAW OF THE UNITED STATES

EDITED BY
DAVID S. CLARK AND TUĞRUL ANSAY

SECOND EDITION

KLUWER

Introduction to the Law of the United States

Second Edition

Edited
by

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INTRODUCTION TO THE LAW OF THE UNITED STATES

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For my peregrine family:
Marilee, Lee, Susanna, Eliina,
Liisa, and David

– D.S.C.

To my children Arpa and Can

– T.A.

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Preface to the Second Edition

The success of *Introduction to the Law of the United States* in the context of the rapid globalization of legal education and law practice calls for the book's renewal. The splendid group of American comparatists who participated in the first edition have agreed to update and in some cases substantially rewrite their chapters. They have also added recent suggested books for further reading to their selected bibliographies. In this second edition we bring the contributions of professors Jonathan C. Carlson, Vivian Grosswald Curran, Michael Wallace Gordon, John O. Haley, and Joachim Zekoll. At the same time we pause to remember our departed colleagues: Herbert L. Bernstein, John G. Fleming, William F. Fratcher, Friedrich K. Juenger, and Edward M. Wise.

David S. Clark
Tulsa

October 2001

Tuğrul Ansay
Hamburg

Preface to the First Edition

The aim of this book is to provide an authoritative description of the major elements of the American legal system. We are fortunate to have a distinguished group of American law professors write about fields in which they are expert. At times their commentary goes beyond historical development and explanation of the law and legal institutions to encompass critique. In that sense the 18 chapters presented here involve an historical, systematic, and critical introduction to the law of the United States.

The authors are special in another way. In addition to their areas of expertise in American law, each is also knowledgeable about a legal system outside that of the United States. They are comparative lawyers, who bring to their writing the perspective of an outsider as well as that of an insider. They thus see features of American law that are invisible to insiders, who breathe and live the law in which they work. Only strangers will see that certain aspects of the legal system in the United States are unusual, even perverse.

The 18 chapters are ordered in such a manner as, first, to acquaint the reader with the basic structural and cultural elements defining law in the United States: federalism, pragmatism, liberty, and individualism. Distinctive to the United States is also its method of legal education and its unitary legal profession, as well as the ways in which this profession makes use of its sources of law. Second, the authors describe the principal fields of public law: constitutional law, administrative law, labor law, and criminal law. Third, the traditional core of private common law in America is presented: contracts, torts, and property. The remainder of civil and commercial law follows, including family law, inheritance law, commercial transactions, and business enterprises. Finally, procedure rounds out the book with a description of criminal procedure, civil procedure, conflict of laws, and a discussion of an illustrative American case.

This book is intended primarily for two audiences. First, it is directed at the growing international audience interested in learning about the law of other countries. It provides students, lawyers, judges, scholars, business persons, and administrators outside the United States with the basic information required to understand America's principal legal concepts and institutions. Each chapter ends with a selected bibliography so that the interested reader can pursue further research in specific legal areas. Second, the volume is aimed at the American law student or general student perhaps interested in law, who desires a reliable overview of the American system of law.

Introduction to the Law of the United States has a number of features to facilitate its use. The 13 page table of contents presents a detailed outline to acquaint the reader with the major divisions in American law. For a specific inquiry the lengthy index exhaustively covers the contents of the various chapters. It includes, for instance, an alphabetical listing of all the statutes cited.

Finally, within each chapter there are liberal cross-references to related material found elsewhere in the chapter or even in other parts of the book.

The editors would like to thank the authors for their superb efforts in making this volume possible. We note with sorrow the passing of our colleague, William F. Fratcher, on 24 June 1992. We are grateful to the secretarial staff at the University of Tulsa – Ann Hail, Sharon Miller, and especially Michele Schultz – for their expert production of the manuscript. *Virtus probata florescit.*

David S. Clark
Tulsa

July 1992

Tuğrul Ansay
Hamburg

List of Abbreviations

A.	<i>Atlantic Reporter</i>
AALS	Association of American Law Schools
ABA	American Bar Association
ADR	alternative dispute resolution
AFDC	Aid to Families with Dependent Children
AIDS	acquired immune deficiency syndrome
ALI	American Law Institute
ALJ	administrative law judge
ALR	<i>American Law Reports</i>
APA	Administrative Procedure Act
app.	appendix
art.	article
ATLA	American Trial Lawyers Association
CFR	<i>Code of Federal Regulations</i>
Ch.	Court of Chancery
chap.	chapter
Co.	Company
CISG	United Nations Convention on Contracts for the International Sale of Goods
C.M.L.R.	<i>Common Market Law Reports</i>
Const.	Constitution
D	defendant
D.C.	District of Columbia
DEA	Drug Enforcement Agency
DMCA	Digital Millennium Copyright Act
DWI	driving while intoxicated
EC	European Community
E.C.R.	<i>Report of Cases before the Court of Justice of the European Communities</i>
EEOC	Equal Employment Opportunity Commission
ERISA	Employee Retirement Income Security Act
EU	European Union
Ex.	Court of Exchequer
F.	<i>Federal Reporter</i>
FAA	Federal Aviation Administration
FACA	Federal Advisory Committee Act
FBI	Federal Bureau of Investigation
F.Cas.	<i>Federal Cases</i>
Fed.R.App.P.	Federal Rules of Appellate Procedure
FELA	Federal Employers' Liability Act

FLSA	Fair Labor Standards Act
FOIA	Freedom of Information Act
FRCP	Federal Rules of Civil Procedure
F.Supp.	<i>Federal Supplement</i>
FTC	Federal Trade Commission
FTCA	Federal Tort Claims Act
GAO	General Accounting Office
H.L.	House of Lords
ICC	International Chamber of Commerce
ILP	<i>Index to Legal Periodicals</i>
IRS	Internal Revenue Service
IVF	<i>in vitro</i> fertilization
J.D.	doctor of jurisprudence degree
K.B.	<i>Law Reports</i> (King's Bench)
LL.B.	bachelor of laws degree
LLC	limited liability company
LL.M.	master of laws degree
LLP	limited liability partnership
L.R.	<i>Law Reports</i>
LSAT	Law School Admission Test
LSU	Louisiana State University
M.B.A.	master of business administration degree
MBCA	Model Business Corporation Act
MPC	Model Penal Code
NAACP	National Association for the Advancement of Colored People
NAFTA	North American Free Trade Agreement
NCCUSL	National Conference of Commissioners on Uniform State Laws
N.E.	<i>North Eastern Reporter</i>
NGO	non-governmental organization
NLRA	National Labor Relations Act
NLRB	National Labor Relations Board
N.W.	<i>North Western Reporter</i>
N.Y.S.	<i>New York Supplement</i>
OCSE	Office of Child Support Enforcement
OMB	Office of Management and Budget
OSHA	Occupational Safety and Health Administration
P	principal
P.	<i>Pacific Reporter</i>
para.	paragraph
PEB	Permanent Editorial Board (UCC)
PKPA	Parental Kidnapping Prevention Act
pt.	part
Q.B.	<i>Law Reports</i> (Queen's Bench)
RICO	Racketeer Influenced and Corrupt Organizations Act
RULPA	Revised Uniform Limited Partnership Act
SEC	Securities and Exchange Commission
So.	<i>Southern Reporter</i>

S.W.	<i>South Western Reporter</i>
T	testator
TIAS	<i>Treaties and Other International Acts Series</i>
TV	television
UCITA	Uniform Computer Information Transactions Act
UETA	Uniform Electronic Transactions Act
U.L.A.	<i>Uniform Laws Annotated</i>
U.S.	United States; <i>United States Reports</i>
U.S.C.	United States Code
UST	<i>United States Treaties and Other International Agreements</i>
UCC	Uniform Commercial Code
UCCC	Uniform Consumer Credit Code
UCCJA	Uniform Child Custody Jurisdiction Act
UCP	Uniform Customs and Practice for Documentary Credits
UFTA	Uniform Fraudulent Transfer Act
UIFSA	Uniform Interstate Family Support Act
UMDA	Uniform Marriage and Divorce Act
UMPA	Uniform Marital Property Act
UPA	Uniform Parentage Act; Uniform Partnership Act
UPAA	Uniform Premarital Agreements Act
URESА	Uniform Reciprocal Enforcement of Support Act
USA	Uniform Securities Act
V	victim
WTO	World Trade Organization
§	section

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