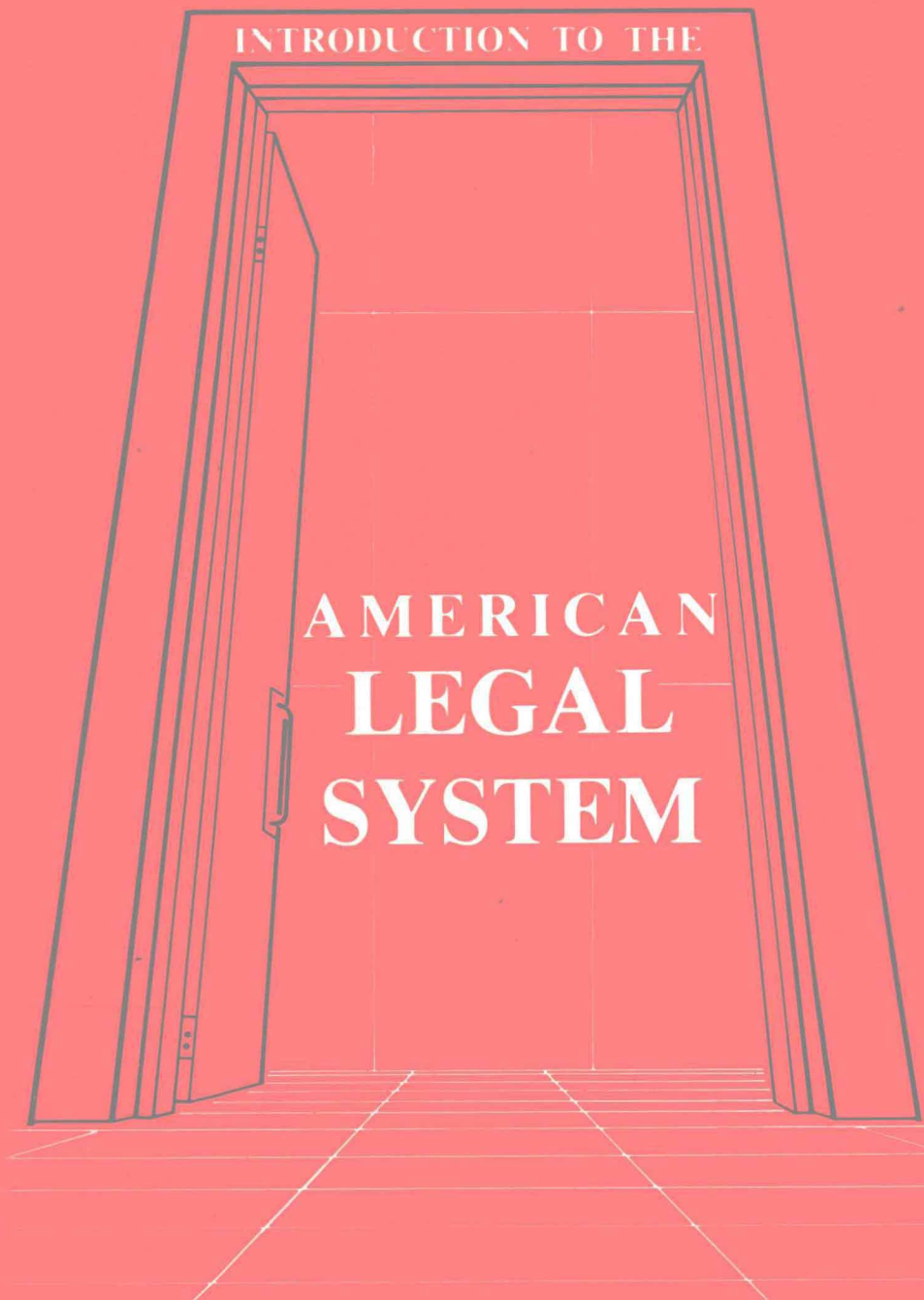
ENIKA H. SCHULZE
P. MICHAEL JUNG
REBECCA P. ADAMS

INTRODUCTION TO THE

AMERICAN LEGAL SYSTEM



Introduction to the American Legal System

Fifth Edition

By

Enika H. Schulze
P. Michael Jung
Rebecca P. Adams

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FOREWORD

The purpose of this book is to provide a comprehensive overview of the American legal system for the student or beginning paralegal. The book explains basic legal concepts in a concise, easy-to-grasp way not readily available in current literature. Important concepts are highlighted for ease of comprehension.

This edition includes updates to every chapter, including the important and increasing role of alternative dispute resolution in the American legal system, found at the end of Chapter Three. Discussion of various concepts has been expanded, and new sections have been added to broaden student understanding of the principles underlying our system of justice. More common legal terms have been added to the Glossary, and many existing definitions have been expanded. Finally, the entire book has been carefully edited to render it even more readable than prior editions. This includes the addition of more headings to better identify and subdivide the topics covered by the text.

Introduction to the American Legal System provides a general overview of the structure of the legal system, the criminal justice system, and the federal courts. It includes an extensive glossary as well as specific concepts and examples in the substantive areas of:

- torts
- contracts
- real property
- wills and intestate succession
- legislation.

A chapter on legal research is included to orient the novice on issues of the law, legal material, and techniques of legal research. In this edition we have included the United States Constitution in Appendix A, because it is the primary source of U.S. law.

Introduction to the American Legal System is also a popular study guide for the certificate examination offered by the National Association of Legal Assistants.

Susan R. Patterson
Editor

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Sincere appreciation for revisions in this edition is expressed to Susan R. Patterson, Esq., whose research and attention to detail have added significantly to the quality of this book.

The Publisher

PREFACE

The authors have done a superb job of providing a comprehensive and detailed description of the complex American legal system, written in a style that permits even beginning students of the legal system to understand the subject matter thoroughly. This volume will be a very valuable reference handbook to those whose livelihood is earned in American courts.

George R. Poehner, Former Chairman
Standing Committee on Legal Assistants
State Bar of Texas

As a straightforward description of the judicial process from beginning to end it is almost ideal for the person who is new to the court system. . . .The book is arranged so that even the complete novice can grasp the basic ideas . . . [The authors] comment on the public's criticism, and then attempt to explain why a particular procedure or law is necessary in order to guarantee citizens their constitutional rights. This frank approach allows readers to look at the material in an intelligent manner, making their own judgments about the law's merits and faults.

Legal Information Alert

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Chapter One

GENERAL INTRODUCTION TO THE LEGAL SYSTEM

Basic Legal Concepts and Terminology.

1. Sources of American Law.

Modern American jurisprudence finds its origins in the small towns and villages of England. There, judges resolved disputes by making decisions that were based on custom, common sense, and fairness. These decisions, although at first not recorded, became part of an ancient tradition known as the **common law** or "the law of the case."

As the common law developed, so did the principles of ***stare decisis*** and **precedent**. When a court made a decision based upon the facts of the case before it, that decision provided guidance for other courts faced with similar sets of facts. Gradually, the courts developed the policy that a decision of a court was binding on that court and on other courts of equal or lower rank when the same or a similar issue arose in the future based on the same or similar facts. The reason for this policy was simple: People functioning in a society needed to know the rules so they could conduct themselves accordingly. They needed to know that a particular decision was the law, would remain the law, and would not be changed the next time a court was faced with the same issue. The principle of *stare decisis* also serves as a check on the power of judges.

In England, although the common law was the primary source of legal rules and principles, statutes gradually played an increasingly important role. A **statute** is an act of a legislative body that may be a prohibition, a command, or a declaration. The meaning of the various statutes was not always clear, however; nor was it always obvious that a statute was applicable to a particular set of facts. Thus, courts assumed the responsibility of construing statutes and applying them to various fact situations.

In the United States today, the common law, statutory law, and the principle of *stare decisis* form the backbone of our legal system. The courts of our nation, in resolving disputes or interpreting statutes, are guided by the decisions that other courts have made in the past when faced with the same or similar issues. These decisions, unlike those of the ancient English courts, are recorded and presented in law books so that lawyers, legal scholars, and judges may refer to them and study them whenever they need guidance.

2. Substance v. Equity.

The rules that are the heart of our system of justice, whether they are legislative enactments or a part of the common law handed down by judges, are rules of **substantive law**. They state the rights and duties of individuals and the circumstances in which a court will grant one person redress against another.[1] Courts frequently are asked to resolve a question of substantive law. In some cases, they may have to determine the meaning of a particular statute. If there is no statute that applies to the facts before it, a court may have to decide what the common law rule should be in that sort of a case and in so doing make new law. If the rule has already been established by *stare decisis*, courts may have to determine whether the facts of that case fit the rule.

Occasionally, a court may determine that the common law rule, if applied to the facts at hand, would achieve a highly unjust result. In these cases, the court can apply principles of **equity** notwithstanding the rule. In other words, the court will attempt to achieve a fair result when the common law rule is inadequate to achieve justice. Take, for example, the case of an engineer living on the east coast who accepts an oral job offer from a company in Texas. In reliance on the offer, she and her husband quit their jobs, take their children out of school, sell their home and move. After one month on the job, the engineer is fired without good cause. Under the common law she would likely have no remedy, because most states still follow the doctrine of employment-at-will that says an employer, in the absence of a written agreement to the contrary, can fire an employee for a good reason, a bad reason, or no reason at all. Nevertheless, if she brings suit against the Texas employer, she may be able to win damages based on the equitable doctrine of "detrimental reliance," because she put herself and her

family in a vulnerable position in reliance on the job offer. If the court determines that her actions were reasonable, a decision in her favor would most likely stand up on appeal as an equitable remedy for the employer's wrongdoing. Note, however, that equity will generally limit the amount of monetary damages she can obtain and will disallow damages designed to punish the employer. Today, common and statutory law, to a greater extent than in the past, embody principles of equity. This is the case simply because, over time, legislatures and courts have had to deal with a wider range of circumstances and cases for which they have fashioned remedies that have, in turn, become the rule of law. Nevertheless, courts may still apply principles of equity with confidence, independent of any rule. To the extent that lawmaking cannot keep up with the rate of technological, social and cultural change, courts will continue to be called upon to make equitable decisions in the absence of applicable common law rules and statutes.

3. Substance v. Procedure.

Courts reach these decisions by studying existing rules of substantive law and by relying on principles of justice and common sense. These rules of substantive law are very different from rules of **procedure**. The rules of procedure establish the step-by-step mechanics that people bringing or defending a lawsuit or criminal prosecution must follow. Each state establishes its own procedure, as do the federal courts. These procedures are the means by which people:

- gain access to the courts
- conduct themselves during preparation for trial
- conduct themselves during the trial itself
- enforce the judgment of a court, once that judgment has been entered.[2]

Rules of procedure are very important. Their goal is to impose order on a dispute so that it will be resolved correctly, fairly, and quickly. They provide the method by which each party presents his or her story to the court in the way that is most conducive to a fair decision. Rules of procedure focus the dispute on only the relevant issues, thereby saving time and protecting litigants from prejudicial, immaterial evidence. They also give to the parties the means of discovering their

opponent's position. Such discovery tools prevent unfair surprise; they also enable parties to present to the court a more complete story so that the court can better understand the truth. In federal courts, the procedural rules are known as the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

4. Civil v. Criminal.

There are two basic types of disputes: civil and criminal. In a criminal case, the state or federal government brings an action against an individual to determine if he or she has broken one of its laws and, if so, to punish the person accordingly. A civil case is different. A person, called the plaintiff, brings a lawsuit seeking some sort of redress for an injury that person claims to have suffered. The person may be an individual, a corporation, or sometimes even the state. The redress, called the **remedy**, that the person seeks is usually in the form of money, called **damages**. The person asks the court to order an opponent, called the **defendant**, to pay monetary compensation for the wrong that the opponent caused. For example, a person who loses an arm in an auto accident cannot ask the court to provide a new arm. One can, however, ask the court to require the person who caused the accident to pay monetary compensation for that arm. Of course, the problem with this system is that it is practically impossible to put a dollar value on something as priceless as an arm. How much money is an arm worth? or a person's health? or life? Although we cannot really put a price tag on things such as these, we can compensate the victim for certain specific losses. Thus, the person who caused the accident can be required to pay to the victim, among other things, whatever the victim's medical bills were or will be in the future, and whatever income the victim has lost or will lose as a result of the accident.

The Court.

The primary function of the court is the orderly resolution of disputes. These disputes may be between two private parties, between a private party and the state or federal government, or even between two states. In later chapters we will explore in detail how the courts perform this vital task of mediating disputes. First, however, we will examine

several important characteristics of the courts that will give us a perspective on their role in our society.

1. The Judiciary and the Separation of Powers.

In the United States the judicial branch is one of the three branches of government. The other two branches are the executive (the president, or in the various states, the governor) and the legislative. Under the federal as well as the state constitutions, each branch acts as a check on the other two, ensuring that no one branch becomes overly powerful. The legislature, for example, has the power to enact laws. This power is not absolute. If the president or governor opposes a particular law, he or she may veto it. Similarly, the courts have the authority to check the power of the other branches.

Thus, a court may rule that a particular law that the legislature passed and the executive signed is unconstitutional, which voids the law. The party relying on the law will usually appeal the decision to a higher court. If the state's highest court, or the United States Supreme Court, upholds the original decision, the law is permanently nullified.

2. The Judiciary and Federalism.

Just as there are a federal government and fifty different state governments, so is there a system of federal courts and fifty different state courts. Whereas the federal Constitution created the federal courts, the different state constitutions created the state courts. In general, the federal and state courts function independently of each other. Although certain types of cases may be tried in a federal as well as in a state court, many cases may be tried only in state courts, and many others may be tried only in federal courts.

As a general proposition (although there are exceptions), the federal courts cannot interfere with or contradict the actions of a state court, and vice versa. Thus, if a person does not like a decision received in a federal court, that person cannot go to a state court and try the case a second time in the hopes of obtaining a more favorable ruling.

3. Courts as Protectors of the Individual and the Oppressed.

The courts play the important role of standing between the government and the individual and affording protection to the individual. They make certain that a person accused of a crime is not deprived of rights and receives a fair trial. Courts also insure that the majority of our citizens does not infringe on the rights of the minority. Legislators who tend to vote the majority views of their constituents may be unresponsive to minority groups who may espouse unpopular causes. The courts must be certain the majority, acting through the legislatures, does not deprive the minority of the rights to which everyone in this country is entitled. The decisions of the Supreme Court, for example, on abortion, desegregation, and prayer in public schools came about after legislatures failed to resolve these politically unpopular issues through legislative action.

In theory, the federal courts are more likely than state courts to make these unpopular decisions that protect the rights of the individual and of minorities. In recent years, however, state courts have been more responsive than the federal courts to civil rights claims, a reversal of the pattern in the 1960s and 1970s. This new trend may be due to a growing conservatism on the federal bench coupled with increasing public support for minority rights. One very important reason for this phenomenon is that in many states state and local judges are elected for a term and then must face reelection, whereas all federal judges are appointed to their posts and serve for life. Thus, the federal judge can make a ruling in favor of unpopular people or causes and not run the risk of losing his or her job in the next election. The elected judge, however, is more prone to being influenced by popular opinion and, as a result, may protect unpopular people or viewpoints less zealously than the appointed judge.

These two methods of selecting judges reflect two sharply differing views about the judiciary. The elected judge is ultimately answerable to the majority, for the judge must ask the majority for reelection. An elected judiciary is based on the theory that even though the majority may sometimes infringe on the rights of the individual or the minority, majority control is nonetheless the best method of governing a nation.