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CASES AND MATERIALS

Fifth Edition



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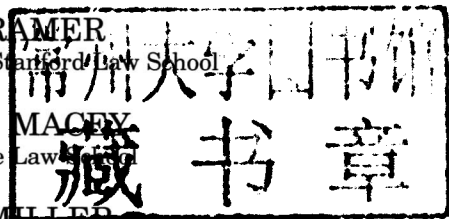
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**INTRODUCTION TO
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610 Opperman Drive
St. Paul, MN 55123
1-800-313-9378

Printed in the United States of America

ISBN: 978-0-314-20053-2

*In Memory of
Lorraine N. Spritzer
(1923–2008)*

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PREFACE TO THE FIFTH EDITION

The core of legal method and process involves reading, analyzing and synthesizing judicial opinions and interpreting legislation. Chapters I, III, and V include these traditional materials in what we hope is an interesting and instructional format. Chapter II, the Anatomy of a Legal Dispute, is innovative for a legal method casebook. It follows a typical automobile accident through various legal processes leading to a civil lawsuit and culminating in a judgment. After digesting Chapter II, students should more fully appreciate the later materials on case analysis, legislation and the role of the courts. Indeed, several themes first introduced in Chapter II reemerge in later chapters of the book. Chapter VI analyzes the role of the courts in conflict resolution. We believe this subject matter is well suited to this course, although some schools may prefer to defer these materials to a course in constitutional law. We have also included discussion on the criminal justice system in Chapter IV.

A change in focus occurs in Chapter V. Just as early legal method casebooks erred in containing too little discussion of legislation, we believe more recent efforts err in the other direction. An intensive study of the legislative process—that is, analysis of what actually happens to a bill—is, in our opinion, not terribly important to the study of legal process.

The book does not purport to state the law regarding any substantive or procedural field. Rather, its purpose is to teach the methods of the study of law. For that reason, editing of the cases has been done sparingly. Our purpose is not to present the students with an ordered collection of rules and legal principles, but rather to acquaint them with the legal process in formulating common law and in interpreting statutory provisions. Extensive editing would have impeded this process. So too would have an excessive use of note cases. The subtle flavor of the cases and the evolution of their reasoning, so important to an understanding of the legal process, could easily have been sacrificed in the interests of brevity. Thus, in order to achieve the goal of understanding the way the law progresses, we have reproduced opinions insofar as they shed light on our objective. The same footnote numbering appears in the casebook as appears in the original sources; editors' footnotes are typically indicated by letters. To improve readability, deletions of materials in the cases have occasionally not been noted with asterisks.

Several factors prompted the preparation of this fifth edition. First has been the continued encouragement and suggestions of the professors who have adopted and students who have used the book. Second, since the publication of the fourth edition four years ago, there have been significant judicial and legislative developments related to legal method and process. Several of these developments have been integrated into the book. By way of

illustration, we now include an extended discussion of automobile searches, incorporate additional insights into the ever-challenging area of statutory construction, discuss several changes to the Model Rules of Professional Conduct, and note Supreme Court cases that may well alter the civil litigation landscape. No one can predict where the Court will go and whether Congress will intercede to undo the changes. In addition, to accommodate student requests, we have expanded the glossary of legal terms.

We thank the various publishers and authors who have permitted the use of copyright material. We are deeply grateful to a number of people without whom this book would not have been possible. First and foremost, we thank the more than 10,000 students who served, perhaps not with their informed consent, as our testing ground. Successive waves of classes over many decades of teaching have contributed to this effort. Among those deserving our special thanks in the preparation of this fifth edition are Dean Paul Schiff Berman of the Sandra Day O'Connor College of Law at Arizona State University, who has encouraged and supported this undertaking; Jared Sutton, a law student who provided research assistance; and Jodi R. Rogers, who provided expert administrative assistance. We welcome Jessica J. Berch as our colleague in undertaking the fifth edition of this book.

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Tempe, Arizona
April 2010

INTRODUCTION

Introduction to Legal Method and Process embodies our belief that understanding process and procedures is as important as understanding substantive law. Substantive arrangements, whether voluntarily adopted through contractual undertakings or imposed by law as in the fields of torts and criminal law, cannot be learned in a vacuum; or to express the concept differently, procedure must inform the study of substantive law. Legal realists, skeptics, and postmodernists cannot dispute that the vast majority of the nearly 2,000,000 American lawyers share the common heritage that the resolution of legal disputes depends upon method and process and that the evolution of law, statutory and judge-made, requires comprehension of the functions of and interrelationships among institutional methods and processes. This book attempts to clear the mist surrounding this tremendously important, but all too often arcane, subject. And it attempts to clear the mist before, or contemporaneously with, the students' study in law school of the substantive fields.

This book provides the analytical skills necessary for success in the study of law. Because mastery in law is acquired only by practice, the book also contains questions and exercises that allow students to apply and develop those skills. Chapter I provides general background on law school, such as information about law school classes, case briefs, and final examinations, and broad overviews of the common law and court systems in the United States. Chapter II chronicles a legal dispute and discusses the concerns that may arise between the occurrence of a typical automobile accident and its resolution in court. Chapter III illustrates the development of the common law and provides students an opportunity to analyze and synthesize four series of cases on different legal issues. Chapter IV describes the criminal process and guides students through some of the basic concepts in criminal procedure. Chapter V discusses interpretation and application of statutes. Chapter VI is devoted to the role of the federal courts in the American Legal System.

This course will introduce you to the skills that, according to the American Bar Association, are vital for any lawyer. See Rule 1.1 of the Model Rules of Professional Conduct 2009. These skills include "analysis of precedent, the evaluation of evidence and legal drafting, . . . and determining what kind of legal problems a situation may involve." Comment 2 to Rule 1.1. This book also teaches how to interpret statutes, rules and regulations.

In the study of law you will undoubtedly experience many frustrations. Classroom sessions may seem to breed only confusion. At times you will feel that you have not learned anything in the process. You will be aware of the growing pains; yet not be able to observe the accompanying growth. Progress in comprehending the materials does not occur in linear fashion. It may lie

dormant for long periods. Do not be dismayed. If the experience of former generations of students teaches us anything, it is that with continued effort and hard work, you can reach the full potential of your skill and abilities by the end of this course.

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**INTRODUCTION TO
LEGAL METHOD
AND PROCESS
CASES AND MATERIALS**

Fifth Edition

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