ROTHENBERG
BLUMENKRANTZ

PERSONAL LAW

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ROBERT D. ROTHENBERG

STEVEN J. BLUMENKRANTZ
State University of New York, Oneonta

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To Werner, who helped me find my values,
and to Sarah, who helps me live them
To Carole and Katie—the two women in my life

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ABOUT THE AUTHORS

Robert D. Rothenberg is an assistant professor of Business and Accounting at the State University of New York at Oneonta. He received a Bachelor of Business Administration from the City University of New York and a Juris Doctorate from New York University. Professor Rothenberg is a Certified Public Accountant and a practicing attorney. He teaches Introductory and Advanced Accounting courses as well as courses in Law, Business, and Real Estate. He is admitted to practice before the U.S. Supreme Court as well as New York State Courts and is a member of the New York State Bar Association, the American Institute of Certified Public Accountants, and the New York State Society of Certified Public Accountants.

Steven J. Blumenkrantz is an assistant professor of Business and Accounting at the State University of New York at Oneonta. He received his Bachelor of Science in Accounting from the State University of New York at Buffalo and his Juris Doctorate from Brooklyn Law School. Professor Blumenkrantz is a Certified Public Accountant and a practicing attorney. He teaches Introductory and Advanced Accounting courses as well as courses in Law, Business, and Real Estate. He is admitted to practice before the U.S. Supreme Court as well as New York State Courts and is a member of the New York State Bar Association, the American Institute of Certified Public Accountants, and the Otsego County Bar Association.

PREFACE

In teaching various law and accounting courses we realized that our students desired practical legal information so we designed a course to provide this material. The course was called ''Personal Law'' and its reception was overwhelmingly positive. In reviewing the market for a textbook suitable for such a course, we discovered that there was nothing available offering legal information relevant to the everyday lives of lay people. This observation precipitated the writing of this text.

During our work on this book we continued to teach a personal law course. Various chapters from the manuscript were reproduced and distributed to the class each semester. The manuscript was changed based on our teaching experience and student comments. Over a number of semesters all of the chapters in the text were tested in this manner.

The practice of law today includes the knowledge of various forms, which are used in this text. In addition, we integrated relevant and interesting cases to illustrate how particular fact patterns might be decided by courts. It is our conviction that after reading this text students will be reasonably familiar with various aspects of law. We caution students to remember the adage: A little knowledge is a dangerous thing. This textbook is not to be used as a substitute for the knowledge and expertise of an attorney. Its purpose is to ensure that individuals have sufficient legal information to discuss details of their legal problems intelligently with professional legal counsel.

We have designed this text to provide flexibility in course presentation. Any cases cited in the text are briefed in the teacher's manual and can be integrated in the course to give greater depth. The teacher's manual also suggests various methods and approaches to teaching the course. The growth of this text is directly attributable to the questions and suggestions of our students and colleagues.

Our thanks to all those students whose inquiries over the years initiated the writing of this book. We would also like to extend special thanks to the following: Sheri Herring, Kate Moon, Arabella Meadows-Rogers, Jean Coons, Charlize Fazio, Barbara Lifgren, Sue Lapine, Donna Lambros, and Sheila Reynolds who contributed to the typing and proofreading of this manuscript. Will Bookhout gave us the use of his law library. The National Bank and Trust Company of Norwich and DeMulder Realty, Inc., provided various forms. Thomas Potter provided expertise in the area of taxes; and Dave Muehl gave us helpful insurance information. The State University of New York, College at Oneonta and the Albany Law School provided support and library services.

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Despite all this help, any errors or omissions are our responsibility.

We would also like to thank Lucille Sutton, our editor, for all her assistance, and extend kudos to our families for their unswerving support.

RDR
SJB

CONTENTS

PART ONE

THE LEGAL SYSTEM

The legal system encompasses a broad area that includes laws, creation of laws, places where laws are upheld, and the people who participate in the process.

Chapter 1 discusses creation of laws, including the U.S. Constitution, the legislature, and administrative agencies, as well as the federal and state court systems.

Chapters 2, 3, and 4 discuss the types of laws that we categorize as criminal, tort, and contracts.

CHAPTER 1

The Legal Environment

INTRODUCTION

Nature and Sources of the Law

Law has been defined in many different ways. Some definitions refer to rules and sanctions; others, to the outcome of particular cases; others, to right and wrong; and still others, to impacts on social behavior. We define law as a system of resolving disputes, guiding behavior, and providing sanctions.

The primary purpose of law and a legal system is to provide a resolution to any given issue. Disagreements are wasteful both to individuals and to society. Time spent in argument over who owns a piece of property could be more productively spent in planting a garden or in other pursuits. Hostility builds when an issue is unresolved (although sometimes also when it is), and a system of law mitigates these problems. Resolution of disputes on an individual basis would resolve these problems. However, a good legal system should do more.

In a society, stability, as well as knowledge of the consequences of an act, becomes important. A person making a decision needs to know what will happen because of the decision and what else to do if the result should be different. Therefore, a good legal system should provide a large measure of consistency. If a given fact pattern has been decided, others in the society can plan how to structure their activities provided the same fact pattern, if litigated a second time, would produce the same results. The courts' commitment to consistency is called the doctrine of stare decisis. Stare decisis is the term used for a rule of law, that once a legal principle has been established by a number of judicial decisions, it becomes binding and should be followed. This rule is designed to foster judicial efficiency (by preventing repetitive trials of the same issues) and to provide a needed element of stability in the law. The doctrine allows an attorney to plan a course of action with knowledge of the legal consequences thereof.

As a general rule, stare decisis will require a decision to be followed even where the court would have decided the case otherwise if there had not been any precedent. It is not, however, an absolute rule. The doctrine will not be followed in cases where the rule laid down in the prior case is wrong. The doctrine may be ignored in some cases where the facts warrant a departure from precedent.

Another characteristic of some legal systems is flexibility. Different persons disagree about the extent to which this is a desirable characteristic; however, our system includes a degree of flexibility. This may come into conflict with the consistency principle. In an agrarian society, population density is low, and property rights interfere with the freedom of movement of individuals. Property rights then become secondary to a person's right to be safe and free from harm. As a society produces greater technological innovations, a flexible legal system evaluates these. Thus, a court may have to deal with electronic eavesdropping devices, computer fraud, and so on.

Law is sometimes confused with morality or justice. These are not the same. Morality generally is a high standard of conduct. It is also subjective to a degree. A legal system should try to promote a high standard of conduct, but not necessarily

as high as some moral standards. Justice generally evokes an image of fairness to both parties. A good legal system strives for justice, but recognizes that resolution of conflicts is of paramount priority. In some instances, justice is possibly unattainable. For example, the issue of abortion has equities on both sides. To allow abortions is to value a woman's right to control her body more than a fetus's right to survive. To prohibit abortions is to make the reverse choice. Neither choice is ''fair'' to the interests of the other party. From a societal viewpoint, however, a choice must be made so that pregnant women know what they may do. A third approach is to view this as a strictly moral issue and leave it to the discretion of the women involved. A court in such a case would refuse to deal with the problem.

Our legal system developed from the English system. Both our system and the English system can be divided into two major categories: the common law and statutory law. Common law consists of principles developed in judicial decisions by reason, justice, conscience, and the needs of the times. Specific rules of common law may change as the times require, but the basic underlying concepts remain. Thus, the common law may from time to time establish new rights when necessary. (For example, the development of sophisticated eavesdropping devices made it necessary for the courts to expand the doctrines of privacy.)

The term *common law* is also sometimes used in contrast to the civil law. In this sense, common law refers to the law of England as opposed to the laws of France or Spain. Most states have adopted the common law. In a few states, where the Spanish or French influence was great, some of the civil law concepts still apply (e.g., Louisiana and the Southwestern states).

Statutory law refers to the rules and principles that have been set forth by legislatures in written statements known as statutes. These may deal with the same or different topics as may be covered under the common law. In the event of conflict, statutes will override the common law unless the statute is found to be unconstitutional.

The early system of English law consisted of a number of courts that dealt only with certain types of issues. A person who had a grievance that could not be properly resolved in the ''law'' courts could petition the king to do what was fair in that situation. These petitions became known as proceedings in equity or in chancery. Courts of equity are more concerned with the administration of justice than are courts of law. Their primary function is to provide a remedy for an injured party where the courts of law are unable to do so. For example, if a buyer enters into a contract to buy a house from a seller and the seller later refuses to deliver ownership of the house, a court of law may punish the seller for breaking the contract; a court of equity may force the seller to transfer the house to the buyer.

The process of bringing a case in a court of law was made very difficult by the imposition of complex procedural rules. (For example, trespass is an action for interference with another's property rights. There are many different types of trespass. A party who was sued for the wrong type could have the action dismissed on that basis. If the process were sufficiently lengthy, the party suing might lose the ability to sue on the proper action because the party's time period expired.) Our le-

gal system began with a dual court system: law courts and equity courts and had a complex system of procedural rules. Today, however, in most states the dual systems have been merged into a single court that may grant either legal or equitable relief. Procedural rules have been simplified to the point where an aggrieved party need only state (and prove) the facts in order to recover. It is no longer necessary to identify the claim by the precise legal terminology.

Jurisdictions

There are 51 separate court systems in the United States. Each of the 50 states has its own court system, and the federal government also has one. This section will cover the federal court system and the basics of a typical state court system.

Federal courts (Exhibit 1–1) have jurisdiction over federal matters. Federal matters include rights established under federal statutes in areas such as patents, copyright, admiralty, antitrust laws, and so forth. Federal courts also interpret the Constitution and U.S. treaties with Indians or other countries. The federal courts cannot review state court proceedings except in cases in which the state laws or state court decisions are in violation of the Constitution of the United States. The federal courts have concurrent (overlapping) jurisdiction with the state courts in areas where federal statutes create private claims (e.g., the Taft-Hartley Act authorizing an employee to sue an employer, the Securities Act giving rights to defrauded investors, and the Civil Rights Act). In addition, the federal courts have jurisdiction in cases based on diversity of citizenship (where an individual from one state is suing an individual from another state) even when there is a state question involved.

State courts (Exhibit 1–2) have jurisdiction over state matters. This includes questions involving state statutes and also the entire body of law dealing with property rights, contracts, and torts (negligence, etc.). Frequently, where there is concurrent jurisdiction, the state courts will deal with the issue first. Most of the topics

EXHIBIT 1-1
Federal Court System

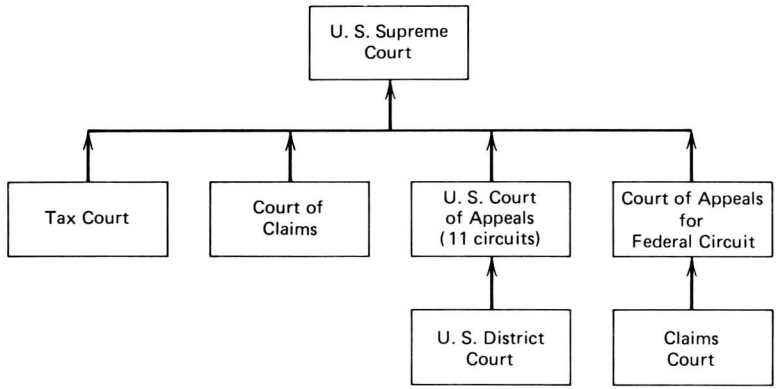
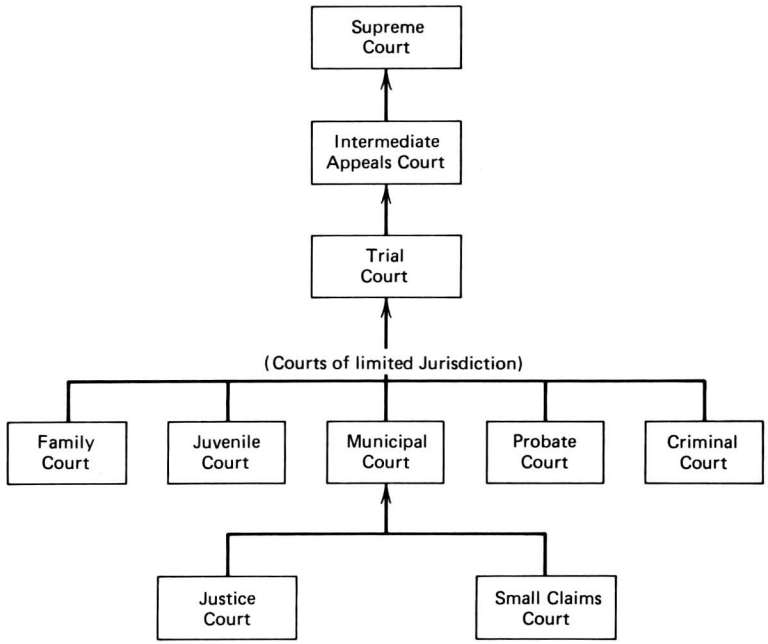


EXHIBIT 1-2
State Court System



covered in this book are within the jurisdiction of the state courts. If a court has the ability to hear a matter, it is said to have subject matter jurisdiction. A court's subject matter jurisdiction may also depend on the amount of the controversy. Many courts cannot hear a case unless the amount of money involved is within certain dollar limits. For example, the federal courts do not have jurisdiction in cases regarding diversity of citizenship unless the amount of the controversy is over $10,000. Other courts cannot hear cases involving more than a specified amount (e.g., small claims courts).

A court must also acquire jurisdiction over a particular controversy. This is usually accomplished by acquiring personal jurisdiction over the defendant. Personal jurisdiction may be acquired if the defendant is present within the territorial confines of the particular court. In some cases, jurisdiction over a particular case may be acquired if certain property is within the territorial limits of the court's authority. For example, a court may resolve an issue of ownership of a piece of real estate located in its area even if both parties live outside its area (called in rem jurisdiction). Some states have personal jurisdiction over the defendants when their activities have taken place within the borders of the particular state even though neither the defendants nor their property is in the state (so-called long arm statutes). However, federal courts have jurisdiction over all persons within the boundaries of the United States.