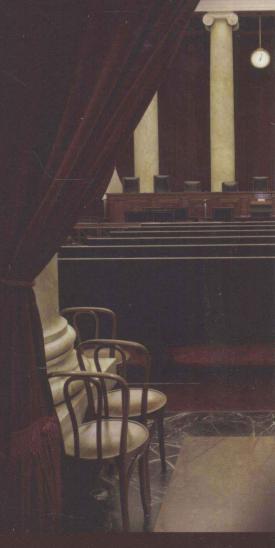
AN INTRODUCTION TO THE AMERICAN LEGAL SYSTEM

John M. Scheb John M. Scheb II

SECOND EDITION





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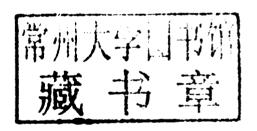
Second Edition

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An Introduction to the American Legal System

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This book is dedicated to John M. Scheb III

PREFACE

We are pleased to present the second edition of An Introduction to the American Legal System. This book is designed as an introductory text on American law and the legal system for undergraduate students in political science, sociology, criminal justice, and legal studies, as well as students in paralegal programs. Our goal is to introduce students to basic legal concepts, principles, and procedures. Of necessity, we have painted with a broad brush, as American law and legal procedures are extremely complex and highly dynamic, and vary considerably across jurisdictions.

Organization

The book is organized in four parts. Part I sets forth the fundamental concepts and concerns of the law, examines the historical development of the American legal system from its English common-law roots, and surveys the structures of the American legal system as well as the legal profession. Part II provides an overview of the substantive law, including constitutional law, criminal law, torts, property law, contracts and business law, and family law. Part III surveys the procedural law, covering civil and criminal procedure, the rules of evidence, and the appellate process. Finally, Part IV looks at two very important areas of modern law: legislation and administrative law and procedure. Because this book will be many students' first encounter with legal studies, we have included an extensive glossary of legal terms (Appendix B).

Special Features

To the beginning student, an introduction to the law can be somewhat overwhelming. To make the book more accessible and useful to the student, every chapter contains a list of learning objectives, a chapter outline, a chapter summary, and a set of boldfaced key terms, all of which are defined in the glossary. To make the book more provocative, each chapter also contains a set of questions for thought and discussion. For the student who wishes to learn more about the topics addressed in the book, each chapter also contains a list of additional reference materials.

Because judicial decisions are central to the development of the law, we have incorporated two features into the text designed to alert students to especially important cases. One of these features, entitled "Case in Point," is a short summary of a significant court decision. There are multiple Case in Point features in each chapter. A related feature, "Opinion of the Court," appears in each chapter and provides substantial excerpts from landmark opinions of the U.S. Supreme Court. These opinions range from classic, such as *Marbury v. Madison* (1803), which is excerpted in Chapter 3, to the very recent, such as *United States v. Morrison* (2000), an excerpt reprinted in Chapter 11.

Another special feature, entitled "The Law in Action," focuses on practical applications of the law and real-world controversies involving legal issues. Topics addressed in this feature range from "Civil Disobedience and the Struggle for Civil Rights" (Chapter 1) to "Purchasing a House" (Chapter 6). Students will also find a set of "Sidebar" features throughout the book. These features provide miscellaneous information relevant to chapter topics. For example, see the Sidebar in Chapter 5, "The Infamous McDonald's Coffee Case," which is of interest to every student of tort law. Other Sidebar features focus on such topics as canons of judicial conduct (Chapter 2),

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warranty deeds (Chapter 6), and the law regarding employment discrimination (Chapter 11). We hope that all these features will make the text more informative and more interesting.

Acknowledgments

In preparing this book, we have relied on the excellent assistance of a number of able persons, whose efforts we gratefully acknowledge:

- Richard R. Garland, Esq., an attorney in Sarasota, Florida, who is certified in appellate practice.
- Robert P. Scheb, Esq., an attorney in Sarasota, Florida, who practices in the field of estates and trusts.
- Rebecca A. Rider, Esq., an attorney in Sarasota, Florida, who practices in the field of domestic relations.
- William T. Brown, an attorney and lecturer in the Political Science Department and College of Law at the University of Tennessee, Knoxville.
- Dr. Mark D. Welton, Professor in the Department of Law at the United States Military Academy, West Point.

Finally, we extend our appreciation to the editorial staff at Aspen Publishers for their help and encouragement throughout this project.

Of course, we assume full responsibility for any errors of commission or omission contained in these pages.

John M. Scheb II
June, 2009

TEACHING AIDS AND SUPPLEMENTS

- Instructor's Manual with Testbank Written by the authors of the text, the Instructor's Manual consists of sample test questions (including true/false, multiple choice, completion, and essay questions) as well as teaching tips and classroom exercises geared to each chapter.
- PowerPoint slides are available on the CD for Instructors.
- Companion Website Come visit our companion website at aspenparalegaled.edu/scheb, where you will find valuable information specific to this book, such as interactive study exercises and related links.

ABOUT THE AUTHORS

John M. Scheb was born in Orlando, Florida in 1926. He practiced law in Sarasota, Florida from 1950 until 1974, serving as Associate Municipal Judge from 1957-1959 and as City Attorney from 1959-1970. In 1975, he was appointed to Florida's Second District Court of Appeal where he served until 1992. Judge Scheb also served as a judge advocate in the United States Air Force Reserve. During the 1990s Judge Scheb served as Distinguished Professorial Lecturer at Stetson University College of Law. Judge Scheb is a member of the American Bar Association, the American Judicature Society, the Florida Bar, and the Sarasota County Bar Association. He is also Master Emeritus of the Judge John M. Scheb American Inn of Court in Sarasota. Judge Scheb holds the B.A. from Florida Southern College, the J.D. from the University of Florida, and the LL.M. from the University of Virginia. He has published articles in *Judicature*, Stetson Law Review, and Tennessee Law Review. With John M. Scheb II, he is co-author of the Criminal Law & Procedure, 6th edition (Thomson/Wadsworth 2008) and Law and the Administrative Process (Thomson/Wadsworth 2005).

John M. Scheb II was born in Sarasota, Florida in 1955. He attended the University of Florida from 1974 to 1982, receiving the B.A., M.A., and Ph.D. in political science. He is now Professor of Political Science at the University of Tennessee, Knoxville, where he specializes in public law and the judicial process. Professor Scheb has authored numerous articles in professional journals, including Social Science Quarterly, Justice System Journal, Political Behavior, American Politics Quarterly, Judicature, Journal of Politics, Law and Policy, and Tennessee Law Review. He is the coauthor of several other textbooks, including: American Constitutional Law, 4th ed. (Thomson/Wadsworth 2008); Criminal Law & Procedure, 6th edition (Thomson/Wadsworth 2008) and Law and the Administrative Process (Thomson/Wadsworth 2005).

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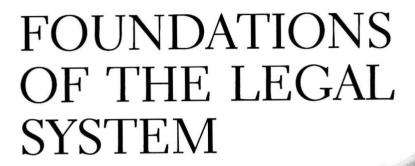
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PART I

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■ Chapter 2: Structures of American Law

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