

ASPEN PUBLISHERS

AN INTRODUCTION TO THE AMERICAN LEGAL SYSTEM

John M. Scheb
John M. Scheb II

S E C O N D E D I T I O N



Wolters Kluwer

Law & Business

ASPEN PUBLISHERS

AN INTRODUCTION TO THE AMERICAN LEGAL SYSTEM

Second Edition

John M. Scheb

Judge, Florida Court of Appeal, 2nd District (Ret.)

John M. Scheb II

Professor of Political Science, University of Tennessee



Wolters Kluwer

Law & Business

AUSTIN BOSTON CHICAGO NEW YORK THE NETHERLANDS

© 2010 Aspen Publishers. All Rights Reserved.
<http://paralegal.aspenpublishers.com>

No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopy, recording, or any information storage and retrieval system, without permission in writing from the publisher. Requests for permission to make copies of any part of this publication should be mailed to:

Aspen Publishers
Attn: Permissions Department
76 Ninth Avenue, 7th Floor
New York, NY 10011-5201

To contact Customer Care, e-mail customer.care@aspenpublishers.com, call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to:

Aspen Publishers
Attn: Order Department
PO Box 990
Frederick, MD 21705

Printed in the United States of America.

1 2 3 4 5 6 7 8 9 0

ISBN 978-0-7355-7925-5

Library of Congress Cataloging-in-Publication Data

Scheb, John M. (John Malcolm), 1926–
An introduction to the American legal system / John M. Scheb, John M. Scheb II. — 2nd ed.
p. cm.
ISBN 978-0-7355-7925-5
I. Law—United States. I. Scheb, John M., 1955– II. Title.
KF385.S34 2010
349.73—dc22

2009022271

AN INTRODUCTION
TO THE AMERICAN
LEGAL SYSTEM

About Wolters Kluwer Law & Business

Wolters Kluwer Law & Business is a leading provider of research information and workflow solutions in key specialty areas. The strengths of the individual brands of Aspen Publishers, CCH, Kluwer Law International and Loislaw are aligned within Wolters Kluwer Law & Business to provide comprehensive, in-depth solutions and expert-authored content for the legal, professional and education markets.

CCH was founded in 1913 and has served more than four generations of business professionals and their clients. The CCH products in the Wolters Kluwer Law & Business group are highly regarded electronic and print resources for legal, securities, antitrust and trade regulation, government contracting, banking, pension, payroll, employment and labor, and healthcare reimbursement and compliance professionals.

Aspen Publishers is a leading information provider for attorneys, business professionals and law students. Written by preeminent authorities, Aspen products offer analytical and practical information in a range of specialty practice areas from securities law and intellectual property to mergers and acquisitions and pension/benefits. Aspen's trusted legal education resources provide professors and students with high-quality, up-to-date and effective resources for successful instruction and study in all areas of the law.

Kluwer Law International supplies the global business community with comprehensive English-language international legal information. Legal practitioners, corporate counsel and business executives around the world rely on the Kluwer Law International journals, loose-leaves, books and electronic products for authoritative information in many areas of international legal practice.

Loislaw is a premier provider of digitized legal content to small law firm practitioners of various specializations. Loislaw provides attorneys with the ability to quickly and efficiently find the necessary legal information they need, when and where they need it, by facilitating access to primary law as well as state-specific law, records, forms and treatises.

Wolters Kluwer Law & Business, a unit of Wolters Kluwer, is headquartered in New York and Riverwoods, Illinois. Wolters Kluwer is a leading multinational publisher and information services company.

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),

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

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).

BRIEF CONTENTS

PREFACE		xvii
PART I	FOUNDATIONS OF THE LEGAL SYSTEM	1
Chapter 1	Development of American Law	3
Chapter 2	Structures of American Law	31
PART II	THE SUBSTANCE OF THE LAW	71
Chapter 3	Constitutional Law	73
Chapter 4	Criminal Law	111
Chapter 5	Torts	167
Chapter 6	Property Law	203
Chapter 7	Contracts and Business Law	233
Chapter 8	Family Law	267
PART III	THE LEGAL PROCESS	307
Chapter 9	Civil Procedure, Evidence, and the Appellate Process	309
Chapter 10	Criminal Procedure	341
PART IV	LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS IN THE LAW	385
Chapter 11	Legislation	387
Chapter 12	Administrative Law and Procedure	423
APPENDIX A	THE CONSTITUTION OF THE UNITED STATES OF AMERICA	451
APPENDIX B	GLOSSARY OF LEGAL TERMS	471
INDEX		505

CONTENTS

PREFACE

xvii

PART I FOUNDATIONS OF THE LEGAL SYSTEM

1

Chapter 1	Development of American Law	3
	<i>Introduction</i>	4
	<i>The Functions of Law in Society</i>	7
	<i>The Development of Law</i>	9
	<i>The Common-Law Tradition</i>	11
	<i>The American Constitution</i>	17
	<i>Modern Statutes and Codification</i>	23
	<i>Administrative Regulation</i>	25
	<i>The Decisional Law</i>	26
	<i>Conclusion</i>	27
	<i>Summary of Key Concepts</i>	28
	<i>For Further Reading</i>	29
	<i>Questions for Thought and Discussion</i>	29
	<i>Key Terms</i>	29
	<i>Endnotes</i>	30
Chapter 2	Structures of American Law	31
	<i>Introduction</i>	32
	<i>Legislatures</i>	33
	<i>Judicial Systems</i>	36
	<i>The Role of the Chief Executive</i>	50
	<i>Regulatory and Administrative Agencies</i>	51
	<i>Law Enforcement Agencies</i>	52
	<i>Prosecutorial Agencies</i>	56
	<i>The Legal Profession</i>	57
	<i>The Adversarial System of Justice</i>	62
	<i>Alternative Dispute Resolution</i>	64
	<i>Conclusion</i>	65

xi

<i>Summary of Key Concepts</i>	66
<i>For Further Reading</i>	66
<i>Questions for Thought and Discussion</i>	67
<i>Key Terms</i>	67
<i>Endnotes</i>	68

PART II THE SUBSTANCE OF THE LAW 71

Chapter 3	Constitutional Law	73
	<i>Introduction</i>	74
	<i>Judicial Review</i>	74
	<i>Legislative Power</i>	80
	<i>Executive Power</i>	83
	<i>Separation of Powers</i>	85
	<i>Federalism</i>	86
	<i>Civil Rights and Liberties</i>	88
	<i>Conclusion</i>	105
	<i>Summary of Key Concepts</i>	105
	<i>For Further Reading</i>	106
	<i>Questions for Thought and Discussion</i>	106
	<i>Key Terms</i>	107
	<i>Endnotes</i>	107
Chapter 4	Criminal Law	111
	<i>Introduction</i>	112
	<i>The Origin and Sources of the Criminal Law</i>	114
	<i>Constitutional Limitations on Criminal Law</i>	116
	<i>Elements of Crimes</i>	118
	<i>Parties to Crimes</i>	119
	<i>Inchoate Offenses</i>	121
	<i>Offenses Against Persons</i>	124
	<i>Property Crimes</i>	130
	<i>White-Collar Crime</i>	134
	<i>Organized Crime</i>	134
	<i>Vice Crimes</i>	135
	<i>Offenses Against Public Order and Safety</i>	138
	<i>Offenses Against the Administration of Justice</i>	140
	<i>Environmental Crime</i>	140

	<i>Military Offenses</i>	141
	<i>Defenses</i>	141
	<i>Punishment of Offenders</i>	152
	<i>Conclusion</i>	160
	<i>Summary of Key Concepts</i>	161
	<i>For Further Reading</i>	161
	<i>Questions for Thought and Discussion</i>	162
	<i>Key Terms</i>	162
	<i>Endnotes</i>	163
Chapter 5	<i>Torts</i>	167
	<i>Introduction</i>	168
	<i>Negligence</i>	169
	<i>Intentional Torts</i>	173
	<i>Strict Liability</i>	180
	<i>Vicarious Liability</i>	182
	<i>Special Tort Situations</i>	183
	<i>Immunities from Liability</i>	191
	<i>Recent Developments in Tort Law</i>	194
	<i>Tort Reform</i>	195
	<i>Conclusion</i>	197
	<i>Summary of Key Concepts</i>	198
	<i>For Further Reading</i>	199
	<i>Questions for Thought and Discussion</i>	199
	<i>Key Terms</i>	200
	<i>Endnotes</i>	200
Chapter 6	<i>Property Law</i>	203
	<i>Introduction</i>	204
	<i>Personal Property</i>	206
	<i>Real Estate</i>	208
	<i>The Lessor-Lessee Relationship</i>	217
	<i>Regulation of the Use of Real Property</i>	219
	<i>Eminent Domain</i>	220
	<i>Trusts</i>	224
	<i>Wills and Intestate Succession</i>	225
	<i>Estate, Gift, and Inheritance Taxes</i>	228

	<i>Conclusion</i>	229
	<i>Summary of Key Concepts</i>	229
	<i>For Further Reading</i>	230
	<i>Questions for Thought and Discussion</i>	230
	<i>Key Terms</i>	231
	<i>Endnotes</i>	232
Chapter 7	<i>Contracts and Business Law</i>	233
	<i>Introduction</i>	234
	<i>Contracts</i>	234
	<i>The Uniform Commercial Code (UCC)</i>	247
	<i>Business Associations</i>	251
	<i>Consumer Protection</i>	257
	<i>Bankruptcy</i>	259
	<i>Conclusion</i>	261
	<i>Summary of Key Concepts</i>	262
	<i>For Further Reading</i>	262
	<i>Questions for Thought and Discussion</i>	263
	<i>Key Terms</i>	263
	<i>Endnotes</i>	264
Chapter 8	<i>Family Law</i>	267
	<i>Introduction</i>	268
	<i>Marriage</i>	268
	<i>Divorce and Annulment</i>	274
	<i>Child Custody, Support, and Paternity</i>	283
	<i>Adoption</i>	290
	<i>Termination of Parental Rights</i>	292
	<i>Guardianship</i>	293
	<i>Reproductive Decisions</i>	294
	<i>Surrogate Motherhood</i>	297
	<i>Decisions Regarding Medical Treatment</i>	299
	<i>Conclusion</i>	301
	<i>Summary of Key Concepts</i>	302
	<i>For Further Reading</i>	302
	<i>Questions for Thought and Discussion</i>	303
	<i>Key Terms</i>	303
	<i>Endnotes</i>	304

PART III THE LEGAL PROCESS

Chapter 9	Civil Procedure, Evidence, and The Appellate Process	309
	<i>Introduction</i>	310
	<i>Civil Procedure</i>	310
	<i>The Rules of Evidence</i>	324
	<i>Appellate Procedure</i>	330
	<i>Conclusion</i>	336
	<i>Summary of Key Concepts</i>	336
	<i>For Further Reading</i>	337
	<i>Questions for Thought and Discussion</i>	337
	<i>Key Terms</i>	337
	<i>Endnotes</i>	338
Chapter 10	Criminal Procedure	341
	<i>Introduction</i>	342
	<i>Search and Seizure</i>	342
	<i>Arrest and Investigatory Detention</i>	349
	<i>Interrogation and Identification of Suspects</i>	351
	<i>The Right to Counsel</i>	353
	<i>The Pretrial Process</i>	355
	<i>The Criminal Trial</i>	361
	<i>Sentencing</i>	367
	<i>Victims' Rights in the Criminal Process</i>	373
	<i>The Appeals Process</i>	374
	<i>Criminal Procedure in Military Tribunals</i>	377
	<i>Conclusion</i>	379
	<i>Summary of Key Concepts</i>	379
	<i>For Further Reading</i>	380
	<i>Questions for Thought and Discussion</i>	381
	<i>Key Terms</i>	381
	<i>Endnotes</i>	382

PART IV LEGISLATIVE AND ADMINISTRATIVE DEVELOPMENTS
IN THE LAW

Chapter 11	Legislation	387
	<i>Introduction</i>	388
	<i>Constitutional Authority to Legislate</i>	388

<i>Antitrust Law</i>	390
<i>Banking and Securities</i>	393
<i>Labor Law</i>	395
<i>Social Welfare Legislation</i>	397
<i>Civil Rights Legislation</i>	400
<i>Environmental Legislation</i>	414
<i>Conclusion</i>	417
<i>Summary of Key Concepts</i>	418
<i>For Further Reading</i>	418
<i>Questions for Thought and Discussion</i>	419
<i>Key Terms</i>	419
<i>Endnotes</i>	419

Chapter 12	<i>Administrative Law and Procedure</i>	423
	<i>Introduction</i>	424
	<i>Delegation of Legislative Authority</i>	425
	<i>Rulemaking</i>	429
	<i>Agency Investigations</i>	432
	<i>Agency Enforcement Powers</i>	434
	<i>Agency Adjudication</i>	437
	<i>Judicial Review of Agency Actions</i>	440
	<i>Public Access to Agency Information</i>	442
	<i>Government in the Sunshine</i>	443
	<i>The Law of Public Employment</i>	444
	<i>Conclusion</i>	446
	<i>Summary of Key Concepts</i>	447
	<i>For Further Reading</i>	448
	<i>Questions for Thought and Discussion</i>	448
	<i>Key Terms</i>	448
	<i>Endnotes</i>	449

APPENDIX A	THE CONSTITUTION OF THE UNITED STATES OF AMERICA	451
APPENDIX B	GLOSSARY OF LEGAL TERMS	471
INDEX		505

FOUNDATIONS OF THE LEGAL SYSTEM

PART I

- Chapter 1: Development of American Law
- Chapter 2: Structures of American Law