

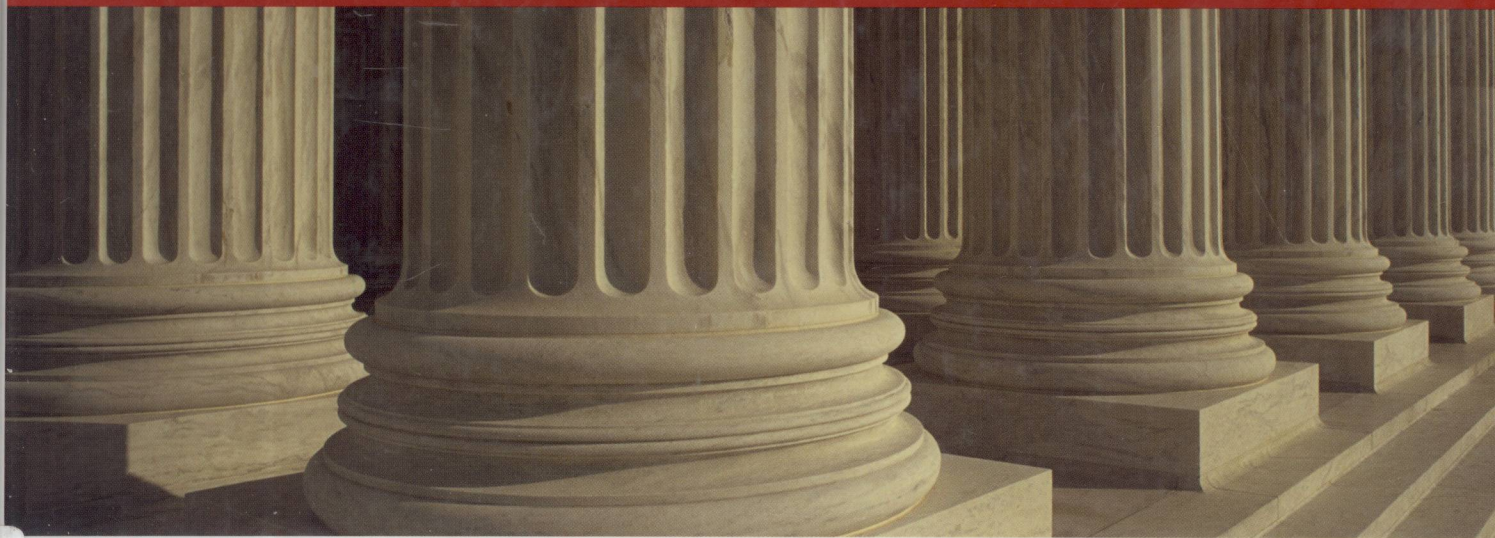
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■ Katherine A. Currier  
■ Thomas E. Eimermann

# The Study of Law

**A Critical Thinking Approach**

**Second Edition**



**Wolters Kluwer**  
Law & Business

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## A Critical Thinking Approach

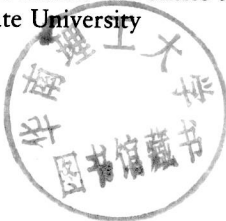
### Second Edition

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**Wolters Kluwer**  
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# The Study of Law: A Critical Thinking Approach

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Professor Currier is actively involved in the development of undergraduate legal education at both the regional and the national levels, particularly through her work with the American Association for Paralegal Education (AAfPE) and the American Bar Association Approval Commission on Paralegals. Professor Currier has served on the national board of AAfPE, first as its parliamentarian and then later as the elected representative of four-year paralegal programs. She served many years as the AAfPE publications chair, charged with the final responsibility for overseeing the *Journal of Paralegal Education and Practice* and *The Educator*. Professor Currier frequently speaks at both the AAfPE Northeast regional meetings and the annual AAfPE conferences on topics as diverse as the use of computer shareware, paralegals and the unauthorized practice of law, creative teaching techniques, and conducting legal research on the Internet. Professor Currier also chaired the American Bar Association Approval Commission on Paralegals, the body charged with conducting site visits of paralegal programs that are seeking their initial ABA approval or reapproval. Currently, she is a member of the Board of Directors of the International Assembly for Collegiate Business Education (IACBE), an organization dedicated to promoting excellence in business education.

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Professor Eimermann's publications include three editions of *Fundamentals of Paralegalism* and journal articles on paralegals, jury behavior, and free speech issues. He earned his B.A. in Political Science at North Central College. He went on to receive an M.A. and a Ph.D. in Political Science from the University of Illinois-Urbana/Champaign campus.

Katherine Currier and Thomas Eimermann also coauthor *Introduction to Law for Paralegals: A Critical Thinking Approach* and *Introduction to Paralegal Studies: A Critical Thinking Approach*.



*To our spouses and children  
For their understanding and support*

# Preface

## NEW TO THIS EDITION

In our ongoing effort to develop a comprehensive introductory law text that is appropriate for use in general education courses and programs in business, criminal justice, paralegal studies, and political science, we have made several significant changes from our previous edition. We have added new topics, reorganized some materials, and incorporated discussions of many recent court decisions.

The most significant of these changes involve placing greater emphasis on the underlying principles of the law and giving less attention to procedural details. Consistent with this shift we have added a new chapter on constitutional law and eliminated the appendices on legal research and legal writing. We also eliminated the Practical Tips as they focused more on what goes on in law offices rather than on the law itself.

We have not changed the use of our “critical thinking approach” throughout the book. Although we no longer have separate chapters on interpreting statutes, interpreting court opinions, and applying the law, we have incorporated the most important principles from these chapters into our new Chapter 1.

The new constitutional law chapter provides an overview of fundamental concepts such as federalism, separation of powers, due process of law, and the equal protection of the laws. In that chapter we also explore the leading approaches used when interpreting some of the vague and often ambiguous language in the federal constitution.

The second edition also adds coverage on affirmative action, capital punishment, hate crimes, homestead exemptions, and sports-related torts. It expands the previous coverage of eminent domain, federal employment discrimination laws, the insanity defense, punitive damages, same-sex marriage and civil unions, and sentencing guidelines.

Coverage of recent Supreme Court cases includes *Grutter v. Bollinger* and *Parents Involved in Community Schools v. Seattle School Dist.* (affirmative action); *Roper v. Simmons* (death penalty); *Kelo v. New London* (eminent domain); and *Blakely v. Washington*, *United States v. Booker*, *Scott v. Harris*, and *Hudson v. Michigan* (sentencing guidelines).

Finally, we have updated our NetNotes (references to Internet resources) and incorporated new Discussion Questions, Legal Reasoning Exercises (renamed Critical Thinking Exercises and moved to the end of each chapter for easy reference), and Review Questions.

## APPROACH

As the title indicates, in this book we use a critical thinking approach to introduce readers to the study of law. This book is designed for use in introductory law courses for students in any major, but particularly for those in business, criminal justice, paralegal, prelaw, and political science.

Rather than taking an approach that emphasizes the memorization of definitions and rules, *The Study of Law: A Critical Thinking Approach* focuses on the basic foundations of the law and on the legal reasoning process. In addition to presenting an overview of the legal system, this book teaches the basic skills necessary to read and understand statutes and court cases.

We use this critical thinking approach because we believe it is the best way for students to learn the fundamental principles of law. By learning how to read and interpret statutes, cases, regulations, and court documents, students will be better able to learn how the American legal system functions. Therefore this book emphasizes careful reading for detail, analytical thinking, and presentation of arguments. The hypothetical cases, Discussion Questions, and Critical Thinking Exercises incorporated throughout the text all serve to help develop students' critical thinking skills.

## ORGANIZATION OF THE BOOK

**Part 1, The American Legal System**, introduces students to the study of law and the organization of the legal system. It covers such topics as sources of the law, the different ways in which law is classified, and various stages involved in litigation.

**Part 2, Substantive Law and Ethical Issues**, introduces students to basic concepts and terminology used in the most prominent substantive areas of law. This section leads off with a chapter on constitutional law, because constitutional law stands at the top of the hierarchy of law and establishes the framework within which the legal system operates. We then go on to cover key fundamental concepts in torts, contracts, property and estate law, business law, family law, and criminal law. In each chapter we blend traditional case law with a discussion of cutting-edge developments to give students a solid foundation in traditional concepts and an appreciation of the dynamic nature of law. The final chapter probes the ethical dilemmas attorneys face in the context of our adversary system.

Instructors may wish to alter the sequence in which they cover the chapters, or even skip parts when time is limited. However, it is best if instructors plan on covering Part One before selecting from the substantive law chapters contained in Part Two.

## KEY FEATURES

Among the many features that set this book apart are

- the nature of the included cases
- marginal definitions of key terms

- NetNotes
- Critical Thinking Exercises
- Discussion Questions integrated into each chapter
- Review Questions

Because this book stresses the critical thinking approach, we illustrate our points with hypothetical situations and with real case decisions that students will understand and to which they can relate. The cases cover such topics as AIDS-infected blood transfusions, battered woman's syndrome, same-sex marriage, flag burning, the insanity defense, search and seizure of automobiles, sexual harassment, surrogate motherhood, and spousal immunity. We have also included such "classics" as *McBoyle v. United States*, *Palsgraf v. Long Island Railroad*, *Brown v. Board of Education*, and *Mapp v. Ohio*. Our philosophy in editing these and other cases was to retain enough of the court's wording to give students a realistic feel for how judges actually write and to allow students to develop their critical thinking skills. We deleted nonessential information in order to keep each case a reasonable length.

Furthermore, the cases are fully integrated into the text. Many times, these cases are cross-referenced in other cases and used to show how the courts build on precedent and modify it in response to changing societal conditions. Discussion Questions and Critical Thinking Exercises call on students to carefully analyze these cases and apply them to hypothetical situations.

Also of special note are the appendixes. Appendix A includes a complete copy of the United States Constitution and Appendix B contains a convenient listing of websites for legal resources.

An instructor's manual that includes suggested answers for all the Discussion Questions, Review Questions, and Critical Thinking Exercises, as well as teaching tips, is available to help teachers make the most effective use of this book. Also available are PowerPoint slides to assist with classroom lectures and a computerized test bank.

## RELATIONSHIP TO THE AUTHORS' OTHER TEXTS

Those familiar with *Introduction to Law for Paralegals: A Critical Thinking Approach* and *Introduction to Paralegal Studies: A Critical Thinking Approach* will recognize many similarities to this text. All three books emphasize the "critical thinking approach" to understanding the law. All three include excerpts from court cases, discussion questions, NetNotes, and references to ethical questions. Topics such as sources of law, classification of the law, structure of the court system, overviews of civil and criminal litigation, overviews of torts, contracts, property law, and criminal law, and analysis of statutes and cases are also covered in all three books.

However, where the other two books are specifically designed for paralegal students, this book is directed at a more general audience. In *The Study of Law* we have dropped appendices on legal research and writing and references to tasks performed by paralegals. To better serve the needs of a more general audience, we have increased our coverage of constitutional law and placed more emphasis on general education goals.

## ACKNOWLEDGMENTS

Naturally, we owe a great deal of thanks to the many students, educators, paralegals, and attorneys who contributed ideas for this book. We would also like to recognize Victoria Joseph for her contribution to the criminal law chapter.

We would also like to thank the staff at Aspen Publishers for the excellent support we have received on the books we have done with them. We especially want to thank Betsy Kenny and David Herzig for their roles in helping us develop our books.

*Katherine A. Currier*  
*Thomas E. Eimmermann*  
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