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# INTRODUCTION TO PARALEGAL STUDIES

**A Critical Thinking Approach**

FOURTH EDITION



**Wolters Kluwer**  
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# Introduction to Paralegal Studies

## A Critical Thinking Approach

### Fourth Edition

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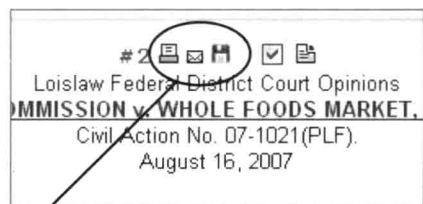


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*To the memory of Vicki Joseph,  
our friend and colleague*



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# About the Authors

**Katherine A. Currier, J.D.**, is the chair of the Department of Paralegal and Legal Studies at Elms College. She has developed and taught many paralegal courses, including Legal Reasoning, Research, and Writing; Introduction to Legal Studies I and II; Law Office Computer Literacy; Law Office Applications; Interviewing, Counseling, and Negotiating; and Law and Literature. Her publications include articles on legal ethics as applied to paralegals and law office computing.

Professor Currier is actively involved in the development of paralegal 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. 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, the body charged with conducting site visits of paralegal programs that are seeking their initial ABA approval or reapproval. Katherine A. Currier graduated magna cum laude with her B.A. in Political Science from Carleton College in 1971, with her M.A. in Political Philosophy from University of California, Berkeley, in 1973, and with her J.D. from Northeastern University Law School in 1979.

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Professor Eimmermann has served as President and as a member of the Board of Directors of the American Association for Paralegal Education. He has also served on the Certification Board and the Advanced Certification Board of the National Association of Legal Assistants, as well as being a member of the Illinois State Bar Association Committee on the Delivery of Legal Services, and a member of the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission. As a consultant for the Illinois Department of Corrections, he designed a Uniform Law Clerk Training Program used in Illinois prisons.

Professor Eimmermann'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 co-authored *An Introduction to Law for Paralegals: A Critical Thinking Approach* and *The Study of Law: A Critical Thinking Approach*.

# Preface

## NEW TO THIS EDITION

This fourth edition keeps pace with many new developments in the law and the paralegal profession. We have added new topics, expanded others, and incorporated discussions of recent court decisions.

Most noticeably in this edition we have added a new feature we call Web Exercises. Building on the NetNotes feature we introduced in the second edition, these Web Exercises are “homework” exercises that involve using Internet resources to locate information that can be found only on the Internet or the type of practical information a paralegal often needs to find.

References to new developments include updated information on the membership of the U.S. Supreme Court, paralegal employment, and recent activities of paralegal-related professional associations. The text also incorporates references to new legislative and judicial developments involving federalism, mens rea, sentencing guidelines, the intellectual property field, and legal ethics. This new edition also includes some new Legal Reasoning Exercises, Discussion Questions, and NetNotes.

## APPROACH

As the subtitle of this book indicates, it uses a critical thinking approach to paralegal studies. Paralegal studies focuses on the functions and duties of paralegals in the American legal system. The critical thinking approach to paralegal studies places great emphasis on the development of analytical thinking skills.

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 to perform paralegal duties in a variety of specialty areas. Therefore, this book emphasizes careful reading for detail, analytical thinking, and the written presentation of arguments.

Another key element of this critical thinking approach is the interactive nature of the book. We have included Hypothetical Cases, Discussion Questions, Legal Reasoning Exercises, Practice Tips, and Ethics Alerts to stimulate students to think about and discuss the underlying assumptions behind various aspects of the law and the ramifications of different approaches to legal problems. We purposely dispersed these items throughout the chapters so that the students would be encouraged to think about them while the material is fresh from recent reading and so as to be readily available for instructors to use as springboards for classroom discussion. While we did relegate the review

questions to the end of each chapter, we have labeled them with the pages they cover so that you can easily assign just part of a chapter with its accompanying review questions.

Although this book was specifically designed to be used in introductory paralegal courses, general prelaw students, criminal justice majors, government majors, business students, and anyone wishing to know more about the law will also find it useful. It presents an overview of the legal system and covers the skills of legal research, legal writing, interviewing, investigation, and computerized case management.

## ORGANIZATION OF THE BOOK

Part 1, Paralegals and the American Legal System, introduces students to the study of law, the organization of the legal system, and the role of paralegals in that system. Chapter 2, Paralegals and the Legal System, includes classification of different types of paralegals and what they do, as well as coverage of the issues of paralegal education, registration, certification, and licensure. Chapters 3 through 6 cover such topics as sources of the law, the different ways in which law is classified, the structure of the courts, and the various stages involved in litigation and alternative dispute resolution.

Part 2, Substance of the Law, introduces readers to the basic concepts involved in the areas of torts, contracts and the Uniform Commercial Code, property and specialized practice areas, and criminal law. It also provides an in-depth coverage of legal ethics, including confidentiality, conflicts of interest, and the unauthorized practice of law.

Part 3, Legal Analysis and Research, contains chapters that build the critical thinking skills students need for reading and analyzing the law. Chapters 12 and 13 cover finding and interpreting statutory law and court opinions. Chapter 14 discusses basic legal research tools, and Chapter 15 shows students how to apply what they have found to specific legal problems. Chapter 15 also discusses how to use the IRAC approach to legal analysis and how to report research findings in a legal memorandum.

Whereas Part 3 builds skills for finding and analyzing the law, Part 4, Paralegals and the Work World, builds skills related to gathering and managing relevant factual information. Chapter 16 focuses on interviewing while Chapter 17 covers the gathering, preservation, and use of different types of evidence. Chapter 18 introduces readers to case management and the various types of computer programs that attorneys and paralegals can use to manage case information.

## KEY FEATURES

Among the many features that set this book apart are

- Discussion Questions integrated into each chapter
- Legal Reasoning Exercises
- Marginal definitions of key terms
- Practice Tips

- Ethics Alerts
- NetNotes
- Web Exercises
- Review Questions
- An appendix on the fundamentals of good writing
- Glossary, including definitions for all bold-faced words and phrases found in the text

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. Discussion Questions and Legal Reasoning Exercises force the students to synthesize and analyze the material rather than simply regurgitating an answer. The Practice Tips help connect the theoretical textbook learning to the reality of the work world. They provide checklists and other “words of wisdom” regarding practical paralegal tasks. By bringing the text to life, the Discussion Questions, Legal Reasoning Exercises, and Practice Tips all help maintain student attention and aid in the students’ retention of the material.

Ethics Alert boxes are placed throughout the text to draw attention to the ethical issues involved in various aspects of the law. These boxes warn students of actions that would be considered unethical; they also give advice on how to act appropriately. NetNotes provide students with handy links to key Internet resources, and Web Exercises require students to utilize the Internet to find specific types of practical information.

Because so much of learning the law involves mastering legal vocabulary, we have included marginal notes containing key definitions. The end-of-the chapter review questions also help students reinforce basic concepts.

Of special note are the appendices. Appendix A contains major excerpts from the U.S. Constitution. Appendix B includes the major codes of ethics with which paralegals need to be familiar. New to this edition, Appendix C provides students with a convenient and easy-to-understand primer on the basics of grammar, including verb tense, pronoun agreement, placement of modifiers, punctuation, and style. Appendix D provides a useful summary of all of the NetNotes found in the text.

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

## TEXTBOOK RESOURCES

The companion website for this book, at [www.aspenparalegaled.com/currier\\_introtoparalegalstudies4](http://www.aspenparalegaled.com/currier_introtoparalegalstudies4), offers additional resources for students and instructors, including:

- Study aids to help students master the key concepts for this course. Visit the site to access interactive StudyMate exercises such as flash cards, matching, fill-in-the-blank, and crosswords. These activities are also available for download to an iPod or other hand-held device.

- Instructor resources to accompany the text.
- Links to helpful websites and updates.

The text comes packaged with 4 months of prepaid access to Loislaw's online legal research database, at [www.loislawschool.com](http://www.loislawschool.com).

Blackboard and eCollege course materials are available to supplement this text. This online courseware is designed to streamline the teaching of the course, providing valuable resources from the book in an accessible electronic format.

Instructor resources to accompany this text include a comprehensive Instructor's Manual, Test Bank, and PowerPoint slides. All of these materials are available on a CD-ROM or for download from our companion website.

## RELATIONSHIP TO THE AUTHORS' OTHER TEXTS

Those familiar with *Introduction to Law for Paralegals: A Critical Thinking Approach* and *The Study of Law: 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 discussion questions, NetNotes, practice tips, 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, and criminal law, and analysis of statutes and cases are covered in all three books.

These books differ in terms of their intended audiences. *The Study of Law* is directed at a more general audience; both the *Introduction to Law for Paralegals* and this text are specifically directed at paralegals. Whereas *Introduction to Law for Paralegals* goes into more detail in its coverage of substantive areas of the law and includes excerpts from actual court opinions, this text provides greater coverage of the role of the paralegal by including additional chapters on interviewing, investigations, and computerized case management.

## SPECIAL THANKS

Naturally, we owe a great deal of thanks to the many students, educators, paralegals, and attorneys who contributed ideas for this book. Special recognition should go to 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 for the key role that she played in handling this fourth edition.

Finally, we also want to thank our spouses and children for their continued support and understanding of our professional activities.

Katherine A. Currier  
Thomas E. Eimmermann

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