FEDERAL COURTS, FEDERALISM AND SEPARATION OF POWERS

CASES AND MATERIALS

Third Edition

Donald L. Doernberg
C. Keith Wingate
Donald H. Zeigler

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CASES AND MATERIALS

Third Edition

By

Donald L. Doernberg
Professor of Law
Pace University School of Law

C. Keith Wingate
Professor of Law
University of California,
Hastings College of Law

Donald H. Zeigler
Professor of Law
New York Law School

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The first edition was dedicated:

To my Fathers
D.L.D

To Lilly, Clarence, Christine, and A.D.
C.K.W.

The second edition was dedicated:

To Cyndy
D.L.D.

To Gloria
C.K.W.

The third edition is dedicated:

To Chris Felts
D.L.D.

To the memories of Harriet Tubman, W.E.B. DuBois, and John Brown
C.K.W.

To my Father
D.H.Z.

Preface

In the four years since the second edition, the Court has focused more narrowly on some areas, leaving others entirely untouched. The third edition continues the basic organization and structure of the earlier editions. Recent years have witnessed important changes in particular areas, but the underlying themes of the course remain the same. Our editing decisions continue to be made to help elaborate those themes. There has, for example, been no significant doctrinal development in the areas of congressional control of jurisdiction (Chapter 2), federal question jurisdiction (Chapter 3), legislative courts (Chapter 4), abstention (Chapter 8) and supreme court review of state court decisions (Chapter 9). On the other hand, the Court has spoken out on standing and mootness (Chapter 1), federal common law (Chapter 5), the Eleventh Amendment (Chapter 7), and federal habeas corpus (Chapter 11). That is not to say that there has been no action in the other areas; it simply has come more as tinkering around the edges rather than major doctrinal exposition; those developments are covered in notes or text rather than as principal cases.

Chapter 1 now includes *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.* The case really could appear in either the standing or mootness subsections. We have chosen the latter, because the Court makes a considerable effort to compare standing and mootness, so it is desirable to have read through both subsections before undertaking *Laidlaw*.

Chapter 5 on federal common law contains *Semtek International, Inc. v. Lockheed Martin Corp.* That case surprised more than one Federal Courts scholar, because the Court appeared in *Boyle v. United Technologies Inc.* and *Atherton v. FDIC* to have interred the technique of using state law as the content of federal common law. *Semtek* demonstrates that reports of the technique's demise were indeed premature.

We have revised the Notes and Questions in Chapter 6. Some of the Notes following *Harlow v. Fitzgerald* have been reorganized in light of the recent decisions, *Saucier v. Katz* and *Hope v. Pelzer,* and we present much of the discussion as textual narrative rather than notes.

Chapter 7, on the Eleventh Amendment, has undergone significant reorganization. We have included *Giles v. Harris*, a 1903 case that, when combined with *Hans v. Louisiana*, appeared to represent the federal judiciary's complete abdication of any responsibility for enforcing the Civil War Amendments on behalf of black citizens. One may see *Ex parte Young*, a watershed case by any measure, as the Court's turning back from this course.

Chapter 8 has no new main cases. The Supreme Court has not been

active in the abstention area in recent years. We have substantially revised the Notes and Questions, however, and the final case of the chapter, *Wilton v. Seven Falls Company,* is reduced to a Note.

We have also made substantial revisions to the Notes and Questions in Chapter 9. The Supreme Court rulings in *Bush v. Palm Beach County Canvassing Board* and *Bush v. Gore* are discussed briefly. We clarify the Notes explaining how the Court proceeds when the respondent seeks to block Supreme Court review based on a state procedural default. Two recent cases, *Lee v. Kemna* and *Nike v. Kasky*, also are discussed.

Since the last edition came out, we have added a chapter on the *Rooker-Feldman* doctrine (at the suggestion, we might add, of Judge William Fletcher of the Ninth Circuit). The doctrine represents another arena in which the federalism battle between state and federal judiciaries plays out. This chapter now precedes the concluding chapter on federal habeas corpus.

The final chapter dealing with Federal Habeas Corpus is much changed, bearing faint resemblance to its predecessor. We have entirely reorganized the chapter, reducing some cases to text discussion or note status and highlighting others that are more doctrinally significant than we originally appreciated. The Court continues to be extremely active in this area. That is exciting, but it also challenges one to assemble a usable chapter that does not overwhelm the rest of the course. Indeed, justiciability, federal common law, the Eleventh Amendment and federal habeas corpus could each make a fine two credit seminar, the only difficulty then being that no school allocates to the Federal Courts course the twelve or thirteen credits it would then take to cover all the material in depth.

We have rewritten the introductory habeas material to clarify the doctrinal changes made by the Warren Court. Headings are revised, new cases are added, and the Notes and Questions are substantially rewritten. Several main cases in the Second Edition have been reduced to notes to make way for new material and because of space constraints. One of the trio of so-called enemy combatant cases decided June 28, 2004, *Rasul v. Bush*, is added as a main case. Another, *Padilla v. Rumsfeld*, is described in a detailed note. Although those cases do not concern the relationship of the federal government to the states, they do provide the most current indication of the Court's view of the function of the once Great Writ.

We continue to use editing conventions to limit length and remove matter that does not contribute to understanding. Within the cases, citations that are not of pedagogical importance are omitted without ellipsis, as are some of the Court's footnotes. The remaining footnotes in cases retain their original numbers. Where the Court is clearly quoting itself, the citation is omitted unless it is peculiarly important to understanding the substantive point. Similarly, when the Court quotes a

clearly identified source (for example an IRS policy in *Allen v. Wright),* we have omitted the citation unless it is necessary for understanding. Authors' footnotes within cases are lettered rather than numbered; other authors' footnotes are consecutively numbered within each chapter. Within the material we have written, we have avoided endless repetition of citations; if we have recently cited a case, we then refer to it by its commonly-used short name. When citing state-court cases, we have included both the official reporter citation and citations to the West regional and individual-state reporters. The current version of the Bluebook may frown on it, but we think it is a service to the reader.

October, 2004

Acknowledgments

From Professor Doernberg:

My family still acknowledges me at the end of this project, which is remarkable testimony to their tolerance; the least I can do is to acknowledge them as well. My wife Cynthia Pope again has come to terms with the ugly reality that one does not write a casebook; one marries it, particularly so in an area in which the Court is predictably active and predictably unpredictable. She and my children Doug and Emily Pope have graciously surrendered time that should have been theirs.

As always, several students have contributed their talents. John Tenaglia, with whom I put together the *Rooker-Feldman* chapter two summers ago and Jennifer Odrobina, who did much to keep it current, were marvelous. Oren Gelber has worked with me this summer and has done a job that is simply beyond description. Her understanding, insight, willingness to offer comments and suggestions and incredible attention to detail have made this project far better than it would otherwise have been. In many ways, she has mastered this difficult subject on her own after only her first year. She has performed brilliantly, and it is my great pleasure to acknowledge my debt to her.

Chris Felts, to whom I dedicate this book, is what Isaak Walton would have called a "compleat" human being, and that is something I do not say lightly. I have known Chris since 1970, when he was four. He is in every way my son save for the small matter that we share no genes. But what does Mother Nature know anyway? In all the ways that really count, we are father and son, and the relationship has brightened my life in innumerable ways over the years, recently multiplied as Chris and his wife have made me a grandfather twice since 2000. He is an extraordinarily special fellow, and I am enriched for knowing him.

From Professor Wingate:

I seem to always be thanking the same people in my acknowledgements. My wife Gloria continues to be a great source of support and inspiration to me in everything I do, and I would be remiss not to acknowl-

edge it. Again, I would like to thank my colleague Evan Tsen Lee for his willingness to share his vision of and ideas about Federal Courts. The Office of Faculty Support here at Hastings continues to make my life much easier with the excellent secretarial and administrative assistance it provides. Thanks to the people there, Stephen R. Lothrop, Ted Jang, Barbara Topchov, Beverly Taylor, and Cecillia Bruno. Finally, I would like to thank my students. I hope they realize that there is a method in the madness.

From Professor Zeigler:

My thanks to Professors Doernberg and Wingate for asking me to join as an author for the third edition. It is an honor to be included. In addition, our conversations about the substance of the course have deepened my understanding of the material and given me new ideas about how to teach it. My thanks also to my wife, fellow law professor Brannon Heath, for her assistance and patience.

I am also grateful for the research assistance of Annie McGuire, Class of 2005, and Julia Khalavsky and Tim Regan, Class of 2006. Ms. McGuire helped with the substantial revision of the chapter on Habeas Corpus. Understanding this complex and rapidly changing area of the law was a challenge for both of us, and her sheer analytical prowess was of real assistance. Ms. Khalavsky and Mr. Regan provided invaluable help in revising the Notes and Questions in several chapters. The Notes and Questions are sharper, clearer, and will be more valuable to students because of their efforts.

Preface to the Second Edition

The basic approach reflected in the first edition still seems to us to facilitate study of this unusually arcane subject. The intervening six years have seen some significant shifts in particular doctrines or subdoctrines, but the basic themes of the subject as a whole remain unchanged. We have therefore tried to continue to select (and edit out) materials according to how well they elaborate those themes rather than for the particular rule of an individual case.

Chapter 1 now includes two additional cases on standing that may indicate substantial shifts in the Court's approach. At least some Members of the Court appear to be rethinking the jurisprudence of "generalized grievances," and issues of Congress's ability to create standing continue to draw judicial attention.

Chapter 2 has expanded by the addition of *Plaut v. Spendthrift Farm*, in which Congress endeavored (unsuccessfully) to undo a nonconstitutional Supreme Court decision with which it disagreed. *Plaut* again brought to the fore issues of the interplay of judicial and legislative power and policymaking. There is also another conflict brewing in this area, involving the Prison Litigation Reform Act. At this writing, no case under that statute has reached the Supreme Court, but the Circuit Courts have been busy with issues reminiscent of both *Plaut* and *Klein*. It does not require much of a crystal ball to suppose that the Supreme Court will choose to address those issues in the not-too-distant future.

We have reorganized the principal cases in Chapter 5 in the wake of *Atherton v. FDIC*, which appears to mark a significant change in the Court's approach to federal common law and the vertical choice-of-law process generally.

Chapter 6 has also changed considerably. *Board of County Commissioners v. Brown* offers a new perspective on municipal liability, and Justice Breyer's explicit suggestion that the Court re-examine part of *Monell v. Department of Social Service* suggests that the law in this area is entering a period of reevaluation. In the interests of space, we have eliminated principal case coverage of the cases in the first edition from *Paul v. Davis* through *Zinermon v. Burch*, since those cases have far more to do with the contours of § 1983 *per se* than with the role of the federal courts as institutions.

The Court's decision in *Seminole Tribe of Florida v. Florida* caused us to reorganize Chapter 7. Covering the cases chronologically seems to us to make study of this complex area even more difficult. Accordingly, after presenting the basic doctrine as in the first edition, we have attempted to arrange the succeeding cases according to how they view (and affect) *Hans v. Louisiana* and *Ex parte Young*, still the foundation cases

for the Court's Eleventh Amendment jurisprudence. Indeed, after *Alden v. Maine* and the *College Savings Bank* cases from the 1998 Term, *Hans* arguably takes on even greater importance than one might have thought even three years ago.

The passage of the Antiterrorism and Effective Death Penalty Act of 1996 has also caused us to take a fresh look at the Chapter 10 materials. The interaction of the statute and the Court's pre-existing doctrine is certainly not entirely clear at this point, nor is it easy to say whether or to what extent Congress has changed the underlying substantive law of the writ. The statute is less than pellucid; the inferior federal courts and ultimately the Supreme Court should be kept busy for the next few years attempting to make sense of it.

We have retained the editing conventions from the first edition that we used to limit length and remove matter that does not contribute to understanding. Within the cases, citations that are not of pedagogical importance are omitted without ellipsis, as are some of the Court's footnotes. The remaining footnotes in cases retain their original numbers. Where the Court is clearly quoting itself, the citation is omitted unless it is peculiarly important to understanding the substantive point. Similarly, when the Court quotes a clearly identified source (for example an IRS policy in *Allen v. Wright),* we have omitted the citation unless it is necessary for understanding. Authors' footnotes within cases are lettered rather than numbered; other authors' footnotes are consecutively numbered throughout each chapter. Within the material we have written, we have avoided endless repetition of citations; if we have recently cited a case, we then refer to it by its commonly-used short name.

January, 2000.

Acknowledgments from the Second Edition

From Professor Doernberg:

The principal burden of support for this project has fallen once again on my family: Cyndy, Emily, and of course Doug, who suggested to me on more than one occasion that my priorities were seriously out of alignment because I had to work on the book rather than to play Age of Empires™ with him on the computer. I can appreciate his viewpoint (indeed, there were times when I agreed wholeheartedly), and I am grateful all of my family for their understanding and tolerance.

I have benefited greatly over the six years since the first edition from the comments, questions, and support of Professor Eric Muller of the University of North Carolina School of Law. This product is far better for his generosity than it otherwise would have been.

I want also specifically to mention my indebtedness to all of those from schools around the country who participate in the Federal Courts

faculty e-discussion group. The continuous exchange of views is enjoyable and most educational, I hope for all of us. It represents the best of what education has to offer: people exerting themselves to gain and share with others understanding of a subject truly worth thinking hard about.

Three students have borne the brunt of the research assistance for the completion of the second edition: Karen A. Anderson of the Class of 2000 worked with me for an entire calendar year, very often adding a valuable additional viewpoint of how parts of the book would work for students. When she began working with me she had not taken the course; by the time she finished she had and is now probably as well qualified to teach the course as any beginning teacher. Sally S. Benvie and Anne DeSutter of the Class of 2001 worked with me for the summer of 1999, and the project reflects their care and diligence as well. It is not possible in a short space to give enough credit to the contributions of all three as researchers, editors, welcome critics, and, most valuably, friends. Some errors have undoubtedly slipped through, but only because I still had my hands on the project after they had finished.

From Professor Wingate:

I would again like to acknowledge the support and assistance of my wife Gloria. She deserves a great deal of the credit for everything I accomplish or produce. Also, I would like to thank my colleague and Federal Courts fellow traveler Even Tsen Lee. He has always been available to offer his wisdom and valuable counsel. The Office of Faculty Support here at Hastings has provided me with excellent secretarial assistance which has made all my work much easier, including my work on this second edition. Consequently, I would like to thank the people in that office, Steven R. Lothrop, Ted Jang, Barbara Topchov, Sonja Starks, and Beverly Taylor.

As I did in the first edition, I would like to thank my Federal Courts students. They continue to teach me.

Preface to the First Edition

Federal Courts is one of the most difficult courses in the law school curriculum. The concepts are highly abstract; the doctrine is remarkably complex; the courts are open to the well-founded suspicion that their application of the doctrine is often inconsistent. Consequently, the subject presents an unusual challenge for casebook authors: to create a text that stimulates productive thought about the complexities without inundating the student with masses of impenetrable material or uncollated detail.

Federal Courts is first and foremost, a course about power. Though many of the issues concern private disputes and individual rights, two fundamental power relationships underlie them: the states versus the federal government—federalism—and the federal judiciary versus Congress—separation of powers. Moreover, many of those power struggles are played out in the context of disputes between the individual and government, a third type of power relationship. Indeed, the way federalism and separation-of-powers battles are resolved often has a major impact on the power balance between individual and government. The federal courts' primary role is to regulate these conflicts. That is what makes the federal courts special—not just another hierarchical court system.

The importance of the themes of federalism and separation of powers in the study of federal courts requires more attention to American history than in many other courses. The law of contracts, for example, was not directly affected by the Civil War; the law of federal courts was and still is. Political events stimulated many important developments in the law of federal courts. Understanding those causal relationships helps to explain federal courts doctrine.

We have elected, in choosing materials for this book, to focus on those two themes. Apparently disparate topics have in common the underlying themes of federalism and separation of powers, and it is easier to understand the forces that move the Supreme Court in a particular area if one has focused on them in other areas. Most of the chapters involve both themes, and the notes and questions following the main cases attempt to stimulate thought in those terms. Accordingly, we have elected to omit topics that do not illustrate these themes as well, such as the original jurisdiction of the Supreme Court and appellate review within the federal system.

We think there are three things a well-constructed casebook should do. First, it should present the basic themes in the subject matter in an integrated manner that demonstrates their development and interrelationships. Second, it should help students develop their analytical skills by challenging them to deal with case materials that are not too pre-

digested and to grasp not merely the holdings of the cases but also their broader implications. Third, it should be a workable teaching and study tool that does not present the instructor with a volume of material that cannot reasonably be covered or that is often covered in some other course, as diversity is. We hope we have charted a middle course between casebooks that contain little interpretive guidance and those that are such exhaustive scholarly exercises that they would serve as excellent research tools but are unsuited to pedagogy. The notes and questions that follow each case are designed to assist the student to understand both the individual case and its doctrinal implications. To be sure, many of the questions have no clear answers. We intend them to elicit debate on the hard issues and to explore the arguments on both sides of controversial decisions, but we have tried to avoid questions that require knowledge that students cannot reasonably have.

The chapter sequence reflects the two themes. Chapter 1, Justiciability, is a good starting point both because it is a collection of threshold doctrines and because it introduces federalism and separation of powers. Justiciability is difficult to cover as a single unit of a multi-unit course. The doctrine, particularly with respect to standing, is so convoluted that it would make a fine two-credit seminar in its own right. We have elected to cover each of the justifiability sub-doctrines with a single case supplemented by extensive notes and text commentary, resisting considerable temptation to add cases to flesh out parts of the doctrine at the expense of greatly increased length. Running throughout Chapter 1 is the primary question of whether Congress or the Supreme Court is the guardian of federalism and separation of powers.

Broadly speaking, Chapters 2, 3, and 4 concern subject matter jurisdiction, another collection of threshold doctrines. Chapter 2 discusses congressional control of federal jurisdiction. With the exception of the original jurisdiction of the Supreme Court, the federal courts derive no jurisdiction directly from the Constitution. Article III, § 2, functions primarily to enable Congress to confer jurisdiction if it wishes. That is why, almost invariably, one must find a statutory implementation of the general Article III authorization in order successfully to invoke federal jurisdiction. Chapter 2 focuses on how much latitude Congress has in conferring or withholding jurisdiction from the Supreme Court and the lower federal courts.

Chapter 3 turns to federal question jurisdiction. Most first-year Civil Procedure courses introduce the subject, but it deserves more study. A delayed return often helps cement concepts that may seem hopelessly amorphous when encountered in the first year. The doctrine is difficult, particularly with respect to declaratory judgment cases, but it illustrates the interaction between Congress and the courts and between the federal and state judicial systems.

Chapter 4, Legislative Courts, introduces a peculiar separation-of-powers problem. Most of the separation-of-powers issues raised in this volume concern whether the federal judiciary is trenching upon the pow-

ers of the other branches of the federal government, particularly Congress. In the area of legislative courts, the question is reversed, and the issue becomes whether Congress, by creating non-Article III courts, is infringing the power of the judiciary. It is an odd and interesting role reversal, casting Congress, not the courts' as the potential constitutional miscreant.

Chapter 5, Federal Common Law, further develops a subject often introduced in Civil Procedure. In our experience, few first-year students really grasp the mechanics of *Erie's* vertical choice-of-law process; fewer still understand the methods of creating federal common law when it is needed. Moreover, we suspect it is highly unusual, if not entirely unheard of, for first-year courses to focus on the separation-of-powers implications of these issues. Yet, increasingly in recent years, voices in the academy and on the bench have suggested that the *Erie* doctrine in its broadest sense properly contemplates both of the themes that animate this volume.

Chapter 6 is a place-setter; it explores the functions and limits of the Civil Rights Act of 1871, 42 U.S.C.A. § 1983. Litigation under that statute need not be in the federal courts, but most of it is. Congress intended the statute to interpose federal power between states and individuals, even though it did not make jurisdiction over § 1983 actions exclusively federal. But most of the problems that Chapters 7 and 8 discuss are played out in § 1983 litigation, so it is well to begin with a sound idea of what that section contemplates.

Chapter 7 examines the states' constitutional insulation from suits in federal court and demonstrates the importance of history in the study of federal courts. The Eleventh Amendment's roots extend back well before the Constitution, into the colonial experience with abusive central control of local affairs. The Amendment is a graphic reminder both that the battle between federal and state power is not merely historical, but continues today and that the power of the federal courts is a key part of that struggle. Moreover, it is the federal courts, primarily the Supreme Court, that determine the scope of the Amendment and thus their own power vis-à-vis the states.

Chapter 8 amplifies the federalism power struggle and begins a series of three chapters that focus on that struggle in a particular context. In these chapters we see the federal courts acting (or refusing to act) with respect to state courts particularly. Here the federalism clash is manifest in the collision of two judicial systems. Chapter 8 covers statutory and judge-made doctrines of restraint that define whether the federal courts can take a dispute away from the state courts. The Anti-Injunction Act, 28 U.S.C.A. § 2283, the doctrine of exhaustion of administrative remedies, and the abstention doctrines the Supreme Court has created all have obvious federalism implications. But they also raise important separation-of-powers questions of whether the Court is being faithful to congressional jurisdictional commands. Finally, these doctrines raise significant questions about the state courts' willingness and

ability to vindicate federal rights.

Chapters 9 and 10 continue the study of federal court and state court interaction, but in a different context. Here the focus is not on the federal courts preventing state court consideration, but rather upon federal courts reviewing state adjudications. Chapter 9 discusses Supreme Court review of state court decisions. The idea of taking a case "all the way to the Supreme Court" has great colloquial currency, but not all cases can be heard there. In addition, there are a variety of doctrines that the Court invokes (apart from its discretionary certiorari policy) to weed out cases that, for one reason or another, it thinks it cannot or ought not hear. It may seem surprising that the Court lacks subject matter jurisdiction over a case with a federal constitutional issue, but that is sometimes true. Chapter 9 explores why. This Chapter also presents the only circumstance in which a federal court, as a formal matter, sits in review of a state court. The federalism implications early-on provoked a constitutional crisis in *Martin v. Hunter's Lessee,* a case well known to all students of constitutional law. The crisis has abated; the issue survives.

Finally, Chapter 10, Federal Habeas Corpus Challenges to State Custody, presents cases in which federal courts, though not as a formal matter sitting in review of state court proceedings, are in fact doing exactly that. Here, the federalism clash is intensified. In Chapter 9, the Supreme Court reviews state court judgments. In the realm of federal habeas corpus, however, the inferior federal courts may review the judgment of the highest court of a state. Moreover, the cases are far more numerous, so federal habeas corpus acts as a constant irritant to the states. Congress has provided the basic statutory framework, but the Supreme Court has played a major role in determining the degree of irritation. Consequently, federal habeas corpus is a good place to end, because we come full circle with respect to the underlying themes of this book. Even as the Supreme Court monitors federal habeas corpus on behalf of federalism, it collides with congressional authorizations of the use of the writ, thus raising separation-of-powers problems. Federal habeas corpus provides a good stage from which to present the continuing importance of these themes and an institutional question of overriding importance: As between Congress and the Court, who should be the guardian of federalism and who should be the guardian of separation of powers?

We have used some editing conventions to limit length and remove matter that does not contribute to understanding. Within the cases, citations that are not of pedagogical importance are omitted without ellipsis, as are some of the Court's footnotes. The remaining footnotes in cases retain their original numbers. Where the Court is clearly quoting itself, the citation is omitted unless it is peculiarly important to understanding the substantive point. Similarly, when the Court quotes a clearly identified source (for example an IRS policy in *Allen v. Wright),*

the citation is omitted unless needed for understanding. Authors' footnotes within cases are lettered rather than numbered; other authors' footnotes are consecutively numbered throughout each chapter. Within the material we have written, we have avoided endless repetition of citations; if a case has recently been cited, it is referred to by its commonly-used short name.

DONALD L. DOERNBERG
C. KEITH WINGATE

January, 1994

Acknowledgements from the First Edition

From Professor Doernberg:

Anyone who has written a book understands that the primary burden falls not upon the author, but upon those closest to him: my wife Cynthia A. Pope, fine attorney, demanding editor, welcome critic and companion of a lifetime, and my children Douglas and Emily Pope, who showed tolerance beyond their years while they wondered why Daddy was so busy. Many colleagues offered helpful comments and criticism, and sometime more. Professors Patti Alleva, Evan Tsen Lee, and Donald H. Zeigler were generous with their time and thought. Dean Steven H. Goldberg's financial support, while very much appreciated, was the least of his contribution. His insistent encouragement and faith in the project has meant more then he will ever permit himself to acknowledge. Professor Michael B. Mushlin stands in a special place. He and I have team-taught Federal Courts three times, twice from these materials. His insight, generosity, and patience is reflected throughout. If *quantum meruit* means anything, I owe him an enormous amount of tuition.

I am indebted to many student research assistants who strove mightily to prevent me from making unpardonable blunders and did so much to help deal with the avalanche of detail that this sort of project entails: Jerome Abelman, Helen Allison, Scott Bonder, Joli Boudreaux, Richard Holahan, Cleve Lisecki, Marios Christos Sfantos, and Rona Shamoon.

I was awarded a Charles A. Frueauff Research Professorship of Law for the 1992-93 academic year and want to express my considerable gratitude to the Charles A. Frueauff Foundation, Inc., for its generous research support for this project.

From Professor Wingate:

My, contributions to this project would not have been possible without the efforts and understanding of a number of people. My wife Gloria assisted me in so many different ways that it would not be possible to list them. My children, Brenda, Marvin, Terry, and Oliver Champion have taken on many of my duties and responsibilities to allow me to work on this book. Their support and encouragement have been appre-