

An Introduction to American Law

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An Introduction to American Law

Second Edition

Gerald Paul McAlinn

PROFESSOR OF LAW
KEIO LAW SCHOOL

Dan Rosen

PROFESSOR OF LAW
CHUO LAW SCHOOL

John P. Stern

PROFESSOR OF LAW
NIHON UNIVERSITY LAW SCHOOL

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This book is dedicated generally to the many students who have studied American law with us in Japan. They have tirelessly and diligently struggled with copied materials and roughly edited cases.

To Sachiko, Ken & Miki

Gerald Paul McAlinn

For Daniel and Allison

Dan Rosen

To Sakumi, George and Ken

John P. Stern

Contents

Preface	xvii
Acknowledgments	xix
A Note on Reading Cases	xxi
Table of Cases	xxiii
Chapter 1 • Basic Principles of American Law	3
The Civil Law and Common Law Traditions	3
The Constitution of the United States of America	5
The Structure of the Constitution	6
Article I	7
<i>United States v. Lopez</i>	7
Topics for Further Discussion	9
<i>Reno v. Condon</i>	10
Topics for Further Discussion	11
<i>Crosby v. Nat'l Foreign Trade Council</i>	12
<i>Geier v. American Honda Motor Co., Inc.</i>	15
Topics for Further Discussion	17
Article II	18
<i>Hirabayashi v. United States</i>	19
<i>Hamdi v. Rumsfeld</i>	22
Topics for Further Discussion	24
Article III	25
<i>Bush v. Gore</i>	26
Topics for Further Discussion	28
Amendments	29
Key Terms and Concepts	29
Chapter 2 • The Jury System	31
The Roles of Judge and Jury in American Law	31
“Professional Judges Should Decide the Law”	32
“Professional Judges Should Decide the Facts”	32
<i>SRI Int'l v. Matsushita Electric Corp. of America</i>	32
Topics for Further Discussion	34
“Trial by a Judge Is More Impartial”	34
“Trial by a Judge Is More Efficient”	35
“A Judge Is More Independent”	35

“Trial by a Judge Upholds Respect for the Law”	35
Right to Trial by Jury	36
Civil Cases	36
<i>Ross v. Bernhard</i>	37
Topics for Further Discussion	37
Criminal Cases	38
Selection of the Trial Jury	38
The <i>Venire</i>	38
The <i>Voir Dire</i>	39
<i>J. E. B. v. Alabama</i>	41
Topics for Further Discussion	42
The Grand Jury	42
Conduct of Trial Arguments	43
Evidence	43
<i>Kumho Tire Co., Ltd. v. Carmichael</i>	44
Topics for Further Discussion	45
The Jury Verdict	45
Jury Instructions	45
Outside Influence on Juries	46
Split Juries and Hung Juries	47
Announcing the Verdict	47
Damage Awards	48
Civil Damages	48
The Controversial Damage Award System	48
Punitive Damages	49
<i>State Farm Mut. Automobile Ins. Co. v. Campbell</i>	51
Topics for Further Discussion	53
After the Verdict	53
Jury Nullification	54
<i>United States v. Dougherty</i>	55
Topics for Further Discussion	56
Status of the Jury Trial	56
Key Terms and Concepts	57
Chapter 3 • The Legal Profession	59
Lawyers and the Public	60
<i>Florida Bar v. Went For It, Inc.</i>	60
Topics for Further Discussion	64
Duties and Obligations of Lawyers	64
Competence	64
<i>Lawyer Disciplinary Bd. v. Turgeon</i>	65
Topics for Further Discussion	66
Diligence and Communication	67
<i>In the Matter of Garnett</i>	67
Topics for Further Discussion	68
Confidentiality	68
<i>In re Disciplinary Proceedings Against O’Neil</i>	69
Topics for Further Discussion	72
Conflicts of Interest	72

<i>Doe ex rel. Doe v. Perry Community School Dist.</i>	73
Topics for Further Discussion	76
<i>Simpson Performance Products, Inc. v. Robert W. Horn, P.C.</i>	76
Topics for Further Discussion	79
Counseling and Mediation	79
Advocacy	80
<i>In re Discipline of Eicher</i>	80
Topics for Further Discussion	84
Prosecutors and Judges	84
<i>In re Kinsey</i>	84
Topics for Further Discussion	86
Recusal	86
<i>Cheney v. U.S. Dist. Court for Dist. of Columbia</i>	86
<i>Caperton v. A.T. Massey Coal Co.</i>	90
Topics for Further Discussion	92
Key Terms and Concepts	92
Chapter 4 • Constitutional Law: Individual Rights	93
Due Process and Equal Protection: An Overview	93
Due Process	95
<i>Lawrence v. Texas</i>	98
Topics for Further Discussion	102
Equal Protection	102
<i>Grutter v. Bollinger</i>	105
Topics for Further Discussion	107
Statutory Protection of Individual Rights	108
<i>McCormick v. School Dist. of Mamaroneck</i>	108
<i>Sutton v. United Airlines, Inc.</i>	110
Topics for Further Discussion	112
<i>Ricci v. DeStefano</i>	113
Topics for Further Discussion	116
Freedom of Religion	116
Establishment Clause	117
<i>Lamb's Chapel v. Center Moriches Union Free School Dist.</i>	118
Topics for Further Discussion	119
Free Exercise Clause	120
<i>Employment Div., Oregon Dep't of Human Resources v. Smith</i>	120
Topics for Further Discussion	122
Tension between the Free Exercise and Establishment Clauses	123
<i>Santa Fe Indep. School Dist. v. Doe</i>	123
Topics for Further Discussion	127
<i>Locke v. Davey</i>	127
Topics for Further Discussion	129
Freedom of Speech and of the Press	129
<i>Ashcroft v. American Civil Liberties Union</i>	131
Topics for Further Discussion	134
<i>United States v. The Progressive, Inc.</i>	135
Topics for Further Discussion	137
<i>United States v. Eichman</i>	137

Topics for Further Discussion	138
Other Individual Rights	138
Key Terms and Concepts	140
Chapter 5 • Civil Procedure and the Federal Courts	141
Horizontal Federalism	141
Personal Jurisdiction	142
<i>Asahi Metal Industry Co. v. Superior Court</i>	143
Topics for Further Discussion	145
<i>Pebble Beach Co. v. Caddy</i>	145
Topics for Further Discussion	147
<i>Revell v. Lidov</i>	147
Topics for Further Discussion	148
Federal Court Subject Matter Jurisdiction	149
Federal Question Jurisdiction	150
Diversity Jurisdiction	150
Federal or State Law	151
Where to Sue or Defend	152
Sovereign Immunity	153
Conflict of Laws	154
<i>Forum Non Conveniens</i>	154
<i>Wiwa v. Royal Dutch Petroleum Co.</i>	155
Topics for Further Discussion	156
Pretrial Procedure	156
The Complaint and Service of Process	156
The Defendant's Response to the Complaint	157
Class Actions	158
Discovery	159
Major Forms of Discovery	161
Exceptions to Discovery	161
Abuses of Discovery	162
Summary Judgment	162
The Trial	163
After the Trial	163
Appeals in the Federal System	163
Recognition and Enforcement of Judgments	164
U.S. Civil Procedure Goes Global	165
Key Terms and Concepts	166
Chapter 6 • Contracts	167
Sources of Contract Law	167
Federal Law	167
The Restatement and the UCC	167
The United Nations	168
What Is a Contract?	168
Classification of Contracts	169
<i>Weichert Co. Realtors v. Ryan</i>	170
Topics for Further Discussion	171
Elements of an Enforceable Contract	171

Offer	172
<i>Venture Assoc. Corp. v. Zenith Data Sys. Corp.</i>	174
Topics for Further Discussion	177
Acceptance	177
Silence as Acceptance	177
Battle of the Forms	178
Defects in Mutual Acceptance	179
<i>Frigalimint Importing Co. v. B.N.S. Int'l Sales Corp.</i>	180
Topics for Further Discussion	181
Consideration	181
<i>Hamer v. Sidway</i>	182
<i>In re Greene</i>	183
Topics for Further Discussion	184
Consideration and the UCC	185
Promissory Estoppel	185
<i>Shoemaker v. Commonwealth Bank</i>	185
Topics for Further Discussion	187
Evidence of Contractual Terms	187
The Parol Evidence Rule	187
The Statute of Frauds	188
Remedies for Breach of Contract	190
Contract Damages vs. Tort Damages	190
Limits on Contract Damages	190
Liquidated Damages	191
When Monetary Damages Are Inadequate	192
Key Terms and Concepts	193
Chapter 7 • Tort and Product Liability	195
Tort and Criminal Law Compared	195
Elements of a Tort	196
Intentional Torts	196
Informed Consent	198
<i>Lugenbuhl v. Dowling</i>	198
Topics for Further Discussion	202
<i>Texaco, Inc. v. Pennzoil Co.</i>	202
Topics for Further Discussion	204
Unintentional Torts (Negligence)	204
Duty Owed	204
<i>Weirum v. RKO General</i>	204
Topics for Further Discussion	206
Special and Limited Duties	206
<i>Benejam v. Detroit Tigers, Inc.</i>	207
Topics for Further Discussion	208
Reasonable Person Standard	208
Causation	209
<i>Cyr v. Adamar Assocs.</i>	209
Topics for Further Discussion	210
Joint and Several Liability	211
Defenses	211

Remedies	212
Punitive Damages	212
<i>Ford Motor Co. v. Stubblefield</i>	213
Topics for Further Discussion	214
Contingency Fee System	215
Mass Torts	215
<i>In re School Asbestos Litigation, School Dist. of Lancaster v. Lake Asbestos of Quebec, Ltd.</i>	216
Topics for Further Discussion	218
Product Liability	218
<i>Escola v. Coca Cola Bottling Co. of Fresno</i>	219
<i>Greenman v. Yuba Power Products, Inc.</i>	221
Topics for Further Discussion	223
Tort Reform	223
Key Terms and Concepts	224
Chapter 8 • Property	225
Ownership of Property	225
Estates in Land and Deeds	226
Acquisition of Property	228
The Contract of Sale	228
Mortgages	228
The Closing	229
Foreclosure Proceedings	230
Options over Property	230
<i>Cipriano v. Glen Cove Lodge</i>	230
Topics for Further Discussion	234
Remedies	235
Condominiums and Cooperatives	235
Acquisition by Adverse Possession and Prescription	236
Landlord and Tenant	236
<i>Wade v. Jobe</i>	237
Topics for Further Discussion	239
Fair Housing	240
Eminent Domain and the Takings Clause	240
<i>Kelo v. City of New London, Conn.</i>	241
Topics for Further Discussion	244
Regulation of Land Use	245
Zoning	245
Regulatory Taking	246
<i>Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency</i>	248
Topics for Further Discussion	251
Key Terms and Concepts	251
Chapter 9 • Intellectual Property	253
Overview	254
<i>Eldred v. Ashcroft</i>	254
Topics for Further Discussion	257
Copyright	258

<i>Bright Tunes Music Corp. v. Harrisongs Music, Ltd.</i>	259
Topics for Further Discussion	261
<i>Sony Corp. v. Universal City Studios</i>	263
<i>Metro-Goldwyn-Mayer Studios v. Grokster, Ltd.</i>	266
Topics for Further Discussion	267
Patent and Trade Secret	268
U.S. Patent No. 5,960,411 (filed Sept. 28, 1999)	269
<i>Amazon.com v. Barnesandnoble.com</i>	271
Topics for Further Discussion	272
<i>American Derringer Corp. v. Bond</i>	273
Topics for Further Discussion	275
Trademark Law	275
<i>Wal-Mart Stores v. Samara Bros.</i>	276
<i>Moseley v. V Secret Catalogue</i>	277
Topics for Further Discussion	279
<i>Brother Records v. Jardine</i>	279
Topics for Further Discussion	281
Key Terms and Concepts	281
Chapter 10 • Criminal Law and Procedure	283
Basic Principles of Criminal Law	284
White Collar and Organized Crime	285
Due Process of Law	287
The Presumption of Innocence and the Burden of Proof	288
Search and Seizure	289
The Exclusionary Rule	290
The Expectation of Privacy	291
<i>Kyllo v. United States</i>	291
Topics for Further Discussion	294
Indictment and Arrest	295
<i>Miranda</i> Rights	296
Arraignment and Probable Cause	298
Plea Bargaining	299
Prosecution and Trial	299
The Right against Self-Incrimination	299
The Right to Counsel and to Confront Hostile Witnesses	300
The Right to a Speedy and Public Trial	301
The Right to Trial by Jury	302
Defenses	303
Justification, Necessity, and Duress	303
Defense of Property or Persons	303
Alibi	304
Entrapment	304
Insanity and Diminished Capacity	305
<i>Kansas v. Crane</i>	305
Topics for Further Discussion	308
Bail	308
<i>Habeas Corpus</i>	309
Crime and Punishment	309

The Prohibition against Cruel and Unusual Punishment	309
The Death Penalty	310
<i>Coker v. Georgia</i>	311
Topics for Further Discussion	314
Parole, Probation, and Mandatory Sentencing (Three Strikes Law)	315
<i>Ewing v. California</i>	316
Topics for Further Discussion	320
Key Terms and Concepts	321
Chapter 11 • Business Law	323
Forms of Business Organization	323
Sole Proprietorship	323
Fiduciary Duty	323
General Partnership and Limited Partnership	324
Trust	325
Limited Liability Company	326
Corporation	326
Duties of Majority Shareholders, Directors and Officers	327
Majority Shareholders	327
<i>Sugarman v. Sugarman</i>	328
Topics for Further Discussion	328
The Business Judgment Rule	328
<i>Moran v. Household International, Inc.</i>	329
Topics for Further Discussion	331
Prohibition on Self-Dealing	331
Remedies Available to Shareholders	332
Shareholder's Derivative Suit	332
Cumulative Voting	332
Right to Dissent	333
Shareholder Proposals	333
Securities Regulation	333
Scope of the Securities Act of 1933	333
Exemptions from the Securities Act of 1933	334
Scope of the Securities Exchange Act of 1934	335
The Sarbanes-Oxley Act	336
The Foreign Corrupt Practices Act	338
Antitrust Laws	339
The Sherman Act and the Clayton Antitrust Act	339
Exemptions from the Antitrust Laws	340
Interpretation of the Antitrust Laws	340
What Is the Market?	342
<i>United States v. E.I. du Pont de Nemours & Co.</i>	342
Topics for Further Discussion	343
Conscious Parallelism	343
Mergers and Acquisitions	343
Other Antitrust Laws	343
The International Reach of U.S. Antitrust Laws	344
<i>F. Hoffman-La Roche Ltd. v. Empagran S.A.</i>	344
Topics for Further Discussion	346

Bankruptcy	346
Cultural Philosophy	346
Bankruptcy Petitions	347
The Bankruptcy Trustee	348
Chapter 11 Bankruptcies	349
Recent Trends in Bankruptcy Law	350
Key Terms and Concepts	350
Chapter 12 • Marriage and the Family	351
Marriage	352
Traditional Values	352
<i>Loving v. Virginia</i>	353
Topics for Further Discussion	355
Common Law Marriage	355
<i>Staudenmayer v. Staudenmayer</i>	356
Topics for Further Discussion	357
Same-Sex Marriage and Civil Union	357
<i>In re Opinions of the Justices to the Senate</i>	357
Topics for Further Discussion	359
The Full Faith and Credit Clause and the Defense of Marriage Act	362
Divorce	362
Division of Property, Alimony, and Prenuptial Agreements	363
<i>Wehrkamp v. Wehrkamp</i>	363
Topics for Further Discussion	365
Alimony	366
Prenuptial Agreements	366
<i>Marvin v. Marvin</i>	367
Topics for Further Discussion	369
Child Custody and Support	370
<i>Painter v. Bannister</i>	370
Topics for Further Discussion	373
Visitation	375
<i>Nuzzaci v. Nuzzaci</i>	375
Adoption	376
Surrogate Mother Contracts	377
<i>In the Matter of Baby M</i>	378
Topics for Further Discussion	378
Illegitimacy	379
Reproductive Rights	380
<i>Planned Parenthood of S.E. Pennsylvania v. Casey</i>	381
Topics for Further Discussion	383
Key Terms and Concepts	383
Chapter 13 • Administrative Law	385
Delegation	386
<i>A.L.A. Schechter Poultry v. United States</i>	386
<i>National Cable Television Assoc. v. United States</i>	388
<i>Whitman v. American Trucking Assn.</i>	389
Topics for Further Discussion	390

<i>INS v. Chadha</i>	390
Topics for Further Discussion	392
Rulemaking: Informal and Formal	393
Proposed Rules Federal Communications Commission	
69 Federal Register 16873-01	394
Topics for Further Discussion	395
<i>United States v. Florida East Coast Ry.</i>	396
<i>National Rifle Ass'n v. Brady</i>	397
Topics for Further Discussion	398
<i>Vermont Yankee Nuclear Power v. Natural Res. Def. Council</i>	398
Adjudication	400
National Labor Relations Board San Francisco Branch Office	
Vae Nortrak North America, Inc. and United Steelworkers	
of America, Local 3405	401
Topics for Further Discussion	403
Judicial Review	404
<i>Massachusetts v. E.P.A.</i>	404
<i>Darby v. Cisneros</i>	405
Topics for Further Discussion	407
Judicial Review of Agency Interpretations of Law	408
<i>Barnhart v. Thomas</i>	408
Topics for Further Discussion	410
Freedom of Information	410
<i>Nat'l Archives and Records Admin. v. Favish</i>	411
<i>United States Dep't of Justice v. Landano</i>	413
Topics for Further Discussion	414
Open Meetings	415
<i>Cheney v. U.S. Dist. Court</i>	415
Topics for Further Discussion	417
Key Terms and Concepts	417
 Appendix A • The Declaration of Independence of the Thirteen Colonies	 419
Appendix B • The Constitution of the United States	423
Appendix C • Map of Federal Circuits	437
Index	439

Preface

If necessity is the mother of invention, efficiency is the father of the textbook. Native speakers of American English, enrolled in a traditional three-year American law school, have scores of legal textbooks from which to choose. The authors' experience, however, is mainly with the "have-nots" of legal textbook readership: students of American law outside of the United States, including those for whom English is not a native language; American undergraduates taking courses in pre-law programs; paralegal professionals handling American law materials; and graduate students in majors other than American law. It is our experience that few English-language textbooks currently in print offer the mix of coverage, instruction, and vocabulary to appeal to this readership. We decided to create a textbook to serve these non-traditional American law textbook readers better than our existing set of photocopied materials.

This book is meant for readers who want to understand the contemporary American legal system at a more than superficial level, but who are not yet studying to become American lawyers. Our approach has been to present the fundamental rules, court cases, concepts, and trends of each key subject in American law in a narrative tailored to the reader without an American legal background. Each chapter covers a major area of law; summarizes the leading doctrines; analyzes recurring, current and developing trends; highlights areas of contemporary debate; offers streamlined versions of precedent-setting cases; raises questions for further discussion; and lists important vocabulary words. Since we have tried to make it possible to finish the entire textbook in one semester, we have necessarily shortened the treatment of some subjects and left out other subjects entirely. However, there is ample opportunity for debate and extended discussion as a result of the materials and cases on such controversial and timely topics as same-sex marriage, reproductive rights, intellectual property, privacy, the jury system, and the role of the courts in a democratic society. Of course the teacher is welcome to supplement the textbook and expand its treatment of any subject.

We have departed significantly from existing practice in editing cases and in the use of footnotes. We have deleted virtually all references to governing authority and cut out much supplementary material. In order to achieve our goals, we have at times heavily edited court cases without use of formal editing marks such as brackets and ellipses, and have frequently left out subsections and headnotes included in the opinion. Our experience has been that these marks are distracting to most students and incomprehensible to non-native readers of English. These editorial marks have a purpose: to make sure that when counsel quotes precedent to a court the precedent is quoted precisely, without misleading quotation out of context. However, brackets, ellipses and the like are not needed when a case is being introduced, in shortened form, to a student who can, if desired, usually view the entire text of the case opinion for free on the Internet. Our students have also found

footnotes distracting, particularly since many of the journals cited are not yet easily available for reading outside of a well-stocked law library. So, we have cited cases, reference works, and quotations with enough attribution to allow a student to find the original source if desired, but without full *Bluebook* details.

Law is an instrument of society and an agent of change. American society in particular is in constant motion. The authors fully expect that some cases and doctrines of American law will change in importance in the years following publication of this textbook. However, we are confident that this textbook will give students the necessary background in process and substance to understand future changes in American law.

Tokyo, June 2010

Gerald Paul McAlinn
Dan Rosen
John P. Stern

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The Carolina Academic Press and our editors Linda Lacy, Zoë Oakes, Karen Clayton, and Keith Sipe, have been supportive, prompt, and flexible. What more could an author want?

A Note on Reading Cases

Embarking on the study of American law without a preliminary understanding of the case law system is an impossible task. Cases are what set the common law apart from other legal traditions and systems, most notably the civil law. They are the grist for the mill of common law. This book will introduce many general principles of American law throughout the text, but the reader will develop the greatest sense and feel for the American legal process through reading the excerpted cases. Careful readers will also observe that central themes permeate the book, and that certain cases are cross-referenced in one or more chapters.

In the common law system, every case serves at least two separate and distinct functions: satisfying the requirements of justice and helping predict future results. The justice function is served when the case decides the matter disputed between the litigants and provides them with a statement of the reasons for the decision. People bring lawsuits because they want to assert a right or to affirm the legality of their point of view. This function could conceivably be served by a simple decision announcing the winner of the suit. However, this would leave the parties feeling uncertain as to why they won or lost and would ultimately undermine the integrity and stature of the courts as the principal forum for justice and the rule of law. To avoid such dissatisfaction, judges render reasoned (some more so than others) decisions explaining why one party has won and the other has lost. Losing parties are rarely satisfied with the results, but at least they can go away feeling they have had their proverbial day in court and their positions have been heard. Giving a fair and balanced statement of the facts, setting forth the applicable rules of law, and then the decision in a single written opinion enhances transparency, allows for focused appeals, and promotes the fundamental value of fairness.

Second, a well-reasoned opinion will also serve as a guidepost to resolving future disputes. Cases make law. A lawyer who reads the opinions in his or her area of expertise and jurisdiction develops a keen awareness of the rules, policies, and material facts that lead to certain results. When consulted by a client about a specific problem, the lawyer can use the existing case law to make an informed judgment about the strengths and weaknesses of the proposed case. This can then be translated into advice intended to prevent unnecessary litigation and to avoid lawsuits without merit.

The common law system is based on two core principles, namely, *stare decisis* (meaning, “let the decision stand”) and respect for precedent. The principle of *stare decisis* holds that lower courts within the jurisdiction of a higher court are bound to follow the legal rulings of the higher court unless the facts of the case at hand are distinguishable to a degree to justify divergence. A lower court can rest assured that its efforts to break free of binding precedent will be reviewed by the appellate courts and either accepted as a new

rule or reversed in light of the existing rules. Learning to distinguish cases is an important skill for an American lawyer.

The cases contained in this book have been selected out of hundreds and sometimes even thousands of possible choices for their representative nature. They are not presented because they are the last and final word on the principles of law for which they are being cited. What the authors hope to achieve is for the lay reader to be able to get the flavor of the American legal process. This means coming to understand how the facts relate to and merge with the general principles of applicable law to form new rules capable of addressing the contemporary issues of society.

The cases have been severely edited to make them more accessible to the non-law school reader. We have deleted virtually all references to governing authority and deleted much extraneous material. Citations have been provided in the text for all of the cases for those readers who desire to read the full text of any of the opinions we have selected. Most of the federal materials can now be found on the Internet at a variety of free sites. A partial list of useful sites is as follows:

Findlaw: <http://www.findlaw.com>

Legal Information Institute: <http://www.law.cornell.edu/>

The Library of Congress: <http://thomas.loc.gov/>

U.S. Supreme Court: <http://www.supremecourt.gov/opinions>

Global Legal Information Network: <http://www.loc.gov/law>

Google Scholar Legal: <http://scholar.google.com>

Many state and local bar associations, as well as state and federal district and appellate courts maintain free online databases.

Finally, it is important to remember when reading the cases in this book that each represents a slice of real life. The disputes were between real people with real concerns, often such that they were willing to pursue their cases through multiple levels of trial and appeal. Extract the principles of law that are to be learned from reading the cases and develop a sense of judicial reasoning by all means, but do not neglect to consider the human conditions and foibles that led the parties to go to court in the first place. It is said that the common law is “living law” because of its ability to adapt to the changing conditions in society. We hope that the reader will share our excitement about the law as a result of reading through the cases we have selected.

Table of Cases

Primary case names are in **bold font** followed by a citation, a comma and the page numbers separated by a hyphen where the excerpted case appears.

A

Abrams v. United States, 129
Adoptions of B.L.V.B. and E.L.V.B., 377
A.L.A. Schechter Poultry v. United States,
295 U.S. 495 (1935), 386–88
A&M Records v. Napster, Inc., 268
Amazon.com v. Barnesandnoble.com, 239
F.3d 1343 (2001), 271–72
American Civil Liberties Union, Reno v.,
134
American Derringer Corp. v. Bond, 924
S.W.2d 773 (Tex. App.–Waco 1996),
273–75
American Library Ass’n, United States v.,
134
Apodaca v. Oregon, 47
**Asahi Metal Industry Co. v. Superior
Court**, 480 U.S. 102 (1987), 143–45
Ashcroft v. American Civil Liberties Union,
542 U.S. 656 (2004), 131–34
Ashcroft v. Iqbal, 157
Atkins v. Virginia, 315

B

Baehr v. Lewin, 357
Baker v. Vermont, 360
Barker v. Wingo, 301
Barnhart v. Thomas, 540 U.S. 20 (2003),
408–9, 410
Batson v. Kentucky, 40
Benejam v. Detroit Tigers, Inc., 635 N.W.
2d 219 (Mich. Ct. App. 2001), 207–8
Berghuis v. Smith, 42
Berghuis v. Thompkins, 297
Bilski v. Kappos, 269

Blakely v. Washington, 321
BMW v. Gore, 213
Bolling v. Sharpe, 116
Booker, United States v., 321
Bowers v. Hardwick, 97
Boyde v. California, 289
Brandenburg v. Ohio, 130
**Bright Tunes Music Corp. v. Harrisongs
Music, Ltd.**, 420 F. Supp. 177 (S.D.N.Y.
1976), 259–61
Brother Records v. Jardine, 318 F.3d 939
(9th Cir. 2003), 279–81
Burch v. Louisiana, 47
Burke v. Rivo, 212
Bush v. Gore, 531 U.S. 98 (2000), 26–28

C

Cage v. Louisiana, 289
Caperton v. A.T. Massey Coal Co., 129 S.
Ct. 2252 (2009), 90–91
Carter v. Carter Coal Co., 12
Chaplinsky v. New Hampshire, 131
Cheney v. U.S. Dist. Court, 542 U.S. 367
(2004), 25, 415–17
**Cheney v. U.S. Dist. Court for Dist. of Co-
lumbia**, 124 S. Ct. 1391 (2004), 86–90
Christian Legal Soc. v. Martinex, 119
Church of Lukumi Babalu Aye v. City of
Hialeah, 123, 246
Cipriano v. Glen Cove Lodge, 801 N.E.2d
388 (N.Y. 2003), 230–34
Citizens United v. Federal Election Com-
m’n, 138
City of Boerne v. Flores, 123
City of Chicago v. Morales, 287

- City of Cleburne, Tex. v. Cleburne Living Center, 246
City of Oakland v. Oakland Raiders, 245
Coker v. Georgia, 433 U.S. 584 (1977), 311–14
Condon, Reno v., 528 U.S. 141 (2000), 10–11
County of Riverside v. McLaughlin, 298
Crane, Kansas v., 534 U.S. 407 (2002), 305–8
Crawford v. Metropolitan Government of Nashville, 113
Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363 (2000), 12–15
Cyr v. Adamar Assocs., 752 A.2d 603 (Me. 2000), 209–10
- D**
- Daniel v. Days Inn of America, Inc., 210–11
Darby v. Cisneros, 509 U.S. 137 (1993), 405–7
Dennis v. United States, 130
District of Columbia v. Heller, 138
Doe ex rel. Doe v. Perry Community School Dist., 650 N.W.2d 594 (Iowa 2002), 73–74
Dougherty, United States v., 473 F.2d 1113 (1972), 54, 55–56
Dow Chemical v. United States, 293, 294
Dow Jones & Company Inc. v. Gutnick, 149
Draper v. United States, 298
Duncan v. Louisiana, 38, 302
- E**
- E.I. du Pont de Nemours & Co., United States v.**, 351 U.S. 377 (1956), 342
Eicher, In re Discipline of, 661 N.W.2d 354 (S.D. 2003), 80–84
Eichman, United States v., 496 U.S. 310 (1990), 137–38
Eisenstadt v. Baird, 380
Eldred v. Ashcroft, 537 U.S. 186 (2003), 255–57
Employment Div., Oregon Dep't of Human Resources v. Smith, 494 U.S. 872 (1990), 120–22
Erie R. Co. v. Tompkins, 152, 154
Escola v. Coca Cola Bottling Co. of Fresno, 150 P.2d 436 (Cal. 1944), 219–21, 223
- Estelle v. McGuire, 289
Ewing v. California, 538 U.S. 11 (2003), 316–20, 321
Exxon Shipping v. Baker, 215
- F**
- F. Hoffman-La Roche Ltd. v. Empagran S.A.**, 542 U.S. 155 (2004), 344–46
Favish, Nat'l Archives and Records Admin. v., 541 U.S. 157 (2004), 411–13, 415
FDA v. Brown & Williamson Tobacco Corp., 510
First English Evangelical Lutheran Church v. County of Los Angeles, 247
Florida Bar v. Went For it, Inc., 515 U.S. 618 (1995), 60–63
Florida East Coast Ry., United States v., 410 U.S. 224 (1973), 396–97
Frigalment Importing Co. v. B.N.S. Int'l Sales Corp., 190 F. Supp. 116 (S.D.N.Y. 1960), 180–81
Furman v. Georgia, 311
- G**
- Gant v. Gant, 367
Garnett, In the Matter of, 603 S.E.2d 281 (Ga. 2004), 67–68
Geier v. American Honda Motor Co., Inc., 529 U.S. 861 (2000), 15–17
Georgia v. Randolph, 295
Gerstein v. Pugh, 298
Gideon v. Wainwright, 300
Gitlow v. New York, 129
Good News Club v. Milford Central School, 119
Goodridge v. Department of Pub. Health, 357, 359
Gratz v. Bollinger, 107
Green, In re, 45 F.2d 428 (S.D.N.Y. 1930), 183–84
Greenman v. Yuba Power Products, Inc., 377 P.2d 897 (Cal. 1963), 221–22, 223
Gregg v. Georgia, 309
Griswold v. Connecticut, 97, 380
Grokster, Ltd., Metro-Goldwyn-Mayer Studios v., 545 U.S. 913 (2005), 266–67, 268
Grutter v. Bollinger, 539 U.S. 306 (2003), 105–7

H

- Hamdi v. Rumsfeld**, 542 U.S. 507 (2004), 22–24, 25, 309
- Hamer v. Sidway**, 27 N.E. 256 (N.Y. 1891), 182–83
- Harmelin v. Michigan**, 321
- Harris v. Nelson**, 309
- Hawkins v. McGee (The Case of the Hairy Hand)**, 190
- Hendricks, Kansas v.**, 305, 308
- Hertz Corp. v. Friend**, 157
- Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt County**, 297
- Hirabayashi v. United States**, 320 U.S. 81 (1943), 19–22
- Hogan, Mississippi University for Women v.**, 103–4, 112
- Holder v. Humanitarian Law Project**, 287
- Horn, P.C., Simpson Performance Products, Inc. v.**, 92 P.3d 283 (Wyo. 2004), 76–79, 79
- Hulbert v. Hines**, 373–74

I

- Illinois v. Caballes**, 295
- In re Disciplinary Proceedings Against O’Neil**, 661 N.W.2d 813 (Wis. 2003), 69–72
- In re Discipline of Eicher**, 661 N.W.2d 354 (S.D. 2003), 80–84
- In re Green**, 45 F.2d 428 (S.D.N.Y. 1930), 183–84
- In re Kinsey**, 842 So.2d 77 (Fla. 2003), 84–86
- In re Marriage Cases**, 361
- In re Matter of Baby M**, 537 A.2d 1227 (N.J. 1988), 378
- In re Opinions of the Justices to the Senate**, 802 N.E.2d 565 (Mass. 2004), 357–59
- In re School Asbestos Litigation, School Dist. of Lancaster v. Lake Asbestos of Quebec, Ltd.**, 789 F.2d 996 (3rd Cir. 1986), 216–18
- In the Matter of Garnett**, 603 S.E.2d 281 (Ga. 2004), 67–68
- INS v. Chadha**, 462 U.S. 919 (1983), 390–92
- International Shoe Co. V. Washington**, 143

Iowa v. Tovar, 300

J

- Jacobson v. United States**, 304
- James Baird Co. v. Gimbel Bros., Inc.**, 167
- J.E.B. v. Alabama**, 511 U.S. 127 (1994), 41–42
- Johnson v. Calvert**, 378–79

K

- Kansas v. Crane**, 534 U.S. 407 (2002), 305–8
- Kansas v. Hendricks**, 305, 308
- Kelo v. City of New London, Conn.**, 545 U.S. 469 (2005), 241–44
- Keystone Bituminous Coal v. DeBenedictis**, 247
- Kinsey, In re**, 842 So.2d 77 (Fla. 2003), 84–86
- Kumho Tire Co., Ltd. v. Carmichael**, 526 U.S. 137 (1999), 44–45
- Kyllo v. United States**, 533 U.S. 27 (2001), 291

L

- Lamb’s Chapel v. Center Moriches Union Free School Dist.**, 508 U.S. 384 (1993), 118–19
- Landano, United States Dep’t of Justice v.**, 508 U.S. 165 (1993), 413–14
- Lawrence v. Texas**, 539 U.S. 558 (2003), 98–102, 355, 361
- Lawyer Disciplinary Bd. v. Turgeon**, 557 S.E.2d 235 (W. Va. 2000), 65–66
- Lee, United States v.**, 120
- Leegin Creative Leather Prods. v. PSKS, Inc.**, 341
- Lemon v. Kurtzman**, 117
- Liebeck v. McDonald’s Restaurant, P.T.S., Inc.**, 49–50
- Lochner v. New York**, 95–96, 97
- Locke v. Davey**, 540 U.S. 712 (2004), 127–29
- Lockyer v. City and County of San Francisco**, 361
- Lofton v. Secretary of Dept. of Children and Family Services**, 377
- Lopez, United States v.**, 514 U.S. 549 (1995), 7–9

Loving v. Virginia, 388 U.S. 1 (1967), 102, 353–55
Lucas v. South Carolina Coastal Council, 247
Lugenbuhl v. Dowling, 701 So. 2d 447 (La. 1997), 198–202
Lujan v. Def. of Wildlife, 404

M

Mahoney v. Mahoney, 365–66
Malinski v. New York, 141
Mapp v. Ohio, 290
Marvin v. Marvin, 557 P.2d 106 (Cal. 1976), 367–70, 370
Massachusetts v. E.P.A., 549 U.S. 497 (2007), 404–5
McCormick v. School Dist. of Mamaronock, 370 F.3d 275 (2d Cir. 204), 108–10, 112
McDonald v. Chicago, 138–39
Meinhard v. Salmon, 324
Metro-Goldwyn-Meyer Studios v. Gorkster, Ltd., 545 U.S. 913 (2005), 266–67, 268
Metromedia v. City of San Diego, 246
Michael H. v. Gerald D., 379
Miranda v. Arizona, 296
Mississippi University for Women v. Hogan, 103–4, 112
Mistretta v. United States, 392–93
Moran v. Household International, 500 A.2d 1346 (Del. 1985), 329–31
Moseley v. V Secret Catalogue, 537, U.S. 418 (2003), 277–78
Mugler v. Kansas, 246

N

National Cable Television Assoc. v. United States, 415 U.S. 336 (1974), 388–89
National Labor Relations Board, San Francisco Branch Office, Vae Nortrak North America, Inc. and United Steelworkers of America, Local 3405, 2004 NLRB LEXIS 475, 401–403
National Organization of Women v. Scheidler, 286
National Rifle Ass’n v. Brady, 914 F.2d 475 (4th Cir. 1990), 397–98
Nat’l Archives and Records Admin. v. Favish, 541 U.S. 157 (2004), 411–13, 415

New York Times Co. v. Tasini, 262
New York Times Co. v. United States, 130–31
New York v. Kozlowski, 53
Newdow v. United States Congress, 127
Nixon, United States v., 25
Nixon v. Administrator of General Services Administration, 25
Norway Plains Co. v. Boston & Maine Railroad, 3
Nuzzaci v. Nuzzaci, 1995 Del. Fam. Ct. LEXIS 30 (April 19, 1995), 375–76

O

O’Hagan, United States v., 336
O’Neil, In re Disciplinary Proceedings Against, 661 N.W.2d 813 (Wis. 2003), 69–72, 79
Orr v. Orr, 366

P

Painter v. Bannister, 140 N.W.2d 152 (Iowa 1966), 370–73
Patane, United States v., 297
Pebble Beach Co. v. Caddy, 453 F.3d 1151 (9th Cir. 2006), 145–47
Penn Central Transp. v. New York City, 247
Pennsylvania Coal v. Mahon, 246
PGA Tour, Inc. v. Martin, 113
Philip Morris USA v. Williams, 53
Pierz v. Gorski, 236
Planned Parenthood of S.E. Pennsylvania v. Casey, 505 U.S. 833 (1992), 381–83
Printz v. United States, 18

Q

Quanta Computer v. LG Electronics, 272

R

Rasul v. United States, 25
Reno v. American Civil Liberties Union, 134
Reno v. Condon, 528 U.S. 141 (2000), 10–11
Republican Party of Minnesota v. White, 86
Revell v. Lidov, 317 F.3d 467 (5th Cir. 2002), 147–48, 149
Reynolds v. Sims, 104

Reynolds v. United States, 352, 355
Ricci v. DeStefano, 129 S. Ct. 2658 (2009),
 113–16
 Willow River Power Co., United States v.,
 225
 Roe v. Wade, 97, 380
 Rosenblatt v. Baer, 96
Ross v. Bernhard, 396 U.S. 531 (1970), 37
 Rowe Entertainment Inc. v. William Morris
 Agency, 160
 Ruiz, United States v., 299

S

Santa Fe Independent School Dist. v. Doe,
 530 U.S. 290 (2000), 119, 123–26
 Schenck v. United States, 129, 130
 Schooner Exchange v. McFaddon, 153
 Scott v. Sandford (Dred Scott case), 94
 SEC v. W.J. Howey Co., 334
 Shady Grove Orthopedic Associates, PA v.
 Allstate Ins. Co, 152
 Sheppard v. Maxwell, 46
Shoemaker v. Commonwealth Bank, 700
 A.2d 1003 (Pa. Super. Ct. 1997), 185–87
Simpson Performance Products, Inc. v.
Robert W. Horn, P.C., 92 P.3d 283 (Wyo.
 2004), 76–79
 Sinclair Oil Corp. v. Levien, 331–32
Sony Corp. v. Universal City Studies, 464
 U.S. 417 (1984), 263–68
SRI Int’l v. Matsushita Electric Corp. of
America, 775 F.2d 1107 (Fed. Cir. 1985),
 32–34
State Farm Mut. Auto. Ins. Co. v. Camp-
bell, 538 U.S. 408 (2003), 51–53, 215
Staudenmayer v. Staudenmayer, 714 A.2d
 1016 (Pa. 1998), 352, 356–57
 Stenberg v. Carhart, 383
 Stone v. Graham, 117
 Strauss v. Horton, 361
Sugarman v. Sugarman, 797 F.2d 3 (1st Cir.
 1986), 327, 328
Sutton v. United Airlines, Inc., 527 U.S.
 471 (1999), 110–12

T

Tahoe-Sierra Pres. Council v. Tahoe Reg’l
Planning Agency, 535 U.S. 302 (2002),
 248–51

Texaco, Inc. v. Pennzoil Co., 729 S.W.2d
 768 (Tex. App. 1987), 202–4, 204
The Progressive, Inc., United States v., 467
 F. Supp 990 (W.D. Wis. 1979), 135–36
 Thermatool Corp v. Dep’t of Revenue Ser-
 vices, 323
 Townsend v. Sain, 300
 Troxel v. Granville, 374

U

United States Dep’t of Justice v. Landano,
 508 U.S. 165 (1993), 413–14
 United States v. American Library Ass’n,
 134
 United States v. Booker, 321
United States v. Dougherty, 473 F.2d 1113
 (1972), 54, 55–56
United States v. E.I. du Pont de Nemours
& Co., 351 U.S. 377 (1956), 342
United States v. Eichman, 496 U.S. 310
 (1990), 137–38
United States v. Florida East Coast Ry., 410
 U.S. 224 (1973), 396–97
 United States v. Lee, 120
United States v. Lopez, 514 U.S. 549 (1995),
 7–9
 United States v. Nixon, 25
 United States v. O’Hagan, 336
 United States v. Patane, 297
 United States v. Ruiz, 299
United States v. The Progressive, Inc., 467
 F. Supp 990 (W.D. Wis. 1979), 135–36
 United States v. Willow River Power Co.,
 225

V

V Secret Catalogue, Inc. et al. v. Moseley,
 et al., 279
Venture Assoc. Corp. v. Zenith Data Sys.
Corp., 96 F.3d 275 (7th Cir. 1996),
 174–77
Vermont Yankee Nuclear Power v. Natural
Res. Def. Council, 435 U.S. 519 (1978),
 398–400
 Village of Arlington Heights v. Metropol-
 itan Housing Development, 246

W

Wade v. Jobe, 818 P.2d 1006 (Utah 1991),
237–39

Wal-Mart Stores v. Samara Bros., 529 U.S.
205 (2000), 276–77

Wawa v. Royal Dutch Petroleum Co., 226
F.3d 88 (2d Cir. 2000), 154, 155–56

Weeks v. United States, 290

Wehrkamp v. Wehrkamp, 357 N.W.2d 264
(S.D. 1984), 363–65

Weirum v. RKO General, 539 P.2d 36 (Cal.
1975), 204–6, 209

Whitman v. American Trucking Assn., 531
U.S. 457 (2001), 389

Whitney v. California, 129, 130

Widmar v. Vincent, 119

Wisconsin v. Yoder, 120, 370

Y

Yuba Power Products, Inc., Greenman v.,
377 P.2d 897 (Cal. 1963), 221–22, 223

Z

Zelman v. Simmons-Harris, 117