

INTRODUCTION
TO THE
STUDY OF LAW
Cases and Materials

THIRD EDITION

INTRODUCTION TO THE STUDY OF LAW

Cases and Materials

THIRD EDITION

Michael Makdisi

Juris Doctor

Florida State University School of Law

John Makdisi

Professor of Law

St. Thomas University School of Law



CAROLINA ACADEMIC PRESS

Durham, North Carolina

ISBN: 978-1-42242-873-3 (Print)
ISBN: 978-0-32717-669-5 (eBook)

Library of Congress Cataloging-in-Publication Data

Makdisi, John.

Introduction to the study of law : cases and materials / by John Makdisi, Michael Makdisi. -- 3rd ed.
p. cm.

Includes bibliographical references

ISBN 978-1-4224-2873-3 (perfect bound : alk. paper) 1. Law--United States--Cases. 2. Law--Study and teaching--United States.

I. Makdisi, Michael. II. Title.

KF385.A4M35 2008

349.73071'1--dc22

2008049558

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Copyright © 2015 Carolina Academic Press, LLC
All Rights Reserved

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work.

Carolina Academic Press, LLC
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.caplaw.com

Printed in the United States of America
2018 printing

DEDICATION

For June Mary Zekan Makdisi whose love as a Wife and Mother has embraced, supported, and encouraged us.

PREFACE

This coursebook is designed for use by beginning law students. The first three chapters provide background reading for the summer months preceding law school. The four topics following these chapters provide several assignments for teaching an orientation course. Since different law schools offer orientation courses of varying length, these assignments have been arranged so that a course may be planned to run anywhere from one to six days. Each assignment has been limited to roughly twenty pages to provide sufficient reading material for one class. The assignments focus on the techniques of the case method of study in the areas of Contracts, Property, Torts and Criminal Law. The purpose of the orientation course is not to teach substantive law but to initiate the student into the methods of legal reasoning that are the basic tools of every lawyer.

The first of the three introductory chapters begins with an introduction to the basic law school curriculum and the goals of a legal education. This is fairly light reading to integrate the particular goals an individual student may have within a more holistic framework. Law students, especially during the first year, will read many judicial case opinions. To help place those cases within the context of the judicial system, the remainder of the first chapter will provide a bird's-eye view of the structure of the court system in the United States and will introduce the appellate process.

Chapter 2 is a longer chapter, intended to introduce the basic concepts of legal reasoning, legal logic and legal decision-making in a concrete fashion, and to explore the more abstract theories on the nature of law and their impact on judicial decision making. The first section of the third chapter focuses on the mechanics of legal reasoning and logic, which law students and practitioners use on a daily basis. The second section extends the discussion of legal reasoning into the thought process behind judicial decisions and takes a look at how the common law changes. The final, and third section examines major theories on the nature of law, and builds upon the concepts in sections one and two by illustrating how the various theories on the nature of law impact judicial decisions.

Chapter 3, the final introductory chapter, is a practical and mental guide for approaching and dealing with the cases that will be the focus of much of the reading during the first year of law school. The first section of this chapter details the case method of study and explains the value of such a study within the context of a common law system such as in the United States. The remaining sections aim to make the first year learning curve less steep by explaining the basic study techniques of reading, annotating, highlighting and briefing cases.

It is important for the student to realize that these materials are designed only to introduce various aspects of the law and the legal system. Some materials are fairly easy reading while others are quite difficult to comprehend in full at this initial stage. A deeper understanding will come with time. For purposes of the orientation course, the student should work to assimilate what he or she can. The orientation is not meant to teach all that law school has to offer. It is designed to provide a foundation on which to begin building an intellectual framework for the study of law.

This third edition adds a number of new readings while at the same time streamlining the existing readings to provide a greater focus on what a student needs to prepare for the unique method of study found in law school. The previous edition split the nature of law and legal reasoning into separate chapters; this edition combines them in order to show their integrated nature. The final chapter continues to introduce the student to the unique case method of study with a selection from the classic *Bramble Bush*, but this edition has added material to provide further guidance on the mechanics of reading, annotating, and briefing cases.

PREFACE

The Topics at the end of the book have remained mostly the same with a few exceptions. The discussion in the first assignment of Topic 1 has been revised. Topic 3 has been replaced with a new topic in the area of criminal law, which provides practice comparing statutes from different jurisdictions. Also, the second assignment of Topic 4 has been removed because it requires more time and effort to digest than is warranted by an introductory course.

We would like to thank the faculty who used the second edition and provided valuable feedback. Their suggestions, especially on Topic 1, have helped us create a more accurate and useful third edition. Overall, this edition has reduced the length of the book to make it more manageable for summer reading. It has changed headings, reworked some of the existing material in order to make it an easier read, and updated and replaced a number of older articles with more modern material.

It should be noted that section identifiers, such as “A,” “1,” or “i” have been removed from headings within the quoted articles to avoid confusion. Footnotes, with some exceptions, have been omitted from the cases and materials without indication by ellipsis. All footnotes are the editor’s unless indicated otherwise. Case citations, as well as the words “[citations omitted],” within cases are generally omitted without indication by ellipsis, unless the case cite is important for understanding. When a case citation within a case is included, the information following the case name is sometimes omitted. Finally, an ellipsis is used to show the omission of text in a paragraph. If the text that is omitted starts within, or at the end of, a paragraph and extends to include another paragraph or paragraphs, the ellipsis appears only in, or at the end of, the paragraph where the omission begins. If the text that is omitted starts at the beginning of a paragraph and extends to include part of another paragraph, the ellipsis appears only in the paragraph where the omission ends.

The credit for the changes that have been incorporated into this new edition belongs to Michael Makdisi, who has joined John Makdisi as a new author and editor for the book. Michael recently graduated from law school and is a licensed attorney in the state of California. His experience as an honors student at Florida State University, where he was a member of Moot Court and editor-in-chief of the *Journal of Land Use and Environmental Law*, has provided this book with the unique insights of a recent student fresh from the three years into which the reader of this book is about to enter. Michael spent several months revising the book for the third edition, at the end of which time he was joined by John to do the final edits and a review of the entire book before submission to the publisher. Both authors are pleased to be working together not only as colleagues but also as father and son.

TABLE OF CONTENTS

Chapter 1	LAW SCHOOL BASICS	1
A.	THE BASIC CURRICULUM AND SETTING YOUR EDUCATIONAL GOALS	1
	ROY STUCKEY & OTHERS, BEST PRACTICES FOR LEGAL EDUCATION	2
	Eric A. DeGroff & Kathleen A. McKee, <i>Learning Like Lawyers: Addressing the Differences in Law Student Learning Styles</i>	5
B.	STRUCTURE OF THE AMERICAN LEGAL SYSTEM	6
	Timothy Dixon, <i>Structure and Process in THE JUDICIAL BRANCH OF FEDERAL GOVERNMENT: PEOPLE, PROCESS, AND POLITICS</i>	6
a.	The Federal System	8
b.	The State Court Systems	9
C.	APPELLATE REVIEW	10
	DELMAR KARLEN, THE CITIZEN IN COURT	10
Chapter 2	LEGAL REASONING AND THE NATURE OF LAW	17
A.	LEGAL REASONING AND LOGIC: THE BASICS	17
a.	The Process of Legal Reasoning	17
	KENNETH J. VANDELDELDE, THINKING LIKE A LAWYER: AN INTRODUCTION TO LEGAL REASONING	18
b.	Legal Logic: Analogy, Deduction and Induction	26
	EDWARD H. LEVI, AN INTRODUCTION TO LEGAL REASONING	26
	Ruggero J. Aldisert, Stephen Clowney & Jeremy D. Peterson, <i>Logic For Law Students: How to Think Like a Lawyer</i>	30
B.	LEGAL REASONING IN THE COURTS	41
	BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS	42
	NEIL MACCORMICK, LEGAL REASONING AND LEGAL THEORY	45
	KENNETH J. VANDELDELDE, THINKING LIKE A LAWYER: AN INTRODUCTION TO LEGAL REASONING	49
C.	THE NATURE OF LAW AND JUDICIAL DECISIONMAKING	53
	HAROLD J. BERMAN, WILLIAM R. GREINER, SAMIR N. SALIBA, THE NATURE AND FUNCTIONS OF LAW	55
	R. RANDALL KELSO & CHARLES D. KELSO, STUDYING LAW: AN INTRODUCTION	60
	Marin Roger Scordato, <i>Post-Realist Blues: Formalism, Instrumentalism, and the Hybrid Nature of Common Law Jurisprudence</i>	66
	Stephanos Bibas, <i>Originalism and Formalism in Criminal Procedure: The Triumph of Justice Scalia, the Unlikely Friend of Criminal Defendants?</i>	69
	Jeff Bleich, Anne Voigts & Michelle Friedland, <i>A Practical Era: The Beginning (or the End) of Pragmatism</i>	73

TABLE OF CONTENTS

Chapter 3	THE CASE METHOD OF STUDY	79
A.	CASES, PRECEDENT, AND THE COMMON LAW SYSTEM	79
	KARL N. LLEWELLYN, <i>THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY</i>	79
B.	HOW TO READ A CASE	95
	KENNETH J. VANDELDELDE, <i>THINKING LIKE A LAWYER: AN INTRODUCTION TO LEGAL REASONING</i>	96
C.	HOW TO BRIEF	99
D.	EXTRACTING THE RELEVANT INFORMATION: ANNOTATING AND HIGHLIGHTING	101
Topic I:	LANDLORD'S DUTY TO PROTECT A TENANT	105
	W. KEETON, D. DOBBS, R. KEETON & D. OWEN, <i>PROSSER AND KEETON ON THE LAW OF TORTS</i>	105
	<i>Corpus Juris Secundum Care Required and Liability for Injuries to Licensees</i>	109
	Assignment 1 Briefing: Examples in Tort Law	111
	<i>LEVINE v. KATZ</i>	111
	<i>KENDALL v. GORE PROPERTIES, INC.</i>	114
	<i>GOLDBERG v. HOUSING AUTHORITY OF THE CITY OF NEWARK</i>	121
	Assignment 2 Answering Questions: Examples in Contract Law	128
	<i>PINES v. PERSSION</i>	128
	QUESTIONS	130
	<i>SAUNDERS v. FIRST NATIONAL REALTY CORPORATION</i>	135
	QUESTIONS	136
	<i>LEMLE v. BREEDEN</i>	137
	QUESTIONS	141
	Assignment 3 A Synthesis in Property Law	145
	<i>JAVINS v. FIRST NATIONAL REALTY CORPORATION</i>	145
	QUESTIONS	151
	<i>KLIN v. 1500 MASSACHUSETTS AVENUE APARTMENT CORP.</i>	153
	QUESTIONS	159
Topic II:	MITIGATION OF DAMAGES	163
	Assignment 1 Briefing: Examples in Contract, Tort, and Property Law	163
	<i>ROCKINGHAM COUNTY v. LUTEN BRIDGE CO.</i>	163
	<i>ROY v. ROBIN</i>	167
	<i>WRIGHT v. BAUMANN</i>	170
	<i>LEFRAK v. LAMBERT</i>	174
Topic III:	ATTEMPT	179
	Assignment 1 Briefing & Statutory Interpretation: Examples in Criminal Law	179

TABLE OF CONTENTS

	<i>COMMONWEALTH v. PRATHER</i>	179
	<i>PEOPLE v. HIRNIAK</i>	183
	<i>STATE v. CLARK</i>	187
	<i>STATE v. STEWART</i>	190
Topic IV:	UNCERTAINTY	195
	Assignment 1 Briefing & Statutory Interpretation: Examples in Criminal Law	195
	<i>COOPER v. SISTERS OF CHARITY OF CINCINNATI, INC.</i>	195
	<i>MANGE v. UNICORN PRESS, INC.</i>	201
	<i>LOCKE v. UNITED STATES</i>	203
	<i>RIDEAUX v. LYKES BROS. STEAMSHIP CO., INC.</i>	207
Appendix A	How to Read a Case Citation	211
Appendix B	Additional Reading	213
Appendix C	On the Lighter Side	219
