An Introduction to American Law

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THIRD EDITION

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This book is dedicated generally to the many students who have studied American law with us.

For Daniel and Allison

Dan Rosen

For Daphne, Duncan, and Sasha

Bruce Aronson

For Geoffrey and Henry

David G. Litt

To Sachiko, Ken & Miki

Gerald Paul McAlinn

To Sakumi, George and Ken

John P. Stern

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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

Preface to the Third Edition

The story of American Law is one of continuity and change. That also is the story of this book. Since the Second Edition, two of the original authors — Jerry McAlinn and John Stern — have passed away. Two other scholars have joined the team. Like the original group of three, the new members are Americans who are teaching law in Japan.

We have retained the names of our two departed colleagues as authors because many of their ideas and words remain within the covers of this book. Nevertheless, the Third Edition contains quite a lot of new material, reflecting developments over the past several years. The purpose of **An Introduction to American Law** has never been to be exhaustive or encyclopedic. Rather, the book has been designed to allow students to engage with important concepts, not necessarily the newest expression of those concepts. However, recent cases often explain the evolution of these ideas and — sometimes — change their trajectory. Thus, we have included excerpts from many of them in this update.

Tokyo, March 2017

Dan Rosen
Bruce Aronson
David Litt

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.

Respect for precedent means that even a court such as the Supreme Court will adhere to its own precedent unless it finds some strong reason to diverge. The idea is that people have come to conform their behavior to the prior decision, so changing it—even if change might be appropriate—would be disruptive. Respect for precedence does not directly apply to decisions from other court systems within the United States, such as a state court considering cases from a different state. In such situations, a court will make use of such precedent only to the extent that it is considered "persuasive."

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. In some cases, for the sake of clarity, some references to multiple parties—plural—have been changed to singular. 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

Law Library of Congress: http://www.loc.gov/law

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

Library of Congress: https://www.congress.gov

Oyez: https://www.oyez.org

U.S. Supreme Court: http://www.supremecourt.gov

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.

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Primary case names are in **bold font** followed by a comma and the page numbers separated by a hyphen where the excerpted case appears. Decisions are those of the Supreme Court of the United States unless otherwise noted.

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