

TABLE OF CONTENTS

PREFACE	V
TABLE OF CASES	XV
TABLE OF AUTHORITIES.....	XIX
Chapter 1. Introduction	1
Comments on Jurisprudence	1
Chapter 2. The Beginnings of Legal Thought.....	21
A. Introduction	21
Hammurabi's Code of Laws	21
Code of Laws (Excerpted)	22
B. Introduction to Plato and Aristotle	24
C. Aristotle	27
The Politics	38
The Nicomachean Ethics	90
D. Antigone	114
E. Comment on Law and Literature.....	138
Chapter 3. The Development of the Natural Law.....	145
A. Introduction	145
B. Thomas Aquinas	154
The Summa Theologica.....	158
C. The Natural Law Tradition Since Aquinas	215
D. John M. Finnis—The “New” Natural Law.....	222
Natural Law and Natural Rights.....	226
E. Lon L. Fuller—Natural Law as Legal Process	246
The Morality That Makes Law Possible	247
F. Church, State, and Law—The Case of Shari'a	254
The End of One Law for All?	257
G. Edward O. Wilson—Nature, Science and Natural Law	260
The Biological Basis of Morality.....	261
Chapter 4. Natural Rights—Human Rights	275
A. Introduction	275
B. John Locke	279
The Second Treatise of Government	293
Shakespeare on the Divine Right of Kings	337
C. Immanuel Kant	338
The Philosophy of Law	342
D. John Rawls—A Veil of Ignorance	361
A Theory of Justice.....	363

E. The Adjudication of Natural Rights.....	385
Lochner v. New York.....	385
Griswold v. Connecticut.....	389
Roe v. Wade	392
Bowers v. Hardwick	409
Lawrence v. Texas.....	411
Obergefell v. Hodges	419
Gregg v. Georgia.....	455
Roper v. Simmons.....	458
Miller v. Alabama	472
Judicial Tourism.....	478
F. European Adjudication of Natural/Human Rights	480
Note on Animal Rights.....	492
 Chapter 5. Legal Positivism: Its Rise and Development.....	495
A. Introduction	495
B. Thomas Hobbes—The Leviathan	497
Leviathan.....	507
C. David Hume—The Artifice of Justice	563
A Treatise of Human Nature.....	571
D. Jeremy Bentham	588
Of Laws in General	592
Bentham’s Critique of Common Law	601
Utility and Push-Pin	604
Two Excerpts from <i>Hard Times</i>	606
Utility and Allocation of Life	610
 Chapter 6. Analytical Positivism	615
A. John Austin—Law as Command.....	615
Note: Austin and Bentham and Utilitarianism	622
The Province of Jurisprudence Determined	624
Criticisms of Austin’s Theory of Law	677
Note on Whether a “Sovereign” Can Bind Itself	682
B. Hans Kelsen—Pure Theory	685
General Theory of Law and State	690
Note on Kelsen’s “Pure Theory of Law”	702
Note on <i>Fiji Islands v. Prasad</i>	706
C. H.L.A. Hart—Primary and Secondary Rules	708
The Concept of Law.....	712
The Hart-Dworkin Debate.....	729
Scott Shapiro, On Hart’s Way Out	730
Hart’s Postscript.....	734
 Chapter 7. Reform and Realism	747
A. Introduction—the Jurisprudence of [Anti-Formalist] Reform	747

B.	Henry Sumner Maine—The Ancient and the Modern.....	769
	Ancient Law: Its Connection with the Early History of Society and Its Relation to Modern Ideas	770
C.	Rudolf Von Jhering—Purpose in Law.....	788
	Law as a Means to an End.....	790
D.	François Gény—Interpreting for Purpose	801
	Méthode d'Interprétation et Sources en Droit Privé Positif	802
	Swiss Civil Code (1907).....	816
	Note on the German Free Law Movement	816
E.	Oliver Wendell Holmes, Jr.—Law's Path	820
	The Path of the Law.....	824
F.	Roscoe Pound—A Critique of Formalism.....	842
	Mechanical Jurisprudence.....	846
	Note: Jerome Frank—The Psychology of Judging	856
G.	Karl N. Llewellyn—Realism About Rules	862
	A Realistic Jurisprudence—the Next Step	865
	Note on Llewellyn's "Debate" with Roscoe Pound.....	887
H.	Scandinavian Legal Realism	892
I.	Note on New Legal Realism.....	898
Chapter 8. Legal Reasoning and Judicial Process.....		901
A.	Introduction	901
B.	On Interpretation	902
	1. The Hart/Fuller Exchange.....	904
	2. Literary vs. Legal Intent.....	909
	3. The Steamboat New World v. King	909
	4. Linguistic Analysis of a Judicial, Statutory and Contractual Norm: "Gross Negligence or Willful Misconduct"	913
	5. Canons of Interpretation/Construction—Textualism	924
	Yates v. U.S.....	931
	6. Departments of Interpretation	956
	7. Decision by Analogy	962
	Adams v. New Jersey Steamboat Co.....	963
	8. A Comment on Precedent.....	968
C.	The Legal Process Paradigm	973
	Commentary: The Making of the Legal Process	974
	Conflict in the Legal Academy, Circa 1969–70, with Implications for Today	988
D.	Sir Edward Coke on Judicial Review	992
	Dr. Bonham's Case	992
E.	Ronald Dworkin—The Herculean Judge	994
	Integrity in Law	998
	Dworkin's "Empire"	1022
F.	Richard A. Posner—Pragmatism	1033
	The Reasonable Judge	1033
	Law, Pragmatism, and Democracy	1036
G.	Note on Arbitration and ADR.....	1063

Chapter 9. Critical Strategies.....	1067
A. Introduction	1067
B. Critical Legal Studies—Deconstructing Liberalism	1075
The Hitchhiker’s Guide to CLS, Unger, and Deep Thought	1076
Legal Education as Training for Hierarchy.....	1086
C. Feminism—Unseating Patriarchy	1107
Feminist Legal Theory	1109
Ellison v. Brady	1119
D. Critical Race Theory—Rejecting Color-Blindness.....	1132
Critical Race Studies: An Introduction.....	1134
E. Intersectional Theories	1148
Laws as Tactics.....	1153
R.G. & G.R. Harris Funeral Homes, Inc. v. Equal Employment Opportunity Commission et al.....	1173
Brief for Transgender Legal Defense and Education Fund and 33 Organizations Serving Transgender Individuals as <i>Amici</i> <i>Curiae</i> in Support of Respondent Aimee Stephens	1173
Brief of Amicus Curiae Dr. Paul R. McHugh, M.D. Professor of Psychiatry in Support of Petitioner.....	1176
Chapter 10. Economic and Legal Concepts.....	1181
A. Introduction	1181
B. Law and Economics.....	1187
Property Rules, Liability Rules and Inalienability: One View of the Cathedral	1192
C. Behavioral Law and Economics	1220
Chicago Man, K-T Man, and the Future of Behavioral Law and Economics.....	1220
Note on Asymmetric Paternalism and the Pension Protection Act of 2006	1232
D. New Private Law Theories	1235
The Morality of Property	1238
Comments on New Private Law Theories	1262
The Inner Morality of Private Law	1273
Glossary	1295
INDEX.....	1305