

OUTLINE

PREFACE TO THE SECOND EDITION	V
PREFACE TO THE FIRST EDITION	VII
TABLE OF CASES	XIX
Chapter 1. Introduction to American Law	1
Introduction to an Introduction	1
American Law: Rife with Contradiction	5
American Law: Complexity	7
American Law: The Moral Dimension	10
And Finally, American Law: Diversity	11
A Page of History	12
Conclusion	20
Chapter 2. The Sources of Law and Common	
Law Reasoning	21
Introduction	21
The Legal Saga: Framing the Issue	21
The Search for Law	23
Enter the Common Law	25
Policy Concerns	30
Old Wine in New Bottles—of Baseballs and	
Foxes	32
Conclusion	35
Chapter 3. The American Constitutional	
System: Allocation of Governmental	
Powers	37
Introduction	37
Our Federalism: Congressional Powers	39

The Commerce Clause	41
The Necessary and Proper Clause	48
Our Federalism: The Supremacy Clause.....	50
Our Federalism: The Powers of the President	51
The Third Branch.....	58
Conclusion	63

Chapter 4. The American Judiciary:

Guardians of the Constitution.....	65
Introduction	65
The Federal Bench in the Constitutional Scheme	65
The Federal Court System.....	67
A Primer on Federal Jurisdiction.....	69
Conclusion	72

Chapter 5. The American Civil Trial:

Ritualized Combat.....	75
Introduction	75
An Overview of the Federal Rules	76
Stages of the Trial: Pleading	78
Pre-Trial Discovery	83
Pre-Trial Motions	90
Pre-Trial Conference.....	91
The Right to a Trial by Jury.....	91
The Trial	95
A Mock Jury Trial	97
A Primer on Rules of Evidence.....	98
Appeals Process.....	100
Conclusion	103

Chapter 6. Contract and Commercial Law:	
A Promise Is a Promise (Maybe)	105
Introduction	105
Jurisprudential Aspirations of Contract Law	107
Contract Formation.....	109
Consideration	112
Promissory Estoppel and Unjust Enrichment	115
Contract Interpretation	115
Contract Performance.....	118
Excuses for Nonperformance.....	121
Remedies	124
An Introduction to Commercial Law	128
Payment.....	129
Transactions on Credit	131
Negotiable Instruments	132
Secured Transactions.....	133
Consumer Protection Law	136
Conclusion	138
Chapter 7. American Tort Law: Venerable	
Common Law on the Eve of Reform?.....	141
Introduction	141
Tort Law Reform	142
Links Between Criminal Law and Tort	145
The Link Between Contract and Tort.....	146
The Moral Dimensions of Tort.....	147
Intentional Torts	147
Battery	150
Assault	151
False Imprisonment	152
Trespass to Real Property	153
Trespass to Personal Property	154
Transferred Intent	155

Defenses to Intentional Torts.....	156
Negligent Torts.....	158
Duty of Care	160
Breach.....	162
Causation.....	163
Contributory Negligence.....	165
Multiple Parties	166
Strict Liability	167
Damages in Tort.....	170
Conclusion	172

Chapter 8. American Property Law:

Plenty of Old Wine in Both New and Old

Bottles.....	175
Introduction.....	175
Possession and Ownership in American Law	177
Adverse Possession	180
Real Estate Transactions.....	183
Eminent Domain.....	184
Land Regulation.....	187
Zoning	193
Environmental Regulation	195
Nuisance	198
Estates in Land	201
Inheritance: Wills and Trusts	207
Landlord-Tenant Law	210
Intellectual Property.....	212
Copyright	213
Patent Law	216
Trademark	218
Conclusion	222

Chapter 9. America’s Business Is Business: And Business Lawyers Govern the Show	225
Introduction	225
Forms of Business Entities: “Non-Corporate Forms”	227
Forms of Business Entities: Sole Proprietorship.....	228
Forms of Business Entities: Partnership.....	229
Forms of Business Entities: Limited Liability Company	233
Forms of Business Entities: The Corporation	234
Corporate Equity and Debt	242
Corporate Mergers and Other Acquisitions	243
Securities Regulation.....	248
Antitrust Law	256
Conclusion	269
 Chapter 10. American Labor Law: Laissez- Faire—Freedom to Contract; Limitations Regarding Discrimination	 271
Introduction	271
Employment Law	273
Employment Discrimination Law	276
American Unions.....	279
Conclusion	283
 Chapter 11. Criminal Law: (Much) Crime and (Severe) Punishment in Modern America	 285
Introduction	285
Basic Principles of the Substantive Criminal Law.....	288

Particular Offences: Murder.....	291
Manslaughter	293
Rape	293
Crimes Against Property	294
Racketeer Influenced and Corrupt Organizations	
Act: Innovating Crime.....	295
Defenses to Criminal Liability	296
Self-Defense.....	297
Insanity.....	298
Other Affirmative Defenses.....	299
Crime and Punishment.....	302
Conclusion	306

Chapter 12. Criminal Procedure: The “Long and Winding Road” from Apprehension of Criminals to Their Release	309
Introduction.....	309
The Criminal Justice Process: From Arrest to Appearance	312
The Criminal Justice Process: Pre-Trial Phase ...	315
The Criminal Justice Process: Trial.....	317
The Criminal Justice Process: Post-Conviction ...	321
Parole	324
Constitutional Criminal Procedure: “The Criminal Goes Free Because the Constable Has Blundered”	326
Unconstitutional Searches.....	329
Unreasonable Searches.....	330
Confessions	333
Exclusionary Rule Exceptions.....	336
Conclusion	337

Chapter 13. A Bill of Rights for All

Seasons	339
Introduction	339
First Amendment: Religious Expression and Tolerance	342
First Amendment: Free Expression	346
First Amendment: Assembly and the Right to Petition	352
The Second Bill of Rights: Equal Treatment Before the Law	353
The Due Process Clause	354
The Equal Protection Clause	357
Privacy Rights	363
The Second Amendment	367
Conclusion	368

**Chapter 14. Administrative Agencies and
Their Law: The Fourth Branch of**

American Law	371
Introduction	371
Functions of Agencies	374
Judicial Review of Administrative Acts	379
Legislative and Executive Control of Agencies	380
Conclusion	382

**Chapter 15. International Law in the
American Legal System: Is It Really**

There?	385
Introduction	385
American Process for Entering into International Agreements	388
Status of International Agreements in American Law	390

Extra-Territoriality of American Law: Substantive Law.....	392
Extra-Territoriality of American Law: Jurisdiction.....	394
The Interface Between European Union and American Law: An Example of New Frontiers of International Law	399
Conclusion	403
Chapter 16. Conclusion: The American Bar	405
Introduction	405
Regulation of the Guild.....	407
The Practice of Law.....	409
Conclusion	410
INDEX.....	413

TABLE OF CASES

References are to Pages

Alcoa, United States v.,	393
Alice Corp. Pty. v. CLS Bank Int'l,	217
American Soc. of Composers, Authors, Publishers, United States v.,	262
Arizona v. Johnson,	333
Arlington Heights, Village of v. MHDC,	195
Armory v. Delamire,	178
Ashcroft v. Iqbal,	79
Atkins v. Virginia,	306
Batson v. Kentucky,	320
Bell Atl. Corp. v. Twombly,	79
Belle Terre, Village of v. Boraas,	51
Berman v. Parker,	185
Booker, United States v.,	304
Bostock v. Clayton Cty., Georgia,	276, 367
Boumediene v. Bush,	324, 394
Brown v. Board of Education,	63, 358
Burton v. Wilmington Parking Auth.,	360
C&A Carbone v. Town of Clarkstown,	48
Cardoza v. City of N.Y.,	95
Celotex Corp. v. Catrett,	90
Charter Township of Delta v. Dinolfo,	51
Chevron, U.S.A., Inc. v. NRDC, Inc.,	380
Chiarella v. United States,	253
Citizens United v. Federal Election Commission,	353
Civil Rights Cases,	357
Cleveland Board of Education v. LaFleur,	363
Comstock, United States v.,	49
Cooley v. Bd. of Wardens of the Port of Philadelphia,	47
Dames & Moore v. Regan,	389
Davis v. United States,	336
Defore, People v.,	326
District of Columbia v. Heller,	368
Dolan v. City of Tigard,	192
Dred Scott v. Sandford,	17
Dudley and Stevens, Regina v.,	300

- Eldred v. Ashcroft, 1, 214
Elk Grove Unified School District v. Newdow, 345
Erie, City of v. Pap's A.M., 194
Facebook Ireland, Ltd. v. Schrems, 403
Fisher v. University of Texas, 361
Florida v. Powell, 334
Gibbons v. Ogden, 39
Gonzales v. Raich, 44
Gratz v. Bollinger, 361
Griswold v. Connecticut, 365
Gundy v. United States, 40, 375
Hadley v. Baxendale, 126
Hawaii Hous. Auth. v. Midkiff, 185
Henningsen v. Bloomfield Motors, 168
Jones, United States v., 330
June Medical Services, LLC v. Russo, 12, 62, 365
Kelo v. City of New London, 176
Lawrence v. Texas, 356
Leegin Creative Leather Prod., Inc. v. PSKS, Inc., 261
Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania, 343
Lochner v. New York, 356
Lopez, United States v., 44
Loretto v. Tel. Manhattan Catv Corp., 189
Los Angeles, City of v. Alameda Books, 194
Louisville & Nashville R.R. v. Mottley, 80
M'Naghten, Queen v., 298
Malone, Commonwealth v., 292
Marbury v. Madison, 59, 66, 340
Mayo Collaborative Ser. v. Prometheus Lab'y, Inc., 217
McCulloch v. Maryland, 50
Mead Corp., United States v., 376
Medellin v. Dretke, 386
Medina v. Gonzalez, 89
Missouri v. Holland, 390
Montejo v. Louisiana, 335
Morrison, United States v., 44
NAACP v. Mt. Laurel, 194
National Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma, 263
National Fed'n of Indep. Bus. v. Sebelius (Obamacare), 39
National Prescription Opiate Litigation, In re, 87

- New York Trust Co. v. Eisner, 13
Nollan v. Cal. Coastal Com., 191
Obergefell v. Hodges, 366
Our Lady of Guadalupe Sch. v. Morrissey-Berru, 344
Penn Central Transport Co. v. City of New York., 188
Pennsylvania Coal v. Mahon, 187
Philadelphia, City of v. New Jersey, 47
Pierson v. Post, 21, 176
Plessy v. Ferguson, 63, 357
Popov v. Hayashi, 33
Price v. Leflore Cnty. Det. Ctr., 89
Ramos v. Louisiana, 320
Raniere, United States v., 296
Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 247
Roe v. Wade, 62, 73, 365
Roper v. Simmons, 306
Schad v. Borough of Mt. Ephraim, 194
Schenck v. United States, 350
Security Nat'l Bank of Sioux City, Iowa v. Abbott, Lab'y,
89
Shelby County v. Holder, 354
Shelley v. Kraemer, 360
Skidmore v. Swift & Co., 380
Spector et al. v. Norwegian Cruise Line Ltd., 393
Spur Indus. v. Del E. Webb Dev. Co., 199
Trump v. Vance, 52
United Haulers Ass'n v. Oneida-Herkimer Solid Waste
Mgmt., 48
Unocal Corp. v. Mesa Petroleum Co., 246
Van Gend en Loos v. Nederlandse Administratie der
Belastingen, 401
Virginia, United States v., 363
Watkins, Ex parte, 323
Whole Women's Health v. Hellerstedt, 62
Wickard v. Filburn, 42
Wyeth v. Levine, 46
Youngstown Sheet & Tube Co. v. Sawyer, 57
Zubulake v. UBS Warburg, LLC, 85