

*Introduction to*

Sixth Edition

# Law



Joanne Banker Hames | Yvonne Ekern

# Introduction to Law

*Sixth Edition*

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**Cover Art (or Cover Photo):** FabrikaSimf/Shutterstock  
**Printer/Binder:** LSC Communications, Inc.  
**Cover Printer:** Phoenix Color/Hagerstown  
**Text Font:** Times LT Pro Roman

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#### Library of Congress Cataloging-in-Publication Data

Names: Hames, Joanne Banker, author. | Ekern, Yvonne, author.  
Title: Introduction to law / Joanne Banker Hames, Deanza Community College;  
Yvonne Ekern, Santa Clara University, School of Law.  
Description: Sixth edition. | Hoboken, New Jersey: Pearson Education, Inc.,  
[2017]  
Identifiers: LCCN 2017048512 | ISBN 9780134868240 | ISBN 0134868242  
Subjects: LCSH: Law—United States.  
Classification: LCC KF386 .H259 2017 | DDC 349.73—dc23  
LC record available at <https://lcn.loc.gov/> 2017048512

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# Preface

The study of law attracts students for a variety of reasons. Many see the study of law as a career choice – as the opportunity to become a lawyer, a paralegal, or some other related professional. Some are interested because of personal dealings with the legal system, while others are interested simply because it is a fascinating subject. Whatever reasons motivate the student, an introductory class in law must accomplish certain basic objectives. Students must develop an understanding of the organization of the legal system. They must comprehend basic legal concepts related to procedural and substantive law. Students should also be introduced to cases, statutes, regulations, and the Constitution, the sources of all of our laws. While students in an introductory law class should not be forced to learn about the law entirely through reading cases, some experience in reading cases is essential to learning about the law.

Our years of teaching convince us that any introductory law course must begin with and emphasize the development of a strong legal vocabulary. Also important is the opportunity to use and develop the critical thinking skills so important to any law-related career. Our goal, therefore, in writing this text is to help instructors by providing beginning students with a book that keeps their interest while providing an overview of the organization and operation of the legal system, as well as an introduction to some of the basic concepts of substantive and procedural law. More importantly, however, we have included several features that give students the opportunity to develop a strong legal vocabulary and to build their critical thinking skills.

## NEW TO THIS EDITION

Feedback from instructors and students who use this text confirmed that the basic organization and features of this textbook are successful. Students especially appreciate the extensive key term definitions in the margin, the interesting cases, and the wide use of common hypothetical cases to explain the application of legal principles. These features remain in the text. However, the law is not, nor will it ever be, a static entity. Any useful textbook dealing with the law must reflect these changes. As a result, our goal in this edition is to also provide students with the following.

- Updates to the law and exhibits containing current legal forms and court documents
- A broader view of some of the substantive and procedural areas of law
- Updated information on the use of technology in law practice
- Discussion of new court cases illustrating current trends in the development of our laws
- More practice in building critical thinking skills with additional case questions and end-of-chapter exercises.

All chapters have been reviewed, edited, and updated so as to contain current law and legal forms.

In particular, chapters in the sixth edition contain the following additions and updates:

Chapter 3 contains new discussion of administrative hearing representatives and business ethics.

Chapter 4 contains a complete revision and update of the section on computer-assisted research.

Chapter 6 contains (1) an updated discussion of First Amendment and Religion by inclusion of Supreme Court Case of *Holt v. Hobbs* (2017) (dealing with Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA)); and (2) an updated section on Rights of Criminal Defendants by inclusion of *Utah v. Strieff*, 579 U.S. \_\_\_\_, 136 S. Ct. 2056 (2016) (dealing with the exclusionary rule).

Chapter 7 contains a more current U.S. Supreme Court case regarding police liability for excessive force, *Plumhoff v. Rickard*, 134 S.Ct. 2012 (2014).

Chapter 8 contains updated legal forms and statutory law related to family law, as well as new cases, *Obergefell v. Hodges*, 576 U.S. \_\_\_\_, 135 S. Ct. 2584 (2015) (same sex marriage) and *Abbott v. Abbott* (international aspect of custody and Hague Convention).

Chapter 10 has been completely revamped. Chapter 10 now deals exclusively with contract law. The fifth edition combined contract and property law into one chapter. These are now two separate chapters (Chapter 10 is Contract Law and Chapter 11 is now Property Law). Chapter 10 thus covers more detail regarding basic contract issues especially formation.

Chapter 11 now deals exclusively with various aspects of property law and contains several new cases. The chapter contains a much more detailed discussion of real property law and personal property law (Chapter 11 in the fifth edition was updated and is now Chapter 12).

Chapter 12 now deals with the Business Environment (formerly chapter 11) and contains updated forms, deleting outdated ones.

Chapter 13 now deals with Civil Litigation (formerly chapter 12) and contains an expanded discussion of the federal rules affecting e-discovery and new cases on general v. specific jurisdiction, *Goodyear Dunlop Tires Operations, S.A. versus Brown*, 564 U.S. 915 (2011) and *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S.Ct. 1773 (2017) (Chapter 13 of the fifth edition was updated and is now Chapter 18).

Chapter 14 contains updated code sections.

Chapter 17 contains a new case, *Perry v. New Hampshire*, 565 U.S. 228 (2012) (dealing with eyewitness identification).

Chapter 18 is now the chapter on Alternative Dispute Resolution (Chapter 13 in fifth edition) and contains an expanded discussion of the Federal Arbitration Act and an introduction to concept of Restorative Justice as applied to criminal cases; a new case *Buckeye Check Cashing, Inc. v. Cardegna* is also included.

## INSTRUCTIONAL AND LEARNING FEATURES OF *INTRODUCTION TO LAW*

The many features of *Introduction to Law* make it an excellent choice for both the student and the instructor. Students will find an easy-to-read text with a built-in dictionary, realistic factual situations, and high-interest cases. Instructors will find an organized text containing questions to help students review text material, hypothetical situations for class analysis and discussion, and assignments in each chapter. *Introduction to Law* contains the following features:

- **Numerous charts and tables** illustrate and clarify legal concepts.
- **Legal vocabulary** is identified in boldface type. The key terms are defined in the margins of the text where the terms appear, and are also listed at the end of each chapter for review.
- **A chapter-opening case file** contains a hypothetical factual situation that introduces the subject matter, encouraging students to think about the subject matter in a law office or everyday setting, rather than simply as more textual reading.
- **Carefully selected and edited case law** appears in each chapter. The case law introduces students to reading the law and assists with the development of critical thinking skills. The cases are interesting and even familiar. Most cases have been edited in an effort to shorten them and to give beginning students the opportunity to ascertain the important concepts of the case without being confused. (In editing the cases, we have taken some liberties with normal rules of editing.) To assist the student, we have also provided a brief introduction to most cases, as well as questions for case analysis following the case.
- Most chapters provide the names of Internet sites that are relevant to the material in the chapter. A **Featured Website** in each chapter provides an overview of one important website, along with student assignments using the site.
- Internet references to international organizations, laws, and legal resources appear in each chapter in a feature titled **A Global Perspective**. This feature allows students to explore global influences on the legal system as well as to compare the U.S. legal system with that of other nations.
- Many chapters include a feature called **A Point to Remember**. This practical information helps students focus on the skills and concepts that will help them in their legal studies.
- Each chapter includes a feature called **Ethical Concerns: What Should the Lawyer Do?** This feature encourages students to consider ethical ramifications of daily experiences of legal professionals.
- A complete **Glossary** at the end of the text contains definitions for all highlighted key terms used in the text.
- A **mock trial** is presented in Appendix II, and a Basic Citation Reference Guide is included as Appendix III. The mock trial could be used at the end of Chapter 17 (“The Trial”). We have found that a mock trial is fun and memorable for students. We have provided the basic fact pattern and the legal issues. The trial is a good opportunity for students to apply the materials presented in the preceding chapters.
- Links to additional case law are found on the book’s website at [www.pearsonhighered.com/carreersresources](http://www.pearsonhighered.com/carreersresources).

## End-of-Chapter Concept Review, Critical Thinking, and Skill-Building Exercises

- A **Chapter Summary** is included in every chapter. The summaries are short overviews of the major concepts covered in the chapter.
- **Questions for Review** follow each chapter summary. These questions help the student focus on the most important concepts in the chapter.
- **Application and Analysis Problems** at the end of each chapter require the student to apply the concepts covered in the chapter.
- The **Assignments and Projects** section contains hands-on activities to help the student build necessary skills.
- **Skills Assessment** provides students with an opportunity to test a variety of skills needed to survive in a law office.

## Instructor Supplements

**Instructor’s Manual with Test Bank.** Includes content outlines for classroom discussion, teaching suggestions, and answers to selected end-of-chapter questions from the text. This also contains a Word document version of the test bank.

**TestGen.** This computerized test generation system gives you maximum flexibility in creating and administering tests on paper, electronically, or online. It provides state-of-the-art features for viewing and editing test bank questions, dragging a selected question into a test you are creating, and printing sleek, formatted tests in a variety of layouts. Select test items from test banks included with TestGen for quick test creation, or write your own questions from scratch. TestGen’s random generator provides the option to display different text or calculated number values each time questions are used.

**PowerPoint Presentations.** Our presentations are clear and straightforward. Photos, illustrations, charts, and tables from the book are included in the presentations when applicable.

To access supplementary materials online, instructors need to request an instructor access code. Go to [www.pearsonhighered.com/irc](http://www.pearsonhighered.com/irc), where you can register for an instructor access code. Within 48 hours after registering, you will receive a confirming e-mail, including an instructor access code. Once you have received your code, go to the site and log on for full instructions on downloading the materials you wish to use.

## Alternate Versions

**eBooks.** This text is also available in multiple eBook formats. These are an exciting new choice for students looking to save money. As an alternative to purchasing the printed textbook, students can purchase an electronic version of the same content. With an eTextbook, students can search the text, make notes online, print out reading assignments that incorporate lecture notes, and bookmark important passages for later review. For more information, visit your favorite online eBook reseller or visit [www.mypersonstore.com](http://www.mypersonstore.com).



# Acknowledgments

No textbook can be produced through the sole effort of its authors. The sixth edition of *Introduction to Law* is no exception.

We would like to thank several individuals whose recommendations, assistance, and encouragement have made this work possible and enjoyable. Daily contributions came, first and foremost, from our husbands, Bill Ekern and Mark Hames: they have each contributed their special talents and knowledge to improving this text. More importantly, they have been a constant source of encouragement and support. We also wish to thank Devin Kinyon, Associate Clinical Professor of Law, Santa Clara University Law School, for his significant contribution to the manuscript. Thanks is also extended to Kerry Hames Erickson for her contribution in the area of workers compensation and to Brian Hames for sharing his knowledge and experience in the area of restorative justice.

Special thanks to the reviewers of this text:

Heidi Fowler, Ivy Tech Community College  
Karen McGuffee, University of Tennessee at Chattanooga  
Paul Palmier, Oakland University  
David Welch, Indiana University, Bloomington  
P. David Palmiere, Oakland University  
Gail Truitt, Governors State University  
Kevin Beaver, Florida State University  
Richard Hansen, Indiana University, Bloomington

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# chapter **one**

## Introduction to Law



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### CASE FILE

#### CENTERVILLE NEWS: MARCH 10

*The following news stories recently appeared in the Centerville newspaper:*

*Emily Ross was seriously injured in an automobile accident when she was hit by an uninsured drunk driver who ran a stop sign. Emily's attorney sued Bar None, a restaurant and bar, claiming that the business served the driver an excessive amount of alcohol, knowing he would be driving home. Bar None denies all liability.*

*Brandon Delgado recently applied for a job with the town of Centerville. As part of the application process the town requires him to provide the password for his Facebook page. He thinks this is a violation of his privacy.*

*The Centerville city council received numerous complaints from parents about their children purchasing and drinking high "energy" drinks. Parents believe that these drinks cause extreme behavior in their children and they have petitioned the council to ban the sale of these drinks to minors. The city council is deciding whether to do this.*

---

### CHAPTER OBJECTIVES

When you complete this chapter you should be able to

- Define the term *law*.
- List some of the historical origins of law.
- Explain the basic concepts of a civil law legal system.
- Explain the basic concepts of a common law legal system.
- List and describe three major philosophical theories of law.
- List three important categories of law.
- Explain the purpose of substantive laws.
- Explain the purpose of procedural laws.
- Provide examples of substantive criminal laws and substantive civil laws.
- Compare and contrast procedures in a criminal case with procedures in a civil case.

**1-1 Introduction****1-2 What Law Is**

Historical Origins  
Philosophical Theories

**1-3 Categories of Law**

Source of Law  
Substantive and Procedural Laws  
Criminal and Civil Laws  
*Substantive Criminal and Civil Laws*  
*Criminal and Civil Procedures*  
*Court Procedures*

**Chapter Case**

*Roper v. Simmons*,  
543 U.S. 551 (2005)

**Case Summaries**

*Exxon Shipping Co. v. Baker*,  
554 U.S. 471 (2008)

*Maples v. Thomas*,  
565 U.S. 266 (2012)

*Marshall v. Marshall*,  
547 U.S. 293 (2006)

**law**

A set of rules and procedures usually intended to regulate some aspect of society.

**SEC. 1-1 INTRODUCTION**

Whether based on fact or fiction, legal stories capture the interest of the American public. Daily news reports in all media generally include some stories involving our legal system. Sometimes the events involve serious issues such as the rights of those who suffer serious injuries due to the actions of other parties. Sometimes the stories involve societal concerns raised by changes in lifestyles. Often, the stories involve legal difficulties of celebrities who get involved in everything from murder to substance abuse. The entertainment media also focus heavily on legal stories. Popular fiction, television series, and movies are often based on law-related events.

Clearly, the law is a fascinating topic. More than that, however, the law affects all aspects of our lives, from the selection of our president to the way we drive our automobiles. At times, the law is simple and straightforward. At other times, it can be complex and involved, requiring experts to explain and interpret it.

Whether your goal is to work in the law or whether you are just interested in law, you should know certain basic concepts about the U.S. legal system. This text introduces you to some of the basics of the U.S. legal system. You will not learn everything there is to learn about the law from this text; that is an impossible task. However, as you go through the various chapters, you will see how the legal system is organized and how it functions. You will read about some important areas of law and see how civil and criminal legal disputes are handled both in and out of court.

**SEC. 1-2 WHAT LAW IS**

Imagine what your community would be like without traffic laws. People could drive on either side of the road, signs could be ignored, and speed would never be an issue. The result, of course, would be chaos and harm. Laws, such as traffic laws, are created to assure harmony and avoid chaos among people who live together. In a general sense, **law** consists of a set of rules and procedures usually intended to regulate some aspect of society. Today, we have laws that regulate many aspects of our lives. The examples in the Case File at the beginning of this chapter provide three examples of situations controlled by laws, but there are many others.

Most often, we use the term *law* to refer to rules created and enforced by federal, state, and local governments. However, other societal organizations and institutions also create rules and regulations and use the term *law* to refer to them. For example, laws, sometimes called canon law, regulate many religious organizations. Corporations and many business, social, and charitable organizations often operate in accordance with rules or regulations, sometimes known as bylaws.

Although all societies need laws, the types of laws adopted by any society are often different. Because values, customs, and even religious beliefs influence laws and legal systems, differences exist from country to country. Even within the United States, different laws are found in different states. From the earliest of times, all civilizations had laws. Also from the earliest of times law was a topic widely explored by historians, philosophers, and legal scholars.

## Historical Origins

The origins and development of laws and legal systems are for the most part based on the actions of government and religion. In many societies government and religion are largely intertwined and their laws reflect this. Because of differences in beliefs and values, laws vary widely from one society to another. However, historically, two major types of legal systems developed, **civil law** systems and **common law** systems. The term *civil law* as used to describe a legal system refers to a system based primarily on written **constitutions** and written laws or **codes**. In such legal systems, a ruler or legislative body creates an extensive set of rules or regulations to govern. The role of courts in such systems is limited. Common law systems, on the other hand, are based on **precedent** or case law.

Civil law jurisdictions, the more common in the world today, date back thousands of years. One of the most famous examples was the Babylonian Empire, a society ruled by a law known as the Code of Hammurabi. The Code was named after the ruler of the time and dates back to approximately 1760 B.C. Like our current laws, this Code contained rules that governed different aspects of society, including criminal laws, domestic relations, and contract laws. For example, if a man stole goods or received stolen goods he was put to death. If a man and woman married, and lived together, they became jointly responsible for debts. And if a builder built a house for another person, that person was obligated to pay. These laws reflected values of the times, but the similarities to many of our laws can still be seen in this ancient Code.

Other examples of civil law legal systems include ancient systems in China, India, and the Roman Empire. More recently, in the 19th century, the Napoleonic Code became the basis of a civil law legal system in France. The civil law legal system continues today in many parts of the world.

Common law systems are those based on the concept of precedent or *stare decisis*. In this type of system, laws originate from decisions of courts rather than legislative bodies. Originally decisions were based on tradition and custom, but eventually decisions were based on precedent. Precedent requires courts to follow decisions of earlier courts. Common law originated with medieval England and is found in many countries once occupied by Great Britain. Since the United States was originally an English colony, it is not surprising that in many ways the legal system in the United States follows common-law principles. The United States has a written Constitution and written codes; however, these are subject to interpretation by the courts and these decisions often become precedent.

## Philosophical Theories

When the president nominates an individual to a high court position, Congress always inquires into the nominee's "judicial philosophy." In part, the question relates to how the prospective justice will decide and apply the law, in particular the Constitution. In today's political context, the question also focuses on an individual's beliefs about the role of the courts in deciding legal questions. In the broader sense, however, the philosophy of law, also known as **jurisprudence**, deals with a multitude of questions related to the origins of law, the meaning of law, and the relationship of law and morality.

### **civil law**

1. A legal system based on written laws or codes. 2. A type of law that controls private disputes between parties.

### **common law**

A body of law developed through the courts.

### **constitution**

A document whose primary purpose is to establish a government and define its powers.

### **code**

A topical organization of statutes.

### **precedent**

The example set by the decision of an earlier court for similar cases or similar legal questions that arise in later cases.

### **stare decisis**

"It stands decided"; another term for *precedent*.

### **jurisprudence**

Study of philosophy of law.