Contents

About the Authors Preface	xvii xix
PART I GAINING FAMILIARITY WITH BASIC LEGAL CONCEPTS	1
CHAPTER 1 The Expanding Legal Professions	3
The Litigious Society	3
Law-Related Careers	6
Teachers	6
Court Reporters	8
The Law Enforcement Officer and Public Administrator	8
The Paralegal, Legal Assistant, and Law Office Manager	10
Lawyers	13
Judges	17
Administrative Law Judges, Arbitrators, and Mediators	19
Ethical Standards in Law-Related Professions	20
CHAPTER 2	
The Origin and Basic Structure of Our Federal Legal System	31
Common Law and Equity	31
Common Law	32
Equity	35
Modern Common Law Sources	37
Natural Law and Positive Law	39
Modern Statutory Law Sources	40
Code Law and Common Law States	41
The Basic Structure of Our Federal System	42
Federalism and Separations of Powers	42
The Supremacy Clause and Judicial Review	48

The Sources of Law and Conflict of Laws	50
Conflict of Laws	50
Individual Rights and Due Process of Law	51
The National Bill of Rights	52
The Due Process Clauses	53
Substantive Law and Procedural Law	56
Civil Legal Actions	59
Criminal Legal Actions	59
Administrative Legal Actions	59
CHAPTER 3	
Court Jurisdiction	65
The Jurisdiction and Hierarchy of Federal Courts	65
Federal Question Jurisdiction	66
Diversity of Citizenship and Pendent Jurisdiction	67
Access to the Federal Courts	69
The Federal Hierarchy of Courts	70
The Jurisdiction and Hierarchy of State Courts	78
State Trial Courts	79
State Appellate Courts	79
CHAPTER 4	
Introduction to Legal Research and Writing	87
Legal Reasoning and Reading Case Law	87
Different Forms of Legal Reasoning	88
The Case Method of Legal Training	90
What Is a Case in Law?	90
How to Analyze a Case in Law	90
Basic Elements of a Case in Law	92
Legal Research Sources	94
Mandatory and Persuasive Legal Authority	96
Secondary Sources: What Are They and Why Use Them?	96
Determining What Law Applies	100
Types of Research	101
Statutory Law Sources	101
Researching Case Law	104
Citation for a Case	104
Finding Tools	106
Using LEXIS and Westlaw	107
Online Legal Research	109

PART II UNDERSTANDING SUBSTANTIVE CIVIL LAW	117
CHAPTER 5 A Brief Introduction to Property and Contract Law	110
- ,	119 119
Basic Property Law	119
Personal Property Rights	120
Legal Actions to Recover Personal Property	123
Real Property Buyers' and Sellers' Rights	124
Intellectual Property Rights	123
Patents	127
Copyrights and Authors' Rights	129
Basic Contract Law	129
Enforceable Contracts	130
The Uniform Electronic Transaction Act	133
CHAPTER 6	
Introduction to Tort Law	141
Basic Types of Torts	142
General Types of Torts	143
Intentional Torts Against a Person	143
Assault and Battery	143
False Imprisonment	144
Intentional Infliction of Emotional Distress	146
Other Intentional Torts Against a Person	147
Intentional Torts Against Property	148
Defenses to Intentional Torts	148
Negligence	150
Breach of Duty	151
Vicarious Liability and Deep Pockets	152
Good Samaritan Statutes	153
Causation	153
Legal or Proximate Cause	154
Damages	155
Comparative Negligence and Contributory Negligence	156
Tort of Negligent Hiring or Negligent Retention	159
Malpractice	160
Defamation and Invasion of Privacy	161
Invasion of Privacy	163

x Contents

Products Liability	165
Tort Reform	167
CHAPTER 7	
Introduction to Family Law	175
Marriage	176
State Marriage Laws	176
Forbidden Marriages	178
Same-Sex Marriage	179
Premarital Agreements	185
Divorce	185
Alimony	189
Child Custody	191
Child Support	200
Adoption	201
CHAPTER 8	
Introduction to Employment Law	207
The Employment-at-Will Doctrine	207
Public Employment	209
Public Policy Exceptions	210
Employment Discrimination	213
Title VII of the Civil Rights Act of 1964	214
Disparate Impact Claims	217
Administrative Requirements	219
Section 1981 of the United States Code	220
Sex Discrimination and Harassment	221
Theories of Discrimination	224
Mixed Motive Cases	225
Retaliation	226
Age Discrimination	227
Disability Discrimination	228
Privacy Rights of Employees	230
Polygraph Testing	230
CHAPTER 9	
Introduction to Equal Protection Law	239
A Matter of Race	239
Marriage and Equal Protection	245

Equal Protection Terminology	248
Affirmative Action	249
Gender Discrimination	250
Equal Protection in the Criminal Justice System	254
Peremptory Challenges	255
Crack Cocaine and Sentencing Disparities	260
Selective Prosecution	261
Race of the Victim Discrimination	263
PART III UNDERSTANDING CIVIL LAW PROCEDURE	269
CHAPTER 10	
Initiating Civil Legal Process	271
Finding a Lawyer	272
Types of Legal Action	275
Money Damages	275
Preliminary Investigation	275
A Contractual Agreement	279
Legal Research	281
Federal Jurisdiction	281
State Jurisdiction	282
Choice of Law and Court	282
Comparing Affirmative Defense Elements	283
Statute of Limitations	284
Standing to Sue	284
Damages Estimated	285
Choice of Federal District Court	285
Request to Settle Out of Court	285
CHAPTER 11 Pretrial Process in Civil Cases	201
	291
Defense Considerations	291
The Pleadings	292
The Complaint	294
Court Filing and Service of Process	297
Defendant's Response	300
The Answer	302

Discovery	303
Interrogatories	306
Depositions	308
Production of Documents	310
Pretrial Conferences	310
Attorneys' Conference	313
Judge's Conference	314
CHAPTER 12	
Civil Trial: Argument and Adjudication	319
The Jury Selection Process	320
Voir Dire Challenges	324
Challenges for Cause	324
Peremptory Challenges	324
Trial Arguments	325
Plaintiff's Opening Statement	326
Defense Opening Statement	328
Examination of Witnesses	329
Rules of Evidence and Objections	329
Leading Questions	330
Hearsay and Best Evidence Rules	330
The Plaintiff's Case in Chief	331
The Defendant's Case in Chief	340
Closing Arguments	349
Plaintiff's Closing Arguments	349
Defendant's Closing Arguments	350
Judge's Charge to the Jury	351
Verdicts	353
The Verdict and Judgment of the Court	355
CHAPTER 13	
Evaluation of the Civil Process	359
The Appeals Process	359
The Right of Appeal	360
Appeals Court Actions	361
Ability to Appeal	361
The Appellate Briefs	362
Appellate Court Functions	364
Oral Arguments	364

Modifications by States to Strict Liability	365
Ending Civil Legal Actions	366
Problems of Civil Litigation	366
The Caseload Problem	367
Alternative Dispute Resolution	368
Court-Annexed Arbitration	368
The Liability Problem	373
Tort Reform	374
Exceptions to Strict Liability	374
PART IV UNDERSTANDING CRIMINAL LEGAL PROCEDURES	381
CHAPTER 44	
Introduction to Criminal Legal Process	383
Initial Investigation and Arrest	384
Initial Arrest	384
Jail and Booking Procedure	385
Custodial Interrogation	386
Further Investigation	386
Basic Criminal Concepts	387
Crimes	387
Development of Various Types of Crime	388
Treason, Felonies, and Misdemeanors	388
Felonies and Misdemeanors	389
Criminal Due Process	390
The Fourteenth Amendment	390
What Has Not Been Incorporated?	391
The Exclusionary Rule	393
The Right to Counsel	395
Police Procedure	396
The Pretrial Process	397
Probable Cause	398
Filing a Criminal Complaint	399
Initial Appearance	400
Defense Counsel	407
Preliminary Hearing	408

CHAPTER 15	
The Pretrial Process in Criminal Cases	417
The Prosecutor	417
Nolle Prosequi	418
Plea Bargaining	418
Initial Screening and Case Assignment	418
Prosecutorial Investigation	419
The Grand Jury Function	420
The Alternate Information Process	421
Grand Jury Procedure Illustrated	422
Grand Jury Deliberation	424
The Right to a Speedy Trial	424
Federal Speedy Trial Act	426
State Speedy Trial Acts	426
Defense Considerations	426
Sentencing Alternatives	427
A Modern Sentencing Grid	427
Plea Bargaining Illustrated	428
The Agreement	430
The Confession	431
Arrest of the Second Suspect	432
The Arraignment	434
Plea Alternatives	434
Plea Day Illustrated	435
Consolidation of Actions	437
Defense Considerations	438
Prosecutor's Decision	439
Right to Counsel at Lineup Identification	440
The Lineup Procedure	440
CHAPTER 16	
The Trial Process in Criminal Cases	447
The Death Penalty	447
Constitutional Status of the Death Penalty	447
A Consolidated Grand Jury Indictment	449
The Grand Jury Indictment	451
The Arraignment and Pretrial	454

Criminal Discovery Process	456
Pretrial Planning (for the Prosecution)	457
Pretrial Planning (for Defendant Williams)	458
Pretrial Planning (for Defendant Jackson)	458
Pretrial Judge's Conference	459
The Trial: Jury Selection and Opening Statements	460
Criminal Voir Dire	461
Judge's Charge at Jury Selection	463
Peremptory Challenge Issues	465
The Trial: Prosecution's Case in Chief	466
Opening Statements for the Prosecution	468
Opening Statements for Jesse Williams	469
Opening Statements for Robert Jackson	469
Prosecution's Case in Chief	470
CHAPTER 17	
The Jury's Verdict, Sentencing, and Appeal	479
Trial: Defense Case in Chief	479
Closing Arguments	484
Closing Arguments for Jesse Williams	485
Closing Arguments for Robert Jackson	485
Trial: Judge's Instructions to the Jury	486
Jury Deliberations and Verdict	490
Trial: Verdict, Judgment, and Sentencing	491
Sentencing	491
Victim's Rights	492
Victim Impact Statements	492
New Trial	493
The Appeals Process	494
Constitutional Issues	500
Prisoner's Rights	503
PART V	
UNDERSTANDING ADMINISTRATIVE DUE PROCESS	513
CHAPTER 18 Administrative Due Process	515
General Administrative Law Concepts	516
Federal Regulation	516
State Regulation	517
ouic reguiitori	311

xvi Contents

Regulatory Agencies	517
Rule-making Functions	518
The Investigative Function	521
The Adjudicative Function	521
Judicial Oversight	522
Quasi-judicial Procedure	522
Fundamental Due Process Illustrated	525
Administrative Law Judges	525
The OSHA Procedure Illustrated	529
Judicial Review	530
Other Specialized Courts	531
U.S. Claims Courts	532
U.S. Bankruptcy Court	534
U.S. Tax Court	534
The Ombudsman	536
Appendices A: The Constitution of the United States of America	543
B: Illustrative Cases in Law	555
C: Witness Statements	575
Glossary	585
Index	599