

Contents

Chapter 1

The Constitution	1
A. Origins of the U.S. Constitution	1
1.1 The First Constitution	1
1.2 The Constitution of the United States	1
1.3 Comparison with the European Union	2
1.4 The Federalist Papers	2
1.5 Alexis de Tocqueville's View of U.S. Lawyers	2
1.6 The Civil War (1861–1865)	3
B. The Three Pillars of American Law	3
1.7 Introduction	3
1.8 Federalism	4
1.9 Separation of Powers (Checks and Balances)	4
1.10 History of Separation of Powers	5
1.11 The Bill of Rights	5
C. The United States Government	5
1.12 Structure of the Government	5
1.13 Separation of Powers: The Executive Branch	6
1.14 Separation of Powers: The Legislative Branch	7
1.15 Separation of Powers: The Judicial Branch	8
D. State Governments	8
1.16 Introduction	8
1.17 The Division of Power between States and the Federal Government.....	8
1.18 Concurrent Jurisdiction of Federal and State Courts	9
1.19 The Commerce Clause	9
1.20 The Necessary and Proper Clause	10
1.21 New States	11
E. The Odd Clauses of the Constitution	11
1.22 Introduction	11
1.23 The Incompatibility Clause	11
1.24 The Weights and Measures Clause	12
1.25 The Original Jurisdiction Clause	12

Contents

1.26 Letters of Marque and Reprisal	13
1.27 The Title of Nobility Clauses	14
1.28 The Bill of Attainder and <i>ex post facto</i> Clauses	15
Chapter 2	
Precedent and the Common Law	17
2.1 Introduction	17
2.2 Blackstone's Commentaries	17
2.3 <i>Stare decisis</i>	18
2.4 Binding Precedent	18
2.5 Persuasive Authority	19
2.6 Cases of "First Impression"	19
2.7 Precedent in Federal Courts	19
2.8 Precedents in Real Estate, Torts and Contracts	20
2.9 How to Find Precedent	23
2.10 How to be Sure the Precedent is Good: "Shephardizing a Case"	23
Chapter 3	
American and Civil Law Courts	25
3.1 Introduction	25
3.2 Courts of General Jurisdiction	25
3.3 Judges	26
3.4 The Adversarial and Inquisitorial System	28
3.5 Single Event Trials	29
3.6 Plea Bargains	29
3.7 Bench Trials	30
3.8 Judges' Use of Codes and Case Law	30
3.9 The Trial Transcript	31
3.10 The Jury's Use of the Transcript	32
3.11 Jury Nullification	32
3.12 The Presumption of Innocence	33
3.13 Proof "Beyond a Reasonable Doubt"	33
Chapter 4	
Criminal Trials	35
A. State Crimes and Federal Crimes	35
4.1 Introduction	35
4.2 Extradition	35
4.3 Double Jeopardy	36
4.4 Preemption	36
4.5 Constitutional Questions	36
4.6 The Bill of Rights	37
B. Pre-trial Hearings	37
4.7 Introduction	37
4.8 Arrest	38
4.9 At the Police Station	40

4.10 The Initial Hearing	40
4.11 The Preliminary Hearing	41
4.12 The Arraignment	42
4.13 Motion to Suppress Evidence	43
C. The Trial	43
4.14 Introduction	43
4.15 The Jury	44
4.16 Voir Dire	44
4.17 The Courtroom	45
4.18 The Opening Statements	46
4.19 Bench Trial or Jury Trial	46
D. Evidence	47
4.20 Introduction	47
4.21 Direct Examination and Cross-Examination	47
4.22 Example of Direct and Cross-Examination	48
4.23 The Insanity Defense	51
4.24 Closing Arguments	51
4.25 The Charge to the Jury	52
4.26 The Verdict	52
4.27 Appeals	53
Chapter 5 Civil Trials	55
A. Introduction	55
5.1 Jury	55
5.2 Fees	55
5.3 Fee Tables	56
5.4 Legal Expense Insurance	56
B. Alternative Dispute Resolution	56
5.5 Mediation	56
5.6 Arbitration	57
5.7 The Federal Arbitration Act	58
5.8 Consumer Arbitration	58
C. Pre-trial Procedures	58
5.9 Introduction	58
5.10 The Complaint	59
5.11 The Answer	60
5.12 Discovery	60
5.13 Required Disclosures	61
5.14 Interrogatories	61
5.15 Oral Depositions	62
5.16 Documents	63
5.17 Electronic Discovery	63
5.18 Motion for Summary Judgment	63
5.19 Pre-trial Conference	64
5.20 Settlement	64

Contents

E. The Trial and Appeal	64
5.21 In General	64
5.22 Punitive Damages	65
5.23 Class Actions	67
F. Types of Civil Law	68
5.24 Introduction	68
5.25 Contracts	68
5.26 Torts	71
5.27 Real Property	72

Chapter 6
From Student to Lawyer 73

6.1 Introduction	73
6.2 The Curriculum	73
6.3 The Harvard System of Law Study	74
6.4 Examinations	79
6.5 Graduation	81
6.6 Employment	81
6.7 Foreign Law Students	86

Chapter 7
International Law: Public and Private 89

A. Public International Law	89
7.1 Introduction	89
7.2 The U.S. and the International Court of Justice	89
7.3 Congressional Power	90
7.4 Presidential Power	90
7.5 Judicial Power	90
7.6 State Powers	91
7.7 Sources of International Law	91
7.8 International Treaties	92
7.9 Extraterritoriality of U.S. Law	92
7.10 Sovereign Immunity	93

B. International Business Transactions	94
7.11 Introduction	94
7.12 Forms of Doing Business	94
7.13 Agencies	94
7.14 Distributorships	95
7.15 Franchises	95
7.16 Licenses	96
7.17 Basic Contract Clauses	96

C. Trade Regulation	100
7.18 Introduction	100
7.19 Tariffs	100
7.20 Nontariff Trade Barriers	101
7.21 World Trade Organization Disputes	102
7.22 EU Regulation of U.S. Business	104

Appendices	107
Appendix A	
Constitution of the United States	107
Appendix B	
Part 165 – Regulated Navigation Areas and Limited Access Areas	123
Appendix C	
Glossary	125
Appendix D	
The Lashinsky Case	133
Appendix E	
Detailed Student Brief of the Lashinsky Case	145
Appendix F	
Films that Illustrate the American Legal System	149
Appendix G	
Suggestions for Further Reading	151