

Preface

It is not unusual for a paralegal program to begin with an overview of law, the profession, and the role of the paralegal. Many introductory courses either present an overwhelming amount of information, more suitable for a law school course, or, at the other end of the spectrum, provide minimal course material, thus leaving a distorted view of the profession and the valuable contributions of the paralegal within the office practice and legal system. The student today is more knowledgeable about law and the diversity of positions within the system as well as the types of law. Regardless of how the student developed the interest in law, there are countless details and types of information needed to function effectively in the role of the professional paralegal. While the student today has more experience and awareness of the legal system, whether through personal experience, observing family situations in which the courts intervened, reading the newspaper, or watching high-profile trials on television, a great deal more is needed to function effectively as a paralegal. This textbook fills that gap and provides much of the necessary information.

Regardless of the level of heightened awareness of law, what actually happens when the lawyers return to their offices and the judges leave the bench remains a mystery for many, and how the system actually operates is equally mysterious. The information the beginning paralegal student may have about law lacks detailed background and context. Likewise, the student must gain understanding of how to read the law in the books and apply it to real-life experiences. The author fills the role of curious citizen, paralegal, and attorney, as well as instructor and teacher, to provide an approach that differs from many texts in a number of ways.

The first significant difference is that the history of each aspect of law is briefly covered. This lends context to the topic and helps illustrate how the various sources of law interact both with each other on a theoretical basis as well as with the procedure. The Constitution, the source of all law, whether state or federal, including procedure as well as theory, is presented and explored. The student builds from that foundation as the various areas of law are presented. The language of law is included to ensure the student called upon to explain the concepts has the proper vocabulary. Using appropriate terms communicates understanding of the theory and ability to apply the concepts whether for the supervising attorney or the client. Research is included to ensure the paralegal not only gains the skills to find the law but also how to evaluate what is read and apply the theory to the facts of the legal question or issue.

Another significant feature of this text is the variety of means to learn and apply the law, including research, writing, and critical analysis in both individual and collaborative projects. The skills helpful in developing competence in each of these functions also are presented and the student is then given opportunities to apply and interrelate the skills and theories. The paralegal student learns through collaboration with peers, instructor facilitation and guidance, personal effort, and continuing personal evaluation of successful understanding and professional growth. While the student is encouraged to use a wide variety of resources, including electronic research tools, the traditional methods of research and skill building also are presented.

The text helps the student learn about research by using both traditional and electronic research assignments. Doing traditional research is the optimal way to gain appreciation of the depth, scope, and volume of materials and interpretations available throughout the developmental periods of our legal system before electronic means were available. Electronic research means are extremely useful after developing a fundamental understanding of the basics. It is particularly useful to conduct the traditional research to gain appreciation of the tools and resources used when the law was in its infancy in this country as well as today.

The paralegal is often asked to complete projects involving legal analysis and critical-thinking skills. The assignments in the textbook focus on developing those skills and challenging the

student to look at analysis of case opinions, formulate legal positions, and frame issues. The student needs practical guidance and practice in the fundamentals of each of these skills. The collaboration and debates on issues throughout the text provide an opportunity to think like a legal scholar and apply the law creatively to facts to arrive at a legal position. The cases the student reads, researches, and analyzes involve all of the substantive legal issues as well as the spectrum of time. This allows the student to develop appreciation for the various interpretations and applications of legal principles over time.

Lastly, the student has an opportunity to review and evaluate his or her development through the portfolio assignments suggested throughout the course. The assignments help the student in skill building, analysis, and critical thinking, and, at the same time, the student builds a customized reference source to take into active practice. This practical application provides a custom-made tool for the paralegal entering practice. The style reflects the individual student and the most useful format for retaining and organizing materials in both the educational and professional setting. This is another example of the benefit of collaborative learning in the course work. As the student is exposed to the approach of others, aspects of the law will become illuminated and open for discussion and learning that might otherwise not come to the fore in a more traditional read, think, memorize, and repeat back environment. The vibrancy of law is part of the pleasure and challenge that you have chosen. The tools gained, pedagogy applied, and analysis developed will all be invaluable as you enter the world of the legal system. You should enter more as a veteran thinker than a raw recruit, regardless of your learning and working style.

Acknowledgments

This project could not have been finished without the dedication, vision, and assistance of the tremendously capable professionals who contributed their professional expertise and valuable time to reading, commenting on, and guiding the information presentation. Each person added something of value, including his or her support throughout the work in progress. Each contributed unique insight into his or her area of expertise and gave much toward enhancing my vision.

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Connie Farrell Scuderi

A Guided Tour

Scuderi's *Introduction to Law & Paralegal Studies* teaches the basic skills paralegals will need when working in the field using a practical, uncomplicated approach. The material is directly applicable, providing an accurate sense of what paralegals do. The text provides basic coverage of the topics most important for a beginning paralegal student.

The pedagogy of the book applies three goals:

Learning outcomes.

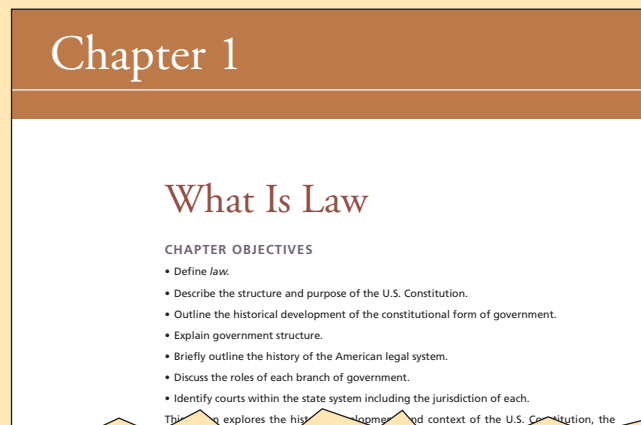
- Critical thinking
- Vocabulary builders
- Skill development
- Issues analysis
- Writing practices

Relevance of topics without sacrificing theory.

- Ethical challenges
- Current law practices
- Technology application

Practical application.

- Real-world exercises
- Portfolio creation
- Team exercises



Chapter Objectives introduce the concepts students should understand after reading each chapter as well as provide brief summaries describing the material to be covered.

CYBER TRIP

Locate a copy or excerpts from the Napoleonic Code and Magna Carta. Review each, paying particular attention to form and theory. Locate sections in each related to punishment and crimes. Compare the provisions of each in general terms. Finally, prepare a brief description of the provisions in each. Use your written analysis as the basis for a classroom discussion.

System Power Structure

FIGURE 1.1 The Form of the Law

the military and the conquering of other nations. This theory ultimately falters, but, nonetheless, *power* is an important component of any government and law. However, power can be defined in a variety of ways. In our system, it comes from individual rights and freedoms, providing exercise of those rights does not trample on those of others. *Structure* is the next important component of effective law and government. Those governed must know where and how to find out about the rules or requirements, and must know the consequences of disturbing the social order. Structure functions best when it is consistent with the needs of both society and the government entity.

Once the structure and power are in place, the third element, *system*, emerges. The system operation derives from identifiable aspects of the structure with power clearly identified and distributed consistent with the needs and wishes of the society served. The nature and definition of the power, structure, and system are what defines any law and society. Figure 1.1 shows how the three purposes and functions operate in a circular, interrelated manner. Each leads to the other and all law flows from this interaction. If one of the three elements is eliminated, not only is there a break in the chain, as it were, but more important, you no longer have a functional legal system.

Cyber Trip offers students a research exercise on using the Internet to study important law-related documents and resources.

RESEARCH THIS!

Locate Am. Jur. 2d and Cor. Jur. 2d. Find the sections regarding "bystander liability," "medical malpractice," "breach of contract," or "counteroffer." Review the same sections in each encyclopedia. Compare the treatment of any one topic in each volume. Provide a summary and explanation of which source you found more adaptable to your personal style and why. Comment on the strengths of each.

Research This! engages students to research cases in their jurisdiction that answer a hypothetical scenario, reinforcing the critical skills of independent research.

SECONDARY SOURCES OF LAW

American Jurisprudence (Am. Jur. and Am. Jur. 2d) Legal encyclopedias organized by topics and subheadings presenting law and scholarly discussion from multiple jurisdictions. Secondary research sources include legal encyclopedias, textbooks, restatements of law, publications from professional legal organizations such as state bar associations, professional journals, and periodicals, to name a few sources. Secondary sources are never considered controlling law, but, nonetheless, they are often helpful in a research project. Legal encyclopedias such as *American Jurisprudence (Am. Jur., Am. Jur. 2d)* and *Corpus Juris Secundum (Cor. Jur. 2d)* are invaluable sources of background information and scholarly analysis of legal issues. Both are organized by topics, subheadings and present law and

Chapter Summary provides a quick review of the key concepts presented in the chapter.

Summary

This chapter introduced you to legal aspects of contracts. You are familiar with some contract terms and provisions in your everyday life. You have now explored the legal requirements for valid contracts and enforceability at law. Contract formation, types of contracts, and issues of concern when a dispute arises were discussed. You have guidelines for evaluating sufficiency of the promises involved and consideration exchanged. We have looked at circumstances that impair contracts, both at the formation and the performance stages. The lesson included discussion of contracts that must be in writing, including theory and conditions imposed for such contracts. Ethical challenges for the paralegal arise in contract issues as with any other practice specialty, and you had the opportunity to think through one such challenge.

- Key Terms**
- Absolute sale
 - Acceptance
 - Adequacy of consideration
 - Agreement
 - Avoid
 - Avoid the contract
 - Benefit
 - Bilateral contract
 - Bulk sale
 - Good faith dealing
 - Goods
 - Gratuitous promise
 - Identifying the goods
 - Illusory promise
 - Implied acceptance
 - Implied contract
 - Informal contract
 - Insufficient consideration

The specific nature of ownership can take a number of forms. The simplest form of real estate ownership is **fee simple absolute**. With this ownership form, the owner of record alone holds the absolute right to use, to possess, and to dispose or divide. Owner's rights in their entirety are superior to those any other individual may assert or request. No additional permissions or approvals are required when a fee simple owner decides to sell or lease the real property.

Under some circumstances, conditions of ownership in real property are contained in the deed. When conditions are imposed, ownership becomes **fee simple defeasible**. If certain conditions occur, the original ownership rights may be transferred or extinguished. Under this form, the original owner retains some interest despite the conveyance to the new owner of record. If the conditions of transfer fail to occur, then the absolute right to ownership **reverts**, or transfers back, to the original owner.

Example:
Olive is the owner of record of the Sparkly Spritzer Farm. Business has been bad of late, so, to get some relief from the obligation to maintain the premises, Olive conveys (transfers) the property use rights to her nephew, Sassy. The conveyance requires that Sassy operate the business continuously and donate all proceeds from visitor contributions to the Oscar and Moe Home for Aged Sailors. Sassy revitalizes the premises and business is booming once again. Sassy decides to donate only one-half of the annual proceeds from visitors' contributions. **Question:** What type of ownership does Sassy have in the property? **Answer:** Fee simple defeasible. Failure to honor the conditions of the transfer causes the ownership rights to revert to the original owner, in this case, Olive, or her heirs.

Real property may have more than one **grantee**, or person(s) to whom an interest of record is transferred on the deed. When this occurs, the ownership is **concurrent**, meaning that more than one individual shares the rights of ownership at the same time. When concurrent ownership occurs, it can take the form of either **joint tenancy**, tenancy in common, tenancy by the entirety, or **community property**. The deed expressly sets forth the nature of the co-ownership and serves notice to all of the status of the ownership, use, and right to the property. As such, when preparing legal documents, including the deed related to real estate transactions, checked carefully at the beginning of the

fee simple absolute
A property interest in which the owner has full and exclusive use and enjoyment of the entire property.

fee simple defeasible
An interest in land in which the owner has all the benefits of a fee simple estate, except that property is taken away if a certain event or condition occurs.

revert (reversion)
Right to receive back property in the event of the happening of a certain condition.

grantee
The person receiving the property.

concurrent ownership
More than one individual shares the rights of ownership.

community property
All property acquired during marriage is owned equally by both spouses.

Key Terms used throughout the chapters are defined in the margin and provided as a list at the end of each chapter. A common set of definitions is used consistently across the McGraw-Hill paralegal titles.

Discussion Questions ask students to apply critical thinking skills to the concepts learned in each chapter, focusing on more specific legal topics and promoting dialogue among students.

Discussion Questions

1. Locate the Federal Rules of Civil Procedure and the state rules for your home state. Look carefully at the sections related to
 - a. Service of process.
 - b. Venue.
 - c. Jurisdiction.
 - d. Time for filing a responsive pleading after receipt of the complaint.
 - e. Certificate of service.Compare each and comment on the similarities and any differences. Be sure to look at the forms as well as the substance. In the jurisdictional response, be sure to check the

7. Select one of the cases from the text including Discussion Questions and prepare a case brief in proper format. Retain your brief in your PRM for easy future reference and use.



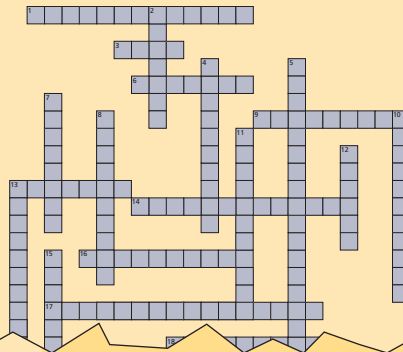
Portfolio Assignment

Research your home state statutes related to damages in civil tort actions. Also look for exceptions to the rule, as it were, and circumstances in which exceptions may be entertained by the courts. Now review the exceptions provisions in the Federal Tort Claims Act, 28 U.S.C. § 2680. After reviewing the exceptions, compare the exceptions to any cap on damages statutes you have located to determine both similarities and differences. Comment on the provisions of both. If you agree with the statutes, provide comment on why. If you do not agree with those provisions, comment on why not as well as the alternative that you believe would be more equitable. Retain your completed document and any materials you find that may be helpful for future use in your PRM.

Portfolio Assignments are designed to use the skills mastered in the chapter and convert them into a practical legal document that can be used as samples of work during interviews.

Crossword puzzles at the end of each chapter utilize the key terms and definitions to help students become more familiar using their legal vocabulary.

Vocabulary Builders



Supplements

Instructor's Resource CD-ROM An **Instructor's Resource CD-ROM (IRCD)** will be available for instructors. This CD provides a number of instructional tools, including PowerPoint presentations for each chapter in the text, an instructor's manual, and an electronic test bank. The instructor's manual assists with the creation and implementation of the course by supplying lecture notes, answers to all exercises, page references, additional discussion questions and class activities, a key to using the PowerPoint presentations, detailed lesson plans, instructor support features, and grading rubrics for assignments. A unique feature, an instructor matrix, also is included that links learning objectives with activities, grading rubrics, and classroom equipment needs. The activities consist of individual and group exercises, research projects, and scenarios with forms to fill out. The electronic test bank will offer a variety of multiple choice, fill-in-the-blank, true/false, and essay questions, with varying levels of difficulty and page references.



Online Learning Center The **Online Learning Center (OLC)** is a Web site that follows the text chapter-by-chapter. OLC content is ancillary and supplementary and is germane to the textbook—as students read the book, they can go online to review material or link to relevant Web sites. Students and instructors can access the Web sites for each of the McGraw-Hill paralegal texts from the main page of the Paralegal Super Site. Each OLC has a similar organization. An Information Center features an overview of the text, background on the author, and the Preface and Table of Contents from the book. Instructors can access the instructor's manual and PowerPoint presentations from the IRCD. Students see the Key Terms list from the text as flashcards, as well as additional quizzes and exercises.

The OLC can be delivered multiple ways—professors and students can access the site directly through the textbook Web site, through PageOut, or within a course management system (i.e., WebCT, Blackboard, TopClass, or eCollege).

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