

# Introduction to Law for Paralegals



PARALEGAL SERIES



# Introduction to Law for Paralegals

## A Critical Thinking Approach

### Seventh Edition

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*To our spouses and children  
for their understanding and support*



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# About the Authors

**Katherine A. Currier, J.D.**, served as the Elms College Paralegal and Legal Studies program director for many years. She developed and taught many law-related courses, including Legal Reasoning, Research, and Writing; Introduction to Legal Studies I and II; Law Office Computer Literacy; Law Office Applications; Interviewing, Counseling, and Negotiating; and Law and Literature. In addition to the three texts she has coauthored with Professor Eimermann, Professor Currier has publications in the areas of legal ethics as applied to paralegals and law office computing.

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Prior to teaching at Elms College, Professor Currier taught at Suffolk Law School and Western New England College School of Law. She graduated magna cum laude with her B.A. in Political Science from Carleton College, with her M.A. in Political Philosophy from the University of California, Berkeley, and with her J.D. from Northeastern University Law School.

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In addition to this text, she co-authored the *North Carolina State Bar Paralegal Certification Exam Guide* in 2013 as well as numerous articles and manuscripts. She graduated with Honors in Political Science and Honors in Studies in Religion from the University of Michigan, Ann Arbor. She earned her Master in International Affairs from Columbia University and her J.D. from the University of Michigan Law School.

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# Preface

## NEW TO THIS EDITION

For this seventh edition, we have updated the law, our NetNotes, and our Web Exercises and added new Discussion Questions and Legal Reasoning Exercises. The overall organizational structure of the book remains the same.

Significant changes occurred in Chapter 2, Paralegals in the Legal System (updated information on paralegal organizations, regulation, and Limited License Legal Technicians); Chapter 3 (new discussion of executive orders); Chapter 6, Civil Litigation and Its Alternatives (new practice tips that address preparing pleadings and discovery as well as trial preparation); Chapter 10, Ethics (revisions to the ABA Rules of Professional Conduct, a discussion and comparison of rules of conduct and ethical rules, the addition of notary public law, and a new ethics alert regarding client confidentiality); Chapter 11, Torts (discussion of defamation in the era of digital media and the Communication Decency Act of 1996, contemporary torts in the digital age, and reference to the #MeToo movement); Chapter 13, Property Law (new case excerpts on trademark issues and the constitutionality of the disparagement clause as well as pre-closing and post-closing checklists); Chapter 14, Laws Affecting Business (addition of public benefit corporations and discussion of hostile work environments vis-à-vis customers); Chapter 15, Family Law (new case excerpts and discussion related to same-sex marriage, paternity, and custody disputes as well as the trend to limit marriages for those under 18 years old); Chapter 16, Criminal Law (new case on inducement to commit suicide and enhanced discussion of criminal exemptions for criminal acts by law enforcement and military officers); Chapter 17, Criminal Procedure (recent cases on cell phone privacy and an expanded discussion of grand juries).

## APPROACH

As the title indicates, this book uses a critical thinking approach to introduce its readers to the study of law. Although it was specifically designed to be used as a text in introductory paralegal courses, general prelaw students, criminal justice majors, government majors, pre-business students, and anyone wishing to know more about the law will also find it useful.

Rather than taking an approach that emphasizes the memorization of definitions and rules, *Introduction to Law for Paralegals: A Critical Thinking Approach* focuses on the basic foundations of the law and of the legal reasoning process. In addition to presenting an overview of the legal system, this book teaches the basic skills necessary to read and understand statutes and court cases.

We use this critical thinking approach because we believe it is the best way for students to learn the fundamental principles of law. By learning how to read and interpret statutes, cases, regulations, and court documents, students will be better able to learn how to perform paralegal duties in a variety of specialty areas. Therefore this book emphasizes careful reading for detail, analytical thinking, and the written presentation of arguments.

Another key element of this critical thinking approach is the interactive nature of the book. We have included Hypothetical Cases, Discussion Questions, Legal Reasoning Exercises, Practice Tips, and Ethics Alerts to stimulate students to think about and discuss the underlying assumptions behind various aspects of the law and the ramifications of different approaches to legal problems. We purposely dispersed these items throughout the chapters so that the students would be encouraged to think about them while the material is fresh from recent reading and to be readily available for instructors to use as springboards for classroom discussion. While we did relegate the review questions to the end of each chapter, we have labeled them with the pages they cover so that you can easily assign just part of a chapter with its accompanying review questions.

## ORGANIZATION OF THE BOOK

**Part 1, Paralegals and the American Legal System**, introduces students to the study of law, the organization of the legal system, and the role of paralegals in that system. It covers such topics as sources of the law, the different ways in which law is classified, and various stages involved in litigation. Chapter 2, **Paralegals in the Legal Systems**, includes classification of different types of paralegals and what they do, as well as coverage of the issues of paralegal education, registration, certification, and licensure.

**Part 2, Finding and Analyzing the Law**, presents the basic tools used to find and analyze the law. These chapters are the basis on which we build the critical thinking skills students need for reading and analyzing the law. Chapters 7 and 8 cover finding and interpreting statutory law and court opinions. In Chapter 7, students are also introduced to the IRAC approach to legal analysis. In Chapter 9, the IRAC method is discussed in more depth and students are shown how to report research findings in a legal memorandum.

**Part 3, Legal Ethics and Substantive Law**, leads off with a chapter on legal ethics that covers confidentiality, conflicts of interest, and the unauthorized practice of law. In our experience, if an ethics chapter is at the end of a book and hence covered near the end of the semester when time is necessarily tight, the topic of ethics does not receive the full attention it deserves. Therefore, we have placed it at the beginning of the substantive law chapters. Other chapters in Part 3 introduce students to the basic terms and concepts in the areas of torts, contracts, property and estate, business, family, and criminal law and procedure. In each chapter we blend traditional case law with a discussion of cutting-edge developments to give students a solid foundation in traditional concepts and an appreciation of the dynamic nature of law.

Some instructors may wish to alter the sequence in which they cover the chapters. For example, some may wish to hold coverage of the role of paralegals

(Chapter 2) either until the end of Part 1 or until the end of the course. Similarly, others may wish to cover the materials on legal ethics (Chapter 10) immediately following Chapter 2 rather than waiting until after the students have completed Part 2 on legal analysis. However, students need to develop the skills taught in Part 2 to be able to fully benefit from the discussion questions and legal reasoning exercises included in Part 3.

## Key Features

Among the many features that set this book apart are

- Chapter Objectives
- Beginning of the chapter case hypotheticals
- Discussion Questions integrated into each chapter
- Legal Reasoning Exercises
- Marginal definitions of key terms
- Practice Tips
- Ethics Alerts
- NetNotes
- Review Questions
- Web Exercises
- Appendixes on good writing, legal citation, and legal research

Because this book stresses the critical thinking approach, we illustrate our points with hypothetical situations and with real case decisions that students will understand and to which they can relate. The cases cover such topics as AIDS-infected blood transfusions, flag burning, the insanity defense, search and seizure of automobiles, same-sex marriages, and spousal immunity. We have also included such “classics” as *McBoyle v. United States*, *Palsgraf v. Long Island Railroad*, and *Mapp v. Ohio*. Our philosophy in editing these and other cases was to retain enough of the court’s wording to give students a realistic feel for how judges actually write and to allow students to develop their critical thinking skills. We deleted nonessential information in order to keep each case a reasonable length.

Furthermore, the cases are fully integrated into the text. Many times, these cases are cross-referenced in other cases and used to show how the courts build on precedent and modify it in response to changing societal conditions. Discussion Questions and Legal Reasoning Exercises call on students to carefully analyze these cases and apply them to hypothetical situations.

Ethics Alert boxes are placed throughout the text to draw attention to the ethical issues involved in various aspects of the law. These boxes warn students of actions that would be considered unethical; they also give advice on how to act appropriately. Practice Tip boxes provide checklists and other “words of wisdom” regarding practical paralegal tasks. They are placed appropriately throughout the text. NetNotes provide students with handy links to key Internet resources.

Also of special note are the appendixes. Appendix A contains the full text of the U.S. Constitution. Appendix B provides students with a convenient and

easy-to-understand primer on the basics of grammar, including verb tense, pronoun agreement, placement of modifiers, punctuation, and style. Appendix C is a quick reference for proper legal citation form. Appendix D contains basic information on how to conduct legal research, both in the books and online. Appendix E provides a topical listing of relevant Internet web sites.

An instructor's manual that includes suggested answers for all the Discussion Questions, Review Questions, Legal Reasoning Exercises, and Web Exercises, as well as teaching tips, is available to help teachers make the most effective use of this book. Also available is a PowerPoint presentation to assist with classroom lectures and a test bank.

## RELATIONSHIP TO THE AUTHORS' OTHER TEXTS

Those familiar with *Introduction to Paralegal Studies: A Critical Thinking Approach* and *The Study of Law: A Critical Thinking Approach* will recognize many similarities to this text. All three books emphasize the “critical thinking approach” to understanding the law. All three include excerpts from court cases, discussion questions, NetNotes, practice tips, and references to ethical questions. Topics such as sources of law, classification of the law, structure of the court system, overviews of civil and criminal litigation, overviews of torts, contracts, property, and criminal law, and analysis of statutes and cases are covered in all three books.

The major differences are that this book and *Introduction to Paralegal Studies* are specifically directed at paralegals, while *The Study of Law* is directed at a more general audience. *Introduction to Law for Paralegals* goes into more detail in its coverage of substantive areas of the law, while *Introduction to Paralegal Studies* includes chapters on interviewing, investigations, and computerized case management.

## ACKNOWLEDGMENTS

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We would also like to thank the staff at Wolters Kluwer Law & Business for the excellent support we have received on the books we have done with them. We especially want to thank Betsy Kenny for the key role that she played in handling this seventh edition.

Finally, a special thanks goes to our spouses and children for their continued support and understanding of our professional activities.

Katherine A. Currier  
Thomas E. Eimmermann  
Marisa S. Campbell

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# Acknowledgments

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# PART



# 1

## Paralegals and the American Legal System





# Chapter 1

## Introduction to the Study of Law

*The study of the law qualifies a [wo]man to be useful  
to self, to neighbors, and to the public.  
Unknown*

### CHAPTER OBJECTIVES

After reading this chapter, you should be able to:

- Explain why the study of law involves more than simply memorizing rules.
- Define *stare decisis* and explain why it is important.
- Define *cause of action* and explain why one does not always exist.
- Apply the terms *analogous* and *distinguishable* to a fact pattern.
- Discuss why the study of law can be both challenging and rewarding.

### INTRODUCTION

The purpose of this text is to help you understand the American legal system and how attorneys and paralegals work within it. In the chapters that follow, you will learn about the organization and structure of the legal system, the various forms that law takes, the procedures used in litigating civil and criminal cases,

and the basic legal principles that form the basis of our law in areas such as torts, contracts, property, and criminal law.

In an effort to make difficult legal concepts more understandable, we illustrate these concepts with references to “famous cases” you may have previously heard about and to short factual scenarios created to illustrate how people and businesses are affected by the law. Let’s get started by examining the first two of these hypothetical cases. Then keep them in mind as you read the rest of this chapter and the chapters that follow.

### Case 1: The Distressed Grandfather

Approximately one year ago, Donald Drake and his six-year-old grandson, Philip, were walking down a residential road on their way home from visiting one of Philip’s friends. Philip was walking on the sidewalk approximately thirty feet in front of Mr. Drake. Suddenly, a car sped past Mr. Drake, seemingly went out of control, jumped the curb, and hit Philip. Mr. Drake ran to Philip’s side, but it was too late. Philip had been killed instantly. The driver of the car, Mrs. Wilma Small, was unhurt. Based on skid marks and testimony from both Mrs. Small and Mr. Drake, the police investigation following the accident determined that excessive speed was the cause of the accident.

Mr. Drake said that at the time of the accident his only concern was for the welfare of his grandson because he himself was clear of the danger. Naturally, Mr. Drake suffered a great deal of mental pain and shock because of seeing his grandson killed. While being driven home from the accident, he suffered a heart attack that necessitated a lengthy hospital stay.

One year later, he still does not feel completely recovered and often suffers from nightmares reliving the accident and his grandson’s death. Following the advice of trusted friends, he decides to make an appointment at the law office of Darrow and Bryan to see if he can sue Mrs. Small to recover for his hospital bills and for his pain and suffering.

### Case 2: The Harassed Student

Wanda Smith, a twenty-two-year-old college student, was walking past a construction site on campus when several of the construction workers began to whistle and make catcalls. Wanda did not appreciate being treated as a sex object and greatly resented the way in which these construction workers were behaving.

After talking it over with a few of her friends, Wanda decides to talk to one of the attorneys at Darrow and Bryan to see if she can take legal action. She does not want other women to have to undergo similar treatment and wonders if she can collect damages for mental suffering.

- As you read through the rest of this chapter, think about whether the law firm of Darrow and Bryan will be able to help either Mr. Drake or Ms. Smith.
- Also, do you think the legal system can, or should, provide an appropriate remedy for addressing their concerns?

Law plays an essential role in everyone's life. It provides guidelines on how people should interact with each other. The criminal codes prohibit theft, assault, battery, rape, murder, and many other offenses. The tax codes require that individuals and businesses give part of their income to the government. The environmental laws prohibit the dumping of raw sewage into lakes and rivers. The civil rights laws protect against discrimination and harassment.

In addition to defining what constitutes appropriate behavior, the law provides a mechanism for resolving the conflicts and disagreements that arise among us without resorting to personal violence. When individuals violate a section of the criminal law, the government takes responsibility for bringing them to trial and for administering an appropriate punishment. If one person's negligence injures others, that person can be required to compensate the injured parties for the damages caused by this negligent act. When persons fail to carry out the terms of a contract, the state can either force them to do so or force them to pay damages that resulted from their failure to live up to their agreement.

Legislators, government administrators, and lobbyists focus on developing the statutes and regulations that govern everything from the way we drive our cars to the procedures we have to follow to get a divorce. Most lawyers spend their time advising people as to what they should do to live within the requirements of the law. For example, a group of entrepreneurs may seek legal advice regarding the best way to organize their new business, or a young married couple may come to an attorney for help with the purchase of their first home. Alternatively, individuals may enlist the aid of an attorney when they have been injured in an automobile accident or have been charged with a crime.

Paralegals help attorneys solve people's legal problems by assisting in the gathering of factual information about the client's situation; by doing legal research to find appropriate statutes, regulations, and case law; by helping to draft various types of legal documents; and by helping to prepare and organize the information attorneys present in trials.

## A. LEGAL ANALYSIS

In addition to helping you acquire this type of basic legal knowledge, this text is designed to develop the critical thinking skills you need to understand statutes, court opinions, and administrative regulations. These critical thinking skills include analyzing the facts, identifying the appropriate legal rules, applying the legal rules to the facts, and reporting the results in a clear and understandable manner.

Keep the stories of the two clients from the beginning of this chapter in mind as we give you a quick overview of the four basic steps in analyzing a legal situation:

- gather and analyze the facts;
- conduct legal research to identify the appropriate legal rules;
- apply the legal rules to the facts; and
- report the results (usually in writing).

Once an attorney completes these steps, the attorney can advise the client as to the appropriate actions to take.

## 1. Gathering and Analyzing the Facts

The first step in legal analysis is to identify and review the relevant facts. The answer to any legal question depends on the specific facts of the individual case. Even a minor change in the facts may alter the outcome of the case.

Just as a medical doctor cannot give a competent medical diagnosis without a thorough examination of the patient, a lawyer cannot render legal advice without a complete understanding of all of the relevant facts. Some areas of the law, such as those dealing with negligence or landlords and tenants, are particularly **fact bound**. For example, assume a stranger approaches an attorney at a party with a question such as: “My landlord is trying to evict me. Can he do that?” or “My husband is trying to get custody of my kids. Will he succeed?” It would be impossible for the attorney to answer without gathering a lot more information and personally reviewing key documents.

Paralegals often assist in the fact-gathering process by conducting interviews, summarizing those interviews, and reading and summarizing relevant documents. For example, when Donald Drake and Wanda Smith came to the law office of Darrow and Bryan to seek advice, they were each interviewed by Pat Harper, a senior attorney with the firm. Chris Kendall, one of the firm’s paralegals sat in on the interviews to help take notes and to become familiar with the facts of their cases.

## 2. Conducting Legal Research to Identify the Appropriate Legal Rules

After meeting with the clients, the first thing that attorney Harper needed to determine was whether either client had a valid cause of action. A **cause of action** can be defined as a claim that based upon the law and the facts is sufficient to support a lawsuit. For example, in Wanda Smith’s case, she was clearly upset and disturbed by what had happened to her. However, that does not mean she has a legal remedy. Her lawyers will have to prove not only that the construction workers harassed and upset her but also that these actions violated some law. It is important to understand that not every problem is a problem for which the courts will supply a remedy.

Thus, the second stage of legal analysis involves the identification of the specific provisions of the law that are applicable to the client’s situation. Because there are so many laws at the federal, state, and local levels, and because the law covers such a wide variety of topics, it is impossible for any lawyer to know everything there is to know about the law. The law is far too complex for any individual to be able to commit it all to memory. Furthermore, because the law is constantly changing, one’s legal knowledge must be continually updated. Therefore, even lawyers who specialize and strive to keep current by reading legal newspapers, journals, and bar publications on a daily basis may still need to do legal research. Law books and on-line computer databases are the tools of the trade for the legal professional.

### Fact bound

When even a minor change in the facts can change the outcome.

### Cause of action

A claim that based on the law and the facts is sufficient to support a lawsuit.

### PRACTICE TIP

Everything you read in this book is wrong! Or at least it might be. Remember that law keeps changing, it varies from state to state, and there are exceptions to many of the rules.

Because **legal research** is a very time-consuming process, attorneys often rely on paralegals to assist them in locating and summarizing the relevant statutes and cases they need to properly interpret the current status of the law. Because attorney Harper has not recently handled a similar case, Chris Kendall was assigned to research the law on sexual harassment. You can find a detailed discussion of legal research in Appendix D.

### 3. Applying the Legal Rules to the Facts

Even after an attorney or a paralegal has found the applicable legal rule through legal research, the job is far from completed. Because each client's problem is unique, simply knowing a general rule will not solve the client's problem. These general rules must be applied to the client's specific facts. We call this **legal reasoning**.

There are two basic types of legal reasoning. The first involves the analysis of court opinions and the second the analysis of constitutions, statutes, and administrative regulations. We will discuss these processes in great depth in Chapters 7, 8, and 10. For now, it is important that you understand that the result in a client's case will depend on how the courts have handled similar situations in the past. This is because our legal system is based on a doctrine known as **stare decisis**, literally, the decision stands. Following stare decisis means that if a court has decided one way on a particular issue in the past, in all likelihood it and other courts in the same jurisdiction will decide the same way on that issue in future cases given a similar set of facts.

In order to find out how similar situations have been handled in the past, an attorney or a paralegal will examine prior court decisions, known as **precedent**, and then apply them to the client's situation. If the facts of the client's situation and a prior court decision are similar, the two situations are **analogous**. If they are analogous, it is likely that the result in the client's case will be similar to the result reached in the prior case. If the facts are significantly different, the two situations are **distinguishable**. Because they are distinguishable, it is likely that the result in the client's case will not be the same as the result reached in the prior case. As you progress through this text, you will learn a lot more about the importance of stare decisis to our legal system. But for now, it is enough to understand that the doctrine of stare decisis is what gives our system its stability and predictability. As we will see, however, stare decisis also gives the courts enough flexibility to allow for change as the needs of our society change.

#### **Legal research**

The process of finding the law.

#### **Legal reasoning**

The application of legal rules to a client's specific factual situation; also known as *legal analysis*.

#### **Stare decisis**

The doctrine stating that normally once a court has decided one way on a particular issue in the past, it and other courts in the same jurisdiction will decide the same way on that issue in future cases given a similar set of facts unless they can be convinced of the need for change.

#### **Precedent**

One or more prior court decisions.

#### **Analogous**

Similar.

#### **Distinguishable**

Different.

## NETNOTE

One way to stay current with the changes in the law is through the Internet. You can find the latest legal news by going to [lp.findlaw.com](http://lp.findlaw.com). Then click on the "For Legal Professionals" tab at the top of the opening screen.