

## Instructor Resources Sample

This is a sample of the instructor materials for *The Law of Healthcare Administration*, Tenth Edition, by J. Stuart Showalter, JD, MFS, and Sallie Thieme Sanford, JD

The complete instructor materials include the following:

- PowerPoint slides
- Instructor's manual
- Test bank (two versions, one numbered and one unnumbered; details on how to use this unnumbered version are included in the file)

This sample includes the materials for chapter 1.

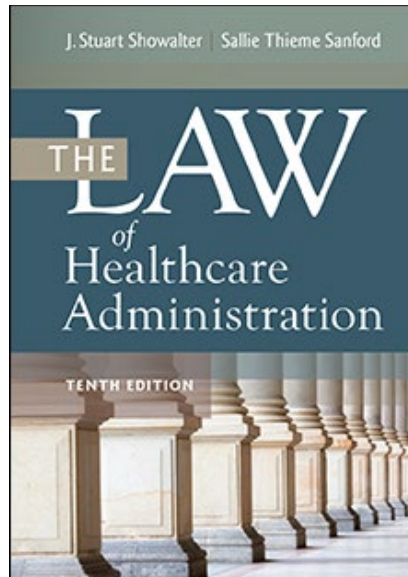
If you adopt this text, you will be given access to the complete materials. To obtain access, e-mail your request to [hapbooks@ache.org](mailto:hapbooks@ache.org) and include the following information in your message:

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- Course level (graduate, undergraduate, or continuing education) and expected enrollment
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- A contact name and phone number/e-mail address we can use to verify your employment as an instructor

You will receive an e-mail containing access information after we have verified your instructor status. Thank you for your interest in this text and the accompanying instructor resources.

## Digital and Alternative Formats

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# Chapter 1

## A Brief History of Law and Medicine

# The Cash Register Story

A businessman had just turned off the lights in the store when a man appeared and demanded money. The owner opened a cash register. The contents of the cash register were scooped up, and the man sped away. A member of the police force was notified promptly.

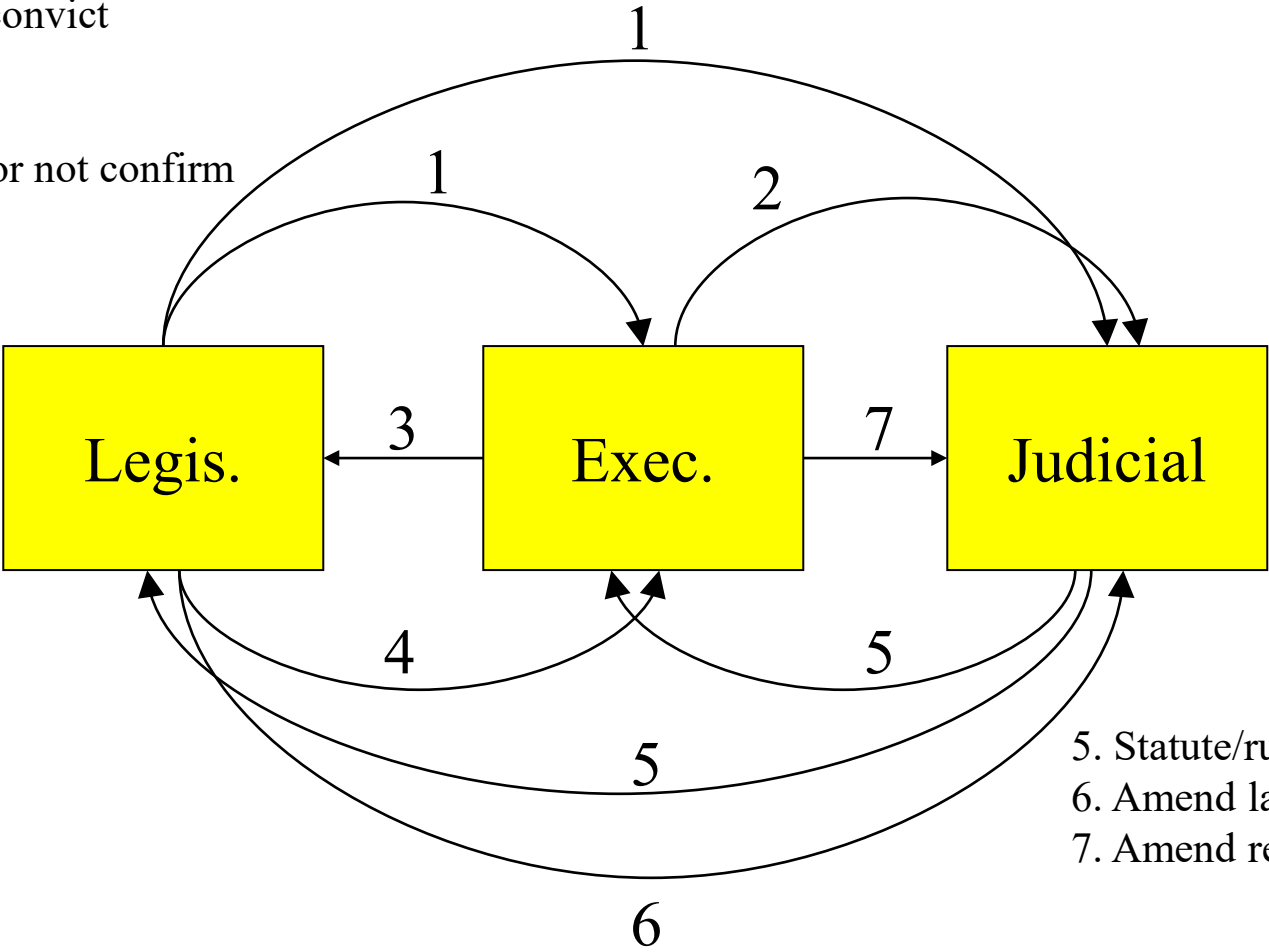
# Part 1: The History of Law

# Introduction to Law

- Sources of law
  - Constitution
  - Statutes
  - Administrative law (regulations)
  - Judicial decisions (“common law”)
- The federal system
- The 3 branches of government
- Separation of powers

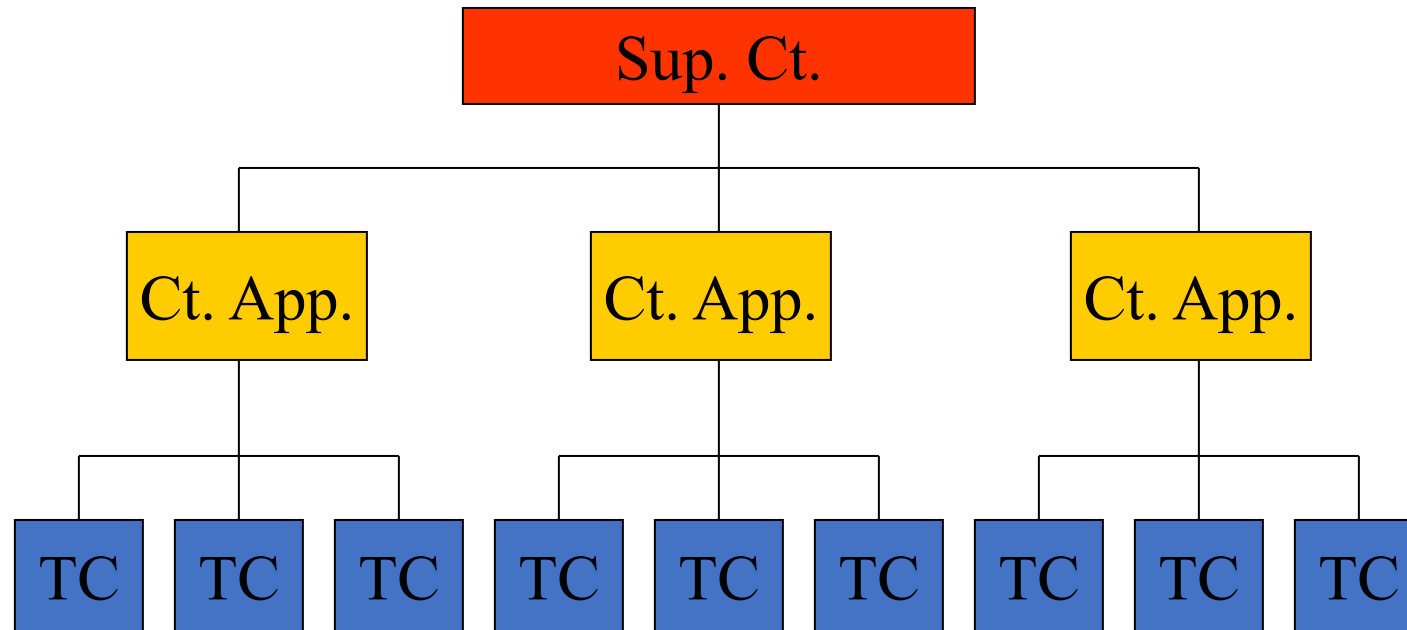
# Checks and Balances

- 1. Impeach/convict
- 2. Appoint
- 3. Veto
- 4. Override or not confirm

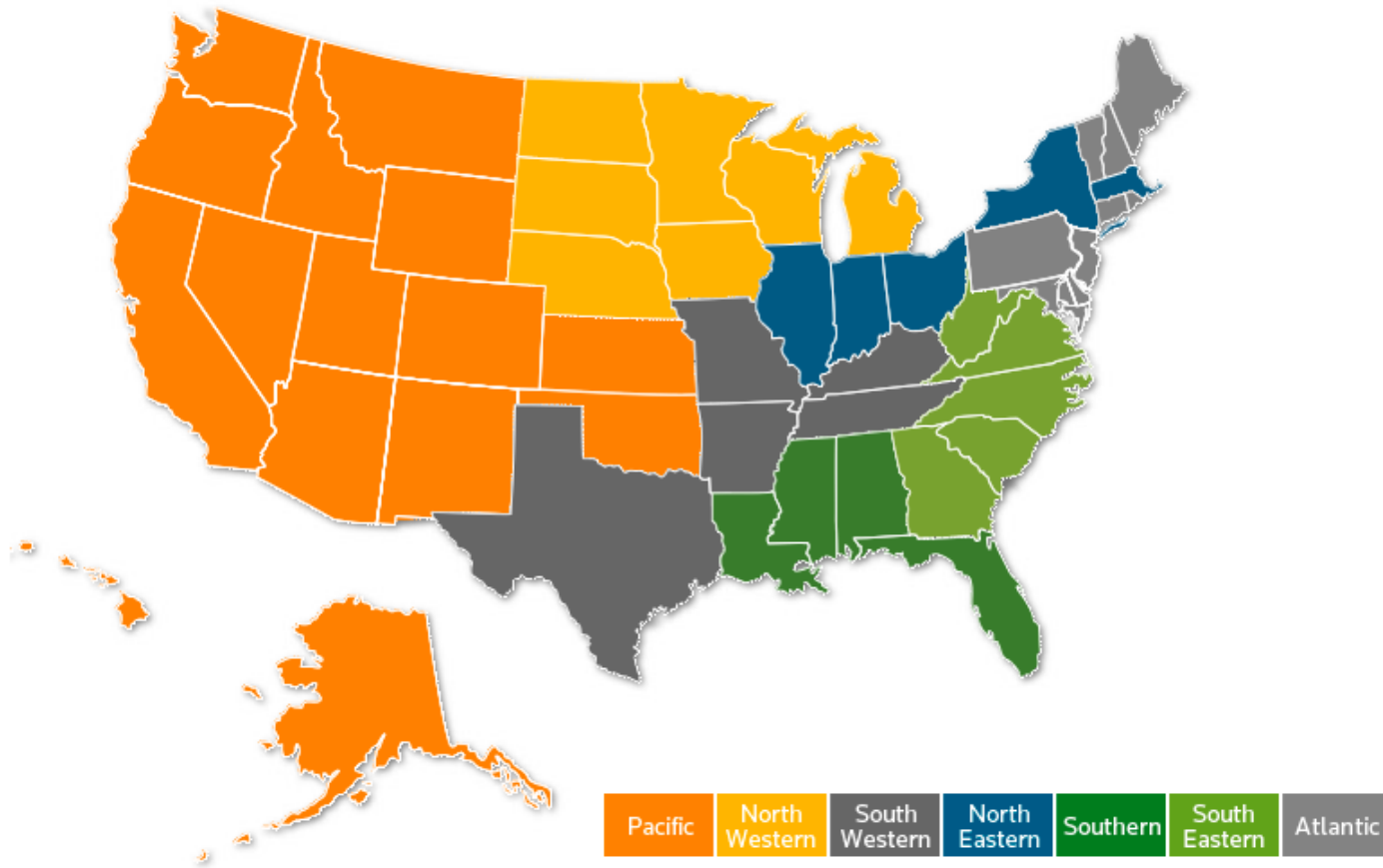


- 5. Statute/rule is unconstitutional
- 6. Amend law
- 7. Amend regulation

# Structure of the Court System



# West's Regional Reporter System





# Legal Citation System

- Nat'l Fed'n of Indep. Business v. Sebelius, 567 U.S. \_\_\_\_ (2012)
- Hill v. Ohio County, 468 S.W.2d 306 (Ky. 1971)
- 42 U.S.C. §1320c
- 45 C.F.R. §164.522

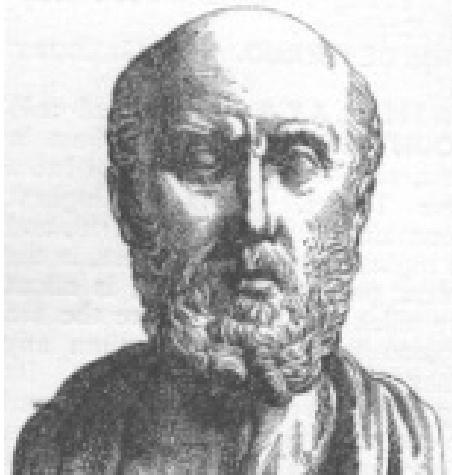
# Part 2: The History of Medicine

# Pharaohs and Babylonians



Code of Hammurabi

# Greeks and Romans



Hippocrates and Galen

# The “Four Humors”



Blood: sanguine, hopeful, amorous

Yellow bile: choleric, bad tempered

Black bile: melancholic, irritable

Phlegm: phlegmatic, calm, rational

This theory prevailed for centuries.

# The Death of Washington, 1799



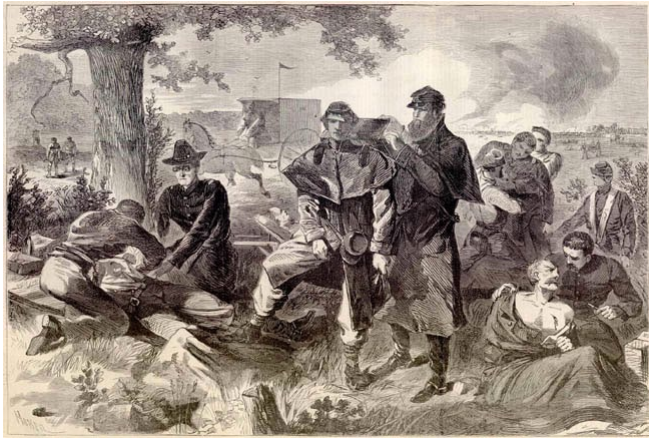
Bleeding and purging probably aggravated his condition:  
an upper respiratory infection and swelling of the larynx.



# The Best Nineteenth-Century Medicine



# The Civil War



Anesthesia was more prevalent than we commonly believe.

Infection and disease were more deadly than wounds.



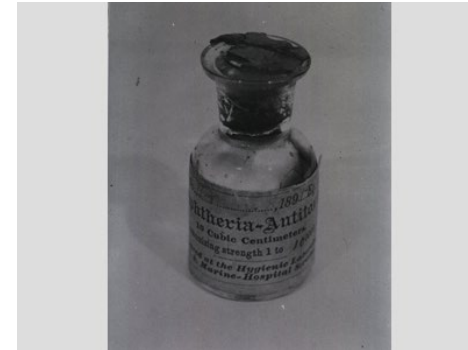
# Civil War to World War II



F. Nightingale



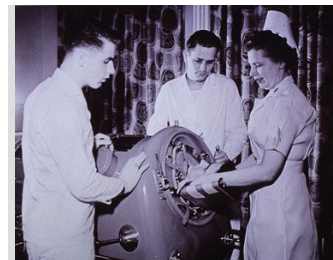
L. Pasteur



Diphtheria antitoxin,  
rabies and flu vaccines



Penicillin



The iron lung

# WWII to the Present

- Open-heart surgery
- Polio vaccine
- Organ transplants
- Kidney dialysis
- HIV/AIDS treatment
- Deciphering the genome

***The Law of Healthcare Administration, Tenth Edition***  
**Instructor's Manual**

***Preface***

In this Instructor's Manual we present some suggestions for teaching the typical master's-level student of health law. We recognize, however, that your students might be working healthcare executives with many years of practical experience, recent college graduates with little or no background in the field, or even undergraduate students looking to get a head start on a master's degree. Whatever the makeup of your class, you can adapt these materials to your needs.

The manual tracks with the chapters of the book, and each chapter of the manual follows this outline:

- I. Overview—an introductory discussion
- II. Main Topics—the most salient points (“takeaways”) for students to learn
- III. Lecture Notes—detailed descriptions of how one might teach the topic
- IV. Talking Points, Questions, and Answers—additional tips to spark class discussion

Also for use with this manual are a PowerPoint presentation, test bank, and other instructor resources available from Health Administration Press. You are of course welcome and encouraged to adapt the materials to your own needs. And please send to us via the publisher any suggestions for improvements.

## Chapter 1:

### A Brief History of Law and Medicine

It is important for students to understand the basics of the US legal system and some of the history of medicine—ergo, Parts 1 and 2 of this chapter.

#### Part 1: The History of Law

##### I. Overview

Civics education is essential for a well-functioning democracy, and when the subject is taught well, it can equip students to become better-informed and -engaged citizens. Unfortunately, studies have shown that knowledge of basic American government was at an all-time low in the fall of 2016. (See, for example, Annenberg Public Policy Center, [“Americans’ Knowledge of the Branches of Government Is Declining,”](#) September 13, 2016.) And apparently it has not improved much since then: “For example, [in 2022] just 47 percent of surveyed US adults could identify the three branches of government—down from 56 percent in the 2021 survey (Annenberg Public Policy Center, [“Americans’ Civics Knowledge Declines on First Amendment, Branches of Government,”](#) September 13, 2022).

One reason for Americans’ poor understanding of civics may be that if it was taught at all in high school, it was treated as a stepchild. It was an elective, taught by someone with little background and less interest—the phys-ed teacher, perhaps. Your challenge will be to take this Cinderella of a subject and make her charming.

Much of your course will revolve around the legal cases discussed in the book. As mentioned in the Introduction, by “cases” we mean real-life situations that evolve (or devolve, more precisely) into litigation and that result in the judicial pronouncements we call “opinions.” To discuss the cases and opinions presented in the text, the student must understand where each case stands in the hierarchy of the legal system, how it came to the court that considered it, and the implications of the ultimate decision. Students must be able to discuss how the principles involved in each case relate not only to the particular facts at the time of the decision but also to healthcare in our society today.

Encourage students to consider the cases by using the following framework:

1. *Procedure.* Who are the parties? Who brought the action? In what court did the case originate? Who won at the trial-court level? What is the appellate history of the case?
2. *Facts.* What are the relevant facts as recited by this court? Are there any facts that you would like to know but are not revealed in the opinion?
3. *Issues.* What are the precise issues being litigated, as stated by the court? Do you agree with the way the court has framed those issues?
4. *Holding.* What is the court’s precise holding (decision)? What is its rationale for that decision? Do you agree with that rationale?
5. *Implications.* What does the case mean for healthcare today? What were its implications when the decision was announced? How should healthcare

administrators prepare to deal with these implications? What would be different today if the case had been decided differently?

This analytical framework is set out on a separate page of this manual as Figure 1. You may wish to have it photocopied and distributed as a handout. It can be used for *every* case. Ask students to discuss each of those five points. Ensure that students are aware of all the salient facts that affect a court’s decision. We suggest that students practice writing out the precise legal issue—one that could be turned into a positive statement of the law. For example, in the *Simkins* case (*see* The Court Decides), the true issue is not “state action,” as the court states in the first paragraph, but whether it is permissible to discriminate on the basis of race.

Ours is not the only framework by which to analyze cases, of course, and you are encouraged to determine the method that works best for you and your students. But whatever technique is used, the point is that a structured analysis will result in the best learning.

## II. Main Topics

- Students should be aware of how history, sociology, politics, economics, ethics, and other fields can affect law.
- The roots of our legal tradition can be traced not just to the American war for independence but as far back as the Norman conquest of England in 1066.
- The purpose of the Anglo-American legal system is to provide an alternative to self-help and personal conflict as a way of resolving disputes.
- Law is far from an exact science, but its uncertainty and flexibility give it strength and appeal.
- Basic legal concepts covered include the sources of law, checks and balances, stare decisis, legal procedure, and the “reporter” system for judicial decisions.

## III. Lecture Notes


PowerPoint (PPT) slides for each chapter are available in the book’s Instructor Resources. They are not reproduced here in total, but they are referred to. You are encouraged to download the slides from the website. This “Instructor’s Manual,” as we are calling it, follows the textbook and the PPT slides, and additional comments can be found in the “Notes” view of the PPT.

The slides and notes begin with an **icebreaker** that you may use in the first moments of the first class. It is not only fun but also effective in getting across this point: *You have to think in this class!*

The icebreaker story is shown on this slide:

**Cash Register Story**

A businessman had just turned off the lights in the store when a man appeared and demanded money. The owner opened a cash register. The contents of the cash register were scooped up, and the man sped away. A member of the police force was notified promptly.



Following the story is a series of statements that students must analyze using their critical thinking skills. Students must decide whether each statement is true or false or whether there's not enough information to decide. You can copy and paste the questions to use as a handout, or just ask the questions aloud in class. The statements are as follows:

1. A man appeared after the owner had turned off the store lights.
2. The robber was a man.
3. The man did not demand money.
4. The man who opened the cash register was the owner.
5. The store owner scooped up the contents of the cash register, and the man ran away.
6. Someone opened a cash register.
7. After the man who demanded the money scooped up the contents of the cash register, he ran away.
8. Although the cash register contained money, the story does not state how much.
9. The robber demanded money of the owner.
10. The story concerns a series of events in which only three persons are referred to: the owner of the store, a man who demanded money, and a member of the police force.
11. The following events in the story are true: Someone demanded money, a cash register was opened, its contents were scooped up, and a man dashed out of the store.

Suggested answers are:

1. Not enough information. We don't know whether the "businessman" was the owner.
2. Not enough information. We don't know that this was a robbery.
3. False.
4. Not enough information. The "owner" could have been a woman.
5. Not enough information. We don't know who scooped up the contents or that the man ran away; he could have "sped away" in his car, on a motorcycle, etc.
6. True.
7. Not enough information. See rationale for #5.

8. Not enough information. We don't know that the cash register contained money. It might have had checks, credit card receipts, or even jellybeans.
9. Not enough information. Again, we don't know that this was a robbery or to whom the demand was made.
10. Not enough information. The businessman and the owner might be two different people.
11. Not enough information. We don't know that the man "dashed out of the store," only that he "sped away."

[NOTE: Regarding the statement that "a member of the police force was notified promptly," for all we know that person might be the owner of the store who happens also to be on the police force.]

The moral of this exercise, of course, is *Don't assume!*

### ***The Historical Foundation of the US Legal System***

We begin with reference to the Code of Hammurabi, discuss the roots of American common law, and mention that law changes from time to time—sometimes slowly, and sometimes quite suddenly, as with statutory enactments. An example of the latter is given in the form of the Affordable Care Act (ACA).

We point out that healthcare law is a "vast, complex, and dynamic field" and that it is essential for healthcare executives to know how best to work with attorneys. Tips for doing so are given in a sidebar on page 5.

### ***Major Sources of US Law and the Hierarchy of Authorities***

You will explain the four sources of law (constitutions, statutes, regulations, and administrative regulations) and that constitutional law trumps the others. Statutes must be consistent with the Constitution, and administrative regulations must be consistent with both the Constitution and the statutes that they implement.

While referring to the exhibits, you can explain the federal system of government, the three branches of government, the separation of powers, and how each branch of government has powers that check and balance the other two. Beforehand, you might want to engage in a little Socratic exercise, asking what powers each branch has over the others. Ask students to discuss the question in groups of two or three without referring to the book. Ask them to draw their own diagram without referring to the text. See how many of the checks and balances they identify correctly.

Explain how trial courts lead to appellate courts and the supreme court. This is similar in both the state and federal systems, although the highest court of a state may not be called the "Supreme Court." To wit:

- In New York, the District of Columbia, and Maryland, the highest court is called the "Court of Appeals."
- In Massachusetts, it is the "Supreme Judicial Court."

- In New York, the *trial* court is called the “Supreme Court” (ask students to find out why that is).

Explain the legal citation system, the reporter system, the role of precedent (*stare decisis*), and how a higher court’s precedent in the same state is binding on the courts below it. Precedents from other states are not binding but can be referred to for guidance on an issue that the instant jurisdiction has not addressed.

### ***The Litigation Process***

Many students (and some instructors) find this section beginning on p. 20 to be “TMI (too much information).” It’s up to you how much detail you want to go into here. Our inclination is to refer to the information and some of the definitions and remind students to return to this material later in the course when relevant concepts arise in other contexts.

This section does, however, include the first of the text’s many mentions of how the COVID-19 pandemic has affected the legal and medical systems. (See “COVID Connection” on p. 22 of the text. These pandemic-related sidebar discussions are sprinkled throughout the text as one of the many new features in this edition.)

### ***A Turning Point in the Quest for Healthcare Justice***

This section is new to the 10th edition and was inserted to illustrate the import role that health law played in the civil rights movement. You should refer to the *Simkins* case in *The Court Decides* at the end of the chapter and ask students to consider the discussion questions that follow the case.

## **IV. Talking Points, Questions, and Answers**

Throughout the book students will see and take for granted the expression “the United States.” You might want to mention that people usually refer to our country in the singular (“*the* United States”), but originally and for much of our history people said “*these* United States.” They basically felt that each of the original colonies was a separate country. This is an important distinction when discussing our federal system.

The text mentions in passing the concepts of diversity jurisdiction and federal question jurisdiction for the federal courts. At this point you could refer to the famous case of *Erie R. R. Co. v. Tompkins*, 304 U.S. 64 (1938), with which you are probably familiar. If you do so, you could engage the students in discussions along these lines:

1. Why is the law of Pennsylvania important for a case tried in New York?

*Pennsylvania is the place where the injury occurred. As a result of this case, federal courts must apply the law of the state where the injury occurred.*

2. What is the significance of the concepts of duty and trespass?

*To win his case, the plaintiff has to prove that the defendant owed him a duty. Under Pennsylvania law at the time, a landowner owed no duty to an undiscovered trespasser; therefore, the plaintiff lost.*



3. In the Judiciary Act, quoted in the opinion, there is reference to “the laws of the several States.” What does this mean? Why does careful interpretation of this statute become important for this opinion?

*The law, written in 1789, could have been drafted better (as most laws could be). It should have said, “the law of the several States.” This would have conveyed that the meaning of all the law, whether statutory or judicial, must be applied.*

4. What is the purpose of “diversity jurisdiction” in the federal courts?

*To avoid the perceived danger of a local jury being prejudiced against an out-of-state plaintiff. This was much more important in 1798, when rivalries and jealousies among states were greater than they are now. (See the earlier comment about “these United States.”)*

*Query how much effect diversity jurisdiction really has in this regard, given that juries and judges come from the local population.*

5. How does this case deepen your understanding of the role of the federal courts and their relationship to state courts and other branches of government?

*Explain that there are two overlapping systems of government, each of which has responsibility for certain things.*

### **Page 27—Discussion Questions for Part I**

1. Identify a current problem that has healthcare implications. In your view, have constitutional, statutory, case law, or regulatory standards helped or hindered its appropriate resolution? Which branch of government is best suited to address it? Is it more a state or a federal issue? *Students interested in healthcare law should have no trouble identifying a current problem, and classroom discussion should help illuminate opinions about the related questions. Throughout the course, you might consider prompting students to stay abreast of healthcare law and policy news by requiring them to regularly skim a reliable news source such as the [Kaiser Health News Morning Briefing](#). We have found that tying class topics to current legal issues helps students better understand the topics.*
2. Consider the term “Obamacare” as it is used in your community. Does it have positive or negative connotations? Is support for or opposition to the ACA a campaign issue in your community? *If these questions do not lead to different responses from the students, you might need to explain that “Obamacare” was originally coined by opponents of the law, and that the ACA was, though many election cycles in much of the country, a prominent, highly contentious campaign issue.*
3. Have you ever been involved in litigation, arbitration, or mediation, either as a party, a witness, or a juror? What were your impressions of the legal system? Do you think the parties were adequately heard and that justice was done? *Note that some students might have had disturbing or stressful involvement with the judicial system (perhaps*

*as a crime victim, relative of an alleged criminal, or medical malpractice defendant). Thus, if you open this question up for discussion, you might want to preface it by saying that, of course, the sharing of experiences is voluntary, and perhaps with asking if anyone has been a juror.*

4. Go to Oyez.org and listen to a recent US Supreme Court oral argument in a case that interests you. Are you able to understand the legal issues? Is this what you expected from a Supreme Court hearing? *Students are typically surprised at how accessible oral arguments are (and how helpful oyez.org is); they are often surprised at the informality of the questioning and how frequently the justices interrupt the lawyers. If a relevant case is being argued during your course, assigning a reflection about it can be a productive assignment. Directing them to part of the NFIB or King v. Burwell oral arguments can help them better understand those cases (and appreciate Justice Scalia's wit.)*
5. Have you ever reviewed a regulation or submitted comments about a proposed regulation? On what sort of regulations do you think a healthcare administrator might usefully offer an opinion? *In case no one has a response to this question, you might have at the ready a pending state or federal proposed regulation for which comments are being sought. State hospital, medical, and nursing associations often have information about pending bills or regulations that they are tracking.*
6. Do you think it matters whether members of the judicial, executive, and legislative branches include people with diverse backgrounds? Why or why not? *This question provides an opportunity to bring into the classroom theories students have likely studied in other courses. Particularly if the students are part of a healthcare administrative program, they probably will have discussed theories relating to group decision-making dynamics, conscious and unconscious bias, and the value (and challenge) of considering diverse perspectives.*
7. What are the purposes of discovery? How might healthcare providers, whether institutional or individual, be involved in responding to a discovery request? *Students should be able to readily understand how a patient's medical condition might be at issue in a personal injury lawsuit. That example provides a way to dive into this question.*

**Page 30— Discussion Questions for *Simkins v. Moses H. Cone Memorial Hospital***

1. Why has this case been called “the *Brown v. Board of Education* decision for hospitals”? How is it similar to *Brown*? How is it different? *Brown and Simkins are similar in that both found formal racial segregation to be unconstitutional and led to its dismantling in a particular sphere. They are also similar in that both were part of larger, multifaceted efforts at desegregation. Both highlight the roles of private action in perpetuating discrimination. They are different in that Simkins involved private entities, not governmental. (Be sure to explain to students that the test for*

*what constitutes state action by private actors has changed since then, which is why we do not focus on that aspect of the case.) Additionally, formal racial segregation in hospitals ended much more quickly and with less virulent opposition than did formal racial segregation in public schools. It is interesting to consider why that might be so, and with reference to the passage of the Civil Rights Act and, the following year, Medicare, with its substantial financial hammer. If you can access the documentary The Power to Heal (often available through libraries and perhaps soon via the PBS website), assigning it to students can help them understand not only the history of racially segregated hospitals but the different tools used to bring about desegregation.*

2. This was the first case in which the federal government intervened to argue that a federal statute was unconstitutional. Noting particularly the date of this case, consider what factors might have influenced the US Department of Justice to intervene in this case, advocating for the plaintiffs' position. *Bills that would become the Civil Rights Act were pending at the time, with contention surrounding, among other things, the provision that would prohibit racial discrimination by recipients of federal money.*
3. The dissent noted that in August 1963, just a couple of months before this decision was handed down, "the Senate rejected a proposal that henceforth grants in aid to hospitals under the Hill-Burton Act be restricted to hospitals which are desegregated, and which practice no discrimination on account of race." Does that surprise you? *Discussion of this question should help reinforce to students that sometimes what seems the most straightforward solution ("amend the statute") can be more difficult than other possible ways to achieve the same or similar end. If they have had a healthcare policy course, students might have insights into legislative process from those class sessions.*
4. The US Supreme Court "denied cert" in this case. What does that mean? What is the practical consequence of that action? *When the Supreme Court declines to hear a case (i.e., "denies cert,"), the lower court's opinion stands. Thus, the defendant hospitals had to desegregate, the Simkins decision was the clear law in the Fourth Circuit, and the federal government would presumably follow it throughout the country (following its standard practice). Furthermore—given the timing of the Supreme Court's decision—Title VI of the Civil Rights Act Title got a boost toward its passage.*

###

## Figure 1

### Handout: Suggested Framework for Case Analysis

1. *Procedure.* Who are the parties? Who brought the action? In what court did the case originate? Who won at the trial-court level? What is the appellate history of the case?
2. *Facts.* What are the relevant facts as recited by this court? Are there any facts that you would like to know but that are not revealed in the opinion?
3. *Issues.* What are the precise issues being litigated, as stated by the court? Do you agree with the way the court has framed those issues?
4. *Holding.* What is the court's precise holding (decision)? What is its rationale for that decision? Do you agree with that rationale?
5. *Implications.* What does the case mean for healthcare today? What were its implications when the decision was announced? How should healthcare administrators prepare to deal with these implications? What would be different today if the case had been decided differently?

## Part 2: The History of Medicine

The slides in this chapter merely illustrate some of the historical content in the text. Use them—or not—as you wish. We find the history to be fascinating, especially when pointing out that what we call “modern medicine” did not being in earnest until at least the mid–twentieth century. The student will benefit from this broader perspective when anticipating the pace of change we can expect in the coming decades.

The chapter contrasts the long history of law, which extends back thousands of years, with the relatively recent development of modern medicine. From the time of Aristotle until roughly the time of the US Civil War, medical knowledge consisted of little more than belief in the **four humors** (“humorism”). Essentially, this unproven speculation held that the human body was filled with four basic substances, the “humors,” which are in balance when a person is healthy. According to the theory, all diseases and disabilities resulted from an excess or deficit of one of these four humors. These deficits could be caused, for example, by vapors that were inhaled or absorbed by the body. Only in the early and mid–twentieth century did what we call “modern medicine” begin to appear. (See appendix 1.1 for milestones and a timeline of the history of medicine.)

Various slides help show the contrast between the state of legal affairs and that of medical knowledge. George Washington was essentially bled to death by his physicians. A hundred years later—in the late nineteenth century—the best medical practice (outside of surgery and setting broken bones) still consisted of only a few home remedies applied by a “simple country doctor” who made house calls (see exhibit 1.7).



The text and the PowerPoint slides trace the birth of health policy from Theodore Roosevelt in 1912, through enactment of Medicare and Medicaid, and on to the Affordable Care Act (ACA). Students are encouraged to track future developments.

We provide only rhetorical questions for this portion of the chapter, and instructors are of course at liberty to go into as much or as little depth as they wish. We do recommend, however, that the class at least engage in a general discussion of their reactions to the comparison of the two professions. For example, it is poignant that at a

time when lawyers were writing the Constitution, physicians were basically limited to setting bones, bleeding people, and using purgatives and poultices.

###