APPENDIX A

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Philip Francis HOFFMAN, Jr., and
Pav-A-Way Corporation, a Florida corporation,
Petitioners,
v.
Hazel J. JONES, as Administratrix of the Estate
of William Harrison Jones, Jr.,Deceased,
Respondent.
No. 43443.
Supreme Court of Florida.
280 So.2d 431 (1973)[1]
78 A.L.R.3d 321[2]

Widow brought wrongful death suits both in her individual capacity and as administratrix of deceased husband's estate. The Circuit Court, Brevard County, William G. Akridge, J., denied plaintiff's requested instruction predicated on comparative negligence, and rendered judgment for defendants, and plaintiff appealed. The District Court of Appeal, 272 So.2d 529, reversed and certified decision on question of whether contributory negligence rule should be replaced with principles of comparative negligence. On writ of certiorari, the Supreme Court, Adkins, J., adopted comparative negligence rule and delineated time when such rule is to be applied at trial and appellate levels.[3]

Remanded.

Roberts, J., dissented and filed opinion.[4]

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1 All footnotes in this appendix are by the author of this book and are inserted to point out features of the opinion.

2 A.L.R.2d, the American Law Reports, second series, publishes selected cases that have an important impact on the development of the law. Such cases are followed by an annotation commenting on the significance of the decision and analyzing that area of law in depth with citations from other jurisdictions.

3 This paragraph summary of the case was written by the editors of the case reports employed by West Group, the private publisher of the regional reporter in which this opinion appears. Florida is one of several states that do not themselves publish a reporter, but rely on the West regional reporters.

4 What follows at this point in the opinion are "headnotes" — summaries of all the major points and holdings of the opinion. These are written by case editors, not by the court. Because of space considerations, only the first 6 headnotes are reproduced here, starting on the next page. There are 16 headnotes in the original. Headnotes are collected in a "digest," which the lawyer can scan to decide

[1] Courts k91(1)

District Court of Appeal is without power to overrule Supreme Court precedent.

[2] Courts k216

Mere certification to Supreme Court by a District Court of Appeal that the latter's decision involves a question of great public interest does not vest Supreme Court with jurisdiction; if neither party involved petitions for writ of certiorari, Supreme Court does not have jurisdiction to answer questions certified or review district court's action.

[3] Courts k91(1)

[3] Courts k216

District Courts of Appeal are free to certify question of great public interest to Supreme Court for consideration and to state their reasons for advocating change; however, they are bound to follow case law set forth by Supreme Court.

[4] Common Law k8

[4] Constitutional Law k55

Supreme Court has power to replace rule of contributory negligence with that of comparative negligence; in view of fact that prior to 1809 English case implicitly pronouncing that rule the theory of contributory negligence was a matter of judicial thought rather than judicial pronouncement, it could not be said that the common law was clear and free from doubt so as to make it part of the statute law of Florida by virtue of statute adopting the English common law. F.S.A.Const. art. 5, §3(b)(3).

[5] Common Law k11

Supreme Court may change a common-law rule where great social upheaval dictates.

[6] Negligence k547

[6] Negligence k549(2)

[6] Negligence k549(10)

A plaintiff in an action based on negligence is no longer to be denied any recovery because of his contributory negligence; if it appears from the evidence that both plaintiff and defendant were guilty of negligence which was, in some degree, a legal cause of injury to plaintiff, plaintiff's recovery is not to be entirely defeated; negligence of plaintiff and that of defendant is to be apportioned with plaintiff receiving only such an amount proportionate with his negligence and negligence of defendant.

. . .

Edna L. Caruso of Howell, Kirby, Montgomery, D'Aiuto, Dean & Hallowes, West Palm Beach, for petitioners.

Sammy Cacciatore of Nance & Cacciatore, Melbourne, for respondent.

E. Harper Field and Frank C. Amatea of Keen, O'Kelley & Spitz, Tallahassee, for

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what judicial decisions might be useful without reading the entire opinions of all relevant cases. Note that some headnotes are listed in more than one category in the digest, such as headnote 4, which is appears in both "Common Law" and "Constitutional Law." Before the title of the headnote (in bold) is a bracketed number that corresponds to a bracketed number at the beginning of some paragraphs in the opinion. The numbers to the right and below the title of the head note are "key numbers" that allow the lawyer to find the headnote and others on the same topic in the digest of key numbers. The use of digests in legal research is discussed in Chapter II, p. 79.

amicus curiae, Fla. Defense Lawyers Ass'n.[5]

C. Graham Carothers and C. DuBose Ausley of Ausley, Ausley, McMullen, McGehee & Carothers, Tallahassee, for amicus curiae, Fla. Railroad Ass'n.

Kenneth L. Ryskamp, of Bolles, Goodwin, Ryskamp & Welcher, Miami, for amicus curiae, Fla. East Coast Railway Co.

William B. Killian, of McCarthy, Steel, Hector & Davis, Miami, for amicus curiae, Fla. Power & Light Co.

Sam H. Mann, Jr. and John T. Allen, Jr., of Harrison, Greene, Mann, Davenport, Rowe & Stanton, St. Petersburg, for amicus curiae, Fla. Power Corp.

Raymond Ehrlich and James E. Cobb, Jacksonville, for amicus curiae, American Mutual Ins. Alliance, American Ins. Asso., and National Asso. of Independent Insurers.

Thomas W. McAliley of Beckham & McAliley, Miami, for amicus curiae, United Transportation Union, Fla. Legislative Boards of Railroad Brotherhoods and the Fla. AFL-CIO.

ADKINS, Justice.

This cause is here on petition for writ of certiorari supported by certificate of the District Court of Appeal, Fourth District, that its decision (Jones v. Hoffman, 272 So.2d 529) is one which involves a question of great public interest. See Fla.Const., art. V, §3(b)(3), F.S.A.[6]

The question certified by the District Court of Appeal is:

> Whether or not the Court should replace the contributory negligence rule with the principles of comparative negligence?[7]

The District Court of Appeal answered the certified question in the affirmative and reversed the trial court in the case *sub judice* for following the precedent set down by this Court in Louisville and Nashville Railroad Co. v. Yniestra, 21 Fla. 700 (1886). This early case specifically held the contributory negligence rule to be the law of Florida, and it has uniformly been followed by the courts of the State ever since. The District Court of Appeal attempted, therefore, to overrule all precedent of this Court in the area of contributory negligence and to establish comparative negligence as the proper test. In so doing, the District Court has exceeded its authority.

In a dissenting opinion, Judge Owen stated well the position of the District Courts of Appeal when in disagreement with controlling precedent set down by this Court:

> [I]f and when such a change is to be wrought by the judiciary, it should be at the hands of the Supreme Court rather than the District Court of Appeal. . . . The majority decision would appear to flatly overrule a multitude of prior decisions of our Supreme Court, a prerogative which we do not enjoy.

Jones v. Hoffman, 272 So.2d 529, p. 534.

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5 Several *amicus curiae* or "friend of the court" briefs were filed by lawyers for the organizations listed. When an appellate court is faced with deciding an important issue, appearances of *amici* are one way it can get additional points of view beyond those of the plaintiff and defendant. *See* Chapter II, p. 43 note 26.

6 A "writ of certiorari" is a discretionary order issued by a higher court to a lower court requiring it to "bring up the record" of a case the higher court wishes to review. Florida thus follows the normal pattern of state appellate courts taking cases on the Supreme Court level only at its discretion. *See* Chapter V, p. 168. *Certiorari* practice in the U.S. Supreme Court is discussed in Chapter V, p. 175.

7 The subject of recovery for negligent actions is discussed in Chapter XI, pp. 432-435. Reading the cited pages would assist in understanding the discussion in the opinion.

The other District Courts of Appeal have recognized the relationship between their authority and that of this Court. Griffin v. State, 202 So.2d 602 (Fla. App.1st, 1967); Roberts v. State, 199 So.2d 340 (Fla. App.2d, 1967); and United States v. State, 179 So.2d 890 (Fla. App.3d, 1965). To allow a District Court of Appeal to overrule controlling precedent of this Court would be to create chaos and uncertainty in the judicial forum, particularly at the trial level. Ever since the District Court rendered its opinion there has been great confusion and much delay in the trial courts of the District Court of Appeal, Fourth District, while the attorneys and judges alike have been awaiting our decision in this case.

[2] We point out that the mere certification to this Court by a District Court of Appeal that its decision involves a question of great public interest does not vest this Court with jurisdiction. If neither party involved petitioned here for a writ of certiorari, we would not have jurisdiction to answer the question certified or to review the District Court's action.

[3] This is not to say that the District Courts of Appeal are powerless to seek change; they are free to certify questions of great public interest to this Court for consideration, and even to state their reasons for advocating change. They are, however, bound to follow the case law set forth by this Court.[8]

[4] Prior to answering the question certified, we must also consider our own power and authority to replace the rule of contributory negligence with that of comparative negligence. It has been suggested that such a change in the common law of Florida is properly within the province only of the Legislature, and not of the courts. We cannot agree.

The rule that contributory negligence is an absolute bar to recovery was — as most tort law — a judicial creation, and it was specifically judicially adopted in Florida in Louisville and Nashville Railroad Co. v. Yniestra, *supra*. Most scholars attribute the origin of this rule to the English case of Butterfield v. Forrester, 11 East 60, 103 Eng.Rep. 926 (K.B.1809), although as much as thirty years later — in Raisin v. Mitchell, 9 Car. & P. 613, 173 Eng.Rep. 979 (C.P.1839) — contributory negligence was held not to be a complete bar to recovery. Maloney, From Contributory to Comparative Negligence: A Needed Law Reform, 11 U.Fla.L.Rev. 135, 141-142 (1958). Although "contributory negligence" itself had been mentioned in some earlier cases, our research reveals that prior to 1809 (as well as for a time after that date) there was no clear-cut, common law rule that contributory negligence was a complete defense to an action based on negligence. Most probably, the common law was the same in this regard as English maritime law and the civil law — *i.e.*, damages were apportioned when both plaintiff and defendant were at fault. See Maloney, *supra*, page 152. Many authorities declare that early references to "contributory negligence" did not concern contributory negligence as we are familiar with it — *i.e.*, lack of due care by the plaintiff which contributes to his injuries — but that it originally meant a plaintiff's own negligent act which was the effective, *direct* cause of the accident in which he was injured. *e.g.*, Turk, Comparative Negligence on the March, 28 Chi-Kent L.Rev. 189, p. 196 (1950).

Prior to Butterfield v. Forrester, *supra*, there was no clear-cut pronouncement of the contributory negligence rule, so it must be said that "judicial thinking" culminated in the implicit pronouncement of the contributory negligence rule in the 1809 decision of

8 The Florida Supreme Court was obviously somewhat upset by the Court of Appeals' going ahead and deciding to use comparative negligence — despite the fact that Supreme Court ultimately agreed with that position on the merits. It thus demonstrates the traditional relationship that exists between superior and inferior courts. However, one frustration for lower appellate courts is the possibility that issues will remain unsettled for years because the supreme court in a system chooses not to decide them. What the Florida Court of Appeals did is one way to force the issue to be decided.

Butterfield v. Forrester, *supra*. In view of the fact that prior to Butterfield contributory negligence was a matter of judicial thought rather than judicial pronouncement, it cannot be said that the common law was "clear and free from doubt," so as to make it a part of the statute law of this State by virtue of Fla.Stat., §2.01, F.S.A.[9]

As we stated in Duval v. Thomas, 114 So.2d 791, 795 (Fla.1959), it is "only when the common law is plain that we must observe it." We also said in this case,

> [W]hen grave doubt exists of a true common law doctrine . . . we may, as was written in Ripley v. Ewell, *supra*, (61 So.2d 420), exercise a "broad discretion" taking "into account the changes in our social and economic customs and present day conceptions of right and justice."

[5] Even if it be said that the present bar of contributory negligence is a part of our common law by virtue of prior judicial decision, it is also true from *Duval* that this Court may change the rule where great social upheaval dictates. It has been modified in many instances by judicial decision, such as those establishing the doctrines of "last clear chance," "appreciable degree" and others. See Negligence: Application of the Last Clear Chance Doctrine by Kenneth M. Myers, 8 Fla.Law.Rev. 336 (1955). In a large measure the rule has been transfigured from any "statutory creation" by virtue of our adoption of the common law (if such it were) into decisional law by virtue of various court refinements. We have in the past, with hesitation, modified the common law in justified instances, and this is as it should be. Randolph v. Randolph, 146 Fla. 491, 1 So.2d 480 (1941), modified the common law doctrine that gave a father the superior right to the custody of a child; Banfield v. Addington, 104 Fla. 661, 140 So. 893 (1932), removed the common law exemption of a married woman from causes of action based on contract or mixed contracts in tort.

In Waller v. First Savings & Trust Co., 103 Fla. 1025, 138 So. 780 (1931), this Court refused to follow the common law principle that an action for personal injuries was abated upon the death of the tort-feasor, the Court saying:

> This court has expressly recognized the principle that in specific instances certain rules which were admittedly a part of the old English common law did not become a part of the Florida common law, because contrary to our customs, institutions, or intendments of our statutes on other subjects. (p. 784)

This Court receded from the common law and held, in Hargrove v. Town of Cocoa Beach, 96 So.2d 130 (Fla.1957), that a municipal corporation may be held liable for the torts of police officers under the doctrine of *respondeat superior*, saying:

> Tracing the rule to its ultimate progeniotr we are led to the English case of Russel v. Men of Devon, 2 T.R. 667, 100 Eng.Rep.R. 359 (1788).
>
> Assuming that the immunity rule had its inception in the Men of Devon case, and most legal historians agree that it did, it should be noted that this case was decided in 1788, some twelve years after our Declaration of Independence. Be that as it may, our own feeling is that *the courts should be alive to the demands of justice. We can see no necessity for insisting on legislative action in a matter which the courts themselves originated.*

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9 The cited statute is a "reception" statute, officially receiving the English common law as the law of the State of Florida as of July 4, 1776. *See* Chapter II, p. 42. This explains why the majority has spent the last few paragraphs determining exactly when contributory negligence came into English common law. The Florida reception statute is quoted in the dissenting opinion *infra* p. A12. The dissent asserts that contributory negligence came into English law much earlier and thus the decision to change it is one for the legislature, not the courts. *See infra* p. A12.

(Emphasis supplied) (p. 132)

Gates v. Foley, 247 So.2d 40 (Fla.1971), established the right of a wife to recover for the loss of consortium as a result of her husband's injuries. This decision receded from Ripley v. Ewell, 61 So.2d 420 (Fla.1952) and abrogated a common law principle, saying:

> It may be argued that any change in this rule should come from the Legislature. No recitation of authority is needed to indicate that this Court has not been backward in overturning unsound precedent in the area of tort law. *Legislative action could, of course, be taken, but we abdicate our own function, in a field peculiarly nonstatutory, when we refuse to reconsider an old and unsatisfactory court-made rule*. (Emphasis supplied) 247 So.2d 40, p. 43.

All rules of the common law are designed for application to new conditions and circumstances as they may be developed by enlightened commercial and business intercourse and are intended to be vitalized by practical application in advanced society. One of the most pressing social problems facing us today is the automobile accident problem, for the bulk of tort litigation involves the dangerous instrumentality known as the automobile. Our society must be concerned with accident prevention and compensation of victims of accidents. The Legislature of Florida has made great progress in legislation geared for accident prevention. The prevention of accidents, of course, is much more satisfying than the compensation of victims, but we must recognize the problem of determining a method of securing just and adequate compensation of accident victims who have a good cause of action.

The contemporary conditions must be met with contemporary standards which are realistic and better calculated to obtain justice among all of the parties involved, based upon the circumstances applying between them at the time in question. The rule of contributory negligence as a complete bar to recovery was imported into the law by judges. Whatever may have been the historical justification for it, today it is almost universally regarded as unjust and inequitable to vest an entire accidental loss on one of the parties whose negligent conduct combined with the negligence of the other party to produce the loss. If fault is to remain the test of liability, then the doctrine of comparative negligence which involves apportionment of the loss among those whose fault contributed to the occurrence is more consistent with liability based on a fault premise.

We are, therefore, of the opinion that we do have the power and authority to reexamine the position we have taken in regard to contributory negligence and to alter the rule we have adopted previously in light of current "social and economic customs" and modern "conceptions of right and justice."

Use of the terms "contributory negligence" and "comparative negligence" is slightly confusing. The two theories now commonly known by these terms both recognize that negligence of a plaintiff may play a part in causing his injuries and that the damages he is allowed to recover should, therefore, be diminished to some extent. The "contributory negligence" theory, of course, *completely* bars recovery, while the "comparative negligence" theory is that a plaintiff is prevented from recovering only that proportion of his damages for which he is responsible.

The demise of the absolute-bar theory of contributory negligence has been urged by many American scholars in the law of torts. It has been abolished in almost every common law nation in the world, including England — its country of origin — and every one of the Canadian Provinces. Some form of comparative negligence now exists in Austria, France, Germany, Portugal, Switzerland, Italy, China, Japan, Persia, Poland,

Russia, Siam and Turkey. Maloney, *supra*, page 154.

Also, our research reveals that sixteen states have so far adopted some form of the comparative negligence doctrine.

One reason for the abandonment of the contributory negligence theory is that the initial justification for establishing the complete defense is no longer valid. It is generally accepted that, historically, contributory negligence was adopted "to protect the essential growth of industries, particularly transportation." Institute of Judicial Administration, Comparative Negligence-1954 Supplement, at page 2. Modern economic and social customs, however, favor the individual, not industry.

We find that none of the justifications for denying any recovery to a plaintiff, who has contributed to his own injuries to any extent, has any validity in this age.

Perhaps the best argument in favor of the movement from contributory to comparative negligence is that the latter is simply a more equitable system of determining liability and a more socially desirable method of loss distribution. The injustice which occurs when a plaintiff suffers severe injuries as the result of an accident for which he is only slightly responsible, and is thereby denied any damages, is readily apparent. The rule of contributory negligence is a harsh one which either places the burden of a loss for which two are responsible upon only one party or relegates to Lady Luck the determination of the damages for which each of two negligent parties will be liable. When the negligence of more than one person contributes to the occurrence of an accident, each should pay the proportion of the total damages he has caused the other party.

In an effort to ameliorate the harshness of contributory negligence, other doctrines have evolved in tort law such as "gross, willful, and wanton" negligence, "last clear chance" and the application of absolute liability in certain instances. Those who defend the doctrine of contributory negligence argue that the rule is also not as harsh in its practical effect as it is in theory. This is so, they say, because juries tend to disregard the instructions given by the trial judge in an effort to afford some measure of rough justice to the injured party. We agree with Dean Maloney that,

> [T]here is something basically wrong with a rule of law that is so contrary to the settled convictions of the lay community that laymen will almost always refuse to enforce it, even when solemnly told to do so by a judge whose instructions they have sworn to follow. . . .
>
> [T]he disrespect for law engendered by putting our citizens in a position in which they feel it is necessary to deliberately violate the law is not something to be lightly brushed aside; and it comes ill from the mouths of lawyers, who as officers of the courts have sworn to uphold the law, to defend the present system by arguing that it works because jurors can be trusted to disregard that very law. 11 U.Fla.L.Rev. 135, pp. 151-152 (1958).[10]

In Connolly v. Steakley, 197 So.2d 524, 537 (Fla.1967), Mr. Justice O'Connell referred to contributory negligence as a "primitive device for achieving justice as between parties who are both at fault." Even Mr. Chief Justice McWhorter, in authoring the decision

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10 This demonstrates how the jury, which is only supposed to decide fact questions and follow the *judge's* instructions on the law, can ultimately have a cumulative effect on the shape of the law. The division of labor between the judge and the jury and the question of jury power to judge the law is discussed in Chapter III, p. 88. This is one area where consistent jury action "bending" the law contributed to changing the law. It is also noteworthy that here and earlier in the opinion, the majority relies heavily on scholarly commentary in support of its decision.

which specifically held the contributory negligence doctrine to be the law of this State, referred to it as "unjust and inequitable." Louisville and Nashville Railroad Co. v. Yniestra, *supra*, 21 Fla. p. 738.

Eighty-seven years after that decision, we find ourselves still laboring under a rule of law that has long been recognized as inequitable. The Legislature did enact a statute in 1887 which applied the principle of comparative negligence to railroad accidents. We held the statute unconstitutional under the due process and equal protection clauses of the Federal and State constitutions because it was of limited scope and not of *general application*. Georgia Southern & Florida Railway Co. v. Seven-Up Bottling Co., 175 So.2d 39 (Fla.1965). Our Legislature again addressed the problem in 1943, when a comparative negligence statute of general application was passed by both houses. This bill was vetoed by the Governor and the Legislature would not override the veto. Senate Journal, Regular Session, 1943, pp. 716-717. One man thus prevented this State from now operating under a much more equitable system of recovery for negligent personal injuries and property damage. Since that "defeat," the Legislature has done little to discard the harsh and inequitable contributory negligence rule, perhaps because it considers the problem to be a judicial one.

Since we definitely consider the problem to be a judicial one, we feel the time has come for this Court to join what seems to be a trend toward almost universal adoption of comparative negligence. A primary function of a court is to see that legal conflicts are equitably resolved. In the field of tort law, the most equitable result that can ever be reached by a court is the equation of liability with fault. Comparative negligence does this more completely than contributory negligence, and we would be shirking our duty if we did not adopt the better doctrine.

[6] Therefore, we now hold that a plaintiff in an action based on negligence will no longer be denied any recovery because of his contributory negligence.

If it appears from the evidence that both plaintiff and defendant were guilty of negligence which was, in some degree, a legal cause of the injury to the plaintiff, this does not defeat the plaintiff's recovery entirely. The jury in assessing damages would in that event award to the plaintiff such damages as in the jury's judgment the negligence of the defendant caused to the plaintiff. In other words, the jury should apportion the negligence of the plaintiff and the negligence of the defendant; then, in reaching the amount due the plaintiff, the jury should give the plaintiff only such an amount proportioned with his negligence and the negligence of the defendant. See Florida Cent. & P.R. Co. v. Foxworth, 41 Fla. 1, 25 So. 338, 79 Am.St.Rep. 149 (1899).

[7][8] This rule should not be construed so as to entitle a person to recover for damage in a case where the proof shows that the defendant could not by the exercise of due care have prevented the injury, or where the defendant's negligence was not a legal cause of the damage. Stated differently, there can be no apportionment of negligence where the negligence of the defendant is not directly a legal cause of the result complained of by the plaintiff. A plaintiff is barred from recovering damages for loss or injury caused by the negligence of another only when the plaintiff's negligence is the sole legal cause of the damage, or the negligence of the plaintiff and some person or persons other than the defendant or defendants was the sole legal cause of the damage.

[9] If plaintiff and defendant are both at fault, the former may recover, but the amount of his recovery may be only such proportion of the entire damages plaintiff sustained as the defendant's negligence bears to the combined negligence of both the plaintiff and the defendant. For example, where it is found that the plaintiff's negligence

is at least equal to that of the defendant, the amount awarded to the plaintiff should be reduced by one-half from what it otherwise would have been.

[10] The doctrine of last clear chance would, of course, no longer have any application in these cases. See Martin v. Sussman, 82 So.2d 597 (Fla.1955).

We decline herein to dissect and discuss all the possible variations of comparative negligence which have been adopted in other jurisdictions. Countless law review commentaries and treatises can be found which have covered almost every conceivable mutation of the basic doctrine. Suffice it to say that we consider the "pure form" of comparative negligence — as we have phrased it above — to be the most equitable method of allocating damages in negligence actions.

[11] In the usual situation where the negligence of the plaintiff is at issue, as well as that of the defendant, there will undoubtedly be a counterclaim filed. The cross-plaintiff (just as plaintiff in the main suit) guilty of some degree of negligence would be entitled to a verdict awarding him such damages as in the jury's judgment were proportionate with his negligence and the negligence of cross-defendant. This could result in two verdicts — one for plaintiff and one for cross-plaintiff. In such event the Court should enter one judgment in favor of the party receiving the larger verdict, the amount of which should be the difference between the two verdicts. This is in keeping with the long recognized principles of "set off" in contract litigation. The Court's primary responsibility is to enter a judgment which reflects the true intent of the jury, as expressed in its verdict or verdicts.

In rare cases the net result of two such claims will be that the party more responsible for an accident will recover more than the party less responsible. On the surface, this might seem inequitable. However, using an extreme example, let us assume that a plaintiff is 80 per cent responsible for an automobile accident and suffers $20,000 in damages, and that the defendant — 20 per cent responsible — fortunately suffers no damages. The liability of the defendant in such a case should not depend upon what damages he *suffered*, but upon what damages he *caused*. If a jury found that this defendant had been negligent and that his negligence, in relation to that of the plaintiff, was 20 per cent responsible for causing the accident then he should pay 20 per cent of the total damages, regardless of the fact that he has been fortunate enough to not be damaged personally.

Petitioners in this cause, and various amicus curiae who have filed briefs, have raised many points which they claim we must consider in adopting comparative negligence, such as the effects of such a change on the concept of "assumption of risk," and no "contribution" between joint tortfeasors. We decline to consider all those issues, however, for two reasons. One reason is that we already have a body of case law in this State dealing with comparative negligence, under our earlier railroad statute. Much of this case law will be applicable under the comparative negligence rule we are now adopting generally.

[12] The other reason is that it is not the proper function of this Court to decide unripe issues, without the benefit of adequate briefing, not involving an actual controversy, and unrelated to a specific factual situation.[11]

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11 The Court adopts the traditional judicial stance of declining to declare any law beyond what is essential to resolution of this case and gives the traditional adversary system reasons for doing so — the lack of sufficient incentive for the parties to "fight it out" over an issue that does not directly affect them. *See* Chapter III, pp. 83-88, where the value of a partisan clash of views is discussed, and Chapter IX, pp. 323-324, where the adversarial basis for limitations on judicial power are discussed.

We are fully confident that the trial court judges of this State can adequately handle any problems created by our change to a comparative negligence rule as these problems arise. The answers to many of the problems will be obvious in light of the purposes for which we adopt the rule stated above:

(1) To allow a jury to apportion fault as it sees fit between negligent parties whose negligence was part of the legal and proximate cause of any loss or injury; and

(2) To apportion the total damages resulting from the loss or injury according to the proportionate fault of each party.

In accomplishing these purposes, the trial court is authorized to require special verdicts to be returned by the jury and to enter such judgment or judgments as may truly reflect the intent of the jury as expressed in any verdict or verdicts which may be returned.[12]

[14] We recognize the thousands of pending negligence cases affected by this decision. In fact, the prospect of a general upheaval in pending tort litigation has always been a deterring influence in considering the adoption of a comparative negligence rule. See Annotation, The Doctrine of Comparative Negligence, 32 ALR 3d 463, p. 487. We feel the trial judges of this State are capable of applying this comparative negligence rule without our setting guidelines in anticipation of expected problems. The problems are more appropriately resolved at the trial level in a practical manner instead of a theoretical solution at the appellate level. The trial judges are granted broad discretion in adopting such procedure as may accomplish the objectives and purposes expressed in this opinion.

Determining the time when the comparative negligence rule shall be applied at the trial level presents another problem. The confusion created by the premature adoption of the comparative negligence rule by the District Court of Appeal is further exemplified by the fact that some trial judges, relying on the decision, have applied the rule in the trial of many cases. Other trial judges have conducted their trials in accordance with the law of contributory negligence.

[15] We hold that a District Court of Appeal does not have the authority to overrule a decision of the Supreme Court of Florida. In the event of a conflict between the decision of a District Court of Appeal and this Court, the decision of this Court shall prevail until overruled by a subsequent decision of this Court.

[16] Under the circumstances, we hold that this opinion shall be applied as follows:

1. As to those cases in which the comparative negligence rule has been applied, this opinion shall be applicable.

2. As to those cases already commenced, but in which trial has not yet begun, this opinion shall be applicable.

3. As to those cases in which trial has already begun or in which verdict or judgment has already been rendered, this opinion shall not be applicable, unless the applicability of the comparative negligence rule was appropriately and properly raised during some stage of the litigation.

4. As to those cases on appeal in which the applicability of the

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12 A "special verdict" is one that requires the jury to provide a justification for its decision by way of specific findings of fact, rather than rendering a "general verdict" stating nothing more than who wins and in what amount. *See* Chapter III, p. 108.

comparative negligence rule has been properly and appropriately made a question of appellate review, this opinion shall be applicable.

5. This opinion shall be applicable to all cases commenced after the decision becomes final.[13]

The certified question having now been answered in full, this cause is remanded to the District Court of Appeal, Fourth District, to be further remanded to the Circuit Court for a new trial.

In order to finalize the determination of the question in this case as expeditiously as possible, this decision is made effective immediately and a petition for rehearing will not be allowed.

It is so ordered.

CARLTON, C.J., and ERVIN, BOYD, McCAIN and DEKLE, JJ., concur.

ROBERTS, J., dissents with opinion.

ROBERTS, Justice (dissenting).

I must respectfully dissent from the majority opinion in this cause. My primary concern is whether this Court is empowered to reject and replace the established doctrine of contributory negligence by judicial decree.

The sovereign powers of this State are divided into three coordinate branches of government — legislative, judicial and executive — by the Constitution of Florida, Article II, Section 3. Our Constitution specifically prohibits a person belonging to one of such branches from exercising any powers "appertaining to either of the other branches unless expressly provided herein." This Court has been diligent in preserving and maintaining the doctrine of separation of powers, which doctrine was imbedded in both the state and federal constitutions at the threshhold of constitutional democracy in this country, and under which doctrine the judiciary has no power to make statutory law. State ex rel. Hanbury v. Tunnicliffe, 98 Fla. 731, 124 So. 279 (1929), Carlton v. Matthews, 103 Fla. 301, 137 So. 815 (1931), State v. Herndon, 158 Fla. 115, 27 So.2d 833 (1946), Hancock v. Board of Public Instruction of Charlotte County, 158 So.2d 519 (Fla.1963), Holley v. Adams, 238 So.2d 401 (Fla.1970), State v. Barquet, 262 So.2d 431 (Fla.1972).

In the case of Ponder v. Graham, 4 Fla. 23, 25 (1851), this Court emphatically stated, "The fundamental principle of every free and good government is, that these several co-ordinate departments forever remain separate and distinct. No maxim in political science is more fully recognized than this. Its necessity was recognized by the framers of our government, as one too invaluable to be surrendered, and too sacred to be tampered with. Every other political principle is subordinate to it — for it is this which gives to our system energy, vitality and stability. Montesquieu says there can be no liberty, where the judicial are not separated from the legislative powers. 1 Spirit of Laws, page 181. Mr. Madison says these departments should remain forever separate and distinct, and that there is no political truth of greater intrinsic value, and which is stamped with the authority or more enlightened patrons of liberty. Federalist, 270." Applying this well established doctrine, we held that the matter of changing statutory law is not one to be indulged by the Court, but is a legislative function. Kennedy v. City of Daytona Beach, 132 Fla. 675, 182 So. 228 (1938). Therein, this Court also reaffirmed the principle that the common law, if not abrogated by statute or constitutional provision, is in full force and

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13 In view of the great change in the law that this decision represents, the court decides to give its decision only partial retroactive effect. *See* Chapter II, p. 48.

effect in this state. See also Bryan v. Landis, 106 Fla. 19, 142 So. 650 (1932), Wilson v. Renfroe, 91 So.2d 857 (Fla.1957), Brooks v. City of West Miami, 246 So.2d 115 (Fla. App. 1971).[14]

It is the statutory law of this state that, "The common and statute laws of England which are of a general and not a local nature, with the exception hereinafter mentioned, down to the fourth day of July, 1776, are declared to be of force in this state; provided, the said statutes and common law be not inconsistent with the constitution and laws of the United States and the acts of the legislature of this state." Florida Statutes, Section 2.01, F.S.A.

The doctrine of contributory negligence was a part of the common law of England prior to July 4, 1776, and therefore, is part of the common law of this state pursuant to Florida Statutes, Section 2.01, F.S.A., and is secure from the desires of this Court to supplant it by the doctrine of comparative negligence, provided that it is not inconsistent with the Constitution and laws of the United States and the Constitution and acts of the Legislature of this state. Ripley v. Ewell, 61 So.2d 420 (Fla.1952), Duval v. Thomas, 114 So.2d 791 (Fla.1959). Furthermore, we have held that courts are bound by the rule of *stare decisis* to follow common law as it has been judicially declared in previously adjudicated cases. Layne v. Tribune Co., 108 Fla. 177, 146 So. 234 (1933).

The question presently before this Court is whether this Court should replace the doctrine of contributory negligence with the concept of comparative negligence. *Sub judice*, by applying the doctrine of contributory negligence, the trial court correctly followed the precedent set down by this Court in Louisville and Nashville Railroad Co. v. Yniestra, 21 Fla. 700 (1886), and its progeny. This Court in *Yniestra* recognized and described contributory negligence as "the law as it unquestionably stands," 21 Fla. 700, p. 737. We said, "If Mr. Yniestra was himself negligent, and that negligence was the proximate cause of his death, the *law* calls that contributory negligence, and the plaintiff could not recover."

Although the case of Butterfield v. Forrester, 11 East 60, 103 Eng.Rep. 926 (K.B.1809), is recognized as a leading case in the area of contributory negligence, such case was not the first pronouncement of the common law doctrine of contributory negligence. Lord Ellenborough wrote in Butterfield v. Forrester, *supra*, "One person being in fault will not dispense with another's using ordinary care for himself. Two things must concur to support this action, an obstruction in the road by the fault of the defendant, and no want of ordinary care to avoid it on the part of the plaintiff." 11 East 60, 61.

The brief opinions of Bayley, J. and Lord Ellenborough in *Forrester* were merely a restatement of the concept of common law contributory negligence. If this case was the origin of common law contributory negligence, then clearly it would not have been adopted as part of the statutory law of this state through Florida Statutes, Section 2.01, F.S.A., because that decision was rendered subsequent to July 4, 1776.

I note with much interest the comment by Wex S. Malone in, "The Formative Era of Contributory Negligence," 41 Illinois Law Review, 151, to the following effect: "The concise opinions of Bayley and Lord Ellenborough in Butterfield v. Forrester (1809) afford no indication that either of those judges felt at the time that he was charting new paths

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14 The dissenting justice is setting out a limited view of Florida courts' power to make common law based on the state constitutional separation of powers principles which are similar to limits on the federal courts's common-law powers, but are unlike that of most state courts. *See* Chapter I, p. 30 and Chapter IX, pp. 321-325 (limitations on federal court power based on separation of powers).

for law."[15]

Contributory negligence was adopted much earlier as a part of the common law. In Bayly v. Merrell, Cro.Jac. 386, 79 Eng.Rep. 331 (1606), the Court explicated, "(I)f he doubted of the weight thereof, he might have weighed it; and was not bound to give credence to another's speech; *and being his own negligence*, he is without remedy." (Emphasis supplied) Cro.Jac. 386, p. 387, 79 Eng.Rep. 331.

Charles Beach in 1882 traced the doctrine of contributory negligence back to its origin in his treatise on contributory negligence, wherein he set out, "Our Anglo-American law of Negligence, including, as of course, that of Contributory Negligence, has come down to us, in ordinary generation, from the civil law of imperial Rome. It is a part of that great debt which the common law owes to the classical and the scholastic jurisprudence." Beach on Contributory Negligence, §1, p. 1 (1882). See also: Beach on Contributory Negligence, 2d Ed., §1, p. 1 (1892), and Beach on Contributory Negligence, 3d Ed., Crawford, §1, p. 1 (1899).

Although he expressed a personal view of dislike for the operation of the principle of contributory negligence, Chief Justice McWhorter recognized in Louisville and Nashville Railroad Co. v. Yniestra, *supra*, the inability of this Court to change the common law rule of contributory negligence when he applied the existing law required to the facts of the case before him. He observed, "The law, in cases at least where human life is concerned, certainly needs *legislative* revision." (Emphasis supplied) 21 Fla. 700, p. 738.

By virtue of Florida Statutes, Section 2.01, contributory negligence is in force and said doctrine can be modified or replaced only by legislation to the contrary. Interposition of judicial power to make a legislative change in a statute which the Legislature on numerous occasions has refused to do is a clear invasion of the legislative.

Co-Operative Sanitary Baking Co. v. Shields, 71 Fla. 110, 70 So. 934 (1916), involved a personal injury suit wherein plaintiff sought to recover damages for injuries sustained through the alleged negligence of defendant. Therein, this Court stated, inter alia, that at common law a plaintiff could not recover for injuries to himself caused by the negligence of another if he in any appreciable way contributed to the proximate cause of injury, upon the theory that there is no apportionment of the results of mutual negligence. See also German-American Lumber Co. v. Hannah, 60 Fla. 76, 53 So. 516, 30 L.R.A.(N.S.) 882. In the *Shields* case, this Court explicitly recited, "The only modification of this common-law principle which the Legislature of this state has seen fit to make is in regard to injuries occasioned by railroad companies. See sections 3148, 3149, and 3150 of the General Statutes. *If this common-law principle is to be still further modified, it must be done by the Legislature, as it is beyond the power and province of the courts.* We would also refer to Coronet Phosphate Co. v. Jackson, 65 Fla. 170, 61 So. 318, and Wauchula Manufacturing & Timber Co. v. Jackson, 70 Fla. 596, 70 So. 599, decided here at the last term, wherein we followed the principles enunciated in German-American Lumber Co. v. Hannah, *supra*. If the evidence adduced in the instant case established the fact that the plaintiff's own negligence contributed to the proximate cause of the injuries which he received, then he cannot recover, even though it is also established by the evidence that the defendant was likewise guilty of negligence, whether by acts of commission or omission, which contributed to or formed a part of the proximate cause of the injury. In order to determine this point a careful examination of the evidence is requisite." (Emphasis supplied) *supra*, 70 So. at p. 936.

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15 The dissenting judge relies on scholarly commentary in his favor to support his position. *See supra* note 10.

In fine, the primary question is not whether or not the law of contributory negligence should be changed, but rather, who should do the changing. Contributory negligence was recognized in the common law as far back as A.D. 1606 and made a part of the statute law of this State in A.D. 1829, and thus far not changed by statute. If such a fundamental change is to be made in the law, then such modification should be made by the legislature where proposed change will be considered by legislative committees in public hearing where the general public may have an opportunity to be heard and should not be made by judicial fiat.[16] Such an excursion into the field of legislative jurisdiction weakens the concept of separation of powers and our tripartite system of government.

For the foregoing reasons, I respectfully dissent.

16 Here, the dissent is making an argument about the relative institutional competence of judges and the legislature to fully consider and decide on changes in the law. *See* Chapter II, p. 45.

CONSTITUTION OF THE UNITED STATES

[drafted 1787, ratified 1789][1]

PREAMBLE

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I [Legislative Power]

Section 1. [Legislative Power Vested in Congress] All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. [House of Representatives] [1. Election and Term of Members] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

[2. Qualifications of Members] No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3. Apportionment of Representation] {Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.}[2] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

[4. Vacancies] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[5. Speaker of the House; Impeachment Power] The House of Representatives shall chuse[3] their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 3. [Senate] [1. Composition, Election, and Term of Office] {The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.}[4]

[2. Staggered Terms and Vacancies] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three

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1 Footnotes and material in square brackets [ ] are explanatory and added by the author. Material in braces { } is superseded or changed by amendment, as explained in the accompanying footnote.

2 The mode of apportionment of representatives among the several states was amended by the 14th Amendment §2. Taxes on incomes without apportionment was authorized by the 16th Amendment. The reference to "other Persons" is to slaves. *See* Chapter I, p. 5.

3 This is the 18th century spelling of "choose."

4 The paragraph in braces was superseded by the 17th Amendment.

Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; {and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.}[5]

[3. Qualifications of Senators] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4. Vice President as President of Senate] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5. Officers] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

[6. Senate's Power to Try Impeachments] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[7. Effect of Conviction in Impeachment] Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section 4. [Congressional Elections and Meetings of Congress] [1. Congressional Elections] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[2. Meetings of the Congress] The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the {first Monday in December, unless they shall by Law appoint a different Day.}[6]

Section 5. [Power of Each House Over Internal Operations] [1. Each House as Judge of Qualifications and Election of Members; Quorum] Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[2. Rules of Proceedings; Punishment and Expulsion of Members] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

[3. Journal and Voting] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

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5 The phrase in braces was superseded by 17th Amendment.

6 The material in braces was superseded by 20th Amendment.

[4. Consent of Each House to Adjournment] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section 6. [Compensation and Immunities; Incompatible Offices] [1. Compensation and Immunities] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.[7]

[2. Incompatible Offices] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section 7. [Legislative Process] [1. Revenue Bills to Originate in House] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2. Passage of Bills by Both Houses and Presentment to President] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3. Presentment of Orders and Resolutions] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8. [Powers of Congress] [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[2] To borrow Money on the credit of the United States;

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

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7 The 27th Amendment amended this section by adding a sentence on compensation of members of Congress.

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7] To establish Post Offices and Post Roads;

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section 9. [Powers Prohibited to the United States]

[1. Importing Slaves] {The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.}[8]

[2. Suspension of Writ of Habeas Corpus] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3. Bills of Attainder and Ex Post Facto Laws] No Bill of Attainder or ex post facto Law

8 Congress duly passed a prohibition of further importation. To the extent that this clause condones slavery, it is superseded by the 13th Amendment.

shall be passed.

[4. No Direct Tax] No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.[9]

[5. No Taxes or Duties on State Exports] No Tax or Duty shall be laid on Articles exported from any State.

[6. No Preferences to Ports Nor Duties on Vessels] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

[7. Appropriations; Statements and Accounts] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8. No Titles of Nobility or Emoluments From Foreign States to Officers of United States] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Section 10. [Restrictions on the States] [1. Powers Restrictions and Rights Restrictions] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[2. Import-Export Clause] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[3. Powers Restrictions] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II [The Executive Power]

Section 1. [Executive Power Vested in President; Term and Election of President and Vice-President; Qualifications of President; Removal and Succession; Compensation; Oath of Office] [1. Executive Power Vested in President; Term of Office] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows:[10]

[2. Election of President and Vice-President] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the

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9 This clause, together with Art. I §2 cl. 3, was repealed by the 16th Amendment.

10 To the extent that this implies that the President may be elected to more than two terms, it is amended by the 22nd Amendment.

United States, shall be appointed an Elector.[11]

[3. Method of Selection] {The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President, the Votes shall be taken by States the Representation from each State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greater Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall choose from them by Ballot the Vice President.}[12]

[4. When Electors Vote] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[5. Qualifications] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

[6. Succession] {In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly until the Disability be removed, or a President shall be elected.}[13]

[7. Compensation] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[8. Oath of Office] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation: — "I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

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11 This clause was altered by the provisions of the 23rd Amendment, which authorizes Presidential Electors for the District of Columbia, thus for the first time giving District residents the right to vote in presidential elections.

12 This clause was superseded by the 12th Amendment. Parts of the 12th Amendment were in turn superseded by §3 of the 20th Amendment.

13 This clause was superseded by the 25th Amendment.

Section 2. [Powers of the President] [1. Commander in Chief; Executive Opinions; the Pardon Power] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the Executive Departments, upon any Subject relating to the Duties of their respective Offices and he shall have Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.

[2. Treaty Power and Appointments Power] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[3. Recess Appointments] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section 3. [Powers with respect to Congress; Ambassadors; Enforcement of the Laws; Commissioning of Officers] He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. [Impeachment of the President and Other Federal Officers] The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

ARTICLE III [The Judicial Power]

Section 1. [Federal Judicial System and Federal Judges] The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. [Jurisdiction of the Federal Courts] [1. The Bases of Federal Jurisdiction] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; —to all Cases affecting Ambassadors, other public Ministers and Consuls; —to all Cases of admiralty and maritime Jurisdiction; —to Controversies to which the United States shall be a Party; —to Controversies between two or more States {; —between a State and Citizens of another State}; —between Citizens of different States; —between Citizens of the same State claiming Lands under Grants of different States {, and between a State, or the Citizens thereof, and foreign States, Citizens or

Subjects.}[14]

[2. Supreme Court Original and Appellate Jurisdiction] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[3. Jury Trial in Criminal Cases] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. [Treason] [1. Definition and Proof] Treason against the United States, shall consist only in levying War against them, or, in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2. Punishment] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV [States; Federal Property]

Section 1. [Full Faith and Credit] Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2. [1. Privileges and Immunities] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2. Extradition] A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

[3. Fugitive Slaves] {No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.}[15]

Section 3. [1. Admission of New States] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[2. Power Over Federal Property] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4. [Guaranty of Republican Form of Government] The United States shall

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14 The two phrases in braces in this clause were superseded by the 11th Amendment. *See* Chapter I, p. 37, and Chapter VI, pp. 222-224.

15 This clause was repealed by the 13th Amendment's prohibition of slavery and involuntary servitude.

guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V [Amendment of the Constitution]

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI [Debts, Supremacy and Oaths]

Section 1. [Debts] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

Section 2. [Supremacy of Federal Law] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Section 3. [Oath of Office] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII [Ratification of Original Articles]

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

DONE in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of Our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth. IN WITNESS whereof We have hereunto subscribed our Names,

[signatures of delegates omitted].

AMENDMENTS TO THE CONSTITUTION[16]

AMENDMENT I [Freedom of Religion, Speech, Press, Assembly and Petition]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT II [Militia; Right to Bear Arms]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

AMENDMENT III [Quartering of Soldiers]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT IV [Searches and Seizures]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT V [Grand Jury Indictment; Double Jeopardy; Self-Incrimination; Due Process of Law; Taking of Property]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT VI [Speedy and Public Trial; Trial by Jury; Notice of Charges; Confrontation; Assistance of Counsel]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT VII [Jury Trial in Civil Cases]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

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16 The year each Amendment was ratified is indicated in parentheses, except for the Bill of Rights (first 10 amendments), which were all ratified together in 1791. *See* Chapter I, p. 3.

AMENDMENT VIII [Bail; Cruel and Unusual Punishment]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT IX [Rights Retained by the People]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X [Powers Reserved to the States]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XI [Immunity of States from Suit in Federal Court] (1798)[17]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

AMENDMENT XII [Separate Electoral Vote for President and Vice-President] (1804)[18]

The Electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate; — The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers of the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

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17 *See supra* note 14.

18 *See supra* note 12.

AMENDMENT XIII [Abolition of Slavery] (1865)

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV [Citizenship; Privileges and Immunities; Due Process of Law; Equal Protection of the Laws] (1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is being denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.[19]

{Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.}

{Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.}[20]

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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19 The first sentence of §2 amended the provisions of Art. I §2 cl. 3 governing apportionment of representation in the House of Representatives by requiring states to count former slaves as whole persons and providing a penalty in the event that state interfered with the voting rights of newly freed slaves.

20 Sections 3 and 4 are obsolete. They concerned matters regarding the aftermath of the Civil War.

AMENDMENT XV [Prohibition Against Racial Discrimination in Voting] (1870)

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XVI [Income Tax] (1913)

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.[21]

AMENDMENT XVII [Direct Election of Senators] (1913)[22]

[1] The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

[2] When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, that the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

[3] This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT XVIII [Prohibition on Alcoholic Liquor][23]

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

AMENDMENT XIX [Women's Right to Vote] (1920)

[1] The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

[2] Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XX [Presidential and Congressional Terms] (1933)

Section 1. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

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21 The 16th Amendment gave Congress the power to levy an income tax. *See* Chapter I, p. 27.

22 The 17th Amendment amended Art. I §2 cl. 1-2, which had provided for election of Senators by the state legislatures.

23 The 18th Amendment, which established "Prohibition," was repealed by §1 of the 21st Amendment. *See* Chapter IX, p. 361 note 345.

Section 2. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3d day of January, unless they shall by law appoint a different day.[24]

Section 3. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Section 4. The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice President whenever the right of choice shall have devolved upon them.

Section 5. Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

AMENDMENT XXI [State Control Over Intoxicating Liquors] (1933)

Section 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

AMENDMENT XXII [Limitation on Presidential Terms] (1951)

Section 1. No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

Section 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three- fourths of the several States within seven years from the date of its submission to the States by the Congress.

AMENDMENT XXIII [Presidential Electors for the District of Columbia] (1961)

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

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24 See supra note 6.

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXIV [Prohibition on Poll Tax in Federal Elections] (1964)

Section 1. The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XXV [Succession to Presidency and Vice-Presidency; Presidential Disability] (1967)

Section 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

Section 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

Section 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Section 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives, their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the

President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

AMENDMENT XXVI [Prohibition Against Discrimination in Voting on Basis of Age] (1971)

Section 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

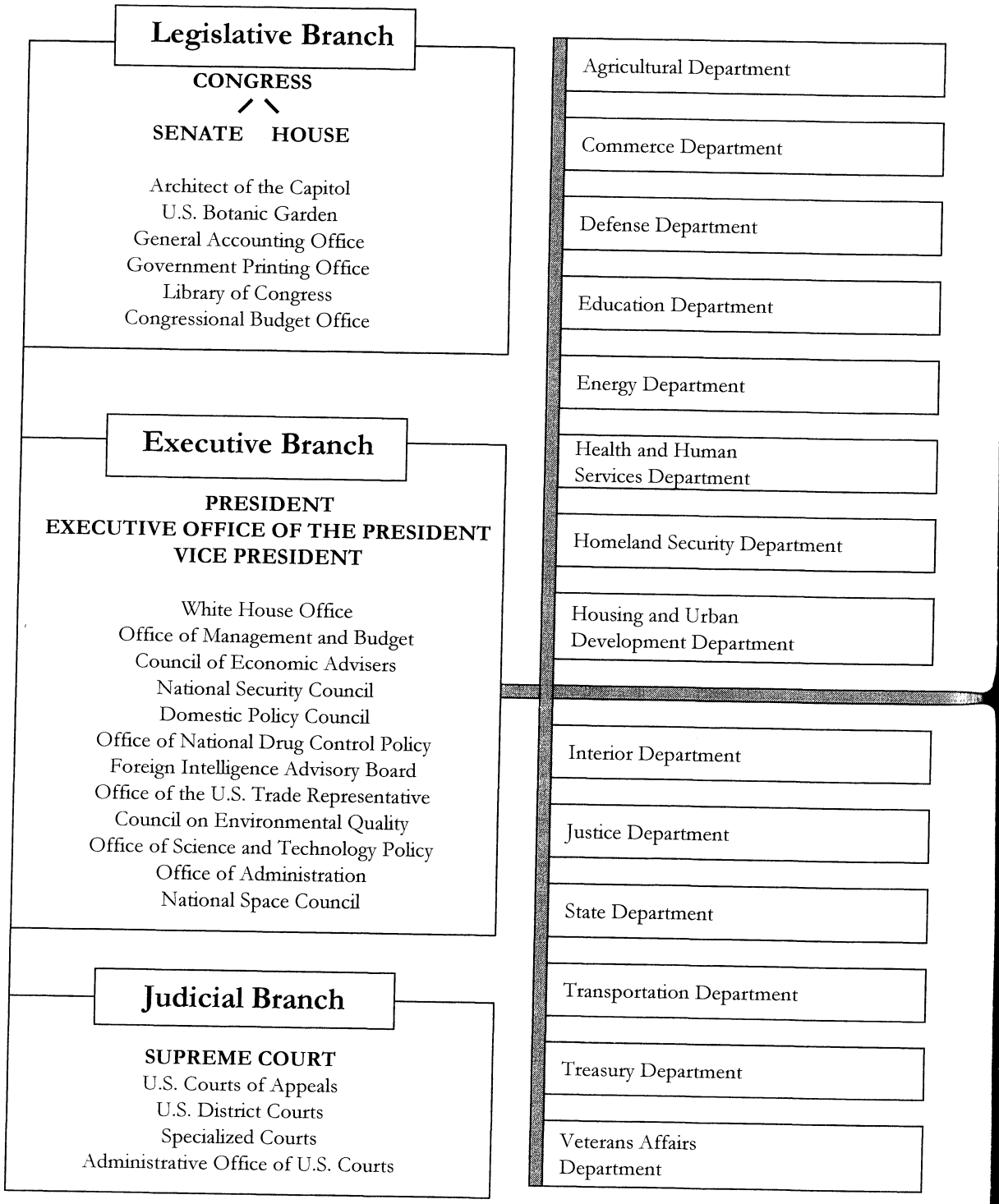
AMENDMENT XXVII [Compensation of Senators and Representatives] (1992)[25]

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

25 This recent amendment amended Art.I §6 cl. 1. It is notable for having the longest period between proposal and ratification — over 200 years. *See* Chapter IX, p. 325 note 53.

DIAGRAMS

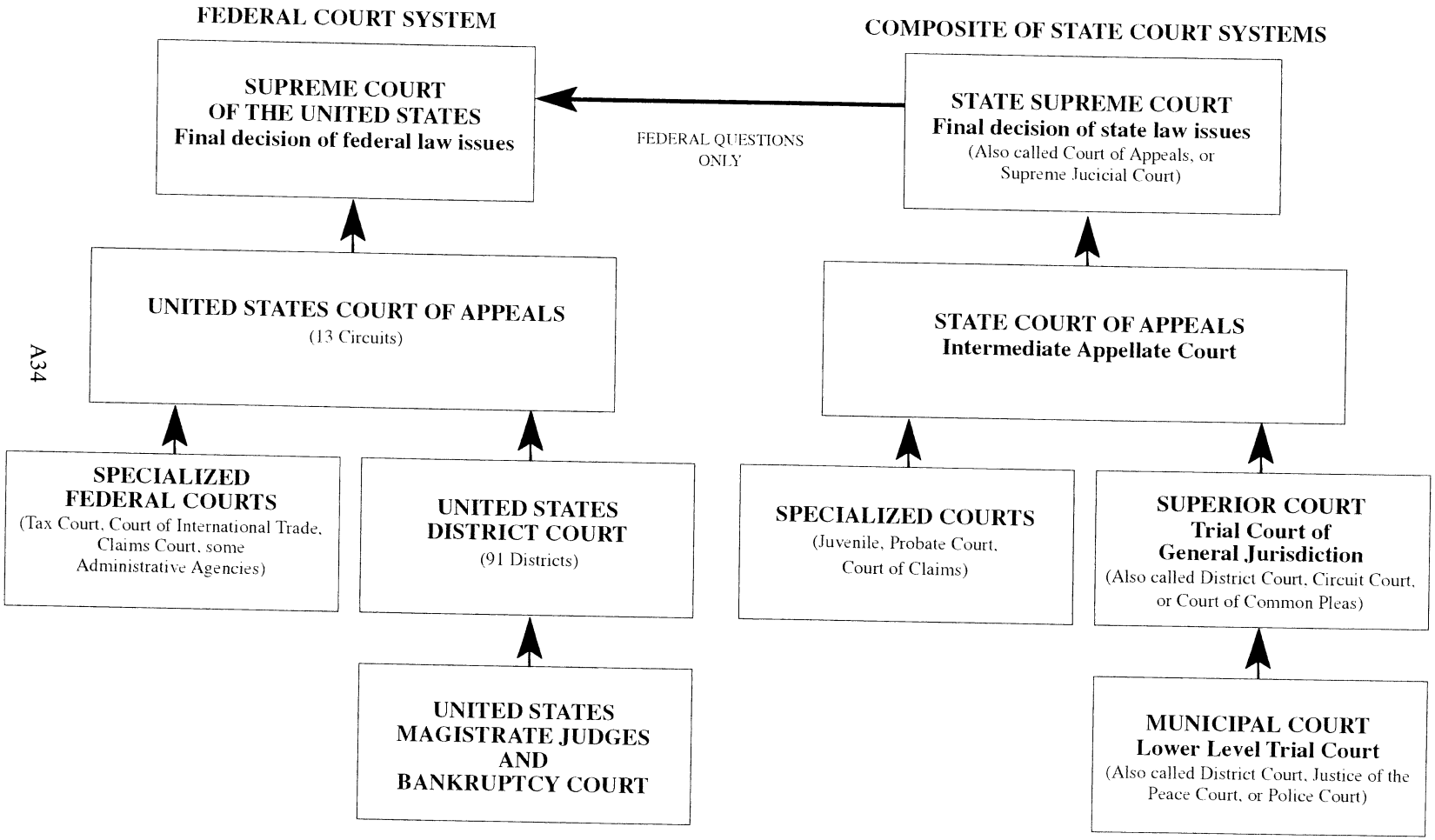
Structure of the Federal Government



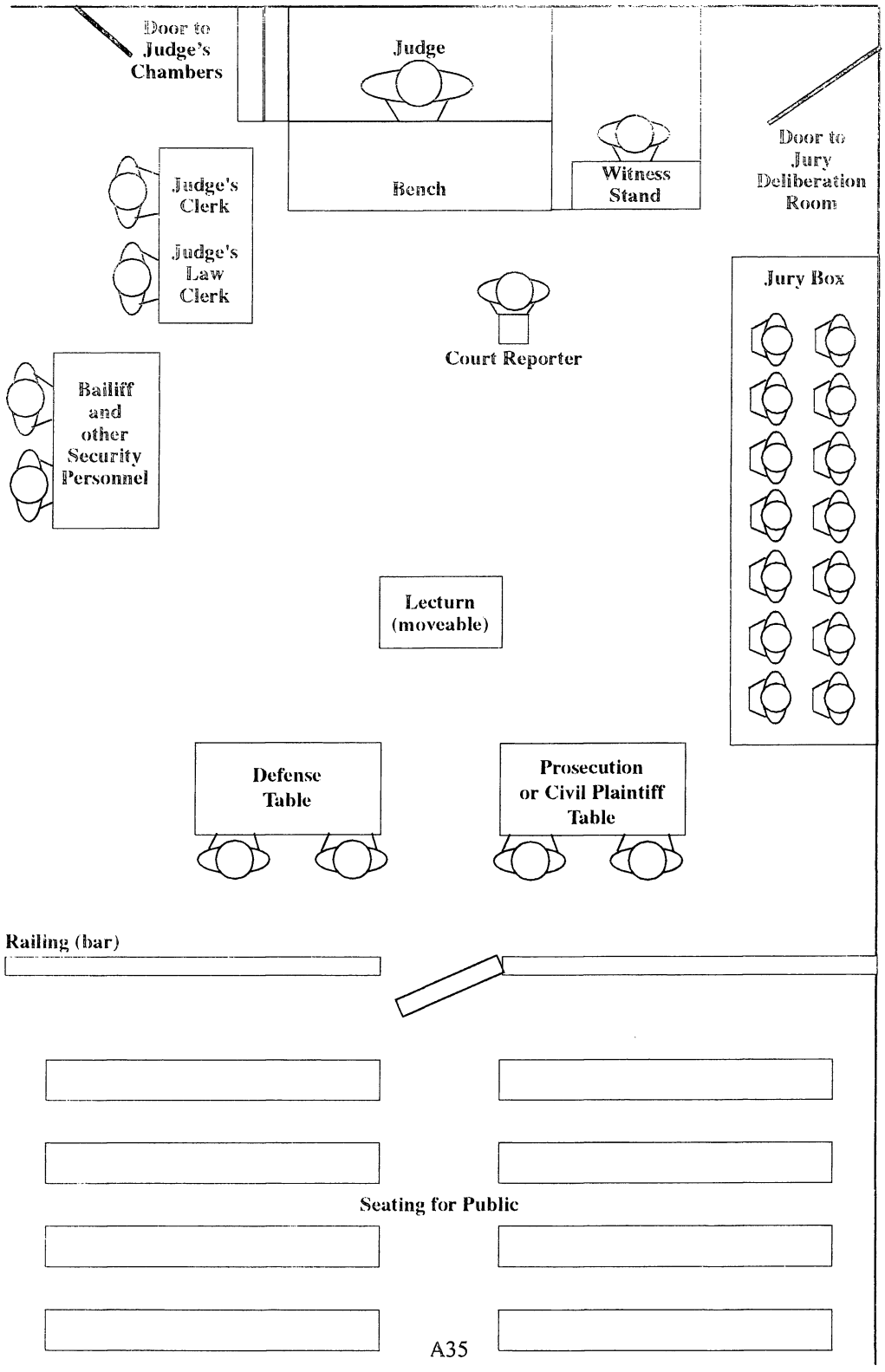
Independent Establishments, Government Corporations and Quasi-official Agencies

African Development Foundation
Appalachian Regional Commission
Board for International Broadcasting
Central Intelligence Agency
Commission on Civil Rights
Commodity Futures Trading Commission
Consumer Product Safety Commission
Corporation for Public Broadcasting
Corporation for National and Community Service
Election Assistance Commission
Environmental Protection Agency
Equal Employment Opportunity Commission
Export-Import Bank of the United States
Farm Credit Administration
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
Federal Housing Finance Board
Federal Labor Relations Authority
Federal Maritime Commission
Federal Mediation and Conciliation Service
Federal Mine Safety and Health Review Commission
Federal Reserve System, Board of Governors
Federal Retirement Thrift Investment Board
Federal Trade Commission
General Services Administration
Institute of Museum and Library Sciences
Inter-American Foundation
International Broadcasting Bureau
Legal Services Corporation
Merit Systems Protection Board
National Aeronautics and Space Administration
National Archives and Records Administration
National Capital Planning Commission
National Credit Union Administration
National Endowment for the Arts
National Labor Relations Board
National Mediation Board
National Railroad Passenger Corporation (AMTRAK)
National Science Foundation
National Transportation Safety Board
Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
Office of Government Ethics
Office of Personnel Management
Office of Special Counsel
Panama Canal Commission
Peace Corps
Pension Benefit Guaranty Corporation
Postal Rate Commission
Railroad Retirement Board
Securities and Exchange Commission
Selective Service System
Small Business Administration
Social Security Administration
Tennessee Valley Authority
Trade and Development Office
U.S. Agency for International Development
U.S. Information Agency
U.S. International Trade Commission
U.S. Postal Service

Diagram of State and Federal Court Systems and Hierarchy



Typical Trial Courtroom



APPENDIX B

ADDRESSES OF MAJOR PUBLISHERS OF U.S. LEGAL EDUCATIONAL MATERIALS AND SOURCES OF U.S. LAW ON THE INTERNET

These companies specialize in legal materials for law students and law teachers, though some have extensive materials for practitioners as well. Most readers of this book will be interested only in the law school materials and will want contact the law school division of the publishers or go to the law school section of the website. An explanation of the kinds of books and materials available is set out in the *Reader's Guide and Bibliographic Introduction* at the beginning of this book (pp. xxxiii-xxxvi).

West Group 620 Opperman Drive Eagan, Minnesota 55123	Telephone: 800-328-4880; 651-687-4919 www.westacademic.com/ or west.thomson.com/store/default.asp
Foundation Press (owned by West) 615 Merrick Avenue Westbury, New York 11590-6607	Telephone: 800-917-7377; 212-760-8700 Fax: 212-760-8705 www.westacademic.com/
Aspen Law and Business 7201 McKinney Circle Frederick, Maryland 21704-8356	Telephone: 800-638-8437; 301-644-3599 lawschool.aspenpublishers.com/
Lexis Law Publishing Attn: Customer Support P.O. Box 7587 Charlottesville, Virginia 22906	Telephone: 800-542-0957 or 804-972-7600; Fax: 804-972-7525 www.lexisnexis.com/academic/universe/academic/

SELECTED INTERNET SITES FOR LEGAL INFORMATION

The amount of legal information and materials available on the Internet is expanding and the sites listed below are subject to change. Further comments on Internet sources are set out in the Reader's Guide and Bibliographic Introduction following the preface.

Legal Research Sites	www.findlaw.com/
Legal Search Engines	www.law.cornell.edu/
Links to Other Legal Sites	gsulaw.gsu.edu/metaindex/
Legal News	www.law.com/ www.law.com/jsp/nlj/index.jsp
U.S. Congress	www.thomas.loc.gov
Library of Congress	www.loc.gov
Federal Judiciary	www.uscourts.gov

National Center for State Courts	www.ncsconline.org
Department of Justice Bureau of Judicial Statistics	www.ojp.usdoj.gov
American Judicature Society	www.ajs.org
American Bar Association	www.abanet.org
Attorney Finders	www.abanet.org/premartindale.html
U.S. Government Printing Office	http://www.gpoaccess.gov/