

# CONTENTS

ACKNOWLEDGMENTS	v
CONTENTS	viii
PREFACE	xi
WHY LEGAL HISTORY MATTERS	1
FINDING AND MAKING THE COMMON LAW	13
CHARTING NEW COURSES	24
FOUNDATIONAL CONSTITUTIONAL PRINCIPLES	34
<i>Proprietors of the Kennebec Purchase v. Laboree</i>	35
<i>Lewis v. Webb</i>	38
<i>Allen v. McKean</i>	42
PAUPERS	48
<i>Adeline G. Nott's Case</i>	49
<i>Portland v. Bangor (1856)</i>	52
<i>Portland v. Bangor (1876)</i>	54
MAINE LAW'S DEBT TO ANIMALS	58
<i>A Stallion Named "Sir William" and Caveat Emptor:</i>	
<i>Let the Buyer Beware</i>	59
<i>A Horse Named "Prince" and the Law of Bailments</i>	62
<i>The Invalidity of Agreements That Violate Public Policy</i>	64
<i>Judicial Notice</i>	67
<i>Competing Interests: Animals and Economic Development</i>	69
<i>Domestic Animals and the Law</i>	73
CONTRIBUTORY NEGLIGENCE AND	
RAILROAD CROSSING COLLISIONS	79
<i>The Contributory Negligence Doctrine</i>	80
<i>Dr. Pickard's Case</i>	82
<i>Albert Lesan's Case</i>	89
<i>Other Cases of Note</i>	90
<i>New Hampshire's Jurisprudence—A Different View</i>	99

<i>Legislative Reform</i>	101
WOMEN AND THE LAW	103
<i>Limiting the Circumstances in Which One Spouse         May Testify Against the Other</i>	105
<i>Strictly Construing Statutes Granting Rights to         Married Women</i>	110
<i>Preventing Tort Claims by One Spouse Against         the Other</i>	114
<i>Preserving the Traditional Structure of Marriage         Court Majority (5-3) Opines That Women Cannot         be Judges in Maine</i>	118
EMPLOYEE INJURIES	120
<i>Massachusetts Chief Justice Shaw and the Fellow         Servant Rule</i>	123
<i>The Fellow Servant Rule Comes to Maine</i>	138
<i>Angele Podvin's Case</i>	141
<i>Lewanna Wiley's Case</i>	143
<i>Julia Cote's Case</i>	146
<i>Silas Potter's Case</i>	147
<i>Maurice Lawler's Case</i>	149
<i>Howard Bessey's Case</i>	151
<i>Mark Cunningham's Case</i>	153
<i>Some Contrary Judicial Views From Other States</i>	154
<i>Legislative Response</i>	157
WRONGFUL DEATH CLAIMS	161
<i>Wrongful Death Claims Under the Common Law</i>	162
<i>Maine's Wrongful Death Legislation and the         Court's Response Thereto</i>	166
MAINE'S MORALITY LAWS	172
<i>Maine's Lord's Day Law</i>	172
<i>Illegal Wagers</i>	178
ENSURING PUBLIC SAFETY	185
<i>"Salus Populi Suprema Lex"</i>	186
<i>Punitive Damages Allowed</i>	188
<i>Riotous Assault Condemned</i>	190
<i>Assault Not Justified by Provocative Words</i>	191

<i>Uncivil Behavior Discouraged</i>	194
<i>Equal Protection Secured</i>	197
THE COURT AND THE PUBLIC SCHOOLS	200
<i>Corporal Punishment</i>	200
<i>Bridget Donahoe and Bible Reading in the Public Schools</i>	211
MAINE'S BLASPHEMY CASE	228
THE CIVIL WAR	238
<i>Responding to the Dred Scott Case</i>	239
<i>Rejecting the Use of Tax Dollars to Facilitate Draft Avoidance</i>	253
MAINE'S RIVERS	259
<i>Rivers as Public Highways</i>	259
<i>Resolving Conflicting Uses of Rivers: A Rule of Reason</i>	265
<i>Frozen Rivers: Rights of Passage</i>	270
RESOLVING DISPUTES BETWEEN NEIGHBORS	275
<i>Mr. Haines's Bowling Alley</i>	276
<i>Mary Hathorn's Tomb</i>	282
GOVERNMENTAL POWER AND PRIVATE PROPERTY	286
<i>The Power of Eminent Domain — Defining "Public Use"</i>	289
<i>Governmental Power to Tax and Spend — Defining "Public Purpose"</i>	297
<i>Restricting the Use of Private Property in the Public Interest — The "Police Power"</i>	310
CONCLUDING THOUGHTS	320
<i>Economic Progress</i>	320
<i>Social Stability</i>	324
<i>The Struggle for Equal Rights Under the Law</i>	327
<i>A Broader View</i>	330
TABLE OF CASES	334
INDEX	340