

# ABOUT THE AMERICAN LAW INSTITUTE

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## Creation of the Institute

The American Law Institute was organized in 1923 following a study conducted by a group of prominent American judges, lawyers, and teachers known as “The Committee on the Establishment of a Permanent Organization for the Improvement of the Law.” The Committee had reported that the two chief defects in American law, its uncertainty and its complexity, had produced a “general dissatisfaction with the administration of justice.”

According to the Committee, part of the uncertainty of the law, as it then existed, was due to the lack of agreement among members of the profession on the fundamental principles of the common law. Other causes of uncertainty were reported as “lack of precision in the use of legal terms,” “conflicting and badly drawn statutory provisions,” “the great volume of recorded decisions,” and “the number and nature of novel legal questions.” The law’s complexity, on the other hand, was attributed in significant part to its “lack of systematic development” and to its numerous variations within the different jurisdictions of the United States.

The Committee’s recommendation that a lawyers’ organization be formed to improve the law and its administration led to the creation of The American Law Institute. The Institute’s charter stated its purpose to be “to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.” Its incorporators included Chief Justice and former President William Howard Taft, future Chief Justice Charles Evans Hughes, and former Secretary of State Elihu Root; Judges Benjamin N. Cardozo and Learned Hand were among its early leaders.

## Institute Projects

The founding Committee had recommended that the first undertaking of The American Law Institute should address uncertainty in the law through a restatement of basic legal subjects that would tell judges and lawyers what the law was. The formulation of such a restatement thus became the first endeavor of the Institute. Between 1923 and 1944, Restatements of the Law were developed for Agency, Conflict of Laws, Contracts, Judgments, Property, Restitution, Security, Torts, and Trusts. In 1952, the Institute started Restatement Second — new editions

of the original Restatements that updated them, reflected new analyses and concepts, and expanded upon the authorities used in reaching the conclusions set forth. Restatement Second also treated subjects not included in the first Restatement, such as Landlord and Tenant and the Foreign Relations Law of the United States. In 1987 a new Restatement of the Foreign Relations Law of the United States inaugurated a third series of Restatements, which also now includes Restatements of Unfair Competition, Property (Mortgages and Servitudes), Suretyship and Guaranty, Torts (Products Liability and Apportionment of Liability), and The Law Governing Lawyers. New Restatements on Agency, Property (Wills and Other Donative Transfers), Restitution and Unjust Enrichment, Trusts, Torts (Liability for Physical Harm), and Employment Law are also being developed as part of Restatement Third. The Restatement Case Citations are additional aids designed to provide easy access to court decisions that cite the Restatements.

For more than half a century the Institute has collaborated with the National Conference of Commissioners on Uniform State Laws in developing and monitoring the Uniform Commercial Code, or UCC. The UCC, a comprehensive code addressing most aspects of commercial law, is generally viewed as one of the most important developments in American law; it has been enacted (with some local variations) in 49 states and in the District of Columbia and the Virgin Islands, as well as partially in Louisiana. In recent years, the UCC has undergone substantial study and revision under the auspices of the Institute and the Conference. Other Institute projects have resulted in the development of model statutory formulations, including the Model Code of Evidence, the Model Penal Code, a Model Code of Pre-Arrest Procedure, a Model Land Development Code, and a proposed Federal Securities Code.

The Institute also engages in intensive examination and analysis of legal areas thought to need reform. This type of study generally culminates in a work product containing extensive recommendations or proposals for change in the law. These projects have dealt with topics such as Federal Taxation, Division of Jurisdiction Between State and Federal Courts, Complex Litigation, Corporate Governance, and Enterprise Responsibility for Personal Injury. Recently completed projects of this type include studies of the Law of Family Dissolution, Transnational Insolvency, Principles of Transnational Civil Procedure, which was carried out in collaboration

with the Rome-based International Institute for the Unification of Private Law (UNIDROIT), and a proposed revision of selected portions of the Federal Judicial Code. Currently underway are projects on International Jurisdiction and Judgments, International Intellectual Property Law, and World Trade Law.

Since 1947 the Institute has collaborated with the American Bar Association in a multifaceted national program of continuing legal education aimed at enhancing the competence of the practicing bar. The American Law Institute-American Bar Association Committee on Continuing Professional Education (ALI-ABA) produces books, periodicals, and audiovisual materials covering most areas of practice and offers courses of study and programs of instruction throughout the country, some telecast nationally via satellite on ALI-ABA's American Law Network. ALI-ABA also sponsors the American Institute for Law Training within the Office (AILTO).

## How the Institute Works

1. A project is undertaken by the Institute only upon the careful consideration and prior approval of its Officers and Council. When a project has been authorized, an expert in the field of law to be considered, usually a legal scholar, is designated as Reporter. With the help of assistants, the Reporter does the basic research and prepares the initial draft of the material.

2. This initial draft is submitted for suggestions and revisions to a small group of Advisers — judges, lawyers, and law teachers — with special knowledge of the subject. In most projects the draft is also reviewed by a Members Consultative Group consisting of members of the Institute with particular interest in the subject.

3. The revised draft is next submitted for further analysis and consideration to the Council of the Institute, a group consisting of some sixty prominent judges, practicing lawyers, and law teachers. The draft can then be referred either to the Reporter and the Advisers for further consideration or to the Annual Meeting for review by the membership.

4. When approved by the Council, the draft as further revised is presented as a Tentative Draft to an Annual Meeting of the entire membership for debate and discussion and is then made available for public distribution. The membership may approve the Tentative Draft, subject to any revisions agreed to, or refer it back to the Reporter and Advisers for additional consideration.

5. In any Restatement or codification project, a series of Tentative Drafts is produced in this manner

over a period of years. When the treatment of a subject has thus been completed, a Proposed Final Draft, consisting of all prior Tentative Drafts and reflecting membership action, may be submitted to the Council and the membership. When the project has been approved by both, the official text of The American Law Institute is prepared for publication.

The final product, the work of highly competent group scholarship, thus reflects the searching review and criticism of learned and experienced members of the bench and bar. Many Institute publications have been accorded an authority greater than that imparted to any legal treatise, an authority more nearly comparable to that accorded to judicial decisions.

## Membership

As a national organization, the Institute aims to assure that its membership reflects both the quality and the diverse character of a rapidly changing profession.

The Institute's bylaws authorize an elected membership of 3,000. This membership consists of judges, lawyers, and law teachers from all areas of the United States as well as some foreign countries, selected on the basis of professional achievement and demonstrated interest in the improvement of the law. After 25 years, elected members are eligible to become life members and as such are no longer included in the elected-membership category. There is also an ex officio membership consisting of the Chief Justice and Associate Justices of the Supreme Court of the United States, the Chief Judges of each United States Court of Appeals, the Attorney General and Solicitor General of the United States, the Chief Justice or Chief Judge of the highest court of each state, law school Deans, and the Presidents of the American Bar Association, each state bar association, and other prominent legal organizations.

Elected members are expected to participate regularly in the work of the Institute in some significant way. Members may participate by attending Annual Meetings, submitting written comments on drafts circulated before Annual Meetings, serving as Reporters, Advisers, or Consultants on Institute projects, serving on Members Consultative Groups, participating as speakers or lecturers in ALI-ABA programs or authors of ALI-ABA publications, or otherwise advancing the work or objectives of the Institute or ALI-ABA.

In order to maintain the Institute's reputation for thoughtful, disinterested analysis of legal issues, members are expected to speak and vote on the basis of their own personal and professional convictions and without regard to client interests.