A Brief Text with Leading and Illustrated Cases (Book Review)

Maurice Finkelstein
important factor in the teaching of a subject. The book under review
treats the question of priorities, first in Chapter Five, which chapter is
titled "General Particulars Governing Priorities" and later in Chapter
Eight, which is entitled, "Transfer of Mortgagee's Interest." Although
some prefer the complete exhaustion of a topic before proceeding to an-
other, there, are, no doubt, many subjects, such as mortgages where strict
logic must bow to pedagogic common sense, and the order of presentation
be that which our experience has taught us to be more conducive to the
understanding of the subject by the student.

It is also noted that the appendix contains a draft of the Uniform
Mortgage Act. The National Conference Commissioners, on Uniform
State Laws, have, for some time in the interest of commercial enterprise,
been advocating such an act. The 1926 conference has placed the considera-
tion of this act on its calendar and it is possible that some definite action
will be taken in 1927. Students of the law should be interested not only
in what the law is, but in all contemplated changes and reforms, be they
progressive or otherwise, and the inclusion of the text of the proposed
act in Professor Parks' book is a step forward in legal education.

E. J. O'TOOLE.

A Brief Text with Leading and Illustrated Cases by Charles W. Gerstenberg,

Avowedly for the purpose of giving a short course in constitutional law,
this volume evidently interprets the words "short course" to mean teaching
a little about a great many parts of the subject rather than teaching inten-
sively about a few parts of the subject. Presented with a dilemma of
giving the course in constitutional law in a short period, the writer would
think that it would seem more advantageous to the student to delve deeply
into part of the subject rather than to touch lightly upon nearly every
phase of the Constitution. The book is divided into two parts, one of
which purports to give a discussion of the Constitution in 126 pages. The
balance of the book is taken up with leading cases. In the first part of
the book the author treats many branches of the subject. Merely listing
them would indicate that his treatment must necessarily be inadequate.
Almost any one of the subdivisions could hardly be given adequate treat-
ment in the small space allotted for all of them. As a consequence of
this brief treatment, the impression that the student gains is that constitu-
tional law consists more or less of a series of rules contained either in
the Constitution or in the precedents established by the decisions of the
Supreme Court. Nothing, it seems to the writer, can be more erroneous
and no approach to constitutional law more barren of results. If anything,
one must recognize that in this branch of the law more than in any other,
we are dealing with flexible standards and broad policies, the application of
which varies with changing states of facts. One is reminded of the ex-
clamation reported to have been made by the late John Chipman Gray, who
for many years had been teaching real property, a subject eminently char-
acterized by its rigid rules. It appears that having attempted to teach con-
stitutional law for a short time, he finally threw up his hands with the
exclamation: "This is not law, this is politics." This was eminently char-
acteristic of a real property professor to whom law must necessarily appear
to be a series of well defined rules. Perhaps the best place to illustrate the
learned author's position is his chapter on The Police Power. In the latter
part of this section he in effect criticizes the dissenting opinions in Hammer
v. Dagenhart, Lochner v. N. Y., Muller v. Oregon and kindred cases where
the dissenting judges and many law writers have been of the opinion that
economic data alone are necessary to test the reasonableness and constitu-
tionality of industrial legislation. In reply to Mr. Frankfurter's dictum
that the brief submitted by the present Mr. Justice Brandeis in Muller v.
Oregon, 208 U. S. 412, was the first to contain authoritative data and that
for the first time briefs breathed reality, Mr. Gerstenberg exclaims: "* * *
that statistical data of the kind submitted in that brief is so easily susceptible
of inexpert handling that it holds within itself the elements and extreme
danger as well as of intellectual right." That seems to be a very lawyer
like way of straddling the necessity of taking a decided position with regard
to the merits of that type of brief. On the other hand, if the implication
is that examination of statistical data might lead to extreme danger, this
is an argument for the abolition of statistics which is, of course, absurd.

Among the cases there does not seem to be any well organized or useful
presentation. Thus in the second section entitled "Separation of Depart-
ments of Government," where the writer intends to deal with the general
subject of the Separation of Powers, he includes with Marbury v. Madison,
1 Cranch, 137, which affected the doctrine of Separation of Powers only by
way of dictum and such cases as Massachusetts v. Mellon, 262 U. S. 597,
where the court refused to pass upon the subject and Ex Parte Grossman,
45 Sup. Ct. 332, which really affects the subject only indirectly. One does
not see the scheme of the third section entitled "United States and the
States" or the purpose of treating the case of Fauntelroy v. Lum, 210 U. S.
230, as a separate subject. In the sixth subdivision, entitled the "Judiciary,"
we again have a case Pacific Telephone & Telegraph Co. v. Oregon, 223
N. Y. 118, where the court declined to take jurisdiction of the suit claiming
it to be a political question, of the type referred to by Mr. Hughes in a
recently published address. At the same time, it is difficult to see what
bearing such a case has upon the other cases collected in that section. Per-
haps a more happy choice than Gitlow v. People of the State of New York,
might have been made to illustrate civil rights and surely a case where the
dissenting part of the court had expressed itself would not seem inappro-
priate. On the whole, the cases do not seem to be selected with any con-
sistent theory. There is a notable lack of dissenting opinions, some of
which are of the utmost importance for the future development of law
and for the proper comprehension of the ratio decidendi. It is helpful of
course to have the Constitution printed in full as an Appendix; and of course,
the book has the merit of being physically well gotten up, but its major
defects pointed out above make it extremely unlikely that it will gather
much vogue where constitutional law is attempted to be taught as a part
of the law specially adapted for the application of standards and policies
of law, to ever changing states of facts.

MAURICE FINKELSTEIN.

STUDENTS' MANUAL OF BANKRUPTCY LAW AND PRACTICE—
Second Edition, by Lee E. Joslyn, Detroit: Matthew Bender & Com-
pany, pp. XVIII-354.

The author of this Manual is a Lecturer on Bankruptcy at the Detroit
College of Law and also a Referee in Bankruptcy. This volume, a text book