

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

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important factor in the teaching of a subject. The book under review treats the question of priorities, first in Chapter Five, which chapter is entitled "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 another, 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 consideration 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, New York, Prentice Hall Inc., 1926, pp. XV, 562.

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 intensively 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 treatment in the small space allotted for all of them. As a consequence of this brief treatment, the impression that the student gains is that constitutional 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 exclamation reported to have been made by the late John Chipman Gray, who for many years had been teaching real property, a subject eminently characterized by its rigid rules. It appears that having attempted to teach constitutional law for a short time, he finally threw up his hands with the exclamation: "This is not law, this is politics." This was eminently characteristic 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. Dagenheart*, *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 constitutionality 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 Departments 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. Perhaps 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 inappropriate. On the whole, the cases do not seem to be selected with any consistent 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.

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STUDENTS' MANUAL OF BANKRUPTCY LAW AND PRACTICE—
Second Edition, by Lee E. Joslyn, Detroit: Matthew Bender & Company, 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