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## Book Reviews

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## BOOK REVIEWS

BRIEF MAKING AND THE USE OF LAW BOOKS. (Fifth Edition.)  
By Roger W. Cooley. St. Paul: West Publishing Co.

It is invariably the case that a potential lawyer, on first entering the library, exhibits an expression of bewilderment. He is confronted with tier upon tier of plainly bound volumes: Statutes, Compiled Statutes, Revised Statutes, Codes, Reports of all kinds, Encyclopaedias, and Treatises ad infinitum. And nothing but an Herculean endeavor on his part will alter the impression. The solution? Roger W. Cooley's "Brief Making and Use of Law Books," a Blue Book of the Judicial Highways.

The book is divided into six parts. The first answers the question, where to find the law, taking up in course: law defined, sources of law, primary and secondary authority and search books. Part Two deals with, how to find the law. This is composed of a lengthy discourse on the analysis of facts, use of digests, reporters, text-books, encyclopaedias, Corpus Juris, Ruling Case Law, and selecting and valuing authorities. Part Three discusses the use of decisions and statutes. Here we have a treatment of imperative and persuasive authority, decisions as precedents together with circumstances affecting the weight of a decision. The foregoing is an epitome of the groundwork in constructing a trial brief. Its purpose is to show the brief maker where to find the material for his brief, how to find it, and how to select out of the mass of material found that which will be suitable for his use.

The rest of the book is devoted to a study of the proper presentation to the court of the controversy in relation to which a final adjudication is desired, and points out the way such material collected could be used to the best advantage. In pursuing this line of action, a theory of the case must first be evolved. The theory is defined as: "a comprehensive and orderly mental arrangement of principles and facts, conceived and constructed for the purpose of securing a judgment or decree of a court in favor of a litigant."

In seeking a sound theory, the brief maker is aided immeasurably by formulating a provisional hypothesis. Its object is to give a definite direction to the search for authorities. A dominant point

in selecting a theory is in choosing that which will afford the relief desired. Most commonly, however, there is really no choice, and among a number of apparent theories only one is legally tenable. Furthermore, what can be said regarding the theory of the case, though apparently referring to the plaintiff's case alone, is in large part equally applicable to the defense. A logical, consistent, and sound theory is as important to a successful defense as it is to the plaintiff's case. And results of this thorough and careful study of the facts and law should be embodied in the brief, which serves as a guide during the trial. The proper preparation of the brief means a thorough study and analysis of the facts, a careful and exhaustive search for authorities, which must in turn be thoroughly analyzed, compared, and weighed to determine their value, and, finally, an arrangement of the facts and the law in logical order, corresponding to the theory of the case.

Should the case be carried to the appellate court the material thus gathered and selected must be incorporated in a Brief on Appeal. To that end the court must be informed as to the nature of the controversy, the facts out of which it arose, the decision of the trial court, the grounds on which a review is asked and the reasons why the decision should be reversed. The brief on appeal is composed of: title, preliminary statement, statement of facts (accentuating accuracy, clearness and conciseness) specification of error, points, argument and conclusion.

The section of the book devoted to The Trial Brief is edited by Edson R. Sunderland, Professor of Law, University of Michigan and Clifford W. Crandall, Professor of Law, University of Florida. Professor Henry S. Redfield, Columbia University, edited The Brief on Appeal.

The work, some seventeen hundred pages, represents a colossal undertaking and the fact that it is now in its fifth edition should sufficiently indicate its merit. It contains a manual of legal bibliography and numerous specimen pages of the various references, which is calculated to give the student a comprehensive idea of the actual sets.

Roger W. Cooley is Professor of Law at the University of North Dakota, and author of Briefs on the Law of Insurance, and of articles on Kidnapping and Sales in the Cyclopaedia of Law and

Procedure. Recently he was Associate Counsel of the United States Veterans' Bureau, and Lecturer on Judicial Precedents at the School of Jurisprudence, American University, Washington, D. C.

F. A. McK.

CASES ON CONSTITUTIONAL LAW. (1926 Supplement.) By James Parker Hall. St. Paul: West Publishing Co.

Professor Hall has supplemented his interesting and valuable collection of cases on Constitutional Law by the addition of 91 cases decided since 1913. The original case book and the supplement are bound into one volume of 1867 pages. One unfortunate feature of the work is the separation of the indexes to the original volume and the supplement respectively. For this and related reasons both student and professor will have cause to regret that the new cases were simply added rather than assimilated into their proper places in Professor Hall's original volume.

The importance of the added recent decisions is attested by the fact that the supplement is one-fourth as large as the original case book. This rapid development of our Constitutional Law will at once startle and discourage the student and yet there are no cases in the new collection that we deem unimportant. The constant and menacing enlargement of the police power is made plain by the inclusion of numerous new and important decisions. If we took the author to task at all it would be for his failure to include *Carroll v. The United States*, a case which undoubtedly marks a sharp shrinkage in the ancient protection afforded by the Fourth Amendment. In view of the laconic affirmative of the Supreme Court in The Prohibition Cases we believe that the grounds for the attack upon the Eighteenth Amendment should have been shown in Professor Hall's supplement by citations from the briefs presented in those cases.

CLARENCE MANION,

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PREPARATION AND CONSTRUCTION OF WILLS. (1926. pp. 1115.) By Clarence M. Lewis. Matthew Bender and Co.: Albany, N. Y.

In 1925 Mr. Clarence Lewis rendered a valuable service to the lawyers of the country by publishing a book on "The Law of Leases"

In that work were included forms applicable to almost every conceivable relation of landlord and tenant, a digest of leading cases on the subject, and a reprint of many notes from law reviews. Unfortunately, however, for the average lawyer, Mr. Lewis stressed a little too heavily the New York law, and his book was not of much value to lawyers from other jurisdictions.

This year Mr. Lewis has released another book. What he did for the real-estate lawyer in 1925, he has done for the probate lawyer in 1926. His "Preparation and Construction of Wills" is a thorough study of the different phases of testaments, an exhaustive digest of modern cases on wills, and once more a reprint of pertinent notes from the law reviews. In this work too are included the last wills of men famous either for their fabulous wealth, or for their public attainments. Prominent in the wills presented are those of William G. Rockefeller, Alfred G. Vanderbilt, Theodore Roosevelt, Woodrow Wilson, and Warren G. Harding. These examples are valuable for two reasons—both as a suggestion of how the rules for the construction of wills are concretely applied, and as a glimpse into the personal characteristics of the respective testators. . . . But of course, after all, this division of the work is a mere corollary to the rest of the text. In the body of the book Mr. Lewis leads us from the preliminary statement of domicile through the possibilities of revocation, the appointment of executors and trustees, provisions in lieu of dower, specific bequests, clauses requiring consent to marriage, annuities, and all the other ramifications of the law of wills, down to the attestation clause. Each section is preceded by a suggested form, already approved by courts. Each section is terse and authoritatively explained by numerous decisions. And this time the author is a little more attentive to jurisdictions other than New York, and is deferential to the laws of the southern and western states as well as to those situated on the Atlantic Seaboard. New York law is emphasized a little, of course, since Mr. Lewis is after all a New York lawyer, but his partiality is extremely slight, and in no way detracts from the value of his work.

C. J. R.

# *Announcement*

The attention of pre-law students is directed to the fact that the subscription price of THE NOTRE DAME LAWYER may now be put on the school-bill.

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