

# TABLE OF CONTENTS

## VOL. II

### **LAW OF JUDGMENTS AND EXECUTIONS, PART I**

#### **JUDGMENTS**

<b>CHAPTER I, Nature And Essentials .....</b>	<b>1</b>
1. In General .....	1
2. Elements of Jurisdiction .....	2
3. Same subject, Illustrated .....	2
4. Nature and essentials of a court .....	3
5. Nature of the business .....	5
6. Organization and qualification of officers .....	5
7. Time of sitting .....	5
8. Place of sitting .....	6
9. Power to try such causes and give such judgments .....	7
10. Same subject, Depends on law defining powers and not on facts .....	7
11. Why so .....	8
12. Jurisdiction of the person .....	8
13. Same subject, Non-resident .....	9
14. Same subject, Exceptions .....	10
15. Same subject, Service on corporations .....	10
16. Jurisdiction of the thing .....	11
17. Jurisdiction of the Question .....	11
18. Same subject, Opinion quoted .....	12
19. Same subject, another case .....	13
20. That procedure is jurisdictional .....	13
21. Procedure not jurisdictional .....	14
<b>CHAPTER II</b>	
<b>THE RECORD .....</b>	<b>16</b>
22. Nature .....	16
23. Entry of the record .....	16
24. Same subject, Example .....	16
25. Conclusiveness of the record .....	17
<b>CHAPTER III</b>	
<b>EFFECT OF JUDGMENT AS A BAR .....</b>	<b>19</b>
26. Why a bar .....	19
27. Amending and modifying judgments .....	19
28. Splitting the cause .....	19
29. Splitting the grounds of recovery and defense .....	20
30. Cross-claims .....	20

31. Fraud .....	21
32. Judgments not on the merits .....	21

#### **CHAPTER IV**

JUDGMENTS AS ESTOPPELS .....	22
33. Distinguished from bar .....	22
34. Essentials of an estoppel .....	22
35. Parties estopped .....	22
36. Estoppel extends only to points actually litigated .....	23
37. Estoppel only as to points certainly and necessarily decided .....	24
38. Two actions depending on different law .....	24
39. If the court that tried the first case could not try the last one .....	25
40. Judgments bar and estop privies .....	25
41. Judgments binding strangers .....	26
42. Same subject, Judgments in rem .....	27

#### **CHAPTER V**

NATURE AND EFFECT OF EXECUTIONS .....	28
43. In General .....	28
44. Kinds of execution .....	28
45. Same subject, Capias .....	28
46. Issuing the writ .....	29
47. Same subject, Death .....	29
48. Same subejct, Who may issue .....	29
49. Same subject, Form .....	30
50. Controlling execution of the writ .....	30
51. Who may execute the writ .....	31
52. Sheriff's right to indemnity .....	31
53. Sheriff's right to break in .....	32
54. When levy, sale, and return may be made .....	32
BIBLIOGRAPHY .....	33
QUIZ QUESTIONS .....	34

### **LAW OF EXTRAORDINARY REMEDIES**

PART I, THE REMEDIES IN GENERAL .....	39
---------------------------------------	----

#### **CHAPTER I**

##### **DEFINITIONS, ANALOGIES AND HISTORY**

1. The purpose of the remedies .....	39
2. Not used in equity .....	39
3. Equitable analogies, Clean hands .....	40
4. Same subject, Laches .....	40
5. Origin of mandamus .....	41

6. Origin of prohibition .....	41
7. Origin of certiorari .....	41
8. Origin of quo warranto .....	42
9. Origin of Habeas Corpus .....	42

## **CHAPTER II**

PRACTICE AND PLEADINGS .....	44
10. How and when proceedings begin .....	44
11. Demand and refusal .....	44
12. Who may be the petitioner .....	44
13. Who may be the respondent .....	45
14. The alternative writ .....	46
15. The answer .....	47
16. An ordinary remedy a bar .....	47
17. A statutory remedy generally a bar .....	48
18. Another remedy must be adequate to be a bar .....	48
19. A remedy in equity not a bar .....	49
20. Discretion of the courts .....	49
21. The trial .....	50
22. Costs .....	50
23. Jurisdiction, King's Bench and the United States Supreme Court .....	50
24. Same subject, Other federal courts .....	50
25. Same subject, State courts .....	51

## **CHAPTER III, PART II**

THE REMEDIES IN PARTICULAR .....	52
MANDAMUS .....	52
26. Jurisdiction of federal and state courts .....	52
27. Against corporations .....	52
28. Against officers .....	52
29. Same subject, Federal and state officers .....	53
30. Same subject, Title to office .....	53
31. What duties it enforces .....	54

## **CHAPTER IV**

PROHIBITION .....	55
32. When issued to a court .....	55
33. When issued to other tribunals .....	55

## **CHAPTER V**

CERTIORARI .....	56
34. Not issued to a common law court .....	56
35. Other tribunals .....	56
36. What errors it corrects .....	57

<b>CHAPTER VI</b>	
QUO WARRANTO .....	58
37. Against corporations, Municipal .....	58
38. Same subject, other corporations .....	58
39. Franchises and powers .....	59
40. Against officers, Public .....	59
41. Same subject, Private .....	60
42. Same subject, Preliminary proceedings .....	61
43. Same subject, Federal and state officers .....	61
44. When relief must be in equity .....	61

<b>CHAPTER VII</b>	
HABEAS CORPUS .....	63
45. What is custody .....	63
46. Jurisdiction of federal and state courts .....	63
47. Same subject, Under the Revised Statutes .....	64
48. Same subject, Legislative custody .....	65
49. The return to the writ .....	66
50. Errors in sentence .....	66
51. Errors in commitment papers .....	66
52. When finding of fact conclusive .....	67
53. Suspension of the writ, By the President .....	67
54. Same subject, by Congress .....	68
55. Same subject, by the States .....	68
BIBLIOGRAPHY .....	68
QUIZ QUESTIONS .....	69

## LAW OF EVIDENCE

### CHAPTER I

#### RULES OF EXCLUSION

PRELIMINARY CONSIDERATIONS .....	73
1. Evidence analyzed .....	73
2. Same subject .....	73
3. Evidence defined and distinguished from reasoning .....	74
4. Judicial evidence and extra-judicial evidence distinguished .....	74
5. Testimony, Documentary evidence, Real evidence .....	75
6. Evidential facts and ultimate facts .....	75
7. Irrelevant matters inadmissible .....	75
8. Place of the law of evidence in the general scheme of the law .....	76
9. The law of evidence defined .....	76
10. The rules of the law of evidence distinguished from other rules of law .....	76
11. Same subject .....	77
12. Relevant matters admissible .....	78

<b>CHAPTER II</b>	
UNIMPORTANT, MISLEADING AND PREJUDICIAL MATTERS .....	79
13. Introductory .....	79
14. The rule stated .....	79
15. Typical cases .....	79
16. The cases explained .....	80
17. Corollaries to the rule .....	81
18. Matters not within the rule .....	82
<b>CHAPTER III</b>	
CHARACTER .....	83
19. Character of parties to the litigation - The rule stated .....	83
20. Reason for the rule .....	83
21. Character, when provable .....	83
22. Scope of the exception .....	83
23. Another exception .....	84
24. Admissible evidence of character defined .....	84
25. Character evidence, how presented .....	84
26. Matters not within the rule .....	85
<b>CHAPTER IV</b>	
CONFessions .....	86
27. Confessions - The rule stated .....	86
28. Reason for the rule .....	86
29. Confessions, when admissible .....	86
30. Typical cases .....	86
31. Confessions, how presented .....	87
32. Matters not within the rule .....	87
<b>CHAPTER V</b>	
HEARSAY .....	88
33. Hearsay - The rule stated .....	88
34. Reason for the rule .....	88
35. Matters not within the rule .....	88
36. Typical cases .....	88
37. Exceptions to the rule .....	89
38. Hearsay evidence, how dealt with .....	89
<b>CHAPTER VI</b>	
EXCEPTIONS TO THE RULE AGAINST HEARSAY .....	90
39. Former testimony - The exception stated .....	90
40. The exception explained .....	90
41. Satisfaction of the exception .....	90
42. Scope of the exception .....	90
43. Former testimony, how shown .....	90

44. Dying declarations - The exception stated .....	91
45. Scope of the exception .....	91
46. Same subject .....	91
47. Declarations in questions of pedigree-The exception stated .....	92
48. The exception explained .....	92
49. Scope of the exception .....	92
50. Declarations as to matters of public or general interest-Exception stated ....	93
51. The exception explained .....	93
52. Public or general interest defined .....	93
53. Public interest and general interest distinguished .....	93
54. Scope of the exception .....	94
55. Private boundaries as matters of public or general interest .....	94
56. Public documents - The exception stated .....	95
57. Public document defined .....	95
58. Typical cases .....	95
59. Other considerations .....	95
60. Ancient documents .....	95
61. Ancient possession - The exception stated .....	96
62. Different meanings of the term "ancient" .....	96
63. Typical cases .....	96
64. Proper custody defined .....	96
65. Ancient possession, how shown .....	97
66. Entries and declarations against interest - The exception stated .....	97
67. Declarations against interest and admissions distinguished .....	97
68. Scope of the exception .....	98
69. Statements incorporated with declarations against interest .....	98
70. Account books of parties to the litigation - The Exception stated .....	99
71. Reason for the exception .....	99
72. No general American rule .....	99
73. Scope of the exception .....	99
74. Same subejct .....	100
75. Account books, how proved .....	100
76. The suppletory oath .....	100
77. Present utility of the exception .....	101
78. Entries and declarations of third parties .....	101
79. The exception distinguished from that in favor of account books .....	101
80. Scope of the exception .....	101
81. Same subject .....	102
82. Entries made in the regular course of business, how proved .....	102
83. An extension of the exception .....	102
84. Declarations bearing upon the physical or mental condition, declarant .....	103
85. Reason for the exception .....	103
86. Statements descriptive of present mental or physical distress .....	103
87. Statements as to intention .....	104
88. Typical cases .....	104

89. Statements of the testamentary intention .....	105
90. Declarations which are a part of some fact or transaction .....	106
91. Scope of the exception .....	107
<b>CHAPTER VII</b>	
OPINION .....	110
92. Opinion - The rule stated .....	110
93. Explanation of the rule .....	110
94. Matter of fact and matter of opinion distinguished .....	110
95. Opinion evidence, when admissible .....	111
96. Typical cases .....	111
97. Opinions of ordinary witnesses, when admissible .....	112
98. Expert opinion evidence .....	113
99. Expert opinion, how presented .....	113
100. Same subject-hypothetical questions .....	113
<b>CHAPTER VIII, PART II</b>	
FORMS IN WHICH JUDICIAL EVIDENCE MAY BE PRESENTED .....	115
REAL EVIDENCE .....	115
101. Introductory .....	115
102. Real evidence defined .....	115
103. Examples of real evidence .....	115
104. Same subject .....	115
105. The rule stated .....	116
<b>CHAPTER IX</b>	
DOCUMENTS .....	117
106. Proof of authorship of documents .....	117
107. A document defined .....	117
108. Attested and unattested writings .....	117
109. Writings, how presented .....	117
110. Execution of unattested writings, how shown .....	117
111. Execution of attested writings, how shown .....	117
112. Same subject - When the rule does not apply .....	118
113. Same subject - Statutory modification of the rule .....	118
114. Proof of execution - When unnecessary .....	118
115. Proof of contents of writings - Best evidence rule .....	119
116. Inscriptions not within the rule .....	120
117. Scope of the rule .....	120
118. Excuses for non-production .....	121
119. Degrees of secondary evidence .....	122
120. The so-called parol evidence rule .....	122
121. The rule explained .....	122
122. Scope of the rule .....	123
123. The rule in contracts .....	123

124. When the contracts rule does not apply .....	124
125. The rule in wills .....	124
126. Principles and rules for the construction of writings .....	125
127. Technical language, how explained .....	125
128. The rules stated .....	125
129. A typical case .....	125
130. Other rules .....	126
131. A rule of evidence relating to writings .....	126
132. Reason for the rule .....	126
133. The exception explained .....	126
 <b>CHAPTER X</b>	
<b>WITNESSES .....</b>	<b>127</b>
134. Introductory .....	127
135. Incompetency defined .....	127
136. Common law causes of incompetency .....	127
137. Same subject .....	127
138. Same subject - Statutory modifications .....	128
139. The rule in the federal courts .....	129
140. Privilege and incompetency distinguished .....	129
141. The privilege against self-incrimination .....	129
142. Scope of the privilege .....	129
143. Claim of the privilege by an accused .....	130
144. Effect of assertion of the privilege by an accused .....	130
145. Waiver of the privilege by an accused .....	130
146. Claim of the privilege by an ordinary witness .....	130
147. Assertion and waiver of the privilege by an ordinary witness .....	131
148. Same subject .....	131
149. When the privilege cannot be claimed .....	131
150. Privileged communications .....	132
151. Communications between attorney and client .....	132
152. Scope of the privilege .....	132
153. How the privilege is claimed and waived .....	132
154. Communications between husband and wife .....	133
155. The examination of witnesses .....	134
156. Direct examination - Cross examination - Re-examination .....	134
157. Personal knowledge defined .....	134
158. Refreshing recollection .....	134
159. Discretion of the court .....	135
160. The examination in chief .....	136
161. Leading questions - When not objectionable .....	136
162. A party cannot impeach his own witness .....	136
163. Cross-examination .....	137
164. Scope of cross-examination .....	137
165. Leading questions unobjectionable on cross-examination .....	137

166. Impeachment by cross-examination .....	137
NOTE .....	140
<b>CHAPTER XI, PART III</b>	
TOPICS RELATING TO THE LAW OF EVIDENCE .....	141
JUDICIAL NOTICE	
167. The doctrine explained .....	141
168. Relation of the doctrine to the law of evidence .....	141
169. Matters judicially noticed .....	141
170. Judicial notice establishes a fact only <i>prima facie</i> .....	142
<b>CHAPTER XII</b>	
PRESUMPTIONS	
171. The doctrine explained .....	143
172. Effect of a presumption .....	143
173. Presumptions are matters of substantive law .....	143
<b>CHAPTER XIII</b>	
BURDEN OF PROOF .....	146
174. The burden of establishing a proposition .....	146
175. The burden of going forward with evidence .....	146
176. The burden of proof defined .....	146
177. Operation of the burden of proof .....	146
178. Same subject .....	147
179. Operation of the burden of presenting evidence .....	147
180. Effect of a presumption on the burden of proof .....	147
<b>CHAPTER XIV</b>	
ADMISSIONS .....	149
181. Confessions and admissions distinguished .....	149
182. The nature of an admission .....	149
183. When admissions may be shown .....	149
184. Solemn admissions .....	149
185. Unsolemn admissions .....	149
186. Admissions, when final .....	150
187. Admissions of parties to a record .....	150
188. Admissions of persons not parties to a record .....	150
189. The rule in conspiracy cases .....	151
<b>CHAPTER XV</b>	
LAW AND FACT .....	152
190. Introductory .....	152
191. Questions of law distinguished from questions of fact .....	152
192. Questions of fact - Court and jury .....	152
193. Verdicts of juries .....	152

194. Taking cases from the jury .....	153
BIBLIOGRAPHY .....	154
QUIZ QUESTIONS .....	155

## **CONSTITUTIONAL LAW**

### **CHAPTER I, PART I**

#### **DEFINITIONS AND GENERAL PRINCIPLES**

#### **CONSTITUTIONS, THEIR NATURE AND FORMS**

1. Constitutional law defined .....	163
2. Subjects of constitutional law .....	164
3. Constitutions - Early meanings .....	164
4. Definition of a constitution .....	165
5. Necessity of a constitution .....	165
6. Further distinctions .....	166
7. Forms and types of constitutions .....	166
8. Written and unwritten constitutions .....	166
9. Sources of written constitutions .....	167
10. The British constitution .....	168
11. Flexible and rigid constitutions .....	169
12. Strength and weakness of written constitutions .....	170
13. Essentials of a written constitution .....	171
14. The bill of rights .....	172
15. Federal and state constitutions compared .....	173
16. The origin of the state constitutions .....	174
17. Character of the early state constitutions-stages of development .....	175
18. Framing of state constitutions - Stages of procedure .....	176
19. The legal position of the constitutional convention .....	178
BIBLIOGRAPHY .....	179

### **CHAPTER II**

AMERICAN CONSTITUTIONS AND CONSTITUTIONAL LAW .....	180
20. Origin and formation of the Federal Constitution .....	180
21. The Constitutional Convention of 1787 .....	180
22. The compromises of the Constitution .....	181
23. Ratification of the Constitution .....	182
24. The Constitution in outline .....	182
25. The Federal Bill of Rights .....	183
26. Sources of the Constitution .....	185
27. Amendment and revision of constitutions .....	186
28. The procedure for amending the Federal Constitution .....	187
29. Amendment of state constitutions .....	189
30. Procedure and limitations .....	190
31. Judicial interpretation of the amending power .....	191
32. Number of amendments adopted .....	192

33. Rules for the construction of state constitutions .....	192
34. Supremacy of the Federal Constitution .....	194
35. Power of the courts to declare statutes unconstitutional .....	194
36. Early American practice .....	195
37. The doctrine of <i>Marbury v. Madison</i> .....	197
38. Reasons for the doctrine .....	198
39. Conditions under which a statute will be declared unconstitutional .....	199
40. Extrinsic evidence .....	200
41. Effect of void statutes .....	201
42. Advisory opinions .....	202
BIBLIOGRAPHY .....	203
QUIZ QUESTIONS .....	204

## **CONSTITUTIONAL LAW, PART II**

ORGANIZATION AND POWERS OF THE UNITED STATES GOVERNMENT .....	209
--	-----

### **CHAPTER I**

RELATIONS BETWEEN THE UNION AND THE STATE .....	209
1. Federal government .....	209
2. Division of powers between the national and state governments .....	210
3. Classification of federal and state powers .....	211
4. Exclusive and concurrent powers .....	211
5. Powers prohibited to the national government .....	213
6. Powers reserved to the states .....	213
7. Powers prohibited to the states .....	213
8. Implied powers .....	214
9. Resulting powers .....	215
10. Inherent powers .....	215
11. Supremacy of federal authority .....	216
12. National control of state government .....	217
13. Rights and privileges of the states .....	218
14. Obligations and duties of the states-The full faith and credit clause .....	219
15. Extradition of fugitives from justice .....	220
16. Interstate rights of citizenship .....	222
17. Federal coercion of a state .....	223
BIBLIOGRAPHY .....	224

### **CHAPTER II**

POWERS OF THE PRESIDENT .....	225
18. Distribution of powers among departments .....	225
19. The President - Powers and duties .....	227
20. Power of appointment and removal .....	228
21. Power of direction .....	229
22. Power to execute the laws .....	230

23. Power in respect to foreign relations .....	230
24. Power in relation to legislation .....	232
25. Military powers .....	233
26. Power to grant pardons .....	234
27. Remedies against the action of the President .....	234
<b>BIBLIOGRAPHY .....</b>	<b>236</b>

### **CHAPTER III**

<b>THE POWERS OF CONGRESS .....</b>	<b>237</b>
28. In general .....	237
29. The power of taxation .....	237
30. Power to borrow money .....	238
31. Regulation of commerce .....	239
32. Naturalization .....	240
33. Bankruptcy .....	241
34. Power to coin money .....	242
35. Weights and measures .....	243
36. Post offices and post roads .....	243
37. Copyrights and patents .....	244
38. Punishment of crime .....	245
39. War powers of Congress .....	247
40. The militia .....	249
41. Military government and martial law .....	250
42. Government of the territories .....	252
43. The District of Columbia .....	254
44. Admission of new states to the Union .....	254
<b>BIBLIOGRAPHY .....</b>	<b>257</b>
<b>QUIZ QUESTIONS .....</b>	<b>258</b>

## **CONSTITUTIONAL LAW, PART III**

### **CONSTITUTIONAL GUARANTIES OF FUNDAMENTAL RIGHTS**

#### **CHAPTER I**

<b>THE CONSTITUTION AS A BILL OF RIGHTS .....</b>	<b>263</b>
1. Historical basis .....	263
2. English constitutional documents .....	263
3. Magna Charta .....	264
4. State bills of rights .....	265
5. Federal Bill of Rights .....	266
6. Limitation only on federal government .....	266
7. Federal guaranties as against state legislation .....	266
8. Privileges and immunities of federal citizenship .....	267
9. State guaranties not superseded .....	269
10. Further as to federal privileges and immunities .....	269
11. Federal guaranties as affecting the inhabitants of territorial possessions ....	270

## **CHAPTER II**

POLITICAL PRIVILEGES AND THEIR PROTECTION .....	271
12. Citizenship .....	271
13. By birth or naturalization .....	271
14. Federal citizenship .....	272
15. Same subject - Illustration .....	273
16. Same subject - Further illustration .....	273
17. State citizenship .....	274
18. Citizenship in the territorial possessions .....	274
19. Citizenship of Indians .....	274
20. Citizenship of corporations .....	274
21. Naturalization .....	275
22. Method .....	275
23. Same subject - Steps required .....	275
24. Other conditions .....	277
25. Declarations previously made .....	277
26. White persons .....	277
27. Married women and minor children .....	277
28. Military service .....	278
29. Indians .....	278
30. Suffrage .....	278
31. Under state constitutions .....	279
32. Federal constitutional and statutory provisions .....	279
33. Right to vote at federal elections .....	279
34. Republican form of government .....	280
35. Purpose of the provision .....	281
36. Changes in state governments .....	281
37. Method of determining whether a state government is republican .....	281
38. Cases of invasion or insurrection .....	282
39. Political question .....	282
40. Titles of nobility .....	282

## **CHAPTER III**

CIVIL RIGHTS AND THEIR GUARANTIES .....	283
41. Federal and state constitutional provisions .....	283
42. Religious liberty .....	283
43. Protection of religious freedom .....	285
44. Taxation and exemptions .....	285
45. Bible in schools .....	285
46. Freedom of speech and the press .....	286
47. Privileged publications .....	286
48. Censorship of the press .....	286
49. Use of the mails .....	287

50. The right to assemble and petition .....	287
51. Right to bear arms .....	288
52. Security of the dwelling and the person .....	288
53. Search warrants .....	289
54. Quartering of soldiers .....	289
55. Personal liberty .....	289
56. Habeas corpus .....	290
57. Slavery prohibited .....	291
58. Peonage .....	291
59. Due Process of Law .....	292
60. Forms of procedure .....	293
61. Equality before the law .....	293
62. The persons protected .....	294
63. Corporations .....	294
64. Jury trial in civil cases .....	295
65. Essentials of jury trial .....	297
66. In what cases jury trial required .....	297
67. Review on appeal .....	298

## CHAPTER IV

### PROTECTION OF PERSONS ACCUSED OF CRIME

68. Trial and procedure .....	299
69. Due process of law in criminal procedure .....	299
70. Bills of attainder - Ex post facto laws .....	299
71. Changes in procedure .....	301
72. The accusation .....	301
73. Whether indictment essential .....	302
74. In federal courts .....	302
75. The trial .....	302
76. Trial by jury .....	303
77. Acquittal conclusive .....	304
78. Waiver of trial by jury .....	304
79. Other essentials of trial in criminal cases .....	304
80. Self-incrimination .....	305
81. Unreasonable searches and seizures .....	305
82. Conviction and sentence .....	305
83. Indeterminate sentence .....	306
84. Twice in jeopardy .....	306

## CHAPTER V

### DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW, AS AFFECTING PERSONAL PROPERTY RIGHTS

-- THE POLICE POWER .....	308
85. General purpose of Fourteenth Amendment .....	308
86. Applicable only to state action .....	308

87. Unequal administration of the law .....	309
88. Due process of law .....	309
89. Difficulty of definition .....	310
90. Equal protection of the laws .....	312
91. Uniformity .....	313
92. Legislation .....	314
94. Preservation of government.....	315
95. Preservation of public peace and good order .....	316
96. General public welfare involving the preservation of health and safety .....	316
97. Public morals and decency .....	317
98. Business morality .....	317
99. Freedom of contract .....	318
100. Protection to property .....	319
101. Use of public property and natural resources .....	320
102. Sumptuary laws .....	320
103. Federal police power .....	321
104. Function of the courts as to cases of police power .....	322
105. Executive department .....	323
106. Taxation .....	323
107. Pardons .....	324
108. Administration of alien exclusion acts .....	324
109. Subordination of military to civil power .....	324
110. Suspension of habeas corpus .....	325
111. Due process in judicial proceedings .....	325
112. Jurisdiction in personam .....	326
113. Jurisdiction in rem .....	327
114. Binding effect of judgment of courts having jurisdiction .....	329
115. Vested rights protected .....	329
116. Retrospective legislation .....	330

## CHAPTER VI

IMPAIRMENT OF OBLIGATION OF CONTRACTS .....	332
117. State legislation prohibited .....	332
118. Public debts and their incidents .....	332
119. What are contracts of the state .....	332
120. Charter contracts .....	333
121. Limitations on charter contracts .....	333
122. Private contracts .....	334
123. Police power as to executory contracts .....	334
124. Impairment of remedy .....	335
125. Judgments as contracts .....	335
126. Changes in rules of judicial decision .....	336
127. Limitation not applicable to federal government .....	336
BIBLIOGRAPHY .....	337
QUIZ QUESTIONS .....	338

## **CONSTITUTIONAL LAW, PART IV**

### **EMINENT DOMAIN**

#### **CHAPTER I**

THE LIMITS OF THE POWER .....	341
1. Eminent domain defined .....	341
2. The power limited by the jurisdiction .....	341

#### **CHAPTER II**

WHAT CONSTITUTES A TAKING .....	343
3. Actual deprivation a taking .....	343
4. The rights in a public way .....	343
5. Change of grade .....	344
6. Steam railroads .....	345
7. Street railways .....	345
8. Pipes and wires .....	346
9. Country roads and city streets .....	346
10. Fee in the public .....	347
11. Other public easements .....	347
12. Injury to outside land .....	347
13. Discontinuance .....	348
14. Waters and water rights .....	348

#### **CHAPTER III**

WHAT CONSTITUTES PROPERTY .....	349
15. Every interest is protected .....	349
16. Fixtures .....	349
17. Owner at time of taking considered .....	349
18. Franchises .....	350
19. Property of a city or town .....	350
20. Public service corporations .....	350

#### **CHAPTER IV**

THE PUBLIC USE .....	351
21. Property cannot be taken for private use .....	351
22. Public use defined .....	351
23. Use of the government .....	352
24. Public service .....	352
25. Distribution of commodities .....	353
26. Public pleasure .....	354
27. Assistance of private enterprise improper .....	354
28. Dominating industries .....	355
29. The mill acts .....	355
30. Drainage and irrigation .....	356
31. Excess takings .....	357

<b>CHAPTER V</b>	
JUST COMPENSATION .....	359
32. Compensation must be certain .....	359
33. Injury to remaining lands .....	359
34. Set-off of benefits .....	359
<b>CHAPTER VI</b>	
DUE PROCESS OF LAW .....	361
35. What questions are judicial .....	361
36. Record and hearing .....	361
37. Limitations and costs .....	362
38. What can be taken .....	363
<b>CHAPTER VII</b>	
PROCEDURE, DAMAGES AND EVIDENCE .....	364
39. Taking and remedy .....	364
40. Damages when whole parcel is taken .....	364
41. Damages when part is taken .....	365
42. Damages when no land is taken .....	3665
43. Expert and opinion evidence .....	365
44. Sales of similar land .....	366
BIBLIOGRAPHY .....	367
QUIZ QUESTIONS .....	368
<b>CONSTITUTIONAL LAW, PART V</b>	
TAXATION .....	373
<b>CHAPTER I</b>	
THE POWER OF TAXATION .....	373
1. Definition .....	373
2. Distinguished from sale .....	373
3. Distinguished from police power .....	373
4. Effect of the distinction .....	374
5. Taxes and excises .....	375
6. Two classes of taxes .....	375
7. Distinction between general and special tax .....	375
8. Special assessments .....	375
9. Excises defined .....	376
10. Two classes of excises .....	376
11. Excises in common use .....	377
12. Importance of distinction between tax and excise .....	377
13. Distinction in the Federal Constitution .....	377
<b>CHAPTER II</b>	
TAXATION BY THE UNITED STATES AND OF UNITED STATES PROPERTY .....	379

14. Direct taxes .....	379
15. Duties and excises .....	379
16. Regulation under guise of taxation .....	379
17. Property of the United States .....	379
18. Bonds - Officers' Salaries .....	380
19. National banks - Transcontinental railroads .....	380
 <b>CHAPTER III</b>	
TAXATION OF FOREIGN AND INTERSTATE COMMERCE .....	381
20. Duties on imports and exports .....	381
21. Duties of tonnage .....	381
22. States cannot tax interstate commerce .....	381
23. Rights of foreign corporations .....	381
24. Valuation of interstate lines .....	382
25. Peddlers and drummers .....	382
26. Goods in transit .....	383
27. Discrimination against products of other states .....	383
 <b>CHAPTER IV</b>	
IMPAIRMENT OF THE OBLIGATION OF CONTRACTS AND DISCRIMINATION AGAINST CITIZENS OF OTHER STATES .....	384
28. Contracts of exemption .....	384
29. General laws not a contract .....	384
30. Contracts of exemption limited .....	384
31. Creditors' rights to continuance of tax .....	384
32. Change in law making tax unlawful .....	385
33. What constitutes discrimination .....	385
34. Rights of foreign corporations .....	385
 <b>CHAPTER V</b>	
THE PUBLIC USES FOR WHICH TAXES CAN BE LEVIED .....	387
35. The use must be public .....	387
36. Public service a public use .....	387
37. Business enterprises .....	387
38. Moral obligations - Gratuities .....	388
39. The use must be of the district taxed .....	388
 <b>CHAPTER VI</b>	
THE SITUS OF PROPERTY FOR THE PURPOSE OF TAXATION .....	389
40. State cannot tax property not within its jurisdiction .....	389
41. Real estate - Unit system .....	389
42. Tangible personal property .....	389
43. Intangible property .....	390

<b>CHAPTER VII</b>	
UNIFORMITY, EQUALITY AND DUE PROCESS OF LAW .....	391
44. Classification not forbidden by Fourteenth Amendment .....	391
45. Classification prohibited in some states .....	391
46. Exemptions .....	392
47. Excises .....	392
48. Notice and hearing .....	392
49. Penalty for not filing list .....	393
50. Permissible methods of collection .....	393
<b>CHAPTER VIII</b>	
ASSESSMENT OF TAXES .....	394
51. The process of assessment .....	394
52. Mandatory and directory provisions .....	394
53. Assessment made as of a certain day .....	394
54. Real and personal estate .....	394
55. Domicile .....	395
56. Evidence of domicile .....	395
57. Tangible personal property .....	396
58. The tax list .....	396
<b>CHAPTER IX</b>	
COLLECTION AND REMEDIES .....	397
59. Summary methods permissible .....	397
60. Distress and arrest .....	397
61. Tax sales .....	397
62. Petition for abatement .....	398
63. Suit against town .....	398
64. Injunction .....	398
65. Suit against assessors .....	398
<b>CHAPTER X</b>	
SPECIAL ASSESSMENTS .....	400
66. Special assessments constitutional .....	400
67. Public use required .....	400
68. Benefit must be local .....	400
69. Lawful objects of assessments .....	400
70. Assessment must not exceed the cost .....	401
71. Relation of assessment to benefit .....	401
72. Hearing .....	402
BIBLIOGRAPHY .....	403
QUIZ QUESTIONS .....	404

## **CONSTITUTIONAL LAW, PART VI**

NATURALIZATION .....	411
<b>CHAPTER I</b>	
EXPATRIATION DEFINED AND EXPLAINED .....	411
1. The doctrine of perpetual allegiance .....	411
2. Treaties recognizing expatriation .....	411
3. Methods of expatriation .....	412
4. Same subject - Executive order of the President .....	412
5. When expatriation is not effected .....	412
<b>CHAPTER II</b>	
COLLECTIVE NATURALIZATION -- METHODS ENUMERATED .....	414
6. Collective naturalization defined .....	414
7. Naturalization by conquest .....	414
8. Naturalization by treaty .....	414
9. Same subject .....	414
10. Naturalization by special acts of Congress .....	415
11. Naturalization by admission of new states .....	415
<b>CHAPTER III</b>	
NATURALIZATION ACCORDING TO FEDERAL LAWS	
PRELIMINARY METHOD OF PROCEDURE .....	417
12. Naturalization defined .....	417
13. Same subject - Federal statutes .....	417
14. Courts authorized to naturalize .....	418
15. Who may be naturalized .....	418
16. Declaration of intention .....	418
17. Form of declaration of intention .....	419
18. Exceptions to the requirements of declaration of intention .....	420
19. Rights acquired by the declaration of intention .....	420
<b>CHAPTER IV</b>	
PROCEDURE IN COURT .....	422
20. Petition for naturalization .....	422
21. Form of petition .....	422
22. Affidavit of witnesses, form thereof and certificate from Department of Commerce and Labor .....	423
23. Filing of petition, notice thereof and fees to be deposited by petitioner .....	424
24. Proceedings in court .....	424
25. Same subject .....	425
26. Duties of clerk .....	426
27. Fees .....	426
28. Forms of certificate of naturalization and of stub of certificate .....	426
29. Fraudulent naturalization .....	427
30. Criminal offenses .....	428

## **CHAPTER V**

NATURALIZATION BY RELATIONSHIP AND WITHOUT RESORT TO LEGAL PROCEEDINGS -- MARRIAGE .....	429
31. The status as determined by statute of an alien woman married to an American .....	429
32. Same subject - Residence, nature of citizenship and termination thereof ...	429
33. Status of an American woman married to a foreigner .....	429
34. Naturalization of minor children by naturalization of parent .....	430
35. Status of children by naturalization of mother by marriage .....	430
36. Application of law to illegitimate and adopted children .....	431
BIBLIOGRAPHY .....	431
QUIZ QUESTIONS .....	432

