

1939

How to Prove a Prima Facie Case. By H. H. Spellman

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BOOK REVIEWS

How to Prove a Prima Facie Case. By H. H. Spellman. Prentice-Hall, Inc., New York. 1939. Pp. 801. \$7.50.

The book under review should be placed upon the "must" list of every young lawyer. The practicing lawyer needs two types of law books in his library—first, those that elucidate clearly the principles of substantive law, and second, those which describe a method by which these principles may be applied to his client's case. This book falls within the latter class.

No matter how zealously the young attorney has done his research into the legal principles which make up the law of his case, when he enters the court room, he is faced with a problem that the usual run of law books does not answer for him, namely, how can he make those principles of law actually workable for his client's benefit. This book, being reviewed, helps him solve this problem in a very practical way.

Perhaps, a sample problem and the solution presented by this work will best describe its benefits to the lawyer who is about to appear in the courtroom with his client's cause. Assume that a lawyer becomes involved in an automobile accident case which will make it necessary for him to introduce as part of his case a photograph of the scene where the accident happened. No doubt, his law school training or his research in preparing his case will make him aware of the legal principle that, in effect, states that a photograph may be introduced in evidence without identification by the photographer. But the source which provided this legal principle does not describe the method by which this principle is workable in the court room. It is the function of the book under review to do this. A quotation from the book on page 723 states the method:

"Q. Are you familiar with the corner at which this accident occurred?

A. Yes, I have lived in that neighborhood for seven years; I pass that corner every morning on my way to work and every evening when I return.

Q. Did you see the corner on the day of the accident, June 11, 1938?

A. Yes, at about 8 A.M. and again at about 6 P.M.

Q. Were there any differences in the structures on that corner at those two times?

A. No. It was the same in the evening as it had been in the morning.

Q. I show you what purports to be a photograph of the corner in question and ask if you recognize the said corner from this photograph?

A. I do.

Q. Is it a fair representation of the corner as you saw it on June 11, 1938?

A. It is.

I offer the photograph in evidence."

This quotation illustrates one of many situations in the book showing the practical application of simple rules of evidence. In addition to this type of material, there is provided, also in question and answer form, the method of putting in proof sufficient evidence of your cause to make out a *prima facie* case, *i.e.*, to keep in court or even obtain judgment if the defense fails. A cumulative index makes it easy to find the several hundred common situations and types of cases happening in practice.

There will be found in addition to this principal material already described, statements of useful legal principles under the heading of "Hints." Likewise, each situation illustrated, is followed by "Source Cases" which furnish authority

from nearly every jurisdiction. Finally, two complete trials in question and answer form, one, involving a promissory note, the other, a divorce case, complete this volume.

When the first edition of this book was published, it met the overwhelming success that it so well-deserved. This revised and enlarged edition is entitled to the same success.

J. WALTER MCKENNA.

Restatement of the Law of Torts. Volume 3. American Law Institute Publishers, St. Paul. 1938. Pp. xxvi, 759.

The third volume of the Torts Restatement deserves an even more cordial welcome from the legal profession than its two predecessors. It deals with seven topics, most of which are given deferred treatment in the usual law school course, and, because of time limitations, often a sketchy treatment. The Restatement likewise has given them a deferred treatment, but a comprehensive one—presenting a greater amount of information on them than is likely to be found elsewhere within a single volume. In fact, the last quarter of Volume 3, devoted to unfair trade practices, gives a fuller discussion of that topic than is to be found in any book not specializing in business torts.

The absence of case citations is, of course, as regrettable in Volume 3 as it was in the earlier volumes. The value of the Restatement would be greatly enhanced were it to include the explanatory notes and authorities which accompany the tentative drafts. Practical reasons presumably have dictated their omission, and it was hardly to be expected that the publishers would depart from the plan originally outlined.

Another cause for regret, foreshadowed in the earlier volumes and increasingly conspicuous in the present one, is the adoption of a classification which achieves little more than divisions and subdivisions of the law of Torts—separate pegs on which to hang sets of rules. This arrangement has the merit of following familiar patterns, and perhaps that is merit enough in view of the cool reception which has been accorded to attempts at a more logical arrangement. Dean Wigmore once organized the subject of Torts in a manner that was logical and as near the ideal as has yet been attained. It was too novel for a conservative profession. The fact that it was presented in a casebook of two volumes rather than one did not help to promote it. But Dean Wigmore's classification was an analysis, not merely an arrangement. It manifested the same genius which has been more effectively immortalized in his treatise on Evidence.

Volume 1 of the Torts Restatement dealt with Intentional Harms, Volume 2 with Negligence. Volume 3 gathers seven groupings of harms for which the law provides redress—all under familiar designations—but by no means excluding the factors of intention and negligence which furnished the distinctive labels for the first two volumes.

The first 54 pages constitute a division entitled "Absolute Liability." Here are considered the situations in which the old rule of "liability without fault" still applies. But even in this division the factor of negligence does not wholly disappear. Under Section 512 the landowner's liability to a known trespasser for injuries inflicted by a wild animal kept by the landowner is made dependent on the latter's exercise of "reasonable care" to warn of the animal's presence.