

Book Review: How to Prove a Prima Facie Defense, by H. H. Spellman

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BOOK REVIEW

How to Prove a Prima Facie Defense. By H. H. Spellman. Prentice-Hall, New York, 1941. Pp. 602. \$6.50.

A great deal of credit should be given to the author of the above book for providing the legal profession with an excellent working tool. If there has been one field of law neglected by legal writers, it is that of procedure. This is especially unfortunate in view of the unsound attitude of many law schools that their students will learn procedure when they are in the field of practice. When the graduates of these law schools are later faced with a procedure problem, they discover a lack of written material in this field.

The volume under review will be of great aid to the young attorney who is faced with the problem of proving a defense for his client. Even if he has become versed to the bursting point with the most technical principles of law relating to his case, yet, it will be of no avail if he is unable properly to present in question and answer form facts which constitute his defense.

The author has set forth in question and answer form the method of proving a great variety of defenses which recur again and again. An example will illustrate: Assume that a used car dealer sues for the price of a used car which he expressly warranted to be a 1939 model. The facts of the defense are that it is a 1937 model. The minimum amount of testimony to prove the falsity of the plaintiff's warranty is set out on page 9 of this volume as follows:

"Q. What is your name and occupation? A. John Smith. I am the general manager of the Buick Corporation for the City of New York.

Q. At the request of the defendant, did you examine the automobile which is the subject of this suit? A. I did.

Q. When and where? A. On June 5, 1940, in front of the defendant's home, when the car was driven there by the plaintiff.

Q. In your capacity as general manager of the Buick Corporation for the City of New York, are you able to determine the year of the model of a Buick car? A. Yes.

Q. How? A. By the general appearance of the car and also by the serial number on the engine and the rotation number on the body.

Q. What model was the car which you examined at the request of the defendant as you have testified? A. It was a 1937 model."

In addition to this useful method of setting out *prima facie* defenses the author has included a valuable section relating to the proof of situations common to various defenses, such as custom and usage, dying declarations, and the like.

A carefully written section as to the best method of using the volume appears in the introduction. The book contains "hints" in the form of brief abstracts of important cases as well as "source cases" which enable a lawyer in any jurisdiction to reach at least one leading case from his state affecting the problem in hand. A table of contents and a most elaborate index complete the book.

The reviewer recommends this volume as a worthy and necessary companion to that widely accepted work—"How to Prove a Prima Facie Case."

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