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How to Prove a Prima Facie Case (3d ed.)(Book Review)

Robert L. Callahan

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BOOK REVIEWS

HOW TO PROVE A PRIMA FACIE CASE (3d ed.). By Howard Hilton Spellman. New York: Prentice-Hall, Inc., 1954. Pp. xiii, 701. \$8.50.

This volume is the third edition of an original work by Samuel Deutch and Simon Balicer, members of the New York Bar. The scope of the work has been broadened by the addition of a third part not contained in the original edition.

The book is divided into three parts. Part One entitled "How to Use This Volume" consists of five pages and is explanatory of the purpose and content of the other parts.

Part Two consists of one hundred and thirty-one "forms" of common prima facie cases set forth in alphabetical order commencing with Account Stated and ending with Work, Labor, and Services. Each "form" contains the questions and answers necessary to establish the particular cause of action. Following each series of questions and answers is a subdivision entitled "Hints," the purpose of which is to suggest difficulties which commonly arise in the trial of particular types of cases in order that they may be met during the course of preparation rather than upon the trial. Finally, there is set forth at the end of each "form" a list of Source Cases which includes the leading case or cases in those jurisdictions which have dealt with the particular subject.

Part Three entitled "Proof of Situations Common to Various Causes of Action" sets forth in question and answer form the proof necessary to establish certain facts, proof of which may become necessary during the trial of the action, or the proof necessary to lay the foundation for documentary evidence or expert testimony. There are twenty-three "forms" contained in this part. As in Part Two, each "form" is followed by Hints and Source Cases.

The book has been designed for use in all jurisdictions in the sense that the leading cases from all jurisdictions considering the particular problem have been cited in the Source Cases.

This work has a two-fold purpose. Its first and primary purpose is to bridge the gulf between legal education and the practice of the law. Its second purpose is to enable the established lawyer to review quickly the elements of a particular cause of action without the necessity of extended original research.

That the young lawyer emerging from law school is beset with many problems in putting his legal education into practice is well recognized. This is true even though he has had Moot Court experience. Unless the newly admitted lawyer has gained some knowledge of trial practice through service in a law office prior to admission, he is generally at a loss as to the method of establishing his case and the type of question he must ask his witnesses in order to prove his client's cause of action. This book is an invaluable aid in that direction. Forms of prima facie cases of all of the more common causes

of action are included, with a ready reference to cases dealing with the particular subject which may be examined in order to verify the accuracy or sufficiency of the form.

As its title implies, however, the volume does not attempt to show the young lawyer how to try the entire case nor does it undertake to answer all of the legal questions which will arise in every case. It is frankly recognized that to do so would be impossible and that additional problems will be presented by the facts of each case which would be impossible to anticipate or deal with in a single volume. On the contrary, the function of this work is to set forth the *minimum requirements* of proof necessary to enable the plaintiff's attorney to present a case which will withstand the defendant's motion to dismiss at the close of the plaintiff's proof upon the ground that the plaintiff has failed to establish a prima facie case. Whether additional proof will be necessary to entitle the plaintiff to judgment at the end of the entire case obviously will depend upon the facts and circumstances of the individual case.

The book well serves the purposes for which it has been produced. The newly admitted trial lawyer by resort to it will find his burden considerably lessened and his path made smoother. The more experienced lawyer will find in it a wealth of reference material to aid him in his research as well as a ready review of the essential elements of the common causes of action.

Essentially, this volume is a form book and not a treatise. But it represents a vast amount of research on the part of the authors and a fundamental knowledge of the substantive law. It can be put to good practical use especially by the neophyte who must however be cautioned not to expect too much. Generally, only half of his work is done when he proves a bare prima facie case. This book will not help him when more than that is required.

ROBERT L. CALLAHAN.*



SUPREME COURT AND SUPREME LAW. Edited by Edmond Cahn. Bloomington: Indiana University Press, 1954. Pp. ix, 250. \$4.00.

The sesquicentennial of *Marbury v. Madison*,¹ furnishes meet occasion for these eleven essays,² each discussed by all of the contributors, we are told, "quite spontaneously," and the discussions printed as "recorded by a stenotypist, the speakers having been afforded no opportunity to polish or revise their remarks."

* Lecturer in Law, St. John's University School of Law.

¹ 1 Cranch 137 (U.S. 1803).

² Status to Challenge Constitutionality (Ralph F. Bischoff); Political Questions (John P. Frank); Review of Facts in Constitutional Cases (Paul A. Freund); The Role of History (Willard Hurst); The Role of the Constitu-