

# A Guide to Motion Practice (Book Note)

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C. I. O. and the A. F. of L. both conducting vigorous drives for members among government employees, the questions presented in this volume will soon call for authoritative answers. This book will serve as a valuable guide to those who will have to take part in the decision of those questions. Mr. Rhyne, who is General Counsel to N. I. M. L. O., has rendered a valuable service in preparing this survey.

AARON B. COLEMAN.\*

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## BOOK NOTES

A GUIDE TO MOTION PRACTICE. By Samuel A. Tripp. New York: Queens County Bar Association, 1946. Pp. xi, 180, index. \$5.00.

Mr. Tripp has been a law assistant to the Justices of the Supreme Court of Queens County for ten years. In that position he has read the papers submitted for thousands of motions. It has been his experience that very many papers do not reflect an appreciation of the proper function of a motion or the basic elements necessary to enable the judge to make a decision. In too many cases the necessary information is lacking or buried in meaningless form. This hinders rather than facilitates the rendition of justice.

In *A Guide to Motion Practice* the author presents the results of his unique experience. Although he limits himself to the conventional divisions in handling the subject, it is clear that he feels that motions, in order to be effective, must not be limited in form or use. A wise attorney will not be stopped merely because the situation is novel. "The important consideration is to find the principle as expounded in a controlling decision and then to apply it to the situation at hand." This technique cannot be acquired from form books, however, as many seem to think.

Without sacrificing authority or complete treatment the author has produced a small, well organized, simple-to-use hand book. The material is set forth in outline form which is conducive to clear thinking. It is not encumbered with multitudinous citations, quotations or forms, which features are left to the standard exhaustive works. However, the author does give authority for each proposition to guide the practitioner into the proper channel.

This guide offers to the practitioner first, a chapter containing a thorough treatment of the fundamentals of the motion procedure and the proper functions of the different papers used. This should help the practitioner to view his motions in proper perspective and to make more intelligent use of them.

Second, commencing with Chapter II, the author covers the particular motions with the more common receiving very complete treatment in separate chapters. This should provide the attorney with the elements and the essential information necessary for a proper decision. Form does not interest Mr. Tripp

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except as it is used to present the information needed by the judge. An additional element of worth is the complete treatment given to the subjects of Reargument, Examinations Before Trial, the Provisional Remedies, and the various matrimonial motions. And though the book is brief, which is a definite asset, it contains an exceptional index of 27 pages.

It has been said that motion practice is an art in itself. However, the acquisition of some degree of skill is not beyond reach for the average practitioner if he has the tools. For the attorney who does not specialize this book will provide expert help in the choice and preparation of his motion. And if the recommendation of the author to follow up his citations to statute and case is followed a really intelligent use of motions should result.

HARRY J. DONAGHY, JR.

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LEGAL REALISM AND JUSTICE. By Edwin N. Garland. New York: Columbia University Press, 1941. Pp. xii, 161, bibliography, index. \$2.00.

This book is more than its title indicates; it is a philosophy of law, presented not from the historical aspect but from the evolutionary-ethical one. By demonstrating the relation between law and the economic society Mr. Garland attempts to give law its proper value.

Expressions in this work such as: "the search for justice is the major enterprise of law, and the attempt to characterize justice is inseparately connected with that which characterizes law," further: "Not all law is just, nor is all justice law," show that the conceptions of the author as to the function of law could perhaps better be classified as a philosophical procedure to improve mankind and simplify its problems. The tools for attaining this goal are the laws, but as their application is in the hands of mortals and all too human ones at that, the fallacies in modern jurisprudence are dwelt upon to quite some extent. In addition, by showing some inconsistencies, *i.e.*, the principle of "equality before the law" and legislation designed to favor the weak and poor, the author demonstrates that law has not yet reached the state of perfection which its long existence would have merited.

The book is written for the thinker who looks beneath the surface of the law and the studies pertaining to it, and it will, therefore, appeal not only to the attorney who naturally is interested in the philosophy of law and our legal system, but also to the layman who wishes to obtain a clear conception of the principles and rules which govern and control the life about him.

LENORE BENARIO.