

Friedman: Contracts and Conveyances of Real Property

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REVIEWS

Contracts and Conveyances of Real Property. By MILTON R. FRIEDMAN. Chicago: Callaghan & Co., 1954. Pp. xi, 425. \$10.00.

Occasionally someone writes a small book upon a segment of some large field of law so well that it enhances the thinking and eases the work of practitioners on problems which fall within the scope of the book. In the opinion of the reviewer, Mr. Friedman has produced such a book. It is a lawyer's book by a practitioner. The scope of the book is the modern real estate transaction and the applicable law from the inception of such a transaction to the last act of closing. The book contains only eleven chapters. It was deemed advisable to enumerate the chapter headings so that the scope of the work will be more apparent. The chapter titles are: Contracts of Sale; Assignments of Contracts of Sale; Examination of Title; Marketable Title; Possession; Mortgages; The Deed; Closing Adjustments; Adjournment or Delay in Closing; Medium of Payment; The Closing. The mechanical arrangement of the book is excellent. The table of contents has a good break-down of the chapter headings into smaller segments with an index geared to this table so that one may readily locate his particular problem with ease.

Mr. Friedman has stated in the preface that his objective was to write the book "with the aim of considering not only what one should know in this field but also what one should do or not do, and why." In carrying out that objective it appears that he is relying a great deal upon his own experiences in the field.¹ He stresses, as of first importance, the making of a good contract. In the words of the author, "the contract makes the law of the case for the parties. It is their charter, and for one, perhaps a strait jacket." The truth of that statement is familiar to any lawyer with some experience in conveyancing. We know that, in comparison, the examination of the title and the closing are likely to be quite routine matters in the average real estate transaction, if there is a well-drawn contract of sale. The stress upon the contract is found throughout the book in the presentation of problems which arose out of some land contract with instructions on how to solve them by negotiation or compromise and with suggested remedies to clear the difficulties.

The most noticeable quality of Mr. Friedman's style is its terseness. Thus he was able to encompass a comparatively large number of situations and the law governing them in a modest size book. He appears to have a ready faculty of digesting large amounts of material and then stating the results in his own words with confidence.² Where there are conflicts of authority or trends in the law, Mr. Friedman is not afraid to be critical of precedents and to express his own opinions.³ Where difficulties arose out

¹ Mr. Friedman has been engaged in the practice of law in New York City for almost a quarter of a century. It appears from his law review articles that he has practiced heavily in the field of real property.

² An excellent example is found at pp. 182-217 involving the frequently occurring problems of Encroachments and Projections. It is the best treatment of the subject that the reviewer has ever seen.

³ See as an illustration pp. 185-186 wherein he considers the conflicting views and doubts regarding the acquisition of easements by opening windows over another's property. He also suggests a solution of the problem without antagonizing a good neighbor and without loss of rights through prescription.

of the wording of the contract, he often suggests the appropriate phrase of words which would have avoided the trouble.⁴ The book is up-to-date on recent cases and law review materials.

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⁴ Mr. Friedman gives very few forms in the book because, he says, they seldom fit without being made over. He has preferred to merely suggest from time to time, in appropriate places in the text, a phrase or short clause as the "kernel" for some instrument under discussion.

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How To Win a Tax Case. By MARTIN M. LORE. New York: Prentice-Hall, Inc., 1955. Pp. xii, 244. \$6.50.

The taxpayer and his representative are almost invariably at a disadvantage in Federal Tax investigations and tax litigation. This is due to the fact that the examining agent who represents the United States Government in the early stages and the conferee, or Government attorney in the advanced stages, are super-specialists. These specialists devote their time to tax matters and in some instances to special interests within the general field of Federal tax law, as for instance the excess profits tax specialist. For this reason the general practitioner who devotes a large part of his time to tort, corporation and probate matters is desperately in need of aid to save him from numerous pit falls and to point out to him advantages which he might otherwise overlook when concerned with this field.

The author draws from a store of his great wealth of experience as is evidenced in his understanding of the internal organizational operations of the Bureau of Internal Revenue and in the helpful psychological approach in the discussions with Internal Revenue Agents. The common sense of the ordinary attorney at law could easily be substituted for much of the material of the early chapters which deals with the Internal Revenue Agent's initial investigation.

The author of *How To Win a Tax Case* performs well the duty of discussing the myriad of points that bear on every case dealing in the field of tax and the almost infinite number of points that bear on individual cases. He uses examples in profusion so that each thought is clearly and unmistakably brought out. In some instances actual incidents that occurred in the tax court are mentioned but the book is entirely void of any citations.

The tax court is a court that adheres strictly to its own set of rules and many causes are lost by the general practitioner who has become more accustomed to the methods of other courts. The author spells out the history of all the procedural aspects of the tax court and agencies, and couples with this, helpful suggestions in procedure. Further, the author frequently refers to the Appendix which contains all the necessary forms and pleadings.

Some points are especially well made. In the matter of continuances, for instance, the general practitioner can almost always obtain a postponement of a hearing of his case in the state courts if the reason for the continuance is within the realm of good taste. The author points out that in the tax court continuances are restricted and generally opposed by the government and denied by the court. It is necessary, even in an initial motion for a continuance, that good reasons for delay be proven and the consent of the government attorney secured or difficulty may be experienced in securing the continuance.

Much of the book contains the elementary trial practice or technique with which the practicing attorney has become familiar and which the student of law may secure from authors writing in detail on trial strategy. To one having some experience in the field of federal taxation, Martin M. Lore's book will be of little value, but to the general prac-