

Lore: How to Win a Tax Case

Warren J. Carey

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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.

MAX P. RAPACZ*

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-

tioner who may become interested in a federal tax case, the book is useful as it contains a combination of fact and advice as well as instructions on tactics and the elements of procedure.

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Handbook of the Law of Evidence. By CHARLES T. McCORMICK. St. Paul, Minn.: West Publishing Co., 1954. Pp. xxxvii, 774. \$10.00.

The first problem that confronts the reviewer in considering this work is: Is it a text, a treatise or an encyclopedia? The difference between the three is not merely one of degree, but of kind. A text, I conceive, to be a work which lays down general principles, supported by the rationale of the rule, exemplified by a few outstanding cases, and distinguished from exceptions to the rule. A treatise is not limited to exemplification, but searches into the causes and origin of the rule, with a critique of its rationale, necessity or effectiveness, and with a prognosis of its future development. An encyclopedia is a storehouse of accumulated cases in which the rule was applied, rejected or modified. A text is designed for the beginning student; a treatise is designed both for the advanced student and the practitioner; an encyclopedia is of primary utility to the practitioner. I would say the present book stands about mid-way between a text and a treatise, with perhaps a slight tipping of the scales in favor of a treatise. It combines the simplicity of a text without the philosophical exhaustiveness of a treatise.

Proficiency in evidence is not a matter of rote; it is largely a matter of *instinct*. We do not *learn* evidence in the same way we learn the mechanics of corporations, future interests and negotiable paper. We *re-act* to evidence, unconsciously and instantaneously, like we re-act to language. Indeed, the study of evidence is like the study of a foreign language. We labor the grammar of the science, with its plethora of rules, exceptions, and exceptions to the exceptions, but we cannot say we know the language until we unconsciously speak its idiom. None of us can remember when we did not speak our native tongue. And yet, we learned it in an extraordinarily short time by pure repetition, aided, of course, by that mysterious function of the human mind we call the logical faculty.

It is likewise with the study of evidence. The writer of a grammatically correct, and rhetorically well-balanced sentence, might have great difficulty in parsing it. He is guided by instinct, rather than by rule. No student can complete the ordinary law school course in evidence without being left in the most bewildering and desperate confusion. His grammar has left him stuttering rather than talking. And yet, the teacher might have labored hard to dispel confusion, to regulate chaos, and to translate instinct into rationale. No experienced teacher need worry about this appalling result. While the term is one of distinct opprobrium, all mental training is a species of brain-washing. If the teacher has religiously drilled on fundamentals, they will remain, even though temporarily obscured by the effluvia of conflicting details. Six months in a court-room, handling even the most trivial cases, will dredge up the basic tenets of the science.

And now, lest this become an essay rather than a review, on to McCormick and his "Handbook of Evidence."

First, as to the mechanical set-up of the book as a whole: in this volume of 774 pages, McCormick first gives us an over-all skeleton outline of his general subject matter, which is then broken down into specific topics in his table of contents. A study of these gives the blue-print and specifications of his approach. The pages are in double columns, with about half the space devoted to foot-note references to authoritative treatises and citations of English and American cases. The citations are usually edited with brief