

Spellman: How To Prove a Prima Facie Case

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REVIEWS

How To Prove a Prima Facie Case. By HOWARD HILTON SPELLMAN. 3d ed. New Jersey: Prentice-Hall, Inc., 1954. Pp. 701. \$8.50.

In probably no profession is the gap between the theoretical and the practical more difficult to bridge than in the profession of law. The theoretical nature of the student's work in law school equips him to handle a case on appeal much more easily than to engage in the conflict in the trial court. Yet, it is at the *nisi prius* level that most of the young lawyer's work is done for the first ten years of his practice, and where most of it is done during his entire professional career. The complaint of most newly-graduated lawyers, and those young in the profession, is that the Law School teaches them very little about the practical handling of a case in the trial court.

The problem of the Law School, on the other hand, is one of time. The amount of theoretical subject matter to be covered in the three years devoted to the course is enormous. This theoretical knowledge is necessary to securing a license to practice. Once that is acquired, the problem of *how* to practice confronts the graduate. The graduate dentist can fill a tooth; the fledgling doctor can go through the motions of diagnosis, leading to the prescription of as harmless a pellet as possible. But the lawyer, once in the water, must not only swim, but must keep an older and more experienced practitioner from drowning him.

In this emergency, the third edition of *How To Prove a Prima Facie Case*, by William Hilton Spellman, furnishes wings to the swimmer to enable him to get across the river. This book is unique in many respects: first, it is not a chronicle of courtroom adventures which retired lawyers write to amuse their brethren, and which have little professional value; second, it is not a book of famous cross-examinations, the ingenuity of which may be justly admired, but which rarely, if ever, can again be duplicated; third, it is not a mere recital of stereotyped questions and answers, to be learned by rote without any understanding of the theory underlying the technique adopted. The work is unique in that it presents an authoritative presentation of the theory underlying the questions propounded to the witness, with extensive citations of cases involving source material from many states, and with trial hints amplified by case quotations on the specific substantive and evidentiary problems involved.

How shall I start? How shall I frame my questions? How shall I put this document in evidence? How shall I interrogate an expert witness? How shall I cover every essential element necessary to the proof of a prima facie case? How shall I avoid that deadly attack—a motion for a directed verdict? These are the questions that trouble not only the young lawyer, but, unfortunately, too many of those old in the profession.

During the months when the young lawyer is waiting for that unfortunate individual who is to become his first client, he would do well to study this book, and the old-timers could very well review these fundamentals they have long ago forgotten. For the novice, its 701 pages should be his bible. He might have done excellent work in Evidence in Law School, but how is he to translate rules of evidence into practical exemplification? The answer is: by practice, not in the courtroom, but in the office. Let him take Spellman's book: he will find 44 types of cases covered by illustrative examinations. These are the ordinary, mine-run cases which come to the lawyer's desk. They involve contracts and torts, bailments and negotiable paper, corporations, brokers, and domestic problems involving divorce, separate maintenance, alienation and

criminal conversation, negligent torts arising from automobiles, defective streets, stairways and food, replevin, real property and taxes, and a score of other topics. Part III of the book covers generic topics that constantly arise in every species of case—the techniques of introducing writings and photographs, the proof of agency and the interrogation of medical and handwriting experts. There are no *causes célèbres* in this book, though the young lawyer may dream of one in which he will one day play a part. But he can prepare for that day now. The piano virtuoso is the product of many grinding hours with finger exercises—the sample examinations in this book are the finger exercises of the lawyer who will one day figure in the *cause célèbre*.

While everyone's method of study differs, I would suggest that in preparing a case with the aid of this book, that the general theory of what must be proved be first read in the cases placed after the illustrative examinations. The source cases should then be consulted for a case in your jurisdiction. It is possible the general theory may be varied in your state. The suggestive hints placed after the sample examination should next be considered. Then we come to the sample examination itself.

Observe the form of each question. As you are proving a *prima facie* case by your client, the plaintiff, note how the direct form of question is used, and the absence of leading or suggestive questions, and of those that call for a conclusion rather than a statement of fact. Second, observe the logic implicit in the order of the questions: the identification of the parties, the delineation of the transaction fixing their rights, the breach of duty by the defendant, and the damages. After those factors are proved, do what the book does—stop.

If the cause of action in your State involves a variation, write out the questions covering this variation, using those in the book as models. It would be a good plan to write out the questions you intend to ask in any event, particularly if you never handled a similar case before. You will find it a very enjoyable and profitable exercise. You will be able to study the *form* of each question, as you write, and thereby foresee and eliminate many formal objections; you will have an opportunity to arrange the questions in the proper logical order to effectively bring out the story, and, what is most important of all, you will know that you have covered every element necessary to prove a case. The time spent in this preparation is time saved in the courtroom, and the confidence which thorough preparation creates replaces the nervousness engendered by going blindly into a case.

The generic examinations on the introduction of documents, and photographs, the proof of agency and expert opinion evidence, should be mastered thoroughly and accurately, so as to remain with you throughout your professional life. You will use them in innumerable cases, and the techniques, once learned, remain the same. With the finger exercises this book gives you, difficulties of proof in ordinary cases disappear, and in more complicated cases become merely a challenge to versatility. You have the assurance that your case is completed, simply, and with the utmost economy of time; irrelevancies, that not only do not help your case but open pitfalls of reversible error, are avoided. The presentation of a case becomes a work of art. Every question is a stone that serves a definite purpose in the house that is being built; if selected with care, if fashioned with the eye of a lapidary, and fitted with precision, the case will have the qualities of all art: solidity, symmetry and economy.

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