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Book Review: Personal Injury Litigation in Texas

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BOOK REVIEWS

PERSONAL INJURY LITIGATION IN TEXAS. BY E. WAYNE THODE, EDITOR-IN-CHIEF, AND THIRTY-EIGHT OTHER AUTHORS. St. Paul: West Publishing Company. 1961. Pp. LX, 1101. \$16.

This volume has been designated "Practice Manual Number 1" of the Continuing Legal Education Program¹ of the State Bar of Texas. With it the State Bar has launched a unique and commendable undertaking to make available to the profession a series of "How to do it" manuals. The book is really a collection of papers prepared by thirty-nine separate authors on some sixteen topics and sub-topics covering the entire spectrum of personal injury practice from the interview with the client to perfecting the appeal. It is manifestly impossible within normal space limitations of a review to do justice to such a publication or even to comment on each of the articles. The most which can be attempted is a discussion of the plan of the book and its general features with specific reference to a few selected articles.

The announced purpose of the volume is to present a competent guide for the lawyer inexperienced in personal injury matters which will at the same time be of assistance to the more seasoned trial lawyer. To accomplish this in the most effective manner, the adversary method of presentation has been employed. On most of the topics covered, there is room for considerable difference of viewpoint depending on the side of the docket from which the tactical considerations are viewed. For this reason the editors wisely chose to assign all such topics to two authors, one to approach the particular subject from plaintiff's and the other from defendant's point of view. This method is especially adaptable to certain areas of personal injury litigation and has been successfully employed for many years in institutes on the subject. The topics covered in this manner include: *Interview and Investigation, Pleadings, Discovery, Depositions, Pre-Trial Conference, Settlement, Jury Selection, Trial Tactics, Expert Witnesses, Demonstrative Evidence, Special Issues, and Opening Statement and Jury Argument*. The roster of protagonists in this adversary drama reads like a Who's Who in Personal Injury Practice. *For the Plaintiff*: Russell Baker, Kearby Peery, Ben Johnson, Gilbert

¹ The aspect of continuing legal education is pointed up in the Institutes on Personal Injury Litigation sponsored by the State Bar in conjunction with presentation of the Manual to the legal profession. A state-wide institute was held at the State Bar Convention, Fort Worth, July 5, 1961. Regional institutes are planned throughout the Fall of 1961.

Adams, Tom Davis, Franklin Jones, Davis Scarborough, Guy Carter, Charles Lieck, Joe Tonahill, James Kronzer, and John Watts. *For the Defendant*: Kraft Eidman, Frank Knapp, John Tucker, Josh Groce, Pinkney Grissom, V. W. McLeod, Mark Martin, Thomas Phillips, Thomas Weatherly, Pitser Garrison, Preston Shirley, and J. A. Gooch. On some of the foregoing topics there are also articles by a distinguished trial or appellate judge or law professor designed to develop further facets of the subject. These include: *The Trial Brief*, Thomas Gee; *General Observations on the Pre-Trial Conference*, Wayne Thode; *Pre-Trial in the State Court*, Judge James Starley; *Pre-Trial in Federal Court*, Judge Joe Estes; *Preparation and Examination of Lay Witnesses*, Tom Reavley; and *Special Issue Submission*, Gus Hodges.

The other articles deal with subjects on which there is probably no great difference of opinion between plaintiff's and defendant's attorneys and which are included for their informational and practical value. These were prepared by equally outstanding attorneys and judges and include: *Choice of Forum*, Tom Morris; *Judge-Jury Relationship: In State Courts*, Judge John Onion; *In Federal Courts*, Judge Joe Fisher; *Affirmative Defenses and Compulsory Counterclaims*, John Sutton; *Verdict, Judgment and New Trial*, Judge Bert Tunks; *Jury Misconduct*, Judge Jack Pope; *Preserving Error—Perfecting Appeal*, Justice Spurgeon Bell. The book also contains one joint effort of two top trial lawyers on opposite sides of the docket: *Elements of Damage*, Warner Brock and Cecil Redford.

For the most part the content of the volume is of high caliber. The authors, all experts in this field, in the main have taken their tasks seriously and from their vast experience have made available to their brethren less versed in these matters a storehouse of information as to trial tactics and methods which will be of untold benefit to those who master them. In a few instances, however, there is a very skimpy and inadequate treatment of the subject. These represent lost opportunities, for the authors of such articles also had much more to contribute had they only taken the time and made the effort. In one or two cases there is evidence of an undue amount of padding with material of doubtful value. But these few shortcomings do not greatly detract from the total value of the book.

While the chief emphasis is on the personal injury action, some of the articles do contain references to wrongful death actions and to workmen's compensation cases. Again, though the primary purpose was to deal with tactical considerations as distinguished from substantive principles of tort law, some of the articles touch on sub-

stantive rules, it being unfeasible to draw a clear line in all instances. When so large a number of authors cover different topics, many of which are interrelated, there will of necessity be a certain amount of overlapping, and in this book there are many instances where more than one author deals with the same problem. But far from being a defect this may well be of considerable value, since it gives the reader different points of view.

In a volume offering such a tempting legal menu by expert chefs it would be not only difficult but unfair to single out any particular essays as the best, and I shall not attempt it. But with a wide variety of topics and authors from which to choose, all readers doubtless will have their favorites. With no reflection on the others I have selected the following: *Interview and Investigation* by Baker for Plaintiff and Eidman for Defendant—Baker's check list should be an especially helpful device; *Choice of Forum* by Morris—a scholarly piece, the best thing I have seen on the subject; *Defendant's Deposition Practice* by Groce, with an excellent check list; *Affirmative Defenses and Compulsory Counterclaims* by Sutton—an outstanding job; *Demonstrative Evidence* for Plaintiff by Lieck and for Defendant by Weatherly—very practical articles; the three articles on *Special Issues* by Kronzer, Shirley and Hodges—best over-all treatment of the subject available; and *Jury Misconduct* by Judge Pope.

One of the most valuable features of the book is the excellent bibliography following each chapter containing a list of books, articles, comments and notes—the most complete to be found anywhere. I have, however, noted what seem to be a few glaring omissions. In the bibliography on Discovery and Depositions I would have expected to find DISCOVERY BEFORE TRIAL by the late George Ragland—which I regard as the best book on the subject. The bibliography for the chapter on Damages fails to list Professor McCormick's excellent text, nor is it cited anywhere in the footnotes to the chapter. If the reason be its date of 1935, I would say that for the most part the principles have not changed. Finally, the bibliography which covers the chapter on Demonstrative Evidence does not include Scott's PHOTOGRAPHIC EVIDENCE, although some of his articles are listed.

The book is equipped with a detailed table of contents—some thirty-seven pages, an excellent index and a complete table of cases, all of which enhance its value for ready reference. The index, however, is keyed to chapter subheads or sections instead of pages. While this may have been justified in order to speed up publication, many

users will find it awkward. Where the subhead covers several pages this makes it more difficult to locate a particular point. The format of the book is up to the high standard which the profession has come to expect from its primary publisher, the West Company.

The general excellence of the book is due in large part to careful planning and execution on the part of Wayne Thode, Editor-in-Chief, and his associates. It is no small editorial task to take thirty-nine separate articles on so many different subjects and integrate them into a cohesive whole. It requires expert judgment and tact as well as long, tedious hours of hard work. The editors and all their assistants deserve the thanks of the profession for a job well done. The idea for this series originated in the fertile mind of Gordon Carpenter, long-time Chairman of the State Bar Committee on Legal Institutes. It was brought to fruition by Paul Carrington during his tenure as President and may well prove to be the most lasting accomplishment of his administration.

The first volume of the series was made possible through funds supplied by the M. D. Anderson Foundation and the Houston Endowment, Inc. Funds for the publication of future volumes² must come from the proceeds of the sale of this book. The success of the series, therefore, is dependent upon the acceptance by the profession of this first volume. The lawyers of Texas can demonstrate their gratitude to these foundations and to their fellow lawyers who gave of their time and talent to make the book possible, and show their confidence in the project by sending in their orders for this book without delay. I predict that they will do this in record numbers and thus keep these top-quality, bargain-priced practice manuals coming.

*Roy R. Ray**

²Next in the series will be *Creditor's Rights in Texas*, Prof. Joseph W. McKnight of the Southern Methodist University School of Law, Editor-in-Chief; Dean Robert G. Storey, Pres. of the Southwestern Legal Foundation, Chairman of the Board of Editors.

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