

FUNDAMENTALS OF TRIAL TECHNIQUES CANADIAN EDITION, by Thomas A. Mauet, Donald G. Carswell, Gordon P. Macdonald. Little, Brown & Company, 1980, pp. xii and 439, paper, \$15.00 (U.S.).

The fan of the television or movie courtroom drama is on the edge of his seat when the quick-minded incisive counsel gains victory for his client by a penetrating and devastating cross examination of a witness, who crumbles under the force of his mastery and brilliance, and reveals all.

Even in the "real world," when counsel reminisce and exchange stories about past trial experiences, they tend to highlight the cross-examinations where the unexpected happened, or where they were able to assume "control" over a belligerent witness.

Accordingly, the person not exposed to the litigation process invariably focuses on the drama of the cross-examination as the essence of a trial, and even experienced trial lawyers seem to remember cross-examination, when other aspects of a case have faded from memory. However, those same experienced trial lawyers will generally agree that cases are won on the strength of the client's position, and not by how effective counsel may be on cross-examination.

This fundamental, often overlooked, is well recognized and treated in "Fundamentals of Trial Techniques" where of the 8 chapters included, the longest is devoted to and entitled "Direct Examination." The philosophy, psychology and mechanics of organization, client preparation and the conduct of direct examination are thoroughly canvassed and analyzed. The manner in which the material is presented, the section headings, the "readability" of the text and the illustrations chosen, are all first-rate.

When the chapter is finished, the reader will have, at the least, a good feel for the concept and use of direct examination and, at the most, a thorough grasp of the subject.

What is said above about direct examination applies, generally, to all other subjects dealt with. These are: Preparation for Trial, Jury Selection, Opening Statements, Exhibits, Cross-Examination, Closing Arguments and Objections.

Particular attention should be given to the chapter on Opening Statements. This is a facet of litigation that counsel tend to overlook or minimize. It is a most useful and effective trial tool and counsel and their clients will be well served by the effort to understand and follow the treatment given by the authors to this subject.

Throughout, the authors illustrate their positions by sample questions and answers or, in the appropriate chapters, sample statements and addresses. Some of these are rather basic and self-evident; however, they are set up on the pages so that explanatory notes appear in the margins at appropriate places. These serve to emphasize and further illustrate certain points, and the over-all effect is very good and most helpful to the reader.

Thomas A. Mauet is the Director of Trial Advocacy and Professor of Law at the University of Arizona and the author of the original edition. Donald G. Casswell and Gordon P. Macdonald are Associate Professor of Law and Sessional Instructor, respectively, at the University of Victoria. In their forward, Casswell and Macdonald state that Mauet's original work was used by them in teaching trial advocacy, and that their re-writing of Mauet's text was to make it conform to Canadian law, practice and terminology. This has been done with relative success.

However, some caution must be taken by the Alberta practitioner who generally appears before a judge alone and only occasionally before a judge and jury. Virtually the entire book deals with the conduct of a trial before a judge and jury. While very often the practice will be the same, there is frequently an example given or an emphasis made which is not entirely suitable to or consistent with appearing before a judge sitting alone. The reader will not have too much difficulty making the mental "adjustments", but should begin the book with this in mind.

Quite properly, the authors repeat throughout what every trial lawyer already knows, but can never be stated often enough: proper performance by counsel at trial, happens only after careful, lengthy, painstaking and detailed organization and preparation before trial. Mauet, Casswell and Macdonald have brought the same attributes to their performances as authors, and have produced a book that would be a worthwhile addition to the library of every trial lawyer.

Barry Vogel, Q.C.