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## Book Review

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## ***Book Reviews***

### **HANDBOOK OF THE LAW OF SALES**

By Lawrence Vold, St. Paul: West Publishing Company,  
1931, pp. ix, 623.

The Uniform Sales Act has been enacted in so large a proportion of the United States that any current treatment of this subject that fails to give adequate discussion of its relevant provisions is not only disappointing but actually misleading. The two editions of Williston's masterpiece are so satisfactory both as an explanation of its provisions by the draftsman and as showing its effect upon the common law that there would seem to be little room for another book on Sales at this time. Professor Vold freely acknowledges his great debt to Williston and he constantly refers the reader to his work for a fuller citation of authorities and a more exhaustive discussion. However, instead of featuring the text of the act and making it the center of the discussion, the author relegates the act to the appendix and makes reference thereto when the act contains provisions in point. A number of chapters of the book have appeared as articles in the leading law reviews but they are now recast to the extent that the main propositions are set out in the familiar black type of the Hornbook Series. The author makes frequent references to the available discussion of particular problems in the law reviews and to provisions of the Restatement of the Law of Contracts. The Uniform Conditional Sales Act and the now common bulk sales statutes are adequately treated and a serious effort is made to accurately analyze the division of property interests which arise in the various security devices resorted to in the modern methods of financing distribution. The author frequently criticizes the decisions and his criticisms are constructive and well deserved. While called a "handbook", the discussion is rarely superficial, but a Pennsylvania lawyer will be surprised to find no Pennsylvania cases cited in connection with the discussion of the distinction between conditional sales and

leases (p. 313) particularly in view of the exclusion of the latter from the operation of the Uniform Conditional Sales Act by the amendment of this act when it was enacted in Pennsylvania.<sup>1</sup> In many other connections, however, attention is called to the peculiarities of Pennsylvania law and some of the more recent decisions are cited. The confusion in the late Pennsylvania cases as to what is necessary to raise an express warranty is not adverted to. However, the book serves as a useful introduction to the consideration of any sales problem and its compactness and form will make it a useful book for law students.

J. P. McKeehan.

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### CASES ON BILLS AND NOTES

By Smith and Moore, 3rd edition, St. Paul, Minn.,  
West Publishing Co., 1932.

Generally speaking, this edition follows the same method of presentation as the previous one, except that the initial introduction treating with the subject of negotiability is advisedly omitted. It was largely surplusage.

Fortunately, the Third Edition has omitted a vast number of cases which formerly served no useful purpose except to supply historical background. There has been substituted a very liberal number of recent cases. If omissions are carefully made by teachers, the student will be able to spend approximately one-half his time on cases decided within the last ten years.

It is regrettable that the number of pages in the new edition has been increased by one hundred and twenty.

This might have been avoided by citing some of these

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<sup>1</sup>On p. 271 it is said: "The importance of this special Pennsylvania theory of the transaction is no longer vital, however, since the adoption there of the Uniform Conditional Sales Act in 1925." The author obviously overlooked the fact of the amendment of sec. 1 of the act, which eliminated bailment leases from its operation. He does, however, at various places note the amendments of the Sales Act made by the Pennsylvania legislature.

cases in footnotes and stating briefly the holding. It is doubtful whether the average student finds the time to read cases that are merely cited in footnotes. In this dual respect the book could have been improved to the student's advantage, because few teachers will find it possible to complete the book within the time allotted.

Because many of the states fail to follow the uniform numbering of the Negotiable Instruments Law, it would also have been most helpful to the student, as a time saving device, to have the uniform sections of the act involved in a given case quoted, or at least noted, at the end.

Leon D. Metzger.

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AMERICAN FAMILY LAWS. VOLUME I.  
INTRODUCTORY SURVEY AND MARRIAGE

By Prof. Chester G. Vernier of Stanford University,  
Stanford Univ. Press, 1931.

This volume is the first of a series of five on American Family Laws. The author has undertaken a gigantic task in that he plans to make a comparative survey of the statutes of forty-eight states, Alaska, Hawaii, and the District of Columbia. His plan of presentation adds much to the value of the series. Each subject is discussed, in so far as it is possible, in the following systematic order: First, A summary of the common law; Second, A statement of the statutory law both in summary form and in detail; Third, Comments and criticisms; and Fourth, References, including case books, texts, law review articles and notes, and annotations. Professor Vernier, as the result of over twenty years of teaching of the law of Persons and Domestic Relations, is well qualified for the task that he has undertaken.

It is to be expected that in a work of this kind, there will appear a few errors. The writer has not attempted to check on any state other than Pennsylvania. The majority of citations from this jurisdiction are accurate.

But it often is true that a statute, after being interpreted and construed by the courts, has a meaning quite different from that which it appears to convey from a mere reading. Thus, the author states the grounds for annulment in Pennsylvania as: insanity, force or duress, bigamy, incest, and certain diseases. In fact, our Divorce Code of 1929 does not expressly set aside certain grounds for annulment, but those usually considered as actually being grounds for annulment are: impotency; incest; fraud, force, or coercion; duress; and prior marriage (not bigamy).<sup>1</sup> Although a few courts granted divorces for insanity under an erroneous interpretation of the Act of 1905,<sup>2</sup> these cases have been over-ruled and the Act correctly construed as permitting divorce "not because of insanity, but in spite of it."<sup>3</sup> Insanity existing at the time of marriage renders the marriage null and void, but Pennsylvania supplies no judicial machinery for setting aside such a marriage. Its nullity, however, may be shown in any collateral proceeding where it is material.<sup>4</sup> The author's error in placing bigamy as a ground for annulment is understood when Sections 10 and 12 of the Act of 1929<sup>5</sup> are considered. Section 10 (1-b) gives bigamy as a ground for absolute divorce. Section 10 (3), lists as a ground for divorce the fact that a spouse innocently remarries after the other has been absent for two years under a well-founded rumor of death. Section 12 provides that either party to the *second* marriage, void because one of the parties was already married, may have the second marriage "declared null and void, in accordance with the principles and forms hereinafter prescribed for cases of divorce from the bond of matrimony." An error of omission is found on page 282, where the author states that "Delaware, New Jersey, and Wisconsin all provide that when a marriage is invalid because of forbidden relationship by either consanguinity or affinity, and is not an-

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<sup>1</sup>P.L. 1238, Section 10.

<sup>2</sup>P.L. 211, as amending Act of 1843, P.L. 233, Section 8.

<sup>3</sup>Baughman v. Baughman, (1907) 34 Pa. Superior Ct. 271; Mintz v. Mintz, (1924) 83 Pa. Superior Ct. 85.

<sup>4</sup>Pitcairn v. Pitcairn, (1902) 201 Pa. 368.

<sup>5</sup>P.L. 1238.

nuled during the lifetime of either party, its validity shall not be inquired into after the death of either party." In fact, Pennsylvania also provides that marriages within the prohibited degrees of relationship shall not be inquired into after the death of either party.<sup>6</sup>

The foregoing criticism is not written in the spirit of destructiveness, but rather as a friendly warning. The next volume of the author's series is to contain a survey of Divorce. It is suggested that special pains be taken in making certain that the statutes giving the grounds for divorce have been construed as would be expected from the meaning apparent from reading them.

The author is to be congratulated:

First—for his attempt to bring to the attention of lawyers and judges the existence of statutes. This is something which American lawyers are apt to over-look.

Second—for the excellent cross-view of the laws of the several states as presented in the work. Coming at a time when there is a keen interest in marriage and divorce questions, this work has an unique value in showing what a mass of confusing and conflicting legislation has been "accomplished" in the various jurisdictions. In these subjects, more than in any other field of the law, there is a great need for uniformity.

Third—for his constructive criticism of the present law, a fine example of which is found in Section 6 on the policy of the law in breach of promise.

W. Reese Hitchens.

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## THE LAW AND PROBATION

Lawyers who cannot distinguish between pardon, probation and parole come in for criticism in the recently issued 1931 Year Book of the National Probation Association.

The National Probation Association is an Association of juvenile court judges, probation officers, crimin-

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<sup>6</sup>Act of March 13, 1815, Section 5; *Walter's Appeal*, (1872) 70 Pa. 392.

ologists, and others interested in the treatment and prevention of delinquency. The President of the Association is Charles Evans Hughes, Jr., and the General Secretary, Charles L. Chute.

"The lack of information on the part of lawyers regarding probation is not confined to certain courts or locations but prevails rather generally in the United States," states one of the Year Book contributors, Justin Miller, Dean of the Law School of Duke University, Durham, N. C., and Chairman of the Criminal Division of the American Bar Association. "This lack of information is due to two things," states Dean Miller, "first, the pride that many lawyers take in the fact that they know nothing about criminal law or have never been in a criminal court, or if so, only at rare intervals. And secondly, the lack of proper training along this line by law schools.

"It is entirely possible for a lawyer to go through an arts college, get a Bachelor's or Master's degree or become a Doctor of Philosophy, and then attend law school and yet never hear a word from his instructors about probation. Criminal law is given usually as a required subject in the first year. It covers very scantily what is called substantive criminal law. Sometimes it touches slightly the subject of criminal procedure. Occasionally mention is made of problems of administration, but as to the new techniques, one of which is probation, usually the college and law school courses speak not at all.

"Frequently the instructor is not sympathetic towards the course, or is a person who has had the course assigned to him because no one else on the faculty wanted it. Sometimes he advises his students to forget the study of criminal law when they have finished with it. Students, so trained, go out into practice and represent clients in the organization of corporations; in the making of contracts; in the running of railroads,—fields in which the lawyers receive their most substantial fees, together with the greatest respect from their colleagues and from the public. These lawyers have no opportunity of coming into contact with such subjects as probation.

"If, by chance, they are elected or appointed to the office of prosecuting attorney, to the bench, or assigned by the court to defend in criminal cases, they will run into these strange new procedures for the first time. They assume, as people frequently do, that as they have not been taught anything about such subjects, and as presumably they have been taught all subjects worth learning, there must be something wrong with these procedures. So they approach them with suspicion and antagonism. Then they find that in dealing with these problems they are brought into contact with social workers, probation officers, people quite outside of the profession of the law,—who speak in terms which are entirely unfamiliar to them. This is embarrassing and naturally their antagonism is increased.

"There is no better basis for antagonism than ignorance and the inferiority complex which results therefrom. Otherwise tolerant, understanding members of the Bar will go out of their way to speak in an antagonistic way about juvenile courts and probation and all the rest of the "new-fangled" ideas which did not happen to be within the range of their education or training. Probation has a hard row to hoe when it comes into such a set-up,—a set-up controlled by lawyers, a judge on the bench, a prosecuting attorney, a defense counsel,—and a probation officer who may or may not know much about the philosophy lying back of this subject but who is attempting to accomplish an objective which is outside the understanding of lawyers."

Other articles of direct interest to the legal profession published in the Year Book of the National Probation Association are: Efficient Criminal Justice by Governor Floyd B. Olson of Minnesota; Summary of New Legislation Concerning Probation and Juvenile Courts enacted in 1931 by Francis H. Hiller, Field Secretary, National Probation Association, New York, N. Y.; Probation in the United States Courts by Sanford Bates, Director, Bureau of Prisons, Department of Justice, Washington, D. C.; Practical Problems in Administering Probation by Irving W. Halpern, Chief Probation Officer, Court of General Sessions,

New York, N. Y.; Organizing a County Probation Department by Judge George W. Smyth, Children's Court of Westchester County, White Plains, N. Y.; The School, the Juvenile Court, and the Social Attitude by Judge Carl B. Hyatt, Social Economist, U. S. Children's Bureau, Washington, D. C.

National Probation Association,  
450 Seventh Avenue,  
New York, N. Y.