

---

Volume 40  
Issue 2 *Dickinson Law Review - Volume 40,*  
*1935-1936*

---

1-1-1936

## Book Review

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

---

### Recommended Citation

*Book Review*, 40 DICK. L. REV. 131 (1936).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol40/iss2/9>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact [lja10@psu.edu](mailto:lja10@psu.edu).

# BOOK REVIEWS

## PENNSYLVANIA INHERITANCE TAXATION

By Keller H. Gilbert, Published by Geo. T. Bissel Company, Philadelphia, Pennsylvania, 1934.

The nature of this book is indicated by the first sentence of the preface where Mr. Gilbert writes, "In the compilation of this work, it has been the purpose of the author to collect, in one volume, the substance of every reported Pennsylvania decision, and the full text of every Pennsylvania act of assembly, directly appertaining to the administration of the inheritance tax law in this Commonwealth." Thus the book may be characterized as a digest of authorities rather than an argumentative treatise. The author has few theories to expound and endeavors to prove nothing. It should be very welcome to the legal profession in view of the almost complete lack of Pennsylvania literature on the subject. As an attorney for the Commonwealth, assigned to the office of the Register of Wills of Philadelphia County to assist in the collection of inheritance taxes, Mr. Gilbert is eminently qualified in this field of the law.

A compilation of this kind is not subject to the ordinary standards of judgment applicable to the usual general text book covering a given field of legal principles. This type of book is used in a different manner, the main purpose of the owner simply being to find whether or not there is a case on his particular point. Therefore, the index and table of contents are very important since they are the keys to admission which, if inadequate, make such a book much less valuable. Mr. Gilbert's book, however, has a very full and complete index as well as an exhaustive table of contents. In addition a table of cases and abbreviations adds to its utility.

There is also included the full text of all acts of assembly ever enacted in the Commonwealth pertaining to inheritance taxes. This is important since generally the taxation of a particular estate is determined by the law in force at date of death of the decedent. Since remainders frequently vest years after the decedent's death, it is often necessary to go back into the statutory law many years. Prior to the release of the present book, this often proved a difficult matter of research for the busy practitioner for these statutes were not all collected together as in these pages. Mr. Gilbert has therefore done well with the mechanics of his book.

The material assembled possesses a quality essential to a compilation of this kind, namely, the necessity that the digest of each case be concise and at the same time clear. If too much of each case is put in, the book will be rambling and unwieldy, but if too little is included the case may be almost worthless. Here too the author's skill must be commended for he has been able, in most cases, to strike a happy medium. The importance of this phase of the book cannot be over-emphasized because, along with the appellate court decisions, Mr. Gilbert has succeed-

ed in making an exhaustive collection of the lower court cases in Pennsylvania relating to inheritance taxes. Many of these lower court opinions would otherwise be difficult to locate and frequently are not easily accessible to the practitioner. One gains the impression that over a long period of years the author, in his daily practice, has compiled notes of these lower court cases.

If any criticism were to be offered it would be to express regret that the author has not volunteered more of his own views, although the danger of this is fully recognized. Here and there a comment is made but they are scarce. Certainly the author's experience and his work in preparing this book must have developed many views and opinions regarding the various phases of this tax which if expressed would be beneficial both to bar and bench. Evidently, however, he desired to adhere to something more akin to a digest than to a text presentation.

The taxation of trust estates is covered only meagerly.

In certain instances the material is not too logically related. It is somewhat like a series of independent annotations with title headings.

On the whole Mr. Gilbert has done a very fine job, and the legal profession should greatly benefit by it.

Leon D. Metzger

### AMERICAN FAMILY LAWS. VOLUME III. HUSBAND AND WIFE

By Prof. Chester G. Vernier of Stanford University, assisted by John B. Hurlbut. Stanford University Press, 1935. Pp. xxix, 684. Price: \$6.50.

This is the third volume of Prof. Vernier's five volume treatise of American Family Law. Volumes I and II, which dealt with Marriage and Divorce, respectively, have been widely reviewed.<sup>1</sup> These reviews have adequately explained, commended, and criticized the general plan employed in presenting this exhaustive collation of the statutory law of the family of the forty-eight American States, the District of Columbia, Alaska, and Hawaii. In Volume III the same method of classifying, charting, and analyzing the legislation has been followed; and the manner in which Prof. Vernier has handled this painstaking task is indicative of a rich scholarship coupled with a realistic appreciation of the position of the family in modern society.

---

<sup>1</sup>Vol. I: Williams, (1931) 16 Marq. L. Rev. 70; Hatie, (1931) 1 Univ. Det. L. J. 52; Hanft, (1931) 10 N. C. L. Rev. 112; Warner, (1931) 10 Tenn. L. Rev. 59; Mueller, (1931) 11 Ore. L. Rev. 113; Hargrave, (1932) 10 Tex. L. Rev. 253; McCurdy, (1932) 42 Yale L. J. 158; Roberts, (1932) 18 Iowa L. Rev. 122; Woodward, (1932) 18 Corn. L. Q. 158; Fuchs, (1932) 18 St. Louis L. Rev. 89; Hitchens, (1932) 36 Dick. L. Rev. 218; Landis, (1932) 45 Harv. L. Rev. 952; Madden, (1932) 80 Univ. of Pa. L. Rev. 779. Vol. II: Williams, (1932) 16 Marq. L. Rev. 284; Warner, (1932) 10 Tenn. L. Rev. 327; Hatie, (1932) 1 Univ. Det. L. J. 215; Mueller, (1932) 11 Ore. L.

This volume treats of the whole field of those particular and peculiar legal relations which emanate from the existence of the status of husband and wife, other than the creation and termination of that status. It collects all the statutory provisions which affect the rights and duties of the spouses as between themselves and as between them and third persons, cutting across the field of torts, crimes, contracts, personal and real property, wills, intestate succession, evidence, the bringing and defense of suits, and domicile, and also devotes a section to the modern domestic relations courts. Its scope, then, is extremely broad and diversified and this volume is necessarily much the largest of the series to date; but the enormity of the task has not resulted in any departure from the thorough, detailed, and accurate treatment accorded to the material in the earlier volumes.

Inasmuch as courts sometimes construe statutes as not meaning what they say and other times change the common law rules without the aid of a statute, Prof. Vernier's classification of the statutes according to their literal wording and meaning, and his omission of the court-made modernizing rules, is apt to be misleading at times as to the state of the law in a particular jurisdiction.<sup>2</sup> This feature has been the subject of criticism of his work; and, yet, if the common law rules and judicial interpretation of the statutes were included it would make of these volumes what they are not intended to be. By presenting a panorama of the statutes "as is" the volumes serve the valuable function of graphically portraying the deficiencies and inadequacies of the statutory family law in America today and concomitantly indicate the path to improvement. By supplementing these volumes with the case and text material the exact state of the law in a particular jurisdiction may be ascertained readily; but to include all this material in the same volumes would tend to obscure the valuable purpose which the chosen treatment so ably subserves. It is, however, observable that there is a somewhat fuller consideration of the decisions in this than in the earlier volumes.

In an introductory chapter the author points out that the two objectives of the Married Women's Acts—to remove the wife's disabilities and equalize the rights of husband and wife—have been supplemented by a new objective—that

Rev. 417; Schamban, (1932) 7 Temple L. Q. 127; Reader, (1932) 37 Dick. L. Rev. 77; McDade, (1932) 7 St. Johns L. Rev. 170; Madden, (1933) 81 Univ. of Pa. L. Rev. 647; Evans, (1933) 21 Ky. L. J. 363; Sabbath, (1933) 42 Yale L. J. 1001; (1933) 3 Idaho L. J. 102; (1933) 11 Chi-Kent L. Rev. 254. Vols. I and II: Rothenberg, (1932) 66 U. S. L. Rev. 339; Baber, (1932) 9 N. Y. U. L. Q. Rev. 512; Angoff, (1932) 12 B. U. L. Rev. 583; Todd, (1933) 19 A. B. A. J. 155.

<sup>2</sup>For example, in the following instances relative to the law in Pennsylvania the material in Vol. III is misleading. In Sect. 156, at p. 71, it is made to appear that husband and wife can not contract with each other in Pennsylvania, due to the absence of a statute permitting it. In fact, it has been held that they may contract: *Nuding v. Ulrich*, 169 Pa. 289, 32 Atl. 409 (1895); *Lineweaver's Est.*, 284 Pa. 384, 131 Atl. 378 (1925). In Sect. 157, at p. 75, it is said that the Pennsylvania statute implies that the husband's common law liability for the postnuptial torts of his wife still persists. (See the table, at p. 83. The Act of April 11, 1848, P. L. 536, Sect. 6, provides that the husband is not liable for the debts of the wife "contracted" before marriage.) It has been held, however, that the husband is no longer liable for her postnuptial torts: *Hinski v. Stein*, 63 Pa. Super. 441 (1917); *Crouse v. Lubin*, 260 Pa. 329, 103 Atl. 725 (1918).

of equalizing the burdens between the spouses—a need not appreciated until these acts had been in operation for some years. His conclusion is that these objectives have been substantially, but not completely, attained and that there is still much room for improvement and clarification of the law. An examination of the statutes, as set out in the book, bears out this observation and discloses that in many jurisdictions the real intentions of the legislative body were defeated through the lack of an adequate appreciation of the nature of the legal changes needed to accomplish the desired result, or simply due to an inability to draft an act that clearly stated what was wanted. A careful study of this volume by legislators, members of bar associations, and others who play a part in the drafting of bills would do much toward the enactment of statutes that would secure the desired results and clarify present uncertainties in the law of husband and wife. In this same chapter, Prof. Vernier discusses briefly the more important problems needing statutory treatment and advances a list of twenty-eight recommendations for change in the law. Some of these relate to the methods of obtaining objectives that are desired, while others relate to matters of policy and merely express his opinion as to what changes will best promote the interests of society. These latter, of course, may be the subject of considerable dispute, such as his suggestion that the rules limiting testimony of the husband and wife against each other and limiting the disclosure of confidential communications between them be abolished (which would require some change in the law of every state). However, they are entitled to considerable weight as the opinions of one who has made a searching study of these problems and they are supported by very convincing arguments in the detailed discussions in the subsequent sections of the book.

Today when people run to Elkton, Maryland, or other Gretna Greens of America, to contract a marriage with dispatch, and travel to Nevada, or other states of easy divorce, to terminate a marriage with almost equal dispatch; and when married women own property, contract, and carry on business generally in many states other than their own, the law of the family can no longer be treated as one merely local in scope. No person who plays a part in the enactment or enforcement of the law can be content with a knowledge of the family laws of his own state alone. To these, and all persons interested in the sociological aspects of the institution of marriage, Prof. Vernier's work will be an invaluable source of information.

It is to be hoped that some provision will be made to keep the completed volumes up to date. The need of some such supplement is illustrated by the fact that since the publication of the first three volumes many states have passed legislation to abolish or limit the bringing of suits for criminal conversation, alienation of affections, or breach of promise.<sup>3</sup>

F. E. Reader

---

<sup>3</sup>Prof. Vernier strongly advocated the abolition, or, at least, a limiting of the right to sue for breach of promise. Vol. I, pp. 26-29.

## CASES ON TORTS

By William Hepburn and Archibald H. Throckmorton. Published by West Publishing Co.,  
St. Paul, Minn., 1935.

Teachers of the law of Torts have long complained that their subject is far too broad to be covered adequately and thoroughly in a one year course. The material chosen for such a course, arbitrarily perhaps, but necessarily, must be limited. One of the principal objects sought to be effected by the second edition of Hepburn's *Cases on Torts* was the reduction of the size of the earlier edition. About 120 additional cases were collected in the new book, but the omission of about 370 of the cases of the first edition resulted in a saving of some 400 pages of material.

This reduction was not primarily accomplished by omitting treatment of any of the branches of law previously covered. Indeed, a short chapter is dedicated to the new subject of "Right of Privacy". Some of the cases omitted dealt with pleading, procedure and equity jurisprudence. The rest of the omissions are the result of a scaling down of certain portions of the earlier case book.<sup>1</sup>

There are those who would have preferred an outright elimination of certain topics and a thorough treatment of the remaining ones rather than a sketchier survey of more topics. Thus the chapters dealing with Trade or Business Competition, Inducing Breach of Contract, Preventing Employment and procuring Discharge, Boycotts, Strikes and Picketing have been retained. Yet in spite of the increasing importance of this subject, the material of the old book has been cut almost in half, partly by the omission of some leading cases. Rather than minimizing the subjects it might have been preferable to relegate them entirely to some such course as Labor Law for complete treatment.

The division of material in the new book follows largely the same order as in the first. Of Chapter X entitled "Torts Through Malice" the same criticism may be made as of the corresponding section in the earlier book. It classifies together such subjects as Malicious Prosecution, Malicious Falsehood, Deceit, Interference With Business or Employment, and the related labor questions of Boycotts, Strikes and Picketing. While these problems all may be colored by the existence or non-existence of malice, such a grouping of topics suggests an extremely conceptualistic and an insufficiently functional treatment.

Apart from this, however, the new book features a number of improvements over the old. The newly added cases are very largely recent cases showing the latest trends of the law. Many of the older omitted cases are carried along in footnotes. The Torts Restatement is quoted fairly liberally from time to time. In these ways the new case book does indicate the latest as well as the older thoughts in the field of Torts.

D. J. Farage

---

<sup>1</sup>In one or two instances, however, the treatment of topics has been expanded.