

# Restatement of the Law of Torts, Volume IV (Book Review)

David S. Edgar Jr.

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

---

### Recommended Citation

Edgar, David S. Jr. (1940) "Restatement of the Law of Torts, Volume IV (Book Review)," *St. John's Law Review*: Vol. 14 : No. 2 , Article 34.

Available at: <https://scholarship.law.stjohns.edu/lawreview/vol14/iss2/34>

This Book Review is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [lasalar@stjohns.edu](mailto:lasalar@stjohns.edu).

they are defective; other judges have held to the contrary. Some judges have held that the voter must sign the petition himself; others have held that an agent may do so with the voter's authority. Some judges have held pencil signatures good; some have voided them. Some courts have voided entire sheets because the subscribing witness erred in setting forth his last voting address, or his election or assembly district; other courts have held this to be immaterial. Some judges have held that proof by affidavits that signatures were obtained by fraud or misrepresentation was sufficient; other judges have refused to accept affidavits and insist on the testimony of the witnesses.

All this confusion arose from the lack of reported authorities, and made it difficult to determine what the law was on any particular question. A lawyer citing a case as sustaining his contention might well have overlooked a subsequent reversal by the same court or by an appellate court, for lack of proper annotation of decisions.

Now all the rulings on these questions have been collated and analyzed in Mr. Abrahams' book, with the result that at one glance it is possible to ascertain the various rulings made by the courts during the past four years.

Mr. Justice Steinbrink has eloquently expressed the value of the book in his admirable introduction to it, which reads in part as follows:

"The New York Election Law Manual with Forms represents a comprehensive, painstaking and accurate study of the Election Law as it is applied in this state, and should be extremely helpful to those who are called upon to deal with problems relating to this subject. The arrangement of the subject matter as a whole is clear, and in accord with the authorities, and of special value are the Election Law Forms printed in the text. The references to the numerous unreported decisions rendered upon this subject, concisely written in narrative form, create the basis for co-ordination and *Stare Decisis*."

CHARLES POKORNY.

---

RESTATEMENT OF THE LAW OF TORTS. Volume IV. St. Paul: American Law Institute Publishers, 1939, pp. xxiv, 830.

The final volume of the Torts Restatement, after continuing and concluding *Interference With Business Relations*, is a catch-all, into which, as everyone expected because of the obvious necessity for the expedient, have been gathered those topics of tort law which did not lend themselves to attention with the parts covered in the other volumes.

This reviewer has said<sup>1</sup> that the pattern or plan of the Restatement was generally to include in Volume I our heritage from the first trespass writ and all its parts, and in Volumes II and III to give us the modern law derived from case. Volume IV, catch-all volume, continues the work of Volumes II and III as our inheritance from trespass on the case, catch-all writ.

---

<sup>1</sup> (1939) 13 ST. JOHN'S L. REV. 465, in a review of the third volume of the RESTATEMENT OF TORTS.

Thus private nuisance and riparian rights are included in the new volume, for more of the law involving these matters has come to us from the chancellor or from the writ of case than from the writ of true trespass. One wonders if the same is true of the law of subjacent and lateral support, also included in the new volume, and, wondering, is led, no matter what he concludes, to comment that in Volume I (Intentional Harms), many matters involving trespass (in the modern sense) to lands were included which had no more basis for being dealt with there than that they were, in result, similar to the consequences of trespass *quare clausum fregit*; a good enough reason.<sup>2</sup> Why, then, not have included the material on support where trespass to land was considered? Or, for that matter, riparian rights as well, and "nuisance", too? For much of what is covered there is nuisance law, when it is not negligence or something very like quasi-contract. Thus we would have had, in one place, a body of the tort law of land. However, there must have been reasons.

The volume's next topic, "Miscellaneous Rules", deals with "various protected interests", such as the rights to vote, to hold office, to partial privacy. Harm to unborn children is covered there. So are harms caused by violations of fiduciary duty and the law of contributory tortfeasors in other chapters under the miscellaneous topic.

Justification, Excuse and Discharge are next taken up. The volume ends with Remedies.

As to the quality of the work, nothing need be said, except what this reviewer has already said,<sup>3</sup> other than that it continues to be the best of the restatements. That the courts, too, believe so, their use and approval of it continue to show.<sup>4</sup>

DAVID S. EDGAR, JR.\*

---

DIVIDENDS TO PAY. By E. D. Kennedy. New York: Reynal & Hitchcock, 1939, pp. xvii, 288.

Dividends are returns on capital investments. Wages are returns on labor investments. In our industrial society, the two are complementary. Business must attract capital, or else there will be little occasion for industrial labor. Between the just satisfaction of labor and the just satisfaction of capital, there is no incompatibility.

These economic truisms conflict with the principal thesis of the author of *Dividends To Pay* that the modern large-size corporations are unconcerned with the jobless or the underpaid. "They have their profits to look after. They

---

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> See THE RESTATEMENT IN THE COURTS (4th ed), noted in this issue.

\* Professor of Law, St. John's University School of Law; and Annotator for New York to the Restatement of Torts.