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WOMEN'S BUREAU

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The Legal Status of Women in the United States of America

January 1, 1948

REPORT FOR

ALABAMA

*Individual State material, constituting part of a
compilation to show the present legal status of
women in the United States of America*



BULLETIN OF THE WOMEN'S BUREAU, No. 157-1 (Revised)

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

In response to continuing domestic and international needs, the Women's Bureau has prepared a revised edition of its 1938 report on the legal status of women in the United States of America.

The revised report is based on an examination of the Constitutions, official statutes, and significant decisions of courts of last resort of the Federal Government and the several States, as well as pertinent law texts of recognized authority.

This pamphlet presents a digest of the material compiled for a single State, which has been incorporated in the complete report.

LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, September 29, 1948.

SIR: I have the honor to transmit to you a revised report on the legal status of women in Alabama. This is one of 54 separate reports constituting a survey of the laws of the 48 States, the District of Columbia, the territories of Alaska, Hawaii, and Puerto Rico, and the United States possessions, the Canal Zone and Virgin Islands.

The original report for each jurisdiction represents a thorough search of statutes and decisions of appellate courts construing its statutes or establishing its judicial policy. Revision covers important changes by legislative action.

The study was made by Sara Louise Buchanan, Attorney on the Women's Bureau staff, member of the bars of the Supreme Court of the United States and of the Mississippi Supreme Court. Valuable assistance was given in the preparation of the report by Mary Loretta Sullivan, Associate Economist, and Elizabeth Batson, Editorial Assistant, both of the Bureau staff.

Respectfully submitted.

FRIEDA S. MILLER, *Director.*

HON. MAURICE J. TOBIN,
Secretary of Labor.

LETTER OF TRANSMITTAL

The following information is being furnished to you for your information and use. It is based on the records of the Bureau of the Census, Department of Commerce, and is not intended to constitute an official statement of the Bureau. It is subject to change without notice and is not to be used for any purpose other than that for which it is furnished.

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Very truly yours,
Director

CONTENTS

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.
2. Contractual Powers of Minors.
3. Property Exemptions from Seizure for Debt—Respective Rights of Men and Women.
4. Property of Married Woman Owned at Marriage—Ownership After Marriage.
5. Contractual Powers of Married Women.
6. Separate Earnings of Married Woman—Ownership and Control.
7. Liability of Married Woman for Family Necessaries.
8. Formal Procedure Required for a Married Woman to Engage in a Separate Business.
9. Married Woman's Separate Property—Control During Marriage—Liability for Husband's Debts.
10. Property Acquired After Marriage Through Cooperative Efforts of Spouses—Ownership and Control.
11. Damages Recovered for Injury by Strangers to a Married Woman's Person, Property, or Character—Ownership and Control.
12. Action to Recover Damages for Willful or Negligent Injuries to the Person or Property of One Spouse by the Other—Respective Rights of Husband and Wife.
13. Competency of Spouses to Testify For or Against Each Other.
14. Disposition of Separate Property by Will—Extent of Married Woman's Right.
15. Estate of Deceased Husband or Wife—Share of Surviving Spouse.
16. Provision for the Surviving Spouse During Administration of the Estate.
17. Disinheritance of Husband or Wife by Will of Deceased Spouse—Survivor's Alternative.

II.—MARRIAGE AND DIVORCE

18. Age of Consent to Marriage—Men and Women.
19. Validity of Common-Law Marriage.
20. Health Certificate Requisites Prior to Issuance of Marriage License—Men and Women.
21. Interstate Cooperation in Marriage Law Enforcement.
22. Grounds for Marriage Annulment—Respective Availability to Man or Woman.
23. Grounds for Divorce—Respective Availability to Spouses.

III.—PARENTS AND CHILDREN

24. Services and Earnings of Minor Children—Parents' Respective Rights.
25. Guardianship of Minor Children—Parents' Respective Rights.
26. Appointment of Testamentary Guardian for Minor Children—Parents' Respective Rights.
27. Inheritance from an Intestate Child—Parents' Respective Rights.
28. Support of Children Born Out of Wedlock—Parents' Respective Responsibility.
29. Inheritance from Child Born Out of Wedlock—Mother's Right.

B.—POLITICAL RIGHTS

30. Domicile of Married Women.
31. Public Office—Eligibility of Women.
32. Jury Service—Eligibility of Women.

THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

INTRODUCTION

Any conclusion bearing on woman's status under the laws of the United States of America must take into account the common law, on which the fabric of the Nation's jurisprudence is woven.

The common-law rules of property sprang from various causes, notably tradition, military or economic exigency, natural male dominance, and the social status of women. Shifts in these have effected an almost complete overturn in laws governing the property owned by a woman prior to her marriage and that coming into her individual ownership after her marriage, by gift, inheritance, will, or accumulation from her premarital possessions.

In general, it has been the rule that where specific statutes abrogating common-law principles have not been enacted, the common law applies. In the century just past many of the old common-law injustices to women have been removed by statute. The largest remaining area to be reformed to the present-day trend lies in the matter of ownership and control of property acquired by the cooperative efforts of husband and wife after marriage.

The material considered centers largely around the woman in the marriage relation, since the legal status of the unmarried woman is practically identical with that of the unmarried man, with the exception of the discrimination in some States which bars women from jury duty; or of distinctions, such as variance between men and women in the statutory age of majority or age of consent to marriage.

ALABAMA

SOURCES

Constitution of Alabama.
Code of Alabama, 1940.
Session Laws—1945, 1947.
Alabama Reports.
Alabama Appellate Reports.
Southern Reporter.

EXPLANATORY NOTE

References to the State Constitution are indicated as (Const., sec. 209); code references, by title or section number, or both if required, as (T. 27, sec. 76). Session laws are referred to by year of enactment and page number, as (1947, p. 110).

Case citations, definitely construing statutes or declaring judicial policy in the absence of express statutory provision, are indicated by numerical footnote references, and appear immediately after the related paragraphs.

Subject headings are preceded by numbers, which remain constant for their respective topics through the entire State series. Cross references to other topics use these numbers, also; as, "See Number 6," which refers to the subject heading "Separate Earnings of Married Woman—Ownership and Control."

ALABAMA

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

In the absence of statutory provision, the common law applies, under which the age of majority for both sexes is 21 years. See Number 2 for exceptions.

2. Contractual Powers of Minors.

On petition in equity court filed by either parent, or by the minor and guardian, or under certain conditions by the minor alone, disabilities of a minor between 18 and 21 years may be removed, either wholly or in part, if such action appears to be for the minor's best interest (T. 27, secs. 13-20).

Also any married woman or widow 18 but under 21 years of age is relieved from the disabilities of minority for general purposes other than political (T. 34, sec. 76).

3. Property Exemptions from Seizure for Debt—Respective Rights of Men and Women.

Personal Property.

Personal property of any resident of the State to the value of \$1,000, in addition to the wearing apparel of the debtor and family and books and pictures belonging to the household, to be selected by such resident, is declared to be exempt from seizure for debt (Const., sec. 204) (T. 7, sec. 629).

The resident need not have a family to be entitled to the exemption.¹ Also, the exemption may be claimed by a married woman.^{2 3}

Insurance on the life of a husband or father for the benefit of his wife, or his wife and children, is exempt from seizure for his debts and other liabilities (T. 7, sec. 624).

An exemption up to \$25 a month is allowed from the wages, salaries, or other compensation of laborers or employees for personal services (T. 7, sec. 630).

Homestead.

The homestead of every resident of the State, not exceeding in value \$2,000 and in area 160 acres, is set apart upon declaration of the owner, free from attachment for debts other than recorded liens against it. If a widow and minor children, or either, survive, the exemption continues during the life of the widow and minority of any of the children (Const., secs. 205, 206, 208) (T. 7, sec., 625).

On the death of the owner such homestead property is exempt from administration proceedings and payment of debts in favor of the widow and minor child or children, or either, during widowhood or minority, whichever may last terminate. If the estate is insolvent, the title to the homestead vests at once and absolutely in the widow and minor children, or either (T. 7, sec. 661). If the homestead is the only real estate in this State owned by the decedent, the title to its vests absolutely in the widow and minor children, or either, without regard as to whether or not the estate is administered (T. 7, sec. 663). If the owner dies without having declared a homestead, the widow and minor children, or either of them, may have instead (1) a money allowance of \$2,000 in lieu of homestead when sale ordered, or (2) a homestead set apart from any real estate owned by the decedent (T. 7, secs. 654, 662).⁴

With court sanction, a widow may use for necessary support the \$2,000 homestead repurchase allowance which formerly could be applied only to a new homestead (T. 7, sec. 690).

The exemption provisions for both real and personal property are applicable to the estates of women residents of the State who die leaving minor children (T. 7, sec. 669).

In applying the homestead law, the court has declared that the legislative purpose is to protect the wife, and through her the family, in the enjoyment of a dwelling place. Hence its provision securing an exempt homestead to every resident of the State and requiring the wife's voluntary signature and assent to any transfer of rights in the homestead, when it belongs to the husband.⁵

See also Number 16.

¹ *Webb v. Edwards* (1871), 46 Ala. 17.

² *Bender v. Meyer* (1876), 55 Ala. 576.

³ *Scheussler v. Wilson* (1876), 56 Ala. 516.

⁴ *Ticer v. Holesapple* (1933), 226 Ala. 271; 146 So. 614.

⁵ *Thompson v. New England Mortgage Security Co.* (1895), 110 Ala. 400; 18 So. 315; 55 A. S. R. 29.

4. Property of Married Woman Owned at Marriage—Ownership After Marriage.

A wife retains ownership of property belonging to her at marriage (Const., sec. 209) (T. 34, secs. 65, 67).

5. Contractual Powers of Married Women.

A married woman who is 18 years of age has full legal capacity to contract as if she were unmarried (T. 34, secs. 70, 71), except that she cannot sell or mortgage her real estate unless her husband joins in the deed (T. 34, sec. 73). She cannot, either directly or indirectly, become a surety for her husband (T. 34, sec. 74).¹

If, however, the husband is mentally incapable, has abandoned her, is a nonresident of the State, or is imprisoned under a conviction for crime for a period of 2 years or more, the wife may contract as to her lands without restriction (T. 34, sec. 73).

Any conveyance of the husband's lands is subject to the dower right of the wife, unless she relinquishes the right by joining in the conveyance, or executing a separate conveyance to that effect (T. 34, sec. 46).

¹ *Sims v. Hester* (1934), 228 Ala. 321; 153 So. 281.

6. Separate Earnings of Married Woman—Ownership and Control.

A wife owns her wages earned outside her home and may recover them by suit in her own name (T. 34, secs. 66, 72).

7. Liability of Married Woman for Family Necessaries.

A wife becomes liable for necessaries only by her special contract (T. 34, secs. 70, 71).¹ The common-law liability of the husband to supply the family with necessaries is not abrogated by the statute authorizing married women to contract for themselves.²

¹ *Hawkins v. King* (1934), 228 Ala. 199; 153 So. 283.

² *Ponder v. Morris & Brothers* (1907), 152 Ala. 531; 44 So. 651.

8. Formal Procedure Required for a Married Woman to Engage in a Separate Business.

No special procedure is required to permit a married woman to engage in business on her own account.

9. Married Woman's Separate Property—Control During Marriage—Liability for Husband's Debts.

The wife has absolute control of her separate estate and it is not subject to the husband's liabilities, but the husband must join in conveyances of real estate (Const., sec. 209) (T. 34, secs. 65, 73).^{1 2}

¹ *Neville v. Cheshire* (1909), 163 Ala. 390; 50 So. 1005.

² *Bozman v. Cleere* (1932), 25 Ala. App. 107; 141 So. 525.

10. Property Acquired After Marriage Through Cooperative Efforts of Spouses—Ownership and Control.

The doctrine of community property between husband and wife does not exist in Alabama.¹

¹ *Joyner v. McMurphy* (1935), 26 Ala. App. 549; 163 So. 533.

11. Damages Recovered for Injury by Strangers to a Married Woman's Person, Property, or Character—Ownership and Control.

The wife is entitled to recover as her separate property damages for injuries to her person or reputation (T. 34, sec. 68). This includes actions for loss of consortium of her husband through alienation of his affections by a third person.¹ See also Number 12.

¹ *Woodson v. Bailey* (1924), 210 Ala. 568, 570; 98 So. 809.

12. Action to Recover Damages for Willful or Negligent Injuries to the Person or Property of One Spouse by the Other—Respective Rights of Husband and Wife.

The wife may recover damages from her husband for his willful¹ or negligent² injury to her. Such damages are her separate property (T. 34, sec. 68) and she sues alone to recover them (T. 34, sec. 72).

¹ *Johnson v. Johnson* (1917), 201 Ala. 41, 44; 77 So. 335; 6 A. L. R. 1031.

² *Bennett v. Bennett* (1932), 224 Ala. 335; 140 So. 378.

13. Competency of Spouses to Testify For or Against Each Other.

The husband and wife may testify either for or against each other in criminal cases, but are not to be compelled to do so (T. 15, sec. 311).¹

In all cases where a husband is charged with abandoning his family and leaving them in danger of becoming a burden to the public, the wife shall be a competent witness against her husband (T. 15, sec. 310).

Husbands and wives are competent witnesses for or against each other in civil cases, except as to confidential communications, that is, facts coming to their knowledge through the channel of the marriage relation.^{2 3}

¹ *McCoy v. State* (1930), 221 Ala. 466; 129 So. 21.

² *Gordon, Rankin & Co. v. Tweedy* (1881), 71 Ala. 202, 210.

³ *Smith v. State* (1915), 13 Ala. App. 411, 417; 69 So. 406.

14. Disposition of Separate Property by Will—Extent of Married Woman's Right.

A married woman may dispose of her property by will (Const., sec. 209) (T. 34, sec. 78). However, if a single woman marries after making a will, the marriage operates as a revocation of it (T. 61, sec. 9).

15. Estate of Deceased Husband or Wife—Share of Surviving Spouse.

If a married woman dies intestate leaving a separate estate, the husband receives one-half of her personal property absolutely after payment of debts and charges against the estate and the use of all her realty during his life (T. 16, secs. 10, 12).

A widow is entitled to a dower or life interest in one-half her deceased husband's lands owned during the marriage if there are no lineal descendants and the estate is solvent; in one-third of his lands if his estate is insolvent. Whether the estate be solvent or not, if there are lineal descendants she is entitled to a dower interest of one-third of her husband's lands (T. 34, secs. 40, 41). If her separate estate is equal to or more than her dower right and distributive share she receives nothing (T. 34, sec. 42); if less, she receives the difference between the value of her separate estate and the dower and distributive share allowed her (T. 34, sec. 43).¹

Either spouse surviving takes the whole of the other's realty only if the deceased spouse leaves no children or their descendants, no father or mother, or no brothers or sisters or their descendants (T. 16, sec. 1).

As to the personal estate of the husband who dies intestate, the portion remaining after payment of debts and charges is distributed absolutely to the widow if there are no children. If there is one child the widow is entitled to one-half; if more than one child and not more than four children she takes a child's portion; if more than four children she is entitled to one-fifth of such net personal estate (T. 16, sec. 10).

Certain exemptions of personal property also are allowed (T. 7, secs. 664, 665). See Number 16.

Any bank deposit in the names of two or more persons and payable to either or the survivor of them, becomes the property of the survivor when one of them dies, regardless of whether or not at the time the deposit was made the funds belonged to only one of the persons or the depositor intended to give the other person a present interest in it. During the joint lives of owners, the law does not affect depositor's withdrawal rights (1945, p. 354).

Joint tenancies with rights of survivorship are valid if the intention to this effect is clearly shown in the instrument creating the estate (1945, p. 730).

¹ *Merchants' National Bank v. Hubbard* (1931), 222 Ala. 518; 133 So. 723.

16. Provision for the Surviving Spouse During Administration of the Estate.

The widow and minor children, or either, receives the family clothing, necessary supplies for family use during 12 months after the husband's death, and necessary household furnishings (T. 7, sec. 664). In addition, personal property of the husband to the value of \$1,000 is set aside for them, exempt from administration or payment of estate debts (T. 7, sec. 665).

The widow of a person who dies intestate and has due him from his employer wages or salary not in excess of \$300 may receive payment, or if necessary may sue to recover the amount due, as part of the \$1,000 in personalty to be set off to her (1947, Act 233).

The widow may retain possession of the dwelling house used as her husband's residence, "with the offices and buildings appurtenant thereto, and the plantation connected therewith," rent-free, until her dower is assigned (T. 34, sec. 50).

See Number 3.

17. Disinheritance of Husband or Wife by Will of Deceased Spouse—Survivor's Alternative.

A widow may not be disinherited by her husband's will. Within the time provided by law she may dissent, in all cases, from the will, and, instead of its provisions, take her dower in lands and the portion of the personal estate to which she would be entitled if her husband had died intestate.¹ If there are no children or their descendants, and the personal estate exceeds \$50,000 in value, she takes the first \$50,000 of personal estate, the remainder to be distributed under the will. If the will makes no provision for her she may claim her dower and distributive share without dissenting from the will (T. 61, sec 18).²

There is no statutory provision for the husband's dissent from the wife's will.

¹ *Dorsey v. Dorsey* (1932), 224 Ala. 496; 140 So. 540.

² *Merchants' National Bank v. Hubbard* (1931), 222 Ala. 518; 133 So. 723.

II.—MARRIAGE AND DIVORCE

18. Age of Consent to Marriage—Men and Women.

Men at 21 and women at 18 years of age may marry without parental consent. Unless previously married, men between 17 and 21, and girls between 14 and 18 years, may marry only with the consent of the parents or guardian given personally or in writing (T. 34, sec. 10). A man under 17 and a woman under 14 years of age are incapable of contracting marriage (T. 34, sec. 4). But such a marriage is voidable merely, and not void.¹

¹ *Owen v. Coffey* (1918), 201 Ala. 531; 78 So. 885.

19. Validity of Common-Law Marriage.

The courts have ruled that a marriage good at common law is good in Alabama without observance of statutory provisions.¹ In this connection see Number 20, footnote 1.

¹ *Rogers v. McLeskey* (1932), 225 Ala. 148; 142 So. 526; and citations.

20. Health Certificate Requisites Prior to Issuance of Marriage License—Men and Women.

Each applicant for a marriage license must file certificates showing physical examination for venereal disease by a licensed physician and laboratory test by an authorized person, made within 30 days of the issuance of license. Physician's certificate must show absence of the disease, or that, if present, it is in a noncommunicable stage. Exception allowed only for specified types of emergencies (1947, Act. 101).

21. Interstate Cooperation in Marriage Law Enforcement.

The courts hold that generally the validity of the marriage is determined by the law of the place where it is contracted.¹

¹ *Smith v. Goldsmith* (1931), 223 Ala. 155; 134 So. 651.

22. Grounds for Marriage Annulment—Respective Availability to Man or Woman.

Marriage within prohibited degrees of kinship is a statutory ground for annulment. (T. 14, sec. 326).

Nullity decree may be granted on void marriage as in case of insanity, or on a voidable marriage, that is, one subject to ratification but not ratified as in case of drunkenness¹ or non-age,² or marriage procured by fraud in certain cases.³

¹ *Henley v. Foster* (1930), 220 Ala. 420; 125 So. 662.

² *Owen v. Coffey* (1918), 201 Ala. 531; 78 So. 885.

³ *Raia v. Raia* (1926), 214 Ala. 391; 108 So. 11.

23. Grounds for Divorce—Respective Availability to Spouses.

The injured party is entitled to a divorce for the following causes: Incurable physical incapacity for entering the marriage state at the time of marriage; adultery; voluntary abandonment for the 2 years preceding filing of bill; ¹ imprisonment in the penitentiary for 2 years, if the sentence be for 7 or more years; commission of the crime against nature, whether before or after marriage; addiction after marriage to habitual drunkenness; ² confinement in insane asylum for 5 successive years if the party is incurably insane.

The wife is entitled to divorce when the husband, at the time of suit for divorce, had become addicted after marriage to the habitual use of drugs (T. 34, sec. 20). Also, if he has committed actual violence on her person, attended with danger to life or health, or by his conduct caused reasonable apprehension of such violence; also, in cases where the wife has lived as a resident in good faith of the State for 2 years separate and apart from her husband and has received no support from him for the 2 years immediately preceding the filing of the bill (T. 34, sec. 22).

A husband is entitled to divorce when the wife was pregnant at the time of the marriage without his knowledge or agency (T. 34, sec. 21).

A limited divorce may be granted on petition of the complaining party for cruelty or for any of the grounds upon which an absolute divorce may be decreed (T. 34, sec. 36).

Neither party may remarry until 60 days after decree is rendered, except to each other (T. 34, sec. 38).

¹ *Perry v. Perry* (1935), 230 Ala. 502; 162 So. 101.

² *Armstrong v. Armstrong* (1928), 217 Ala. 581; 117 So. 195.

III.—PARENTS AND CHILDREN

24. Services and Earnings of Minor Children—Parents' Respective Rights.

The common-law rule prevails, and the father, if living, is entitled to the child's earnings; otherwise the mother is entitled to them.

25. Guardianship of Minor Children—Parents' Respective Rights.

The father is given preference for appointment as a guardian for his minor child having an estate in his own right. If the guardian is other than the father or mother, he cannot exercise any control over the person of his ward during the life of the father, or during the life of the mother if the ward is a girl of any age or a boy under 14 years of age (T. 21, sec. 3).

26. Appointment of Testamentary Guardian for Minor Children—Parents' Respective Rights.

A testamentary guardian of the child's estate may be appointed by either father or mother, but the surviving parent is entitled to the custody of the person of the ward (T. 21, sec. 4).

27. Inheritance from an Intestate Child—Parents' Respective Rights.

Parents inherit equally from their intestate deceased child (T. 16, secs. 1, 10).

28. Support of Children Born Out of Wedlock—Parents' Respective Responsibility.

The mother may bring court proceedings not later than 1 year after the birth of the child, to establish the child's paternity. If she is successful, the court renders judgment and requires the adjudged father to give bond to pay into the court for the child's support and education an annual lump sum fixed by the court, not exceeding \$100 a year for 10 years. Upon failure of payment, judgment may be enforced (T. 6, secs. 1-24).

The father of an illegitimate child may be called to account under either the bastardy statute or that of desertion and nonsupport (T. 6, secs. 1-24; T. 34, secs. 89-104).^{1 2 3}

¹ *Franks v. State* (1935), 26 Ala. App. 430; 161 So. 549.

² *Coan v. State* (1932), 25 Ala. App. 62; 141 So. 262.

³ *Patterson v. State* (1929), 23 Ala. App. 342; 127 So. 792.

29. Inheritance from Child Born Out of Wedlock—Mother's Right.

If a child born out of wedlock dies intestate, and has no children or their descendants living, the mother inherits from his estate (T. 16, sec. 8).

The courts have ruled that the mother is entitled to one-half the estate, the other half to be distributed to the child's brothers and sisters.¹

¹ *Ward v. Mathews* (1899), 122 Ala. 188; 25 So. 50.

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

The husband furnishes the name, the domicile, and generally the support and maintenance of the family.^{1 2}

¹ *Joyner v. McMurphy* (1935), 26 Ala. App. 549; 163 So. 533.

² *Harrison v. Harrison* (1852), 20 Ala. 629.

31. Public Office—Eligibility of Women.

The right to hold public office is open to both sexes alike (T. 41, sec. 5).¹

¹ *Graves v. Eubank* (1921), 205 Ala. 174; 87 So. 587.

32. Jury Service—Eligibility of Women.

Only male citizens, qualified under the statute, are to be placed on the jury list (T. 30, sec. 21).

