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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  
ARKANSAS

*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. 157-3 (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

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UNITED STATES DEPARTMENT OF LABOR,  
WOMEN'S BUREAU,  
*Washington, September 23, 1948.*

SIR: I have the honor to transmit to you a revised report on the legal status of women in Arkansas. 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.*

III

REPORT OF THE COMMISSIONER

The following is a summary of the work done during the year ending June 30, 1907. The Commission has been very busy in carrying out its duties under the provisions of the Act of March 3, 1879, and the Act of March 3, 1897. It has held many public hearings and has received many suggestions from the public. It has also held many public hearings and has received many suggestions from the public. It has also held many public hearings and has received many suggestions from the public.

Very respectfully,  
Commissioner

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# THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

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## 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.

## ARKANSAS

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### SOURCES

Constitution of Arkansas.  
Statutes of Arkansas, Pope's Digest, 1937.  
Session Laws, 1939, 1941, 1943, 1945.  
Arkansas Reports.  
Southwestern Reporter.

### EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation Const., as (Const., art. 9, sec. 7), placed after the related subject matter.

Code section references are likewise in parentheses, thus (sec. 7227).

Session laws are referred to by year of enactment and page number, as (1943, p. 989).

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. Cases showing historical development of a statute or policy are followed by the abbreviation (Hist.).

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

# ARKANSAS

## A.—CIVIL RIGHTS

### I.—CONTRACTS AND PROPERTY

#### 1. Age of Majority.

Males who are 21 and females who are 18 years of age are considered of full age for all purposes. Until those ages are attained, they are considered minors (sec. 6215). But see Number 2.

#### 2. Contractual Powers of Minors.

By common-law rule, a minor's contracts, except for strict necessities, are voidable, as are conveyances of real property executed by him or her.

Statutory provisions empower designated courts, in formal proceeding, to remove the disabilities of any minor male person over 18 years of age, or any female person over 16 years of age, if a resident of the county in which the proceeding is begun. The effect of such court action is to enable the minor to transact business in general, and any specified particular business, as if the minor had attained his or her legal age of majority. Such a minor may act, with full power, as executor, administrator, or guardian (secs. 7451-7453). Otherwise, guardians and curators appointed by the court, or chosen by the minors under the sanction of the court, must be at least 21 years of age (sec. 6224).

Marriage does not confer upon minors any capacity to contract, or to convey property other than that possessed by them as single persons.<sup>1 2 3</sup>

But a minor wife may assent to a property settlement by jointure in lieu of her dower interest in her husband's lands if her father or guardian join her in the conveyance creating the jointure (sec. 4407).

The labor contract of a minor, when approved by the parent having control of him or her, or the guardian if no parents, or such contract of any minor over 15 years of age who has neither parent nor guardian, is binding, provided it is not for a longer period than 1 year (sec. 8837).

See Number 14.

<sup>1</sup> *Pace v. Richardson* (1918), 133 Ark. 422, 432; 202 S. W. 852.

<sup>2</sup> *Harrod v. Myers* (1860), 21 Ark. 592, 599.

<sup>3</sup> *Watson v. Billings* (1881), 38 Ark. 278, 280.

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

##### Personal Property.

Exemptions in personal property to any resident of this State who is married or the head of a family may be selected in specific articles

by the owner up to a total value of \$500, in addition to his or her wearing apparel and that of his or her family (Const., art. 9, sec. 2) (sec. 7184).

The provision is for all of either sex who may be charged with the care and maintenance of a family, whether married or not.<sup>1</sup>

Single persons of either sex who are not heads of families, but residents of the State, may claim exemption in specific articles of personal property of their own selection up to a total value of \$200, in addition to their wearing apparel (Const., art. 9, sec. 1) (sec. 7183).

#### Homestead.

The general homestead exemption is to "any resident" of the State who is married or the head of a family. The homestead is exempt from seizure for debt except for purchase money and liens for improving property; also no homestead exemption can be allowed under legal process against executors, administrators, guardians, receivers, attorneys for moneys collected by them, and other trustees of an express trust for moneys due from them in their fiduciary capacity (Const., art. 9, sec. 3).

There is no distinction because of sex in granting this exemption.<sup>2</sup>

Rural property owned and occupied as a residence by the claimant may be set apart as a homestead to the extent of 160 acres of land with its improvements, not exceeding in value \$2,500; but in no event may the acreage be less than 80 acres, regardless of value (Const., art. 9, sec. 4) (sec. 7179).

Urban property, owned and occupied by the claimant, may be set apart as a homestead to the extent of one acre of land with improvements, not exceeding \$2,500 in value; but in no event may the homestead be reduced below one-fourth of an acre, regardless of value (Const., art. 9, sec. 5) (sec. 7180). If the husband neglects or refuses to make claim for the homestead, his wife may do so (sec. 7182).

Though a husband may not convey the homestead without the wife's joinder, he may abandon it without her concurrence.<sup>3</sup>

As to homestead right of a widow, see Number 16.

<sup>1</sup> *Memphis & Little Rock Ry. v. Adams* (1885), 46 Ark. 159, 162.

<sup>2</sup> *Thompson v. King* (1890), 54 Ark. 9, 13.

<sup>3</sup> *McKenzie v. Rumph* (1926), 171 Ark. 791, 794; 286 S. W. 1022.

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

See Number 9.

#### 5. Contractual Powers of Married Women.

A married woman may dispose of her separate property by will or by conveyance as if she were unmarried (Const., art. 9, sec. 7) (sec. 7223). She has all the rights of a single woman to contract and be contracted with, to sue and be sued, "and in law and equity shall enjoy all rights and be subjected to all the laws of this State" as if she were unmarried. All statutory as well as common-law disabilities of a married woman, such as the disability to act as executrix or administratrix, are expressly removed (sec. 7227). A wife may insure her husband's life for her sole use (sec. 7229). She may use, collect, and invest in her own name all the rents, issues, and profits of her separate

property (sec. 7230); may bargain, sell, assign, and transfer her separate personal property (sec. 7231); and may make and withdraw in her own name savings-bank deposits (sec. 7233). Her property is subject to execution under a judgment recovered against her (sec. 7236).

A power of attorney executed by a married woman, jointly with her husband, releases her dower and homestead right to her husband's grantee (1939, p. 56).

A married woman may file a schedule of her separate personal property, as provided by law, in the recorder's office of her county of residence, and any person attacking the ownership of such property must prove that it is not the separate estate of the married woman claiming it (sec. 7241); if no schedule is filed, the married woman must prove her ownership (sec. 7243).

Husband and wife may make valid deeds of conveyance of real property directly to each other, as if unmarried (sec. 1866). This act, effective March 2, 1935, includes curative provisions validating as full conveyances of interest all prior "instruments of writing affecting or purporting to affect the title to real property, either by way of conveyance or incumbrance," between spouses. Its purpose is declared to be "to empower married men to contract with their wives and married women to contract with their husbands in regard to real property" as if they were unmarried (secs. 1867, 1868).

A tenancy by the entirety is created by the conveyance of property to the husband and wife jointly.<sup>1</sup>

A tenancy by the entirety may be created in personal property, as a bank account. It must be with the consent of both husband and wife as in a joint account.<sup>2</sup>

The right of the wife to control and convey her interest in a tenancy by the entirety is equal to the right of the husband over his interest. Each is entitled to one-half of the rents and profits during the marriage, with power in each to dispose of or charge his or her interest, subject to the right of survivorship existing in the other.<sup>3</sup>

When a married woman is a party to a civil suit, her husband must be joined with her, except (1) she may be sued alone upon contracts made by her in respect to her sole and separate property, or in respect to any trade or business carried on by her; (2) she may sue in her own name for or on account of her separate property, or for damages against any person or body corporate for any injury to her person, character, or property; and (3) where the action is between herself and her husband, she may sue and be sued alone (sec. 1323).

If the husband and wife are sued together, the wife may defend for her own right; and if the husband neglects to defend, for his also (sec. 1324).

Where the father has deserted his family, the mother may prosecute or defend in his name any action to which he might have been a party, with the rights and powers he might have had (sec. 1325).

When a female party to an action marries, the fact may be stated upon the record, the husband made a party with his wife, and the case proceed (sec. 1326).

<sup>1</sup> *Parrish v. Parrish* (1921), 151 Ark. 161, 166; 235 S. W. 792.

<sup>2</sup> *Union & Mercantile Trust Co. v. Hudson* (1921), 147 Ark. 7, 14; 277 S. W. 1.

<sup>3</sup> *Branch v. Polk* (1895), 61 Ark. 388, 395; 54 A. S. R. 266; cited and followed in *Moore v. Denson* (1924), 167 Ark. 134, 139; 268 S. W. 609.

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

A married woman may carry on any trade or business, and perform any labor or services, on her sole and separate account. The earnings from her trade, business, labor, or services are her sole and separate property; they may be used or invested by her in her own name; and she may sue or be sued alone in the courts of the State on account of such property, business, or services (sec. 7231). See also Numbers 5 and 9.

## 7. Liability of Married Woman for Family Necessaries.

A wife may purchase necessaries on her own credit and in her own name, but when she does she is liable for the purchase price of them. See section 7227, cited in Number 5.

The support of their unmarried minor children is chargeable jointly and severally upon the property of the husband and the property of the wife, and in relation to such support they may be sued either jointly or severally (sec. 6206). See also Number 9.

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

No court procedure is necessary to enable a married woman to engage in a separate business (sec. 7231). See also Number 6.

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

The real and personal property of any married woman in the State, acquired before or after marriage, whether by gift, grant, inheritance, devise, or otherwise, so long as she may choose, remains her separate estate and property, and she may devise, bequeath, or convey it as if she were unmarried. Nor is such property subject to the debts of her husband (Const., art. 9, sec. 7) (sec. 7223).

Neither spouse is liable for the debts incurred by the other before the marriage, except that the husband may assume such liability for his wife by express contract in writing (secs. 7239-7240).

A wife's separate property consists of: (1) Property owned by her at her marriage; (2) property conveyed to her in good faith and without prejudice to existing creditors; (3) property acquired by her as her sole and separate property; (4) that which comes to her by gift, bequest, descent, grant, or conveyance from any person; (5) that which she has acquired by her trade, business, labor, or services carried on or performed on her sole or separate account. All such property, with its rents, issues, and proceeds, may be used, collected, and invested by her in her own name, and is not subject to the interference or control of her husband or liable for his debts, except such debts as may have been contracted for the support of herself or her children by her as his agent (sec. 7230).

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

The property acquired after marriage by the joint efforts of the spouses belongs to the husband and is subject to his control and dispo-

sition, by common-law rule; in the absence of a private contract or arrangement, such as joint deeds or joint bank accounts.

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

A married woman may maintain an action in her own name for damages against any person or body corporate for any injury to her person, character, or property (sec. 1323).

These words "person, character, or property" are of the broadest signification and import, and would appear to include any cause of action which could arise in favor of a married woman, out of any relation which she can legally occupy, and include the right to recover damages for the alienation of her husband's affections.<sup>1</sup>

<sup>1</sup> *Weber v. Weber* (1914), 113 Ark. 471, 485; 169 S. W. 318; L. R. A. 1915A, 67; Ann. Cas. 1916C, 743.

### 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.

Under the statute removing the disabilities of married women, the wife may sue her husband either upon contract or in tort (sec. 7227).<sup>1</sup>

It was held in the case of *Katzenberg v. Katzenberg* (1931), 183 Ark. 626, 37 S. W. (2d) 696, that under this statute a wife might sue her husband for injuries resulting to her from his negligent operation of an automobile in which she was riding. But the legislature apparently nullified this holding by the adoption of Act 179, 1935 Session Laws [section 1304 of 1937 Statutes], which declares that "in no event shall any person related by blood or marriage within the third degree of consanguinity or affinity" to the owner or operator of a motor vehicle have a cause of action for personal injury, including death, against such owner or operator.

<sup>1</sup> *Fitzpatrick v. Owens* (1916), 124 Ark. 167, 177; 186 S. W. 832; L. R. A. 1917B, 774.

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

Husband and wife are incompetent witnesses for or against each other in civil actions, concerning any communication made by one to the other during the marriage; but either may testify for the other as to any business transacted by the one for the other as agent (sec. 5156). A liberal construction of this portion of the statute, in connection with the married women's statutes of the State, holds that in view of the enlarged rights of married women, giving the wife power to make her own separate contracts and deal with property as if single, married persons are not to be supposed as constantly partaking of the confidence of each other, but rather as persons having adverse interests to maintain or else that they deal with respect to the property of each other in the relation of principal and agent.<sup>1</sup>

The legislature of 1937 enacted a provision (Act 320) under which either spouse may testify for the other in any civil action, when called as a witness by the other spouse, but neither can be called as a witness by "the opposite party." It provided also for repeal of any conflicting statutes. [This measure, approved March 25, 1937, appears in the

1937 edition of Pope's Digest of Statutes as subsection 5 of section 5156.]

In criminal prosecutions, "a husband and wife may testify against each other in all cases in which an injury has been done by either against the person or property of either" (sec. 3959). "Injury" here has been held to include abandonment.<sup>2</sup>

But otherwise, spouses cannot testify for or against each other in criminal actions.<sup>3 4</sup>

<sup>1</sup> *Fletcher v. Dunn* (1934), 188 Ark. 734, 737; 67 S. W. (2d) 579.

<sup>2</sup> *Murphy v. State* (1926), 171 Ark. 620, 624; 286 S. W. 871.

<sup>3</sup> *Lighter v. State* (1923), 157 Ark. 261, 263.

<sup>4</sup> *Padgett v. State* (1916), 125 Ark. 471, 479.

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

Any married woman's separate property—both real and personal—may be devised or bequeathed by her as if she were unmarried (Const., art. 9, sec. 7) (sec. 7223).<sup>1</sup>

Under the general statutes defining testamentary capacity, a valid will as to real and personal estate may be made by a person 21 years of age or over, and as to "goods and chattels" by a person 18 years of age or over, if of sound mind in each case (secs. 14510, 14511). But the statutory definition of minors provides that females of the age of 18 years are to be considered of full age for all purposes (sec. 6215). It is held that this statute relating to minors "is broad enough to completely emancipate females at the age of 18 years."<sup>2</sup>

The will of a single woman is revoked by her subsequent marriage (sec. 14521) but the will of a single man who subsequently marries is revoked only if issue be born of the marriage (sec. 14520).

<sup>1</sup> *Ward v. Pipkin* (1930), 180 Ark. 855; 22 S. W. (2d) 1011.

<sup>2</sup> *Brake v. Sides* (1910), 95 Ark. 74, 78; 128 S. W. 572.

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

The statutes of descent and distribution provide for equal inheritance among male and female heirs in the same degree of kindred (secs. 4338-4352). Section 4350 [1933, Act 52] declares that in all cases not provided for by statute the inheritance is to descend according to the course of the common law, but without distinction of sex.

See Number 27 as to parents' inheritance.

Husband or wife may share in the estate of a deceased spouse by (A) absolute inheritance or (B) statutory dower.

(A) When any person dies having title to any real estate of inheritance, or personal estate, not disposed of, nor otherwise limited by marriage settlement, and the person is intestate as to such estate, the surviving spouse takes absolutely the entire net estate after payment of decedent's debts only in the event that the decedent leaves no children or their descendants, no father, mother, or their descendants, nor any paternal or maternal kindred capable of inheriting (secs. 4338, 4344).

(B) If there are heirs to the estate, the spouses are entitled to statutory dower, as follows:

## THE WIDOW

## I.—If children survive:

A widow is endowed of a third part of all the lands owned by her husband during the marriage unless the dower right has been relinquished in legal form (sec. 4396), or barred by her own act, or by limitation of time.

As part of her dower, she is entitled absolutely and in her own right to one-third part of the personal estate, including cash on hand, bonds, bills, notes, book accounts, and evidences of debt, owned and possessed by the husband at his death (sec. 4420).

The widow's dower interest is protected in proceeds from the sale of certain timber, oil and gas or mineral leases, and oil and gas or mineral royalties or mineral rights (1945, p. 340).

## II.—If no children survive:

A widow is endowed in fee simple of one-half the real estate possessed by the husband at his death, and one-half the personal estate, absolutely and in her own right, as against collateral heirs. But as against creditors, she is endowed with one-third of the real estate in fee simple, and one-third of the personal property absolutely.

The preceding rules apply to estates in real property designated "new acquisitions," as distinguished from "ancestral estates."

If the husband's real property is an "ancestral estate" the widow is endowed in a life estate of one-half of it as against collateral heirs, and one-third as against creditors (sec. 4421).

A widow is endowed of lands sold in the lifetime of the husband without her consent in legal form, as against all creditors of the estate (sec. 4429). But her inchoate right of dower is barred when the husband has been barred of any title or interest in the lands for 7 years or more, or when his conveyance of the lands without the wife's signature has been made for a period of 7 years or more. This limitation applies to the conveyance only if it has been of record for at least 7 years, and does not apply to conveyance of a homestead (sec. 4414).

The widow's right to dower may be barred by her conviction for the murder of her husband (sec. 4397); by dissolution of the marriage for her misconduct (sec. 4405); or by her assent in legal form to a settlement by jointure in lieu of dower (secs. 4406, 4409).

A devise by the husband's will to the wife of any portion of his real estate is deemed in lieu of her dower, unless the will declares otherwise (sec. 4424).

The widow does not take the homestead, or the statutory allowances to her, as dower, but they are in addition to dower (see Number 16). She is not compelled to elect between these statutory provisions and the will unless the language of the will makes it clear that the property devised to her is in lieu of such allowances as well as of dower.<sup>1</sup>

When provision is made by will for the widow in lieu of dower, she may elect whether to accept the will or be endowed of the lands and personal property owned by the husband at his death (sec. 4425). If she renounces the will, it must be in the manner (secs. 4426, 4427) and within the time (sec. 4428) provided by law.

Dower rights inure to the widow of an alien as if the alien had been a native-born citizen of the State (sec. 4399).

## THE HUSBAND

## I.—When wife leaves descendants:

Upon the death of a married woman intestate, her husband is entitled to one-third of her real property for life, and one-third of her personal property in fee.

In each case the husband's dower is apportioned after the payment of all the wife's debts (sec. 4422).

The interest of a surviving husband in his wife's estate known as *curtesy*, is to be assigned to him under the same procedure provided for assignment of a widow's dower to her, as to the time and manner of assignment. But the curtesy right attaches only to property owned by the wife at her death and not disposed of by her will. The husband is not required to join the wife in any transfer by her affecting the title to her separate property (1943, p. 100).

## II.—When wife leaves no descendants:

The husband is entitled to one-half of her real property for life and one-half the personal property in fee.

If the husband is convicted for the murder of his wife, his dower in her estate is barred (sec. 4398).

<sup>1</sup> *Costen v. Fricke* (1925), 169 Ark. 572, 578; 276 S. W. 579.

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

"A widow may tarry in the mansion or chief dwelling house of her husband for 2 months after his death, whether her dower be sooner assigned her or not, without being liable to any rent for the same; and, in the meantime, she shall have a reasonable sustenance out of the estate of her husband" (sec. 4415). Her right of occupancy, or "quarantine," may be extended until her dower is assigned to her (sec. 4416).

The wife of any intestate decedent, living with him at the time of his death, has the right to remain in the family dwelling house or homestead and to retain possession of all personal property on the premises until her dower and all other property allowed her by law out of her husband's estate is assigned and delivered to her (sec. 82). These rights are in addition to any other provisions for the benefit of widows and minor children (sec. 83).

Upon proof that any deceased person, survived by a widow and minor children, or either, has left personal estate not exceeding \$300 in value, and that funeral expenses not exceeding \$25 have been paid, the title to such personal estate is to be vested by court order in the widow and minor children, or either. If the personal estate exceeds \$300 in value, the widow and minor children, or either, may retain \$300 of such property at the appraised value (sec. 80).

Besides this \$300 allowance, the widow is entitled to retain as her absolute property all wearing apparel of the family for their own use, her wheels, loom, sewing machines, and other implements of industry, all yarn cloth, and clothing made up in the family for their use, and such grain, meat, vegetables, groceries, and other provisions as may be necessary for herself, her own and her husband's family residing with her, for a period of 12 months; also her household and kitchen furniture, beds and bedding, sufficient for herself and family residing with her (sec. 84).

To avail herself of these provisions, a widow should request an appraisal of her husband's property, as provided by statute, within 30 days after his death (sec. 85).

In a solvent estate, the widow may select, besides the property enumerated under section 84, personal property not exceeding a total appraised value of \$150, to be delivered to her by the estate's representative, upon her receipt for it (sec. 86). The widow must apply for such property before it is sold or distributed (sec. 87). Until the widow's dower is apportioned, she is entitled to her proportionate share of any rents from the real estate (sec. 89).

Upon the death of a homestead owner, survived by a widow but no children, if the widow has no homestead in her own right, the decedent's homestead [see Number 3] is exempt to her for her lifetime, with all rents and profits from it. If a child or children, as well as the widow, survive, they share the homestead with the widow, and take one-half the rents and profits, but only during their minority. It is not necessary that the widow or children occupy the homestead (Const., art. 9, sec. 6) (sec. 7162).

If a widow elects not to share in her husband's estate under his will, but to take under the statute, she takes as though no will had been executed and the husband had died intestate. In that case, she is entitled to dower, homestead, and the statutory allowances to widows [as above enumerated].<sup>1</sup>

Even though the widow elects to take under the will, she is entitled to the statutory allowances of \$300 and \$150 out of the personalty, if no contrary intention is expressed in the will.<sup>2</sup>

<sup>1</sup> *Jameson v. Jameson* (1915), 117 Ark. 142, 144; 173 S. W. 851.

<sup>2</sup> *Cypert v. McEuen* (1926), 172 Ark. 437, 441; 288 S. W. 923.

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

A widow may accept a provision made by will for her in lieu of dower, or she may elect to be endowed of the lands and personal property owned by her husband at his death (sec. 4425). The manner and time in which her election must be made are established by law (secs. 4426-4428).

"The right to dower is a legal right. Upon the death of the husband, the widow is seized at law of a freehold estate, and that estate cannot be divested by an intention or determination to take something else in lieu of it, no matter how often the intention may have been made known or communicated. \* \* \* There must be some decisive act of the party, with knowledge of her situation and rights, to determine the election; or there must be an intentional acquiescence in such acts of others as are not only inconsistent with her claim of dower, but render it impossible for her to assert her claim without prejudice to the rights of innocent persons."<sup>1</sup>

The fact that the husband fails to mention his wife in his will does not deprive her of her dower.<sup>2</sup>

A surviving husband's dower right in the wife's estate attaches only to that portion owned by her at her death, not disposed of by her will, and remaining after payment of all her debts (sec. 4422). No statutory provision is made for his election against her will.

<sup>1</sup> *Cooley v. North* (1917), 130 Ark. 350, 352; 197 S. W. 577.

<sup>2</sup> *Yeates v. Yeates* (1929), 179 Ark. 543, 552; 16 S. W. (2d) 996; 65 A. L. R. 466.

## II.—MARRIAGE AND DIVORCE

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

Males at 18 and females at 16 years of age are capable in law of contracting marriage; if under those ages, their marriages are void (1941, p. 66). The word "void" as here used means "voidable."<sup>1</sup>

If a male applicant for license to marry is under 21 years of age or a female applicant is under 18 years of age, satisfactory proof must be given the license clerk of the verbal or written consent of the minor's parent or guardian (sec. 9044). A false affidavit for license under this section constitutes perjury.<sup>2</sup>

<sup>1</sup> *Kibler v. Kibler* (1930), 180 Ark. 1152, 1155; 24 S. W. 867.

<sup>2</sup> *Cox v. State* (1924), 164 Ark. 126; 261 S. W. 303.

## 19. Validity of Common-Law Marriage.

The doctrine of so-called common-law marriages has never obtained or become a part of the laws of this State.<sup>1</sup>

But a common-law marriage contracted in another jurisdiction, where its validity is recognized, is given legal recognition in this State.<sup>2</sup>

<sup>1</sup> *Furth v. Furth* (1911), 97 Ark. 272, 277. (Hist.)

<sup>2</sup> *Estes v. Merrill* (1915), 121 Ark. 361, 367; 181 S. W. 136.

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

No provision appears requiring a certificate of health from either applicant for a license to marry.

## 21. Interstate Cooperation in Marriage Law Enforcement.

The State has not adopted the provisions of the Uniform Marriage and Divorce Act. However, it recognizes the validity of any marriage contracted elsewhere, if such marriage is recognized as legal where contracted and the parties actually resided in that jurisdiction when married (sec. 9023).

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

When either of the parties to a marriage is incapable, from want of age or understanding, of consenting to any marriage, or is incapable from physical causes of entering into the marriage state, or where the consent of either party has been obtained by force or fraud, the marriage is void from the time its nullity is declared by a court of competent jurisdiction (sec. 9021).

Venereal disease existing at the time of marriage has been held sufficient ground for annulment of marriage, on complaint of the husband as to his wife, being deemed a physical incapacity for marriage under this statute.<sup>1</sup>

<sup>1</sup> *Brown v. Brown* (1930), 181 Ark. 528; 27 S. W. (2d) 85.

## 23. Grounds for Divorce—Respective Availability to Spouses.

An absolute divorce, or a limited divorce, may be granted where either party was impotent at marriage and continues so; willfully

deserts and absents himself or herself for 1 year without reasonable cause; had a former spouse living at the time of the marriage sought to be set aside; is convicted of felony or other infamous crimes; or has been addicted to habitual drunkenness for 1 year, or has been guilty of such cruel and barbarous treatment as to endanger the life of the other, or offers such indignities to the person of the other as renders his or her condition intolerable; or has committed adultery subsequent to the marriage. Absolute divorce may be granted either party when husband and wife have lived apart for 3 consecutive years without cohabitation (sec. 4381).

Incurable insanity resulting in institutional care and separation of the husband and wife for at least a 3-year period may be a ground for absolute divorce. A husband seeking divorce for this cause must provide for support of the afflicted wife during her lifetime (1943, p. 989).

### III.—PARENTS AND CHILDREN

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

The common-law rule prevails, and, generally, the father is entitled to the services and earnings of his minor child, but if the father is dead, the mother is entitled to these services and earnings to the same extent as the father. That rule, the court observes, is founded on the universal right of the parent to the custody and control of the child and his duty of maintenance and education of the minor child.<sup>1</sup>

<sup>1</sup> *Biggs v. St. Louis I. M. & S. Ry. Co.* (1909), 91 Ark. 122, 125.

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

In all cases not otherwise provided for by law, the father and mother while living together and being husband and wife are the joint natural guardians of their unmarried minor children with equal powers, rights, and duties, and have the custody and care of their persons, education, and estates, and when such estate "is not derived from the persons acting guardian," such parent or parents must give security and account as other guardians. However, neither father nor mother may have the management of the property of any minor not derived from such parent, until legally appointed and qualified (sec. 6203).

In all cases not otherwise provided for by law, the father while living, and after his death or when there is no lawful father then the mother, shall be the natural guardian of their children, and have the custody and care of their persons, education, and estates; and when such estate is not derived from the person acting as guardian, such parent must give security, and account as other guardians (sec. 6220).

If a minor has property not derived from the parent who is the natural guardian at the time, and such parent's incompetency, or mismanagement of the estate, be shown to the court, a curator may be appointed for the management of the property (sec. 6234). Or if the court deem it advantageous for the minor to have a curator of his estate different from the guardian of the person, such an appointment may be made (sec. 6235).

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

The surviving parent of any unmarried child may, by last will duly executed, dispose of the custody of such child during its minority to some fit person; such person may also control the management of the minor's property, but may not dispose of it without court order. Nor is such person entitled to the earnings of the minor (sec. 6204).

The lawful surviving parent of any minor may appoint by will a guardian of the person of such minor (sec. 6231). No man can bind his child to apprenticeship or service, or part with the control of such child, or create any testamentary guardian for it, unless the mother give her written assent (sec. 7235).

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

The parents of a person dying intestate and without descendants inherit his or her estate, subject to any marriage settlement, dower, and payment of debts, as follows:

### Lands.

(1) If the estate is ancestral [that is, owned by the decedent through gift, will, or inheritance from either parent, or from any relative of the blood of either parent<sup>1</sup>], the property is inherited by the parent through whose line it came, and by his or her heirs; (2) if the estate is not ancestral [that is, derived from any source other than descent, devise, or gift from father or mother, or any relative in the paternal or maternal line<sup>1</sup>], it ascends to the father and mother for life in equal shares, and upon the death of one parent, the survivor takes both shares for life, or if only one parent survives the decedent he or she takes the whole estate for life (sec. 4347).

### Personal Property.

The net personal estate is distributed to the decedent's father and mother in equal parts, or if one parent be dead, then the whole to the surviving parent (sec. 4338).

See also *Chaffin v. Crow* (1930), 182 Ark. 621, 623; 32 S. W. (2d) 155, and citations.

<sup>1</sup> *Kelly v. McGuire* (1855), 15 Ark. 555, 587. (Hist.)

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

When the paternity of a child born out of wedlock has been established by judicial proceeding, the court must render judgment against the adjudged father for the birth expenses of the child, for a sum not less than \$25, if claimed on the trial, together with court costs; then, if claim for maintenance is made by the mother, judgment must be rendered for payment of not less than \$10 for every month from the birth of the child until it is 14 years of age, and approved bond must be given in the penal sum of \$300 to secure such payments (sec. 933). If bond is not given as required, the court must commit the father to jail until compliance or other satisfaction be given (sec. 934).

"Every county judge in this State, upon his personal knowledge or upon information that a woman has been delivered of a bastard child, shall issue his warrant, or cause it to be done, and bring such woman before the county court, and require her to disclose or discover to the court, under oath, the father of such child, or give security, in like manner and sum as hereinbefore required in case of the father, to indemnify each county of this State from all costs and expenses for maintenance, or otherwise, on account of such child while under the age of 7 years; and if she will not discover the father of such child, or give security, the court shall commit her to the county jail until she discovers the father or gives security" (sec. 940).

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

The mother of a child born out of wedlock inherits from such child as if it were legitimate (sec. 4340).

## B.—POLITICAL RIGHTS

### 30. Domicile of Married Women.

The residence qualifications for electors are fixed as 12 months in the State, 6 months in the county, and 1 month in the precinct, town, or ward, next preceding any election at which "any citizen" of the United States proposes to vote, and one purpose of the amendment is declared to be "to confer suffrage equally upon both men and women, without regard to sex" (Const., Amend. 8). [See Pope's Digest of the Statutes, 1937, page 182, note under amendment, for interesting reference to its history.]

The privilege of declaring intention of citizenship in the State may not be denied or abridged because of sex or marital status. Thirty days' residence is required prior to the filing of the declaration (1941, p. 914).

Generally, the domicile of the husband is the domicile of the wife. This is true, even though the wife may abandon and desert her husband and live in another State. The husband is the head of the family, and as such may represent his wife in a court action, and a decree against him is against her also, despite her separate residence.<sup>1</sup>

But under the same rule, a widow, living apart from her husband at his death, even in another State, is declared not to have forfeited her right to the widow's homestead in the husband's estate.<sup>2</sup>

<sup>1</sup> *Collum v. Harvey* (1928), 176 Ark. 714, 720; 3 S. W. (2d) 993.

<sup>2</sup> *Bruce v. Bruce* (1928), 176 Ark. 442, 446; 3 S. W. (2d) 6.

### 31. Public Office—Eligibility of Women.

By constitutional amendment women may qualify as electors (Const., Amend. 8), and consequently for election or appointment to office (Const., art. 19, sec. 3). Sex is not a bar to the holding of any public or civil office in the State (sec. 10436), and women, where otherwise qualified, are entitled to hold public or civil office, whether elective or appointive (sec. 10437).

### 32. Jury Service—Eligibility of Women.

A woman may not be prevented from serving on a jury when summoned, if she so desires, provided, however, that she can otherwise qualify as a juror under the statute (sec. 8304); but she may not be compelled to serve against her will (Const., Amend. 8) (sec. 8302). Her refusal to serve may be made to the officer serving the writ of summons, or when notifying her of her selection as a juror, and not afterwards (sec. 8303).

