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UNITED STATES DEPARTMENT OF LABOR

MAURICE J. TOBIN, Secretary

WOMEN'S BUREAU

FRIEDA S. MILLER, Director

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The Legal Status of Women in the United States of America

January 1, 1948

REPORT FOR
INDIANA

*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. 157-13 (Revised)

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UNITED STATES DEPARTMENT OF LABOR
WOMEN'S BUREAU
WASHINGTON, D. C.

The Legal Status of Women in the
United States of America
January 1, 1938

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.

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UNITED STATES
DEPARTMENT OF LABOR
WASHINGTON, D. C.

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LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, October 14, 1948.

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

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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.

INDIANA

SOURCES

Constitution of Indiana.
Burns' Annotated Statutes, 1933.
Session Laws, 1935, 1937, 1939, 1941, 1945, and 1947.
Indiana Reports.
Indiana Appellate Reports.
Northeastern Reporter.

EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of section numbers following the abbreviation Const., as (Const., art. 1, sec. 23), placed after the related matter.

Code section references likewise are in parentheses, thus (sec. 38-101).

Session laws are referred to by year of enactment and page number, as (1935, p. 828).

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 paragraph. 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."

INDIANA

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

The statutory age of majority is 21 years for both sexes (sec. 2-4701, subsec. 6).¹

¹ *Bauman v. Grubbs* (1866), 26 Ind. 419.

2. Contractual Power of Minors.

Any married man or woman under 21 years whose wife or husband is of full age may convey or mortgage his or her separate real estate, or any interest therein, or make any contract concerning it, if the adult wife or husband joins in the transaction. However, the consent of the judge of the circuit court where the parties reside must be obtained after proper hearing and determination by the court that the transaction is for the benefit of the minor spouse (1947, p. 789).

She may join her husband in any instrument for the conveyance of his real estate as though she were 21 years of age, and her conveyance is deemed valid (sec. 56-207).

The marriage of a female ward under the full age of 21 years to a person of full age, at the discretion of the court, may operate as a legal discharge of the guardianship, and in such case the court may authorize the guardian to account to the wife, with the assent of the husband (sec. 8-134).

Otherwise, infants may not alienate lands nor any interest in lands (sec. 56-102). Contracts for necessities are enforceable against minors (sec. 58-102).

Any deposit by a minor in a savings bank is for his benefit, and payable to him (1935, p. 330).

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

The statute specifically provides that "A married woman who is a resident of this State, whether a householder or not, shall be entitled to the same exemption of property from seizure or sale for the payment of any debt or liability contracted by her, as householders are under the constitution and laws of this State, to be claimed and selected in the same manner" (sec. 38-109).¹

Also, the right to quiet title by court decree on real estate up to the value of \$700, as against a judgment, is secured to "any resident householder or married woman of the State of Indiana, entitled to claim real estate * * * , exempt from sale on execution * * * " (1935, p. 1014).

Any resident householder of the State has an exemption privilege of both real and personal property, exclusive of income or profits, to a total value of not more than \$1,000. The real property so exempt must not exceed \$700 in value; the tangible personal property, \$600 in value; and intangible personal property, \$15 in value. Income or profits not exceeding \$15 a week are exempt. Of any excess above \$15 a week, 90 percent is exempt and 10 percent is subject to execution (1937, p. 1348).

Resident householder is defined by the court as "A person who has members of his family dependent upon him for support, and who does support them."² Statutes of exemption are not intended for the benefit of the debtor himself alone, but the purpose of such enactments is to secure provision for the wants of indigent families.³

¹ *Junker v. Hustes* (1888), 113 Ind. 524; 16 N. E. 197.

² *Lowry v. McAlister* (1882), 86 Ind. 543, 544.

³ *Gregg v. Brickley* (1901), 27 Ind. App. 154, 158; 59 N. E. 1072.

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

The wife's personal property, acquired either before or after marriage, remains her own property to the same extent and under the same rules as her real estate (sec. 6-2322).

Her real property, together with all the rents, issues, income, and profits from it, is her own separate property and under her own control, except as to alienation, as if she were unmarried (sec. 38-102).

5. Contractual Powers of Married Women.

The statute declares that: "All the legal disabilities of married women to make contracts are hereby abolished, except as herein otherwise provided" (sec. 8-101). The exceptions noted are as to her separate real estate: A married woman may not convey or mortgage it unless her husband joins in such conveyance or mortgage; nor can she enter into any executory contract to sell, mortgage, or convey such real estate without her husband's joinder in the contract (sec. 38-102). However, upon proper proceedings, the court may empower a wife to convey or encumber her real estate without the husband's joinder, if it be established that her husband is insane (sec. 38-122), or has deserted her without cause, been imprisoned in the State prison for felony, or become incapacitated through habitual drunkenness and neglects to provide for his family, or when he renounces the marriage covenant, or refuses to cohabit with his wife because of religious affiliations forbidding such cohabitation. The action of the court will depend on whether or not it is to the wife's benefit to permit her to make such conveyance, encumbrance, or contract (secs. 38-116 to 38-121).

The wife of an "absentee" (see sec. 6-401) is given all the rights and independent powers of an unmarried woman to make contracts and execute deeds and acquittances for herself during the time the absentee's estate is under administration (sec. 6-404).

With reference to her separate personal property, a married woman has the same freedom of contract, in her own name, as if she were unmarried (sec. 38-102). As to contracts other than regarding her real property, her capacity is as great and unrestricted as that of an unmarried woman.¹

A married woman may act as administratrix, executrix, or in any other trust or fiduciary capacity, without the written consent of her husband. But the court in its discretion may increase the amount of bond required if a single woman marries while acting in such capacity and may take into consideration the marital status of a female applicant for such appointment when fixing the amount of bond required (1935, p. 828).

A married woman, regardless of her age, is liable for any torts committed by her, and she is subject to prosecution for them, as if unmarried. Husbands are not liable for the contracts or the torts of their wives (sec. 38-105).

If a widow remarries, holding real estate in virtue of any previous marriage, and there be a child or children by such marriage or their descendants living, she may not dispose of that real estate during a subsequent marriage, either with or without her husband's assent; however, she and her living husband may alienate such real estate if her children by the marriage in virtue of which such real estate came to her are all adults and join in the conveyance; or if there is no issue of such former marriage, the widow may alienate such real estate in fee simple during her subsequent marriage by the joinder of her living husband in the conveyance (sec. 6-2318).

There is no such restriction as to land inherited by a husband.

Husband and wife may execute valid powers of attorney to each other for conveyance of the interests of one or both in lands owned by them together (1945, p. 1371).

¹ *Young v. McFadden* (1890), 125 Ind. 254, 256; 25 N. E. 234.

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

A married woman may carry on any trade or business and perform any labor or service on her sole and separate account. Her earnings and profits derived from any labor or business, other than labor for her husband or family, are her sole and separate property (sec. 38-103).^{1 2}

A married woman may sue alone (1) when the action concerns her separate property; (2) when the action is between herself and her husband; but in no case shall she be required to sue or defend by guardian or next friend, except she be under the age of 21 years (sec. 2-205).

¹ *Arnold v. Rifner* (1896), 16 Ind. App. 442; 45 N. E. 618.

² *Offenbacher v. Offenbacher* (1933), 98 Ind. App. 689; 187 N. E. 903.

7. Liability of Married Woman for Family Necessaries.

The wife is liable for necessaries purchased on her account (secs. 38-101, 38-102).^{1 2} See Number 5.

¹ *Arnold v. Engleman* (1885), 103 Ind. 512; 3 N. E. 238.

² *Minnis v. Steele* (1921), 79 Ind. App. 45; 132 N. E. 702.

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

A wife may engage in business as if unmarried (secs. 38-102, 38-103).^{1 2 3} See Number 6.

¹ *Wilson v. Wilson* (1888), 113 Ind. 415; 15 N. E. 513.

² *Burk v. Platt* (1882), 88 Ind. 283, 285. (Hist.)

³ *Wasem v. Ruben* (1910), 45 Ind. App. 221, 225; 90 N. E. 636.

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

A married woman may take, acquire, and hold property, real or personal, by conveyance, gift, will, inheritance, or by purchase with her separate means or money. Such property, together with all its rents, issues, income, and profits, remains her own separate estate, and under her own control, the same as if she were unmarried. But her husband must join in the execution of any contract, conveyance, or mortgage relating to her separate real estate (sec. 38-102). The separate deed of her husband conveys no interest in the wife's lands (sec. 38-113).

However, the wife may execute a valid lease for a term of years without the husband's joinder.¹

Property purchased with the separate earnings of a married woman cannot be subjected to payment of her husband's debts.²

A savings-bank deposit made by a woman who is or becomes married must be held for her exclusive right and benefit, not subject to the control or lien of any person except her creditors, and repaid only to her, together with dividends (1935, p. 330).

Estates by the Entirety.

A deed conveying land to both husband and wife creates an estate by the entirety, as at common law, unless a contrary intention is expressed in the deed.³ At common law, the survivor takes the whole property on the death of the other. During their joint lives neither can convey without the consent of the other, and no part of the land can be taken under execution for the separate debt of either. When husband and wife take by entireties, neither of them holds any of the property separately; in that respect they are equal, though in some respects he has personal rights of property which she has lost by her marriage.⁴

* * * An estate by entirety is an estate of an anomalous character, created by the common law and preserved by statute when the law of "real property and the alienation thereof" was first reduced to a code in Indiana * * * and reenacted without change when the statutes were revised in 1852, as part of "an act concerning real property and the alienation thereof," which is still in force * * *. Such statutes are not in harmony with any other part of the law of Indiana governing the legal right of husband and wife, and the law authorizing their creation will not be enlarged by construction. Estates by entireties do not exist as to personal property * * * except when such property is directly derived from real estate held by that title, as crops produced by the cultivation of lands owned by entireties or proceeds arising from the sale of property so held.⁵

When husband and wife contract to purchase property, or lease with option to purchase, the contract creates an estate by the entireties in them unless they direct that the contract show otherwise (1945, p. 51).

¹ *Kokomo Natural Gas and Oil Co. v. Mallock* (1912), 177 Ind. 225; 97 N. E. 787; 39 L. R. A. (N. S.) 675.

² *Elliott v. Atkinson* (1910), 45 Ind. App. 290; 90 N. E. 779.

³ *Dotson v. Faulkenburg* (1917), 186 Ind. 417, 419; 116 N. E. 577.

⁴ *Carner v. Smith* (1883), 90 Ind. 222, 223, 227; 46 Am. Rep. 210. (Hist.)

⁵ *Koehring v. Bowman* (1924), 194 Ind. 433, 436; 142 N. E. 117. (Hist.)

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

By common-law rule, the property acquired after marriage by the cooperative efforts of both spouses is the property of the husband

and under his control, 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 sue in her own name for any injury to her person or character, and the damages recovered become her separate property (sec. 38-115); likewise when the action concerns her separate property (sec. 2-205).

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.

A married woman cannot sue her husband for personal injuries caused by his negligence.^{1 2}

This common-law rule, based on the unity of the spouses, would seem to apply to a husband who claims injury by his wife, in the absence of a statute to the contrary; but no authority for such a conclusion has been found.

¹ *Blickenstaff v. Blickenstaff* (1929), 89 Ind. App. 529; 167 N. E. 146.

² *Henneger v. Lomas* (1896), 145 Ind. 287, 289; 44 N. E. 462; 32 L. R. A. 848.

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

When the husband or wife is a party to a suit, and incompetent to testify in his or her own behalf, the other is excluded also. However, in a suit for the seduction of a wife, the husband is a competent witness, but not the wife (sec. 2-1720).

Husbands and wives may testify for or against each other in all cases, except as to confidential communications (secs. 2-1713, 2-1714).¹

¹ *Vukodanovich v. State* (1926), 197 Ind. 169, 173; 150 N. E. 56.

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

Neither spouse by any provisions of his or her will may defeat the other's statutory right to one-third of the testator's estate.^{1 2} See Number 15. Married women have the same capacity to make wills as their husbands (secs. 7-101, 7-102),³ except that a widow, during a second or subsequent marriage, holding real estate by virtue of any previous marriage and having living issue of such former marriage, may not alienate such real estate by will (sec. 6-2318).⁴

¹ *Huffman v. Coveland* (1894), 139 Ind., 221; 38 N. E. 861.

² *Collins v. Collins* (1891), 126 Ind. 559, 562; 25 N. E. 704; 28 N. E. 190.

³ *Hibberd v. Trask* (1903), 160 Ind. 498, 501; 67 N. E. 179.

⁴ *Davis v. Thompson* (1913), 179 Ind. 539; 101 N. E. 1012.

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

Dower and curtesy have been abolished (sec. 6-2353). The statutory provisions for the surviving spouse differ somewhat for husband and wife, and are presented in detail under the headings real property and personal property.

REAL PROPERTY

General Statement.

By statutory provision, the widow shares in her husband's real estate in any or all of the following classes: (1) Lands owned by him at his death (sec. 6-2313); (2) lands in which he had an equitable

interest at his death, or lands conveyed by him during the marriage without her joinder (secs. 6-2325, 6-2341); (3) his lands sold under court order, in a proceeding not affecting the wife's interest (sec. 6-2337).

The surviving husband's statutory interest attaches only to lands owned by the wife at her death.¹

Either spouse may bar his or her statutory right in the lands of the other by executing a valid antenuptial contract in which he or she releases this right for other lands or for a pecuniary provision (secs. 6-2342, 6-2343). The wife may bar her statutory right by joining her husband in any act or conveyance that will alienate his lands to which her statutory interest attaches (sec. 6-2341).

If a jointure is settled upon her before marriage without her assent, or if the jointure is made after her marriage, she has the right to elect within 1 year after her husband's death to take the settlement under the jointure or to retain her statutory right. She is not entitled to both (sec. 6-2346).²

Widow's Share.

If the husband die, either testate or intestate, the widow is entitled outright to one-third of his real estate, as his heir,³ free from all demands of creditors; but if all other property is insufficient to pay the husband's debts and the real estate exceeds in value \$10,000 as against creditors she receives one-fourth only, or if it exceeds in value \$20,000, one-fifth only (sec. 6-2313).^{4 5}

If a husband die intestate, leaving his widow and one child, each takes one-half of his real estate (sec. 6-2314).

A childless second or subsequent spouse takes only a life interest in one-third of the lands of a deceased intestate husband or wife, if there be surviving issue of the decedent's preceding marriage (sec. 6-2315).

Such a widow takes outright a one-third interest in the husband's lands conveyed by him during the marriage without her joinder (sec. 6-2325).⁶

Husband's Share.

If the wife die, either testate or intestate, the surviving husband is entitled outright to one-third of his wife's real estate, subject to its proportion of the debts of the wife contracted before marriage (sec. 6-2321). See Number 17.

Share of Either Spouse.

If a husband or wife die intestate, leaving no child, but leaving parents or parent, the surviving spouse takes three-fourths of both real and personal property; the remaining one-fourth goes to the parents jointly, or to the survivor of them. However, if the entire property does not exceed \$1,000 in value, the living spouse takes all of it (sec. 6-2323).⁷

If a husband or wife die intestate, leaving no child and no parent, the surviving spouse takes the whole estate, both real and personal property (sec. 6-2324).

PERSONAL PROPERTY

Widow's Share.

If a husband die testate, one-third of his personal property goes outright to his widow, subject to its proportion of the debts of the decedent (sec. 6-2319).

If a husband die intestate, leaving a widow and child or children, not exceeding two, his personal property remaining after payment of debts is to be divided equally among the widow and children, the widow taking an equal share with one child. But if the number of children exceed two, the widow's share cannot be reduced below one-third of the whole (sec. 6-2320). Whether he die testate or intestate she is entitled to a \$500 allowance of selected articles of personalty (sec. 6-711). See Number 16.

Upon proof that the estate, both real and personal, of a deceased husband, exclusive of mortgages or other encumbrances, is not worth over \$500, the widow is entitled to receive title to the whole estate by court decree (secs. 6-1701, 6-1704).

A childless second or subsequent wife has the same interest in the personal estate of her deceased husband as the widow of a first marriage [sec. 6-2320].⁵

Husband's Share.

The personal property of a deceased wife is distributed in the same manner that her real estate descends, and is apportioned under the same circumstances (sec. 6-2322). See also either spouse's share under real property and Number 17.

¹ *Turner v. Heinberg* (1902), 30 Ind. App. 615, 617, 621; 65 N. E. 294, 296.

² *Mannan v. Mannan* (1900), 154 Ind. 9, 13; 55 N. E. 855.

³ *Bowers v. Lillis* (1917), 187 Ind. 1, 9; 115 N. E. 930.

⁴ *Elliott v. Cale* (1887), 113 Ind. 383, 402; 14 N. E. 708; 16 N. E. 390.

⁵ *Mansur v. Hinkson* (1884), 94 Ind. 395, 397.

⁶ *Ramsey v. Yount* (1918), 68 Ind. App. 378; 120 N. E. 618.

⁷ *Hughes v. Yates* (1924), 195 Ind. 185; 144 N. E. 862.

⁸ *Sigler v. Hooker* (1868), 30 Ind. 386.

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

On the death of a man having a family, if he leaves a widow or minor child, the following articles are to be kept for their use: (1) All articles of apparel and ornament of the widow and of the children of the deceased; (2) the wearing apparel of the deceased, which the widow may distribute at her discretion among the nearest relatives unless disposed of by decedent's will; (3) Bibles and schoolbooks used in the family of such decedent; and (4) all the provisions on hand provided for consumption by the family (sec. 6-703).

A surviving wife and minor children, in all cases, are to "be allowed to remain in the ordinary dwelling-house of the family, and to occupy the same and the messuage thereunto appertaining and fields adjacent, if any, not exceeding forty [40] acres, free of rent, for one [1] year from the death of her husband" (sec. 6-704).

The widow of a testate or intestate spouse is entitled to select and take from articles appraised for sale by the estate such of them as she desires to the value in the aggregate of \$500, or cash in part or altogether, up to that amount. If cash and personal property are

insufficient, she has a superior lien on the real estate for the deficit (sec. 6-711).¹

No such provision appears for a surviving husband.

Wages due a deceased person in an amount not exceeding \$150 may be paid to a surviving husband or wife after 30 days from date of death, if no administration is granted. A similar provision exists for withdrawal of bank deposits up to \$100 (1941, p. 555).

¹ *Muga v. Fenn* (1926), 198 Ind. 372, 374; 153 N. E. 776.

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

The statute provides that whenever any real or personal property is devised or bequeathed, or a pecuniary or other provision made by will, by either spouse to the other, the survivor receives nothing from the decedent's estate under the laws of descent if the will does not so provide in express terms (secs. 6-2332, 6-2333). However, the surviving spouse may, within 6 months from the date the will is probated, renounce its provisions for him or her, in proper form as provided by law, and elect to take his or her statutory interest in the estate (1937, p. 1010).

II.—MARRIAGE AND DIVORCE

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

Males at 21 years of age and females at 18 may marry without consent of parents or guardians. Such consent is required if the male is under 21 or the female under 18 years but if there is no parent or guardian resident in the State, and the female has resided in the county where the license is sought for 1 month preceding such application, license may be issued on an affidavit of some disinterested person as to the facts required by statute (secs. 44-202, 44-203).

Marriage is declared to be a civil contract, into which males at 18 and females at 16 are capable of entering (sec. 44-101).

19. Validity of Common-Law Marriage.

The law declares that no marriage shall be void or voidable for the want of license or other formality required by law, if either of the parties thereto believed it to be a legal marriage at the time (sec. 44-302).

Though persons may be punished for not complying with statutory requirements, such want of form or lack of ceremonial rites will not invalidate a marriage entered into from good motives and with intent to create the relation of husband and wife, followed by open acknowledgment of the marital relation.^{1 2}

¹ *Teter v. Teter* (1885), 101 Ind. 129, 134; 51 Am. Rep. 742.

² *Dunlop v. Dunlop* (1935), 101 Ind. App. 43, 50; 198 N. E. 95.

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

Before a license to marry may be issued, each applicant must file prescribed evidence of a standard serological test for discovery of syphilis, and an opinion from a duly licensed physician that no syphilis is present, or that, if present, it is not in a communicable

stage. The test must be made within 30 days prior to application for license.

Exceptions to this procedure are authorized only on order of a designated court, acting upon joint application of the parties, supported by proof of good reasons, such as an emergency or pregnancy (1939, p. 514).

No license may be issued if either of the parties is an imbecile, epileptic, of unsound mind or under guardianship as a person of unsound mind, or afflicted with a transmissible disease, or, at the time of making application, is under the influence of an intoxicating liquor or narcotic drug. If the male is or within 5 years has been an inmate of any county asylum or home for indigent persons, a license may not be issued unless it satisfactorily appears that the cause of such condition has been removed and that such male applicant is able to support a family and is likely to so continue (sec. 44-207).

A male applicant for license to marry must show satisfactory support of any children of former marriages (1941, p. 103).

21. Interstate Cooperation in Marriage Law Enforcement.

The provisions of the uniform marriage law have not been adopted. But if residents go into another State to be married, having the intention to evade provisions of the marriage laws of Indiana and to return to the State to reside, and do so return, the marriage is void, and the parties are subject to all penalties provided by law (sec. 44-209).

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

All marriages prohibited by law on account of consanguinity, affinity, difference of color, or where either party has a former spouse living, if solemnized within the State, are void without any legal proceedings (sec. 44-105).

When either of the parties to a marriage is incapable, from want of age or understanding, of contracting the marriage, or when such marriage is procured through fraud of one of the parties, it may be declared void by any court having jurisdiction of divorces, on application of the incapable party in the case of want of age or understanding and of the innocent party in the case of fraud (1937, p. 136).

23. Grounds for Divorce—Respective Availability to Spouses.

An absolute divorce may be granted to the injured party on one of the following grounds: Adultery; impotency existing at the time of the marriage; abandonment for 2 years; cruel and inhuman treatment; habitual drunkenness; conviction after marriage of an infamous crime in any country; incurable insanity and confinement in an asylum for the 5 years next preceding the suit. The wife may be granted an absolute divorce on the failure of the husband to make reasonable provision for his family; and for the failure of the husband to make reasonable provision for his family for a period of 2 years (1935, p. 248).

A separation from bed and board for a limited time may be granted to the aggrieved party for any of the following reasons: Adultery, if not the result of connivance or consent of the parties and plaintiff is not guilty of the same offense; desertion; habitual cruelty, or such

constant strifes of both parties as render their living together intolerable; habitual drunkenness, or the confirmed excessive use of morphine, cocaine, or any other drug; gross and wanton neglect of conjugal duty of either party covering a period of 6 months.

Where the wife is plaintiff such separation may be granted for the neglect or refusal of the husband suitably to provide for her covering a period of 6 months (sec. 3-1230).

III.—PARENTS AND CHILDREN

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

There is no specific statute on the matter of parents' right to their children's earnings. See Number 25.

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

The natural guardianship of a child or children rests jointly upon the father and mother, or upon the survivor if either parent be dead (sec. 8-110). See Number 26.

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

The statute provides for joint natural guardianship by the parents, or for sole natural guardianship by the surviving parent if one be dead (sec. 8-110). Other statutes provide that: The father, if a suitable person, or if there be no father then the mother, if a suitable person, is entitled to the custody of the person, control, and education of their legitimate minor children, but either or both may be deprived of such custody in some appropriate proceeding wherein it appears that the welfare of such children is paramount to the claims of the parent.¹ In such a case, a guardian appointed by the court has the custody and tuition of such minor (sec. 8-109).

When a guardian has been appointed by will by a father or mother of any child, such guardian shall be entitled to preference in appointment over all others, without reference to his place of residence or the choice of such minor; but his appointment and duties and powers shall in all other respects be governed by the law regulating guardians not appointed by will (sec. 8-103).

Neither of these statutes has been expressly repealed. It would appear that such an appointment of guardian by will with reference to the custody and control of the child would be given effect only if the surviving parent were an unsuitable person, in the discretion of the court. But this conclusion is not supported by any authority.

¹ *McDonald v. Short, Supt.* (1921), 190 Ind. 338; 130 N. E. 536.

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

From the estate of an unmarried person dying intestate, the parents take one-half of the real and personal property as joint tenants, if the decedent leaves brothers or sisters or their descendants. If only one parent be living, he or she takes the portion of the deceased parent (sec. 6-2303).¹

If decedent leaves no brothers or sisters or their descendants, the parents take the whole as joint tenants; if either be dead the other takes the estate (sec. 6-2304).

If a husband or wife die intestate, leaving no child, but leaving parents or parent, the decedent's estate descends three-fourths to the widow or widower, and one-fourth to the father and mother jointly, or to the survivor of them, except that if the whole estate does not exceed \$1,000, the whole goes to the decedent's widow or widower (sec. 6-2323).

¹ *Parish v. Campkin* (1894), 139 Ind. 1, 15; 37 N. E. 607.

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

The parents of a child born out of wedlock have the same obligation for its support as the parents of a legitimately born child. The unmarried mother may compel the adjudged father to contribute a reasonable share of support for the child. Also, she may recover from him the necessary expenses of the pregnancy and birth (1941, p. 301).

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

If a child born out of wedlock dies intestate without issue or other descendants, his mother inherits his estate (sec. 6-2311) subject to the provisions made in behalf of a surviving spouse (sec. 6-2312).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

There is no specific statutory provision as to a wife's domicile other than in the poor relief legislation, which declares that the "settlement" of a married woman follows and is that of her husband; but if he has no residence in the State, she has her own as at the time of her marriage (1935, p. 433).

By rule of common law, generally the domicile of a married woman is that of her husband.

The constitution declares that in all elections not otherwise provided for by it, "Every citizen of the United States, of the age of 21 years and upwards, who shall have resided in the State during the 6 months, and in the township 60 days, and in the ward or precinct 30 days immediately preceding such election, shall be entitled to vote in the township or precinct where he or she may reside" (Const., art. 2, sec. 2).

31. Public Office—Eligibility of Women.

No restrictions appear in the constitution or statutes, and apparently women are eligible for all public offices.

32. Jury Service—Eligibility of Women.

Women are eligible to serve as jurors on the same basis as men (Const., art. 2, sec. 2) (sec. 4-3317).^{1 2 3}

¹ *Jalbert v. State* (1928), 200 Ind. 380; 165 N. E. 522.

² *Walter v. State* (1935), 208 Ind. 231; 195 N. E. 268.

³ *Palmer v. State* (1926), 197 Ind. 625; 150 N. E. 917.

