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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

KANSAS

*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. 157-15 (Revised)

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1949

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C.
Price 5 cents

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, April 29, 1949.

SIR: I have the honor to transmit to you a revised report on the legal status of women in Kansas. 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 report was prepared by the
Federal Reserve Bank of St. Louis
in cooperation with the
Federal Reserve Bank of Chicago
and the Federal Reserve Bank of
Kansas City. The report was
prepared under the direction of
the Federal Reserve Board of
Governors.

Very truly yours,
Federal Reserve Board of Governors

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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.

KANSAS

SOURCES

Constitution of Kansas.
General Statutes of Kansas, Annotated, 1935.
Session Laws, 1937, 1939, 1947.
Kansas Reports.
Pacific 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. 15, sec. 6), placed after the related subject matter.

General Statutes section references are likewise in parentheses, thus (sec. 38-101). Session laws are referred to by the year of enactment, as (1937, p. 402).

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."

KANSAS

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

The age of majority is 21 years for both sexes. However, every legally married person over 18 years of age, during marriage, is considered an adult with reference to contracts, property rights and liabilities, and the capacity to sue and be sued (sec. 38-101).

2. Contractual Powers of Minors.

The unmarried person under 21 years of age may make contracts, but these are subject to his or her repudiation at or soon after majority (sec. 38-102). See Number 1.

Any minor may have conferred upon him or her the full power in all respects to exercise and enjoy all rights of property and of contracts and be subject to liabilities thereunder as if of full age, if upon proper petition and hearing of evidence, the district court where the minor resides is of the opinion that such removal of disabilities will promote the interest of the minor (secs. 38-108, 38-109).

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

Personal Property.

The exemptions of personal property from attachment and execution are (1) to "every person residing in this State, and being the head of a family" (1937, p. 402) and (2) to "any person" other than the head of a family, owning such property and residing in the State (sec. 60-3505). The term "head of a family" includes any person who has charge of children, relatives, or others living with such person (sec. 77-201, subsec. 29).

Homestead.

A homestead to the extent of 160 acres of farming land or of 1 acre in an incorporated town or city, with all improvements on it, when occupied as a residence by the family of the owner is exempted from forced sale under any process of law, except for payment of taxes, or purchase money, lien, or improvement lien, or unless both spouses have given a written release of their homestead right (Const., art. 15, sec. 9) (sec. 60-3501).

The homestead exemption is for the benefit of the family as a whole and of each individual comprising it, so long as the family relation

is not severed. After the death of both parents, an adult unmarried daughter was held entitled to the exemption.¹

The homestead right, together with separate property provisions, is a part of the State's protection for the family.² To deny a like exemption to the husband would be an unwarranted restriction in construing the constitutional provision for homestead exemption.³

¹ *Kochler v. Gray* (1918), 102 Kan. 878, 881; 172 Pac. 25.

² *Cross v. Benson* (1904), 68 Kan. 495, 501; 75 Pac. 558; 64 L. R. A. 560. (Hist.)

³ *Weaver v. First National Bank of Chicago* (1907), 76 Kan. 540, 554; 94 Pac. 273.

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

See Number 9.

5. Contractual Powers of Married Women.

A married woman, while the marriage relation continues, may bargain, sell, and convey her real and personal property and enter into any contract relating to such property with the same freedom as a married man (sec. 23-202).¹

* * * there are no restrictions upon the authority of married women to contract generally. Whatever contract her husband can make she can make. The court availed itself of the first opportunity presented to make this decision, and that the legislative intention was properly grasped is certain from the fact that the married women's act of 1868 has remained unchanged * * *²

¹ *Bates v. State Savings Bank* (1933), 136 Kan. 767, 771; 18 Pac. (2d) 143. (Hist.)

² *Harrington v. Lowe* (1906), 73 Kan. 1, 14; 84 Pac. 570. (Hist.)

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

The earnings of any married woman from her trade, business, labor, or services are her sole and separate property, and may be used and invested by her in her own name (Const., art. 15, sec. 6) (sec. 23-204).¹ The husband has no dominion over the wife's labor or her earnings.

If she so desires, they are unqualifiedly her own, and he cannot interfere with them.² At least a portion of her time may be given to the labor or business done on her sole and separate account. The profits or earnings of such business or labor are her sole and separate property, and cannot be appropriated or controlled by her husband without her consent.³ A married woman may sue and be sued in the same manner as if unmarried (secs. 23-203, 60-404). She may sue separately and in her own name,⁴ and with reference to her separate real or personal property, she may sue and be sued in the same manner, to the same extent, with like effect, and as freely as any other person may in regard to his or her real or personal property.^{5 6}

¹ *Savage v. Modern Woodmen of America* (1911), 84 Kan. 63, 69; 113 Pac. 802; 33 L. R. A. (N. S.), 773.

² *Norris v. Corkill* (1884), 32 Kan. 409, 411; 4 Pac. 862.

³ *City of Wyandotte v. Agan* (1887), 37 Kan. 528, 530; 15 Pac. 529.

⁴ *Munger v. Baldrige* (1889), 41 Kan. 236, 241; 21 Pac. 159.

⁵ *Knaggs v. Mastin* (1872), 9 Kan. 532, 547.

⁶ *Ennis v. Nusbaum* (1913), 90 Kan. 296, 298; 133 Pac. 537.

7. Liability of Married Woman for Family Necessaries.

If by contract a wife assumes responsibility for necessaries, to be paid out of her own estate, she becomes liable for them (sec. 23-202).^{1 2}

¹ *Bonebrake v. Tauer* (1903), 67 Kan. 827; 72 Pac. 521.

² *Frisby v. Hladky* (1934), 139 Kan. 517; 31 Pac. (2d) 1001.

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

No formal procedure is required. Any married woman may carry on any trade or business on her sole and separate account, and the earnings from such trade or business are her sole and separate property (sec. 23-204).^{1 2} See Number 6.

¹ *Harrington v. Lowe* (1906), 73 Kan. 1, 18; 84 Pac. 570.

² *Tallman v. Jones* (1874), 13 Kan. 438, 445.

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

The property, real and personal, which any woman in the State may own at the time of her marriage, and the rents, issues, profits, or proceeds thereof, and any real, personal, or mixed property which comes to her by descent, devise, or bequest, or the gift of any person except her husband, remains her sole and separate property, notwithstanding her marriage, and is not subject to the disposal of her husband or liable for his debts (sec. 23-201). See also Const., article 15, section 6.^{1 2}

¹ *Chastain v. Crossfield* (1932), 135 Kan. 667; 11 Pac. (2d) 1011.

² *State v. Koontz* (1927), 124 Kan. 216, 218; 257 Pac. 944.

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

There is no specific statute creating community of interest between spouses in property acquired after marriage by their cooperative efforts. By rule of common law, such property belongs to the husband, unless joint ownership is created by deed, contract, or other private agreement. See Numbers 14 and 15 for provisions protecting the interest of a surviving spouse in real estate conveyed without joinder of both spouses, also in property passing by will of a deceased spouse.

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

A married woman has the sole right to recover damages for loss or impairment of her ability to perform services, caused by personal injuries to her through the wrong of another. Any damages thus recovered, so far as based upon loss or impairment of her ability to perform services in the household and in the discharge of her domestic duties, are for the benefit of her husband "so far as he shall be entitled thereto" (sec. 23-205).¹ The statute bars the right of the husband to recover for such loss, and besides removing common-law restraints, avoids a multiplicity of suits.²

The wife may recover damages for alienation of her husband's affections by an intruder.³

See also Number 6.

¹ *Clark v. Southwestern Greyhound Lines* (1936), 144 Kan. 344, 347; 58 Pac. (2d) 1128.

² *Taylor v. S. H. Kress & Co.* (1932), 136 Kan. 155, 157; 12 Pac. (2d) 808.

³ *Burch v. Goodson* (1911), 85 Kan. 86; 116 Pac. 216.

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.

Apparently the common-law rule prevails, that neither spouse may sue the other in tort.

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

Husband and wife are competent witnesses for or against each other in criminal proceedings, but cannot be compelled to testify except in behalf of the other in such cases (sec. 62-1420).

In civil actions, neither spouse may testify for or against the other as to any communication made by one to the other during the marriage, whether called while that relation existed or afterward (sec. 60-2805).

In prosecutions for desertion or nonsupport, husband and wife are competent to testify against each other in all relevant matters (sec. 21-447).

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

There are no special restrictions as to a married woman's will (sec. 22-201). Neither spouse may bequeath away from the other more than one-half of his or her property, unless the other consent in writing before two witnesses (sec. 22-238).¹

¹ *Carmen v. Kight* (1911), 85 Kan. 18, 22; 116 Pac. 231.

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

General.

All provisions enacted in relation to the widow of a deceased husband are applicable to the husband of a deceased wife.¹ Each spouse is entitled to the same rights or portion in the estate of the other, and their respective heirs inherit like interests from them. Estates of dower and by curtesy are abolished (sec. 22-127).

If the surviving spouse has consented in writing to the provisions made for him or her in the other's will (sec. 22-238), or if the survivor elects to take under the will, the disposition by will is effective, but if there is no will, or the survivor renounces the will, the statute provides what he or she may take (secs. 22-245, 22-246).

Real Property.

The homestead is exempt from distribution, and descends absolutely to the surviving spouse and children, or either, as provided by statute (secs. 22-102 to 22-107). Also, one-half in value of all the real estate in which the decedent at any time during the marriage had a legal or equitable interest, not subject to a court decree, payment of debts, or released by the living spouse, is to be set apart to the surviving spouse in fee simple (secs. 22-108, 22-127). The remainder of such real estate descends to the children, if any (sec. 22-118); if there are no children, the surviving spouse takes this portion also (sec. 22-119).

The court construes section 22-108 as applying to real estate not forming part of husband's estate at the time of his death, but in which a possessory interest accrues to the widow by allotment; that is, real estate owned and disposed of by the husband during the existence of the marriage relation, of which the widow has made no conveyance. As to such property, she becomes absolute owner of one-half, if she survives her husband;^{2 3} but she cannot claim such share when she was a nonresident of the State at the time of the conveyance and never had been a resident as the decedent's wife (sec. 22-108).⁴

Personal Property.

As to the personal property of the deceased, the statute provides that such portion of it as may not be necessary for the payment of debts, nor otherwise disposed of according to law, may be distributed to the same persons and in the same proportions as though it were real estate; that is, the surviving spouse takes half such remainder if there are children, and, if no children, he or she takes the entire remainder (sec. 22-130).

The husband has the right to give away his personal property while living, if it is given in good faith, even though such gift is made to defeat the wife's right under the statute in the property.^{5 6} See Number 14.

¹ *Nagle v. Tieperman* (1906), 74 Kan. 32, 43.

² *Putnam v. Putnam* (1919), 104 Kan. 47, 53; 177 Pac. 838.

³ *Bates v. State Savings Bank* (1933), 186 Kan. 767, 769; 18 Pac. (2d) 143. (Hist.)

⁴ *Pfleiderer v. Brooks* (1927), 122 Kan. 647, 650.

⁵ *Poole v. Poole* (1915), 96 Kan. 84, 89; 150 Pac. 592, citing and approving *Small*

v. Small (1895), 56 Kan. 1; 42 Pac. 323; 30 L. R. A. 243; 54 A. S. R. 581.

⁶ *Osborn v. Osborn* (1918), 102 Kan. 890; 172 Pac. 23.

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

An allowance out of the personal estate of the decedent is set apart for the widow and minor children, or either, including the wearing apparel of the deceased, household goods, provisions and fuel for one year, and other specified items of personal property or cash in lieu of such personal property, not exceeding \$250 (sec. 22-511). If there are no minor children, such allowance belongs to the widow absolutely. The selection of property is made by the widow (sec. 22-512).

None of the property set apart as an allowance to the widow and minor children is liable for the payment of any of decedent's debts, unless a legal prior lien exists against it (sec. 22-514).

This allowance to the widow is in addition to her rights under the decedent's will or under the law if she declines to take under the will.¹ As to homestead provision see Number 3 and section 22-102.

¹ *Pellett v. Pellett* (1931), 132 Kan. 427; 295 Pac. 984. (Hist.)

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

Either spouse may reject the provision for him or her in the other's will, and take instead the portion of the other's property passing by law to the survivor (secs. 22-117, 22-127, and 22-245).^{1 2}

¹ *Kittel v. Smith* (1932), 136 Kan. 522, 525; 16 Pac. (2d) 538.

² *Moore v. Herd* (1907), 76 Kan. 826, 827, 829; 93 Pac. 157.

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. Under these ages the father, or mother, or if both be dead or incapable, any guardian the minor may have, must personally or in writing give consent. For males under 18 and females under 16 years of age the consent of the probate judge also must be secured before a license is issued.

A waiting period of 3 calendar days (inclusive of Sundays and holidays) must elapse between the date license is applied for and issuance of the license. Exceptions granted only by the district judge and on proof of emergency or extraordinary circumstances (sec. 23-106, as amended 1947, ch. 240, p. 369).

Boys under 14 and girls under 12 cannot legally consent to marriage by a common-law rule.¹

¹ *Browning v. Browning* (1913), 89 Kan. 98, 100; 130 Pac. 852.

19. Validity of Common-Law Marriage.

Common-law marriages have not been abolished by statute.¹ The statute provides that the marriage relation shall be entered into only as prescribed by law (sec. 23-101), and that any persons living together as man and wife within the State without being married shall be held guilty of a misdemeanor, and punishable on conviction by fine or imprisonment (sec. 23-118). But the court holds that such persons may consummate a valid common-law marriage, even though in so doing they subject themselves to the punishment prescribed by the legislature for failure to make the marriage a matter of public record, as required by law.²

¹ *Freeman v. Fowler Packing Co.* (1932), 135 Kan. 378, 379; 11 Pac. (2d) 276.

² *State v. Walker* (1887), 36 Kan. 297; 13 Pac. 279.

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

Each applicant for license to marry must file a certificate showing that a physical examination has been made, including a standard serological test for syphilis, within 30 days before the date license is issued. The examining physician must certify whether in his opinion syphilis is present or infection with other venereal disease, and if there is such infection whether it is or may become communicable to the marital partner. The physician must state also whether in his opinion the applicant is feeble-minded.

Exception to these requirements may be granted only by the district judge, on proof that the applicant, if a woman, is over 45 years of age, or that an emergency or other sufficient cause justifies an order for the license to be issued.

In cases where infection exists, and marriage is authorized by court order, as provided by law, the clerk of the district court must give required notice to the State board of health for required or necessary action to protect the public health.

Evidence of similar premarital tests for a nonresident applicant, made in another State within 20 days of issuance of license, may be accepted by the licensing officer (1947, ch. 241, p. 370).

No man or woman who is epileptic, imbecile, feeble-minded, or afflicted with insanity, may marry, unless the woman be over 45 years of age.

Children born after a parent became insane may not marry unless the afflicted parent was discharged as cured from an institution for the insane more than 9 months preceding the child's birth, and remained cured for a period of 20 years after such discharge (sec. 23-120).

Sources of information as to applicant's condition lie in the sworn statement required at the time license is issued, or the officer's personal knowledge, or the knowledge of the officer called upon to perform the ceremony (secs. 23-121, 23-122). Violations upon conviction are subject to punishment, as shown in the statutes cited (sec. 23-123).

21. Interstate Cooperation in Marriage Law Enforcement.

All marriages contracted elsewhere, if valid in the place of contract, are valid in the State (sec. 23-115).

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

Incapacity for want of age or understanding is a ground for annulment. The incapable party may institute the action (sec. 60-1515). Marriages between parties within the forbidden degrees of kinship are void (sec. 23-102).

23. Grounds for Divorce—Respective Availability to Spouses.

Divorce may be granted the injured party for any of these causes: (1) Former spouse living at the time of the subsequent marriage, (2) abandonment for one year, (3) adultery, (4) impotency, (5) wife at the time of marriage pregnant by another than her husband, (6) extreme cruelty, (7) fraudulent contract, (8) habitual drunkenness, (9) gross neglect of duty, (10) conviction of a felony and imprisonment therefor after the marriage, (11) insanity for a period of five years. The eleventh cause is very strictly defined by statute (sec. 60-1501). The granting of a divorce on the ground of insanity does not relieve the successful party in the suit from contributing to the support and maintenance of the disabled one (1939, ch. 232, p. 466).

III.—PARENTS AND CHILDREN

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

The mother has equal right with the father as natural guardian of the person of their minor child.¹ (Const., art. 15, sec. 6.) Either parent is entitled to the child's services, and such right also entails on the parent who receives the benefit of its services an obligation to maintain and support the child.^{2 3} See Number 25.

¹ *State v. Angel* (1889), 42 Kan. 216, 222; 21 Pac. 1075.

² *Harris v. Harris* (1869), 5 Kan. 46, 52, 53.

³ *Miller v. Morrison* (1890), 43 Kan. 446, 448, 449; 23 Pac. 612.

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

The father and mother are natural guardians of the persons of their minor children and each parent equally so with the other. If either

dies, or is incapable of acting, the natural guardianship devolves upon the other (Const., art. 15, sec. 6) (sec. 38-201).^{1 2}

¹ *State v. Jones* (1876), 16 Kan. 608, 611.

² *State v. Angel* (1889), 42 Kan. 216, 222; 21 Pac. 1075.

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

Neither parent may appoint a testamentary guardian if both are capable under the law. The surviving parent may appoint a guardian by will (secs. 38-201, 38-202).

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

On the death of an intestate person who leaves no issue or wife, the whole of his estate goes to his parents (sec. 22-119). If one of his parents is dead, the whole of the estate goes to the surviving parent (sec. 22-120).

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

When the paternity of the child has been established by judicial proceeding, the court orders the father to be placed under bond for annual payment of such sum or sums of money as the court finds necessary for securing the maintenance and education of the child (secs. 62-2301 to 62-2321).

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

When a child born out of wedlock dies intestate, the mother may inherit his estate (sec. 22-121). If the recognition of relationship between the child and its father has been mutual, the father may inherit from the child, but the mother and her heirs take preference over the father and his heirs (secs. 22-123, 22-124).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

The wife's domicile is that of her husband by operation of law.¹

¹ *Ford v. Peck* (1924), 116 Kan. 74; 225 Pac. 1054.

31. Public Office—Eligibility of Women.

Women are eligible for public office (Const., art. 5 sec. 8).¹

¹ *Wright v. Noell* (1876), 16 Kan. 601. (Hist.)

32. Jury Service—Eligibility of Women.

Women may serve as jurors (sec. 43-102). Though women are by law exempted from jury service, they are not disqualified by such exemption (sec. 43-116).¹ The tax assessor is required to ascertain from each woman elector in his district, at the time of the annual assessment, whether she desires to be exempted from jury service that year. If she does so desire, her name will not be placed in the list of jurors (sec. 43-117).

¹ *The State v. Stunkle* (1889), 41 Kan. 456, 459; 21 Pac. 675.