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**The Legal Status of Women
in the
United States of America**

REPORT FOR
LOUISIANA
as of January 1, 1956



WOMEN'S BUREAU BULLETIN 157-17 (Revised)

UNITED STATES DEPARTMENT OF LABOR

JAMES P. MITCHELL, Secretary

WOMEN'S BUREAU

Mrs. ALICE K. LEOPOLD, Director

The report for Louisiana was prepared by Laura H. Dale with the assistance of Laura H. Harris, under the general direction of Alice A. Morrison of the Division of Women's Labor Law and Civil and Political Status of the Women's Bureau, U. S. Department 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, and "natural male dominance." Economic and social advances in the position of women in the United States have brought about marked changes in the laws governing property and family rights and political status.

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 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.

The United States Summary of the Legal Status of Women in the United States of America, Bulletin 157, has been brought up to date as of January 1, 1953. Information in the Summary is compiled from the reports for each of the 48 States and the District of Columbia.

SOURCES

West's Constitution of Louisiana, Annotated
West's Louisiana Revised Statutes, Annotated
West's Louisiana Civil Code, Annotated
Louisiana Reports
Louisiana Appeals
Southern Reporter

EXPLANATORY NOTE

This pamphlet, Bulletin 157-17, presents a digest of the Constitution and statutory provisions affecting the legal status of women in the State of Louisiana. It includes pertinent statutory changes enacted in that State up to January 1, 1956, and supersedes the previous report and addendum for Louisiana.

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as "(Const., art. 11, sec. 1)," placed after the related subject matter.

Revised Statutes citations are indicated by section number, as "(R. S., sec. 2167)."

References to the Civil Code are by article numbers preceded by the abbreviation "C. C.," as "(C. C., art. 37)."

Case citations definitely construing statutes or declaring judicial policy in the absence of express statutory provision are indicated by footnote references.

Numbered subject headings are the same as those used in the Summary. Cross-references employ these numbers for brevity, as "See number 6," which refers to the subject heading "Earnings of a married woman."

Louisiana law is derived primarily from French civil law. Early French laws and ordinances and the Customs of Paris were in effect during the French colonial period. Under Spanish rule, from 1769 to 1803, Spanish law was applicable. In the American period, Anglo-American common law has influenced statutes and the decisions of the courts.

LOUISIANA

CIVIL RIGHTS

Contracts and Property

1. Age of majority

Twenty-one years is the age of majority for both men and women (C. C., art. 37).

2. Contractual powers of a minor

Contracts of minors in this State are valid, if made with the intervention of tutors and assent of a family meeting, where the law requires such intervention. The contract of mandate may be accepted under certain restrictions.

Stipulations in a marriage contract are valid if made with the authority of those whose consent is required by law.

Where the minor has no tutor, or the tutor fails to supply him with necessities for his support or education, the minor's contract for such necessities is valid. An obligation arising from an offense or quasi-offense is binding on the minor.

In all other cases the minor is incapacitated from contracting, though he may render his contracts valid by ratification (C. C., arts. 1748, 1785, 2330).

There are three types of emancipation of minors: (*a*) Emancipation conferring the power of administration; (*b*) emancipation by marriage; and (*c*) emancipation relieving the minor from the time prescribed by law for attaining the age of majority (C. C., art. 365).

Type (*a*) may be effected by (*i*) notarial act, when the minor has arrived at the age of 15 years, consisting of a declaration of emancipation by the father (or if there is no father, by the mother) before a notary public in the presence of two witnesses (C. C., art. 366); or (*ii*) judicial proceeding when the minor has reached the age of 18 years (C. C., art. 367). The minor who is emancipated has full administration of his estate, and may pass all acts which are confined to such administration, grant leases, receive revenues and monies which may be due him, and give receipts therefor (C. C., art. 370).

He cannot bind himself for any sum exceeding the amount of 1 year of his revenue (C. C., art. 371). He cannot sell or mortgage real

estate without the authority of the court, which can be granted only with the advice of a family meeting and in case of absolute necessity or certain advantage (C. C., art. 373). He cannot dispose of either movables or immovables by donation *inter vivos* unless by marriage contract (C. C., art. 374). However, any minor so emancipated when engaged in trade is accepted as having arrived at the age of majority for all acts in relation to such trade (C. C., arts. 376, 2225). This type of emancipation is subject to revocation (C. C., art. 377).

Type (*b*) is emancipation by marriage. Both male and female minors may be emancipated by marriage (C. C., art. 379).

As the marriageable age of a female is 16 years (C. C., art. 92), from the age of 16 years to 18 years she is affected by the same disabilities as and has only the rights of the minor emancipated according to type (*a*) (C. C., art. 384).

However, when the married minor reaches the age of 18 years, she is relieved of all disabilities which attach to minors and has full power to do and perform all acts as fully as if she had arrived at the age of 21 (C. C., art. 382). Emancipations by marriage may not be revoked (C. C., art. 383).

Type (*c*) is a judicial emancipation available to a minor who has reached the age of 18, upon satisfactory evidence of his capability to manage his own affairs and upon parental consent to the proceeding. By such a proceeding the minor is relieved of all minority disabilities as fully as if he had arrived at the age of 21 years (C. C., arts. 385, 386).

The consent of the father or mother, or both, if living, is necessary to authorize the court to act on an emancipation petition. Such consent is not necessary if the application is made on the ground of ill treatment, refusal to support, or corrupt examples (C. C., arts. 368, 387).

A minor who is capable of contracting marriage may give his consent to a marriage agreement; and the agreement and donations he makes are valid, provided that if he is not emancipated he has been assisted in the agreement by those persons whose consent is necessary to the marriage (C. C., art. 2330).

Minors may make deposits and withdrawals from credit unions on their own authority (R. S., sec. 6: 663).

3. Property exemptions from seizure for debt

A. RESPECTIVE RIGHTS OF MAN AND WOMAN

In any case in which wages or salaries are to be garnished, the court is authorized to fix the portion of the debtor's wage or salary which is exempt from seizure (R. S., sec. 13: 3911).

The following are exempt from all liability for debt: (a) Pensions and proceeds under annuity policies or plans; (b) all gratuitous payments made by employers to their employees or former employees, or their widows or heirs (R. S., sec. 20:33).

B. HOMESTEADS

The Constitution provides that there shall be exempt from seizure and sale the homestead owned and occupied by the debtor, consisting of lands not exceeding 160 acres, buildings and appurtenances, whether rural or urban, of every head of a family or person having a mother or father or other persons dependent on him for support. If the homestead exceeds \$4,000, the beneficiary is entitled to that amount if the home is sold under legal process. A sale that does not exceed that amount is null and void. The benefit of this exemption may be claimed by the surviving spouse, or minor child, of a deceased beneficiary (Const., art. 11, sec. 1).

Homestead exemptions exist without recordation, except where the property is situated in a city of more than 250,000 population (Const., art. 11, sec. 4).

The statute provides that if the husband refuses or neglects to declare the family homestead as required by law, his wife, if living with him, may file an authentic declaration; but her declaration is limited to community property occupied as a home. If in the city, such exempt property may not exceed one lot or lots of ground actually occupied as the residence; if rural, property may not exceed 20 acres of land on which the family residence is situated (R. S., secs. 9:2801-9:2804).

The husband has no power to mortgage, sell, or execute a waiver of the homestead without the written consent of his wife (Const., art. 11, sec. 3) (R. S., sec. 9:2801).

4. Ownership and control of property owned at marriage

The property brought into the marriage by the wife, not made a part of the dowry, remains her separate property (C. C., arts. 2334, 2335). Linens and clothes belonging to the wife are not to be included in the husband's estate inventory if she renounces the community as provided by law (C. C., arts. 2413, 2416).

5. Contractual powers of a married woman

By contract properly executed before the marriage, the spouses may waive the provisions of the law which otherwise would automatically create upon the marriage a community of acquets and gains between them, and instead may agree that each shall retain his or

her property and revenues as separate, and subject only to the owner's control and disposition (C. C., arts. 2325-2332, 2392, 2393).

The most common forms of marriage agreements are the settlement of the dowry and the various donations the spouses may make to each other or receive from others in consideration of the marriage (C. C., art. 2331). The dowry is given to the husband for him to enjoy as long as the marriage shall last (C. C., art. 2347). He has the administration of the dowry, and the wife cannot deprive him of such administration; he may act alone in a court of justice for the preservation or recovery of the dowry, but this does not prevent the wife from remaining the owner of the effects which she brought as her dowry (C. C., art. 2350).

The wife has the right to administer personally her paraphernal property without the assistance of her husband (C. C., art. 2384). She may permit the husband to administer it wholly, or together with herself, but in either case the fruits of the property become part of the community estate, if one exists; if no community exists, each party enjoys as he chooses that which comes to his hands (C. C., arts. 2385, 2386). The wife may withdraw this property from his administration at any time (C. C., art. 2387), and she may sue to recover it (C. C., art. 2391).

She has a legal mortgage on the property of her husband for the restitution or reinvestment of her dowry, of dotal property which came to her after marriage, and of her paraphernal property (C. C., art. 3319). To protect her rights under mortgages and privileges against her husband as to separate property, such instruments and any marriage agreement as to immovable property must be recorded in due form (C. C., arts. 2264, 2265, 3349, 3369).

Any married woman may open bank accounts, make deposits, and withdraw her funds without the assistance of or intervention of her husband, in the same manner and under the same conditions as if she were unmarried (R. S., secs. 6:28, 9:51).

A married woman is given full powers as an owner of shares of Federal savings and loan associations (R. S., sec. 6:832).

Women are given the same rights, authority, privileges, and immunities and are required to perform the same obligations and duties under the law as men possess and are required to perform in the holding of office, including the civil functions of tutor, undertutor, administrator, executor, arbitrator, notary public, and member of family meeting (R. S., sec. 9:51).

No assignment of wages or salaries to be earned in the future shall be valid when made by husband without the written consent of the wife attached to such assignment, unless the spouses have been living

separate and apart for a period of 5 months before the assignment is made (R. S., sec. 6: 587).

Married women may make deposits and withdrawals from credit unions on their own authorization (R. S., sec. 6: 663).

Immovables settled as dowry cannot be alienated or mortgaged by either husband or wife (C. C., art. 2357), except that the wife may, with the authorization of her husband, or on his refusal with court authorization, give her dotal effects for establishment of her children by a former marriage (C. C., art. 2358), or with her husband's authorization for establishment of their children (C. C., art. 2359).

6. Earnings of a married woman

A wife's earnings during the marriage when she and her husband are living together are community and not separate property (C. C., arts. 2334, 2404).^{1 2 3}

If the earnings of the wife accrue while she is living separate and apart from her husband, even though not separated by judgment of court, they are her separate property, and she is empowered to sue to recover them in her own right unless she be under the age of 18 years (R. S., sec. 9: 102).

7. Liability for family support

The husband and wife owe to each other mutual fidelity, support, and assistance (C. C., art. 119). Fathers and mothers have, by the very act of marriage, contracted together the obligation of supporting, maintaining, and educating their children (C. C., art. 227).

If each spouse is separate as to property, that is, if by prenuptial agreement there is no community of property (C. C., arts. 2325, 2329, 2332, 2392, 2393), the debts contracted during the marriage enter into the partnership or community of gains and must be acquitted out of the common fund (C. C., art. 2403). If the wife contracts in her own name, on her own credit, intending to render her own separate estate liable for the debt, she is liable therefor (R. S., secs. 9: 101, 9: 102).

The wife who has obtained a separation of property under apprehension of loss of her property rights must contribute both to the household expenses and the education of the children in the proportion her fortune bears to that of her husband. If nothing remains to her husband, she is wholly liable for such expenses (C. C., art. 2435).

When a marriage agreement is made, unless other terms are specified for contribution, the wife contributes to the amount of one-half of her income from her separate property (C. C., art. 2395). If the wife

¹ *Alexius Bros. and Co. v. Brock* (1952), 58 So. (2d) 279.

² *Hollingquest v. Kansas City Southern Ry. Co.* (1950), 88 F. Supp. 905.

³ *Valence v. Louisiana Power and Light Co.* (1951), 50 So. (2d) 847.

has only paraphernal property and has reserved to herself the administration of it, she is expected to bear a proportion of the marriage expenses equal, if necessary, to one-half her income (C. C., art. 2389).

Dotal property is that which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment (C. C., arts. 2335, 2337, 2338). It is also called dowry and is to be clearly distinguished from dower, which does not exist in Louisiana. The income from it belongs to the husband and is intended to help him to support the expenses of the marriage, such as the maintenance of the husband and wife and of their children, as well as other expenses that he deems proper (C. C., art. 2349).

Extradotal or paraphernal property is that which forms no part of the dowry (C. C., arts. 2335, 2338).

Whenever a husband has left his wife in destitute or necessitous circumstances and has not provided her with means of support for 60 days, or when either parent shall have left his minor child, whether legitimate or illegitimate, in destitute or necessitous circumstances for 60 days, such conduct is presumptive evidence of the offense of criminal neglect of family, and such person is liable to fine, imprisonment, or both (R. S., sec. 14: 74).

8. Right of a married woman to engage in a separate business

No judicial proceeding is required if the wife engages in any commercial employment or business separate from her husband's business or trade. She may, without being empowered by her husband, obligate herself in anything relating to her trade. In such case, her husband is bound also if a community of acquets and gains exists between them (C. C., art. 131).

9. Rights of a married woman with respect to separate property

The property of married persons is classified as separate and community.

Separate property is that which either party brings into the marriage or acquires during the marriage with separate funds, or by inheritance, or by donation made to him or her particularly (C. C. art. 2334).

The separate property of the wife is divided into dotal and extradotal property.

With respect to her separate property, a married woman is fully relieved of all former disabilities and incapacities and is empowered to make contracts or to undertake obligations as freely as any person of either sex may do, whether married or unmarried. In no case shall any act, contract, or obligation of a married woman require the authority of her husband or of the court to give it validity (R. S., sec. 9: 101).

A married woman has capacity to sue and be sued or "otherwise appear in judicial proceedings, and to stand in judgment" without authority of her husband or the court (R. S., sec. 9:102).

She may become a surety or bind her property as security for the benefit of her husband or the community estate (R. S., sec. 9:103).

A married woman may not exercise any of these powers until she reaches the age of 18 years (R. S., sec. 9:104).

It is expressly provided that none of these powers relate to the matrimonial community property (R. S., sec. 9:105).

If the dowry consists of immovables, or movables not valued by the marriage contract, or valued with declaration that valuation is not intended to divest the wife of her property rights, the husband or his heirs may be compelled to restore them to the wife or her heirs on dissolution of the marriage (C. C., art. 2367).

10. Property acquired by joint efforts of husband and wife

Common property, or community property, is that which is acquired by the husband and wife during marriage in any manner different from the sources described under separate property (C. C., art. 2334). It consists of the profits of all the effects of which the husband has the management and enjoyment, the produce of the reciprocal industry and labor of both husband and wife, and of the estate which they may acquire during the marriage, as defined by statute (C. C., art. 2402).

The husband is the head and master of the partnership or community of gains; he administers its effects, disposes of the revenues which they produce, and may alienate them "by an onerous title," without the consent and permission of his wife. He can convey immovables of the community, or all or part of the movables, without valuable consideration, for the establishment of the children of the marriage, but not otherwise, except under certain statutory conditions. But upon satisfactory proof that the husband has disposed of the common property to defraud his wife, she may bring suit against her husband's heirs in support of her claim in one-half of the property (C. C., art. 2404).

The wife can convey community property only with the husband's authorization, and when the community property is in the wife's name, the husband must have her written consent to sell or mortgage it (C. C., art. 2334).

A married woman may act as mandatory, and her acts will bind the mandator and the person with whom she contracts, although she is not authorized by her husband. She may act as mandatory for her husband or for the community, when her husband authorizes the action (C. C., art. 1787).

During the marriage, if the wife finds her dowry in danger due to the mismanagement of her husband, or otherwise, or if the disorder of his affairs leads her to believe that her rights and claims in the community are in danger, she may petition the court for a separation of property (C. C., art. 2425). Such a separation of property can be effected only by court decree, after hearing all interested parties (C. C., arts. 2427-2434).

11. Damages for injury to person, property, or character

Damages resulting from personal injuries to the wife are not community property, but her separate property (C. C., arts. 2334, 2402). She sues in her own name, and the term "personal injuries" includes not only physical injury, but any injuries which are personal to the wife, as injuries to feelings, resulting from abuse, slander, or libel.⁴

Neither spouse can maintain a suit in damages for the alienation of the affections of the other. The court observes: "The best way to suppress such conduct [enticing the affections of another's spouse] * * * would be by means of a penal statute condemning both of the particeps criminis. A law that would allow * * * compensation in money for such a wrong would be revolting to a majority of men, and might tend more to encourage blackmail than to protect the home. It is not astonishing that the Civil Code makes no provision for such a right of action."⁵

12. Damages for injury by spouse to person or property

The court holds that the law does not permit wives to sue their husbands during marriage or to make contracts with them, except where specially provided for, because this would be destructive of the marriage status; and that an action by the wife for damages from the husband for her personal injuries resulting from his negligence could not be maintained.^{6 7}

13. Competency of husband or wife to testify for or against each other

Neither spouse may be compelled to testify against the other in any criminal proceeding.

Private conversations between husband and wife are privileged communications, and neither may be compelled to testify concerning them. (R. S., sec. 15: 461).

⁴ *Martin v. Derenbecker* (1906), 116 La. 495; 40 So. 849.

⁵ *Moulin v. Monteleone* (1928), 165 La. 169; 115 So. 447.

⁶ *Palmer v. Edwards* (1934), 155 So. 483; rehearing denied, 156 So. 781.

⁷ *Viguerie v. Viguerie* (1913), 133 La. 406; 63 So. 89.

One spouse may, but is not compelled to, become a witness for or against the other, in other respects than those stated in the two preceding paragraphs. (R. S., sec. 15:462).

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under the Uniform Reciprocal Support Act. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parenthood. (R. S., sec. 13:1672).

14. Right to dispose of separate property by will

The wife may make her last will without the authority of her husband (C. C., arts. 135, 1480) (R. S., sec. 9:101). Neither spouse can by will dispose of any greater interest in the community estate than his or her one-half therein.⁸

A testament is revoked by the birth of a legitimate child to the testator or by the subsequent adoption of a child by him (C. C., art. 1705).

15. Inheritance rights in deceased spouse's estate

When a marriage has been dissolved by death, the surviving spouse takes property according to the following rules:

Community property

The survivor, or his or her heirs, takes one of two equal parts of the community estate (C. C., art. 2406).

If the half owned by the deceased spouse was not disposed of by will, and he or she left neither father nor mother nor descendants, the surviving spouse takes this distributable share in full ownership. If the deceased left no descendants, but a father and mother or either, then this distributable share is divided in two equal portions, one of which goes to the father and mother or the survivor of them, and the other goes to the surviving spouse (C. C., art. 915).

If the deceased spouse dies intestate leaving issue of the marriage with the survivor, the living spouse is entitled to a usufruct for his or her life or until remarriage, in so much of the decedent's share in the community property as may be inherited by such issue (C. C., art. 916).

The husband or wife of an absentee who wishes to continue to enjoy the benefit of the community property may prevent the provisional possession or exercise of all rights which depend on death of the absentee, and claim and preserve for himself the administration of the estate. If the husband or wife of the absentee chooses to have the community dissolved, he or she may claim all rights if security is given for such things as may have to be restored. If the wife elects to have

⁸ *Succession of Haydel* (1938), 188 La. 646, 177 So. 695.

the community continued, the right of renunciation is retained (C. C., art. 64).

Separate property

When the deceased spouse has left neither lawful descendants, nor lawful ascendants, nor collateral relations, the surviving spouse inherits from the decedent as follows: The wife not legally separated from her husband inherits from him to the exclusion of any natural child or children duly acknowledged; but the husband not legally separated from the wife inherits from her only if she leaves no natural child or children by her duly acknowledged (C. C., arts. 917, 924, 925).

When the separate property of either spouse has been increased or improved during the marriage, the other spouse or his or her heirs are entitled to one-half the value of the increase or improvement, if it be proved that the gain is the result of the common labor, expenses, or industry. But there is no such division of gain if it is proved that the increase is due only to the ordinary course of things, to the rise in value of property, or the chances of trade (C. C., art. 2408).

The marital portion, or "marital fourth," is a right in the estate of the deceased spouse which accrues to the living spouse, in the absence of a dowry, if the husband or wife "die rich," leaving the survivor in necessitous circumstances. If there are no children, the living spouse takes one-fourth of the estate in full property; if the children number three or less, the right is still one-fourth, but only of the usufruct; if there be more than three children, the surviving spouse takes only a child's share in usufruct and is bound to include in this portion what has been left to him as a legacy by the deceased spouse (C. C., art. 2382).

A widow or minor children left in necessitous circumstances, not possessing in their own right property to the amount of \$1,000, shall be entitled to demand and receive from the succession of the deceased husband or father a sum sufficient to make up the difference between the \$1,000 limit and the amount of any property owned by them or any of them in their own right. During her widowhood the widow has, and enjoys the usufruct of, this amount received by her from her husband's succession, but the amount afterward vests in and belongs to the children or other descendants of the deceased husband. This amount must be paid in preference to all other debts, except those secured by the vendor's privilege on both movables and immovables, conventional mortgages, and expenses incurred in selling the property (C. C., art. 3252).

The statutes of inheritance recognize no primogeniture nor distinctions because of sex in the same degree of kin (C. C., art. 893).

16. Provision for survivors during administration of estate

Whether the wife accepts or renounces the community division of marital property during the time allowed for her to make an inventory and deliberate, as provided by statute (C. C., arts. 2410, 2413), she is entitled to a moderate allowance from such property for the maintenance of herself and household, and to the rent-free use of a residence belonging to the community (C. C., art. 2422). (See number 15.)

The wife's linen or clothes are not included in the inventory of the community estate. She has a right to take them without any formality (C. C., art. 2416).

A bank may pay to the surviving widow of a depositor up to \$500 of the decedent's deposits or deposits of the community, without court authorization (R. S., sec. 9:1513).

17. Right of husband or wife to disinherit the other by will

There is no statute which empowers a surviving spouse to reject the will of a deceased husband or wife, when its provisions are unsatisfactory.

The wife and her heirs or assigns have the right to free themselves from the community debts contracted during marriage by renouncing the partnership or community of gains. A wife who renounces loses every sort of right to the community gains, but she takes back all her effects, whether dotal or extradotal. A wife who has taken an active concern in the effects of the community may not renounce the same (C. C., arts. 2410-2412).

Marriage and Divorce

18. Age of consent to marriage

At 21 years of age, both men and women may marry without consent of parents or tutor (C. C., art. 37). Such consent is necessary between the ages of 18 and 21 for males, and 16 and 21 for females (C. C., art. 97). Males under 18 and females under 16 are forbidden to marry unless permission is obtained of the district court as provided by statute (C. C., art. 92).

19. Common-law marriage

Marriages are recognized by law only when contracted and solemnized according to the rules which it prescribes (C. C., art. 88).

Common-law marriages may not be contracted under the laws of Louisiana.⁹

⁹ *Franzen v. E. I. du Pont de Nemours & Co.* (1943), 51 F. Supp. 578, affirmed, C. C. A., 146 F. (2d) 887.

20. Premarital requirements

All persons who apply for license to marry must have a physical examination within 7 days prior to such application, as provided by law; and license may be issued only to such persons who file with the license officer a proper certificate showing that they are free from venereal diseases as nearly as can be determined by thorough examination and recognized scientific tests, if such tests are deemed necessary by the examining physician (R. S., sec. 9:241-9:245).

It shall be unlawful for any minister or public officer to perform a marriage until a period of 72 hours has elapsed after issuance of marriage license (R. S., sec. 9:203). This waiting period is not required if there is attached to the license a certificate from the judge of the district court certifying that in his opinion meritorious reasons exist for the immediate performance of the marriage (R. S., sec. 9:204).

21. Interstate cooperation in marriage-law enforcement

No marriage may be contracted in this State by a person residing and intending to continue to reside in another jurisdiction if such marriage would be void in such place of residence, and any such marriage in this State is held null and void (R. S., sec. 9:222). Louisiana will recognize a marriage contracted elsewhere if valid where it was solemnized and if such marriage does not violate the public policy and good morals of this State.¹⁰

If any person residing and intending to continue to reside in the State who cannot contract a valid marriage under State law goes outside the State and there contracts a marriage prohibited and void, the marriage is null and void for all purposes (R. S., sec. 9:221).

22. Annulment

No marriage is valid to which the parties have not freely consented. Consent is not free when (a) given to a ravisher, unless the party ravished has been restored to enjoyment of liberty at time of consent; (b) extorted by violence; (c) there is a mistake respecting the person whom one of the parties intended to marry (C. C., art. 91).

Marriages may be annulled on the grounds of duress or force in obtaining consent to marriage, bigamous marriage, prohibited degrees of kinship, or prohibited interracial marriages (C. C., arts. 91, 93-95, 110). A marriage which has been declared null, even if it was contracted in good faith, produces nevertheless its civil effects as it relates to the parties and their children (C. C., art. 117).

¹⁰ *Succession of Gabisso* (1907), 119 La. 704, 714; 44 So. 438; 121 A. S. R. 529.

If only one of the parties acted in good faith, the marriage produces its civil effects only in his or her favor and in favor of the children born of the marriage (C. C., art. 118).

The marriage of minors contracted without consent of the parents cannot for that cause be annulled; but such want of consent shall be a valid cause for the father and mother to disinherit their child (C. C., art. 112).

23. Divorce

Separation from bed and board may be granted either party on ground of: (a) Adultery; (b) conviction of felony and sentence to death or to imprisonment at hard labor in State or Federal penitentiary; (c) habitual intemperance or excesses, cruel treatment, or outrages toward the other if such intemperance or ill treatment is of such a nature as to render their living together insupportable; (d) public defamation toward the other; (e) abandonment; (f) attempt by one on life of other; (g) flight from justice upon charge of felony.

Intentional nonsupport by husband of wife who is in destitute or necessitous circumstances constitutes ground for a separation from bed and board by the wife (C. C., art. 138).

Absolute divorce may be granted to either party for one of the following causes: (a) Adultery; (b) conviction of felony and sentence to death or imprisonment at hard labor (C. C., art. 139); or (c) after judgment of separation from bed and board has been rendered, and 1 year has passed, and no reconciliation has taken place (R. S., sec. 9:302) (C. C., art. 139).

Divorce from bed and board does not dissolve the bonds of matrimony, since the husband and wife are not at liberty to marry again; but it puts an end to their conjugal cohabitation (C. C., art. 136). Absolute divorce dissolves the bonds of matrimony and places the parties in the same situation with respect to each other as if they had not been married (C. C., art. 159).

“A wife who is a party to divorce is not at liberty to contract another marriage until 10 months after the dissolution of her preceding marriage.” (C. C., art. 137).

In case of divorce on account of adultery, the guilty party may never contract marriage with his or her accomplice in adultery, under penalty of being prosecuted for bigamy (C. C., art. 161).

In cases of separation from bed and board, the party losing the suit shall lose all advantages or settlements the other party may have conferred by the marriage contract or since, and the party at whose instance the separation has been obtained shall retain all such rights (C. C., art. 156).

Separation or divorce shall not deprive children of the marriage of any advantages secured to them by law or by the marriage contract of their father and mother (C. C., art. 158).

If custody of children is claimed by both parents, custody shall be granted to the mother pending suit, whether she is plaintiff or defendant, unless there are strong reasons to deprive her of it, the decision being left to the discretion of the judge (C. C., art. 146).

In all cases of separation and divorce, the children shall be placed under the care of the party obtaining the decree, unless the judge shall order the children entrusted to the care of the other party because of the greater advantage to them (C. C., art. 157).

Alimony and maintenance

If the wife has not sufficient income for maintenance pending suit for separation or divorce, court may allow a sum for her support, proportioned to her needs and to means of her husband (C. C., art. 148). On granting a divorce, the court may allow wife alimony out of property and earnings of her husband not to exceed one-third of his income. Alimony is revocable if the wife contracts a subsequent marriage (C. C., art. 160).

From the day on which action of separation is brought, it is unlawful for the husband to contract any debt on account of community property or to dispose of community property, and any alienation made after that time is null if it is proved that it was made with fraudulent intent to injure wife's rights (C. C., art. 150).

Parents and Children

24. Parents' right to services and earnings of a minor child

Fathers and mothers during marriage have the enjoyment of the estate of their children until the children are of age or are emancipated from parental control (C. C., art. 223). This usufruct shall not extend to any estate which the children may acquire by their own labor and industry (C. C., art. 226).

25. Guardianship of a minor child

A child remains under the authority of his father and mother until his majority or emancipation from parental control. In case of difference between the parents, the authority of the father prevails (C. C., art. 216). The authority of the father over his children is superior to that of the mother so long as they may reside together as husband and wife.¹¹

¹¹ *State v. Elliott* (1930), 171 La. 306, 311; 131 So. 28.

During the marriage the father is administrator of the estate of his minor children; but in the event of his mental incapacity or absence, the mother is such administrator, provided the spouses are not separated by court decree (C. C., art. 221).

If the mother remarries, her administration over the children cannot continue except with the consent of relatives or friends of the father through a family meeting (C. C., art. 82).

If the father of minor children has disappeared, the mother shall take care of them and exercise all rights of her husband with respect to their education and the administration of their estate (C. C., art. 81).

The father, or after his death, the mother, is responsible for the damage occasioned by minor or unemancipated children residing with them or placed by them under the care of other persons, reserving to them recourse against those persons. The same responsibility attaches to the tutors of minors (C. C., art. 2318).

26. Appointment of testamentary guardian for a minor child

The right to appoint a guardian or tutor by will belongs exclusively to the parent dying last (C. C., arts. 250, 257); but "if one of two parents be an interdict or notoriously insane" the other parent has the right to appoint a tutor to his or her minor children (R. S., sec. 9:601).

27. Inheritance—child

If a person dies leaving no descendants, but a father and mother and brothers and sisters or descendants of brothers and sisters, the estate is divided into two equal portions. One of these portions goes to the father and mother, who divide it equally between them; the other goes to the brothers and sisters of the deceased or their descendants, as prescribed by law (C. C., art. 903). If one parent has predeceased the person dying without issue, the portion of the estate which would have been inherited by such deceased parent will go to the brothers and sisters of the deceased child or to their descendants (C. C., art. 904).

28. Child born out of wedlock

Under Louisiana law a bastard is an illegitimate child not acknowledged by its father, or whose father and mother were incapable of contracting marriage at the time of conception, or whose father is unknown. Illegitimate children who have been acknowledged by their father are called natural children (C. C., art. 202).

A child born out of wedlock may be legitimated by the subsequent marriage of his father and mother, or by a declaration of intention

to legitimate the child by his father or mother before a notary and two witnesses. The notarial act of legitimation may be performed only by parents who were capable of contracting marriage at the time of conception and who do not have living legitimate ancestors or descendants (C. C., arts. 198, 200, 203) (R. S., sec. 9:391).

Fathers and mothers owe support to their illegitimate children when they are in need (C. C., art. 240). The obligation for support ends when the child becomes able to support himself (C. C., art. 243).

The mother or her ancestors are obligated to support adulterous and incestuous children (C. C., art. 245).

If legally acknowledged by one or both parents, an illegitimate child may sue his parents for support and education. He has the right to prove his filiation in court. Need for such support must be proved. An illegitimate child may sue the heirs of his parent or parents for support (C. C., arts. 230, 241, 242).

A natural child succeeds to the estate of his mother when legally acknowledged by her, if she has left no lawful children or their descendants. If there are lawful children or descendants, natural children are entitled only to a moderate alimony (C. C., art. 918).

A natural child succeeds to the estate of his father if he has been acknowledged, in the absence of his father's surviving wife, descendants, ancestors, or collateral relatives (C. C., art. 919).

A bastard, adulterous, or incestuous child may not inherit the estates of his natural father or mother; the law allows him a mere alimony (C. C., art. 920).

A child legitimated by marriage of the parents following its conception takes only those successions which are opened subsequent to the marriage of the father and mother (C. C., art. 954).

29. Inheritance—child born out of wedlock

If a child born out of wedlock dies without posterity, and the mother alone has made legal acknowledgment of such child, she inherits all of its estate. If both mother and father have acknowledged the child, each parent takes half of the estate (C. C., art. 922).

POLITICAL RIGHTS

30. Domicile of a married woman

A married woman has no other domicile than that of her husband (C. C., art. 39). She must go wherever he goes to reside (C. C., art. 120).

31. Public office—eligibility of women

Women are eligible for public office (Const., art. 8, secs. 1, 3; art. 22, sec. 1, subsec. 9) (C. C., art. 25) (R. S., sec. 9: 51).

32. Jury service—eligibility of women

A woman may serve as juror provided she has filed with the clerk of the district court, prior to the drawing of jurors, a written declaration of her desire to be subject to such service (Const., art. 7, sec. 51) (R. S., secs. 15: 172, 15: 17.2, 9: 101).