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The Legal Status of Women in the United States of America

January 1, 1948

REPORT FOR

MAINE

*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. 157-18 (Revised)

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

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

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

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

LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, October 19, 1948.

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

LETTERS OF TRANSMITTAL

Enclosed for the Board of Directors
of the Federal Reserve Bank of St. Louis

The following report of the Board of Directors
of the Federal Reserve Bank of St. Louis
for the year ending December 31, 1914,
is hereby transmitted to the Board of Directors
of the Federal Reserve Bank of St. Louis
for their consideration and approval.
Very respectfully,
The Board of Directors

James S. Miller, Vice President
The Federal Reserve Bank of St. Louis
St. Louis, Missouri

CONTENTS

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

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

II.—MARRIAGE AND DIVORCE

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

v

III.—PARENTS AND CHILDREN

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

B.—POLITICAL RIGHTS

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

THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

INTRODUCTION

Any conclusion bearing on a 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.

MAINE

SOURCES

Constitution of Maine.
Revised Statutes of Maine, 1944.
Session Laws, 1945, 1947.
Maine Reports.
Atlantic Reporter.

EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of section numbers following the abbreviation Const., as (Const., sec. 177), placed after the related subject matter.

References to the Revised Statutes of Maine appear in parentheses, showing chapter and section, as (ch. 74, sec. 3).

Session Laws are referred to by year of enactment and chapter, as (1945, ch. 76).

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."

MAINE

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

In the absence of express definition, other than prescribing the voting age as 21 years and over (Const., art. II, sec. 1) (ch. 3, sec. 2), the common-law rule of 21 years for both sexes governs generally. But see Number 2.

2. Contractual Powers of Minors.

A married woman, of any age, may own in her own right real and personal estate acquired by descent, gift, or purchase; and may manage, sell, convey, and devise the same by will, without the joinder or assent of the husband; but such conveyance without the joinder or assent of the husband does not bar his right and interest by descent in the estate so conveyed (ch. 153, sec. 35). Under this statute the sale of real estate by a married infant is not voidable on the ground of infancy.¹

The contracts of single women who are minors are good only if ratified by them when they attain majority, unless the contract be for necessities, or real estate of which the minor has received the title and retains the benefit (ch. 106, sec. 2).

¹ *Fields v. Mitchell* (1914), 112 Me. 368, 370; 92 Atl. 293. (H st.)

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

The exemption of personal property is in general terms. No construction has been found as to whether such exemption applies to women as well as men (ch. 99, sec. 67).

The homestead exemption is to "a householder in actual possession" (ch. 99, sec. 68). No specific interpretation of the term "householder" has been found, as to whether the right accrues to a married woman where the husband has not claimed the exemption. However, the court has observed in another connection that the statute of exemption is to be construed with reference to the situation and vocation of the "owners of property," and the evident object of the provision is that "persons should not be deprived of the simple means by which they gained a livelihood in their respective vocations."¹

¹ *Files v. Stevens* (1891), 84 Me. 84; 24 Atl. 584.

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

A woman having property is not deprived of any part of it by her marriage (ch. 153, sec. 36).

5. Contractual Powers of Married Women.

A married woman may contract with reference to her separate estate (ch. 153, secs. 35–38, 40). This power has been construed to include contracts with her husband. She may enforce her legal contract against a stranger to the same extent as though she were unmarried, but she is likewise liable personally on such contracts. She may not enforce such a contract against her husband by an action at law, nor is she, on the other hand, liable to her husband in an action at law on account of such contract. However, the equity courts will entertain suits founded on this statutory contract right.¹

A wife cannot make a valid conveyance, without the joinder of her husband, of any real estate which he has directly conveyed to her, except real estate conveyed as security or in payment of a debt actually due her by her husband (ch. 153, sec. 35).^{2 3}

Nor can she enter into a partnership contract with her husband.⁴

¹ *Perkins v. Blethen* (1911), 107 Me. 443, 446; 78 Atl. 574.

² *Gato v. Christian* (1914), 112 Me. 427, 430; 92 Atl. 489.

³ *Perkins v. Morse* (1885), 78 Me. 17; 2 Atl. 130.

⁴ *Haggett v. Hurley* (1898), 91 Me. 542; 40 Atl. 561. (Hist.)

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

A wife may receive the wages of her personal labor, not performed for her own family, maintain an action therefor in her own name, and hold them in her own right, against her husband or any other person (ch. 153, sec. 37).

But the wife may not sue her husband directly for services performed by her for him,¹ nor can an assignee of her claim maintain such a suit.²

¹ *Mott v. Mott* (1911), 107 Me. 481, 483; 78 Atl. 900.

² *Perkins v. Blethen* (1911), 107 Me. 443, 448; 78 Atl. 574.

7. Liability of Married Woman for Family Necessaries.

A wife is liable for necessaries purchased in her own name (ch. 153, sec. 38).

NOTE.—This section of the statute provides that suit may be maintained against a married woman, and her property held liable for debts and damages as if she were single, but she cannot be arrested. The court construes this to mean that she shall not be liable to arrest, commenting that this provision is for the benefit of women, and for the benefit of organized society in that the protection of wives and mothers from such harassment is essential to maintaining the home in integrity, as the beginning and the end of all government.¹

The support of a neglected wife and children is compulsory, and remedies are provided for violation of this law (ch. 153, sec. 43) (1947, ch. 369).

¹ *Bragg v. Hatfield* (1925), 124 Me. 391, 392; 130 Atl. 233.

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

No judicial proceeding is requisite for a married woman to engage in a separate business (ch. 153, secs. 35–39).

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

Certain exceptions exist in the statute declaring the rights of married women to hold and dispose of their property: The husband must join in conveying any real estate which he had conveyed directly to her unless he so conveyed it as security or satisfaction for debt to her. And when payment was made from the property of her husband for property so conveyed to her, or when it was conveyed by him to her without a valuable consideration, it may be taken as the husband's property to satisfy debts contracted before such purchase (ch. 153, sec. 35).

A married woman may release to her husband the right to control her property or any part of it, and to dispose of the income for their mutual benefit, and she may in writing revoke such release (ch. 153, sec. 36).

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

The court has held that though a woman assists her husband in his business, even in caring for money which is the product of their joint labor, this does not make any part of the money her property; that the enabling statutes (Married Women's Act) do not absolve a wife from the duty to render to her husband such services in his household as are commonly expected of a married woman in her station of life.¹

¹ *Mott v. Mott* (1911), 107 Me. 481; 78 Atl. 900. *Holmes v. Vigue* (1934), 133 Me. 50; 173 Atl. 816.

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

A wife may sue in her own name at law to protect her personal and property rights against injury by others than her husband. See Number 12.

She also is empowered by statute to maintain an action for damages against a "female person more than 18 years of age" who alienates the affections of the plaintiff's husband and deprives her of his "aid, comfort, and society," if the suit is brought within 3 years of the discovery of the offense (ch. 153, sec. 41).

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

The statute authorizes a wife to "prosecute and defend suits at law or in equity, either of tort or contract, in her own name, without the joinder of her husband, for the preservation and protection of her property and personal rights, or for the redress of her injuries, as if unmarried" (ch. 153, sec. 39). But the court rules that this statute refers only to actions by a married woman against third parties and not to those against her husband, holding that the common law has not been extended by the statute to permit the wife to sue her husband for his negligent injury to her.¹

¹ *Sacknoff v. Sacknoff* (1932), 131 Me. 280, and cases cited.

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

In criminal trials the husband or wife of the accused is a competent witness (ch. 135, sec. 22), either for or against the other.¹

The husband or wife of any party interested in a civil action may be a competent witness (ch. 100, sec. 115).

¹ *State v. Black* (1874), 63 Me. 210, 212.

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

A married woman or widow of any age, if of sound mind, may dispose of her real and personal estate by will (ch. 155, sec. 1).

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

Of real estate owned by an intestate spouse at death or during marriage, the right to which has not been relinquished by the surviving spouse, the survivor takes absolutely one-third part if children also survive. (This one-third descends free from payment of debts.) If no issue survive, the living spouse takes one-half, and if no kindred, such spouse takes the whole (ch. 156, sec. 1, subsec. I).¹

The personal property of an intestate, except that portion assigned to his widow by law and by the judge of probate as an allowance, is applied first to payment of debts of the deceased and expenses of administration. The remaining portion is then distributed according to the rules for real-estate descent, described above (ch. 156, sec. 20).²

Money received for life insurance on the life of an intestate spouse, less the preceding 3 years' premiums with interest, is not subject to debts if a spouse or children survive. In this case, the living spouse takes one-third the proceeds, or if no children survive, the entire proceeds (ch. 156, sec. 21; ch. 141, sec. 62, subsec. IV).

¹ *Longley v. Longley* (1899), 92 Me. 395; 42 Atl. 798.

² *Fogg's Estate* (1909), 105 Me. 480; 74 Atl. 1133.

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

There is allowed to the widow so much of the personal estate, including wearing apparel, of an intestate spouse or of an insolvent estate, as the court considers necessary according to the family's need and social station (ch. 141, sec. 62, subsecs. I, II) (ch. 143, sec. 14).

Upon the death of a wife whose estate is solvent, the court may make an allowance to her husband from her personal estate, in the same manner as to a widow from the estate of her husband (ch. 143, sec. 19).

A widow is allowed her reasonable sustenance from her husband's estate and rent-free occupancy of his house for a 90-day period following his death (ch. 143, sec. 17).

Also, exempted premises may be occupied by the widow during her widowhood and by the decedent's children during their minority (ch. 99, sec. 71).

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

Instead of the provision in the will, either spouse who survives may elect to take his or her statutory share under distribution of the real and personal estate (ch. 156, secs. 13-14).

The share of the surviving spouse is reduced to one-half the estate when he or she rejects the will or is not provided for by the will and no kindred of the deceased spouse survive (1945, ch. 76).

II.—MARRIAGE AND DIVORCE

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

Men at 21 and women at 18 years may marry without parental consent. No certificate of record of intentions may be issued to a man under 21 or to a girl under 18 without the written consent of their parents or guardians, if any living.

Nor may such certificate be issued to persons under 16 years of age without their parents' or guardians' written consent, and without the clerk's notification in writing to the probate judge in the county of the parties' residence, that such statement of intentions has been filed. The judge may, in the interest of public welfare, order that no such certificate shall issue (ch. 153, sec. 5). Under the common-law rule, which has not been abrogated by statute, males at 14 and females at 12 years may be lawfully married.¹

¹ *Hiram v. Pierce* (1858), 45 Me. 367, 371.

19. Validity of Common-Law Marriage.

There is no express provision in the statute as to recognition or abrogation of common-law marriages. However, a penalty of \$100 is laid for contracting a marriage contrary to the statutory requirements for formal proceedings (ch. 153, sec. 5). Residents of the State intending to be joined in marriage must cause notice of their intention to be recorded in the office of the clerk of the town in which each resides, at least 5 days before a certificate of such intentions is granted (ch. 153, sec. 4). The statute does not declare void a marriage contracted in violation of these provisions. Note the judicial policy followed in *Hiram v. Pierce* (1858), 45 Me. 367, 371, upholding the validity of a marriage between minors without parental consent, in the absence of a statute declaring such a marriage void.

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

Each applicant for license to marry must file prescribed evidence that within the 30-day period immediately preceding the application, he or she has had a physical examination, including a standard blood test, as required by the bureau of health for the discovery of syphilis, and that in the opinion of the examining physician the applicant is not infected with syphilis or, if so infected, is not in a stage of that disease whereby it may become communicable.

Each applicant whose first test appears to indicate infection is entitled to have at least 3 tests, of which not less than 2 indicate syphilis infection.

Exception may be granted because of emergency or for other good cause by authority of a designated court, acting on joint application of the parties and evidence submitted (ch. 22, secs. 107-115).

21. Interstate Cooperation in Marriage Law Enforcement.

If residents of Maine have their marriage solemnized elsewhere in order to evade the statutory provisions declaring marriages void

because of kinship, insanity or idiocy, or polygamy, and later return to reside in Maine, the marriage is void (ch. 153, sec. 9).

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

Marriages prohibited because of kinship, insanity, idiocy, or polygamy, if solemnized within the State are absolutely void; and the sentence of either party to imprisonment for life and confinement under it dissolves the bonds of matrimony without special judicial proceedings in either case (ch. 153, sec. 51). However, the statute provides that when the validity of a marriage is in doubt, either party may file a libel as for divorce; and the court shall decree it annulled or affirmed according to the proof. Such a decree does not affect the rights of the party complained against unless he was personally notified to answer, or did answer to the libel (ch. 153, sec. 52). See also Number 18.^{1 2}

¹ *Unity v. Belgrade* (1884), 76 Me. 419, 422.

² *Winslow v. Troy* (1902), 97 Me. 130, 132; 53 Atl. 1008.

23. Grounds for Divorce—Respective Availability to Spouses.

The injured party may be granted an absolute divorce for any of the following causes: Adultery, impotence, extreme cruelty, utter desertion for 3 consecutive years immediately preceding the filing of the petition, gross and confirmed habits of intoxication from use of liquors or drugs, or cruel and abusive treatment.

A wife may be granted an absolute divorce from her husband who, though sufficiently able to provide suitable maintenance for her, grossly or wantonly and cruelly refuses or neglects to do so (ch. 153, sec. 55).

III.—PARENTS AND CHILDREN

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

The father and mother are the joint natural guardians of their minor children and are jointly entitled to the care, custody, control, services, and earnings of such children, and neither parent has any rights paramount to the rights of the other with reference to any matter affecting such children (ch. 153, sec. 16).

25. Guardianship of Minor Children—Parent's Respective Rights.

See Number 24 and references.

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

If the minor is under 14 years of age, a guardian named by the deceased father in his will, or by the deceased mother in her will when the father died without making a nomination, will be appointed by the court, if a suitable person (ch. 145, sec. 2). But such a guardian takes charge of the minor's estate only; the care of the person and his education rests with the surviving parent, if competent (ch. 145, sec. 3).

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

Parents inherit equally from their deceased intestate child (ch. 156, sec. 1, subsecs. III, IV, and V; sec. 20).

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

If sufficient proof is presented in a bastardy proceeding to convince a jury of the father's identity, he is adjudged responsible for, and charged with, the maintenance of the child, with the assistance of the mother, as the court orders. Bond for the father's performance of the court's decree is required (ch. 153, secs. 23-29).

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

The right of the mother of a child born out of wedlock to inherit from it is the same as if the child were legitimate (ch. 156, sec. 3).¹

¹*Messer v. Jones* (1896), 88 Me. 349, 355, 356; 34 Atl. 177.

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

Husband and wife may have separate residence for voting, office-holding, or jury service (ch. 3, sec. 4).

31. Public Office—Eligibility of Women.

The statute provides that no citizens of the United States having a right to vote in this State may be denied the right to hold any civil office under this State or any subdivision thereof on account of sex (ch. 3, sec. 3).

Historic interest attaches to requested Opinions of the Supreme Judicial Court Justices on this point, found in 62 Maine 596, rendered 1874, and in 119 Maine 605, rendered 1921.

32. Jury Service—Eligibility of Women.

Jury commissioners are charged with the duty of preparing a list of persons deemed by them qualified for jury service, and it is provided that the list "shall contain such a number of names of persons, male and female, qualified for jury service as the commissioners shall deem necessary." Selection of persons for jury service is to be based on their mental, moral, and physical fitness. Persons rejected by the commissioners are ineligible for at least 3 years. Commissioners may drop from the list names of persons who, by reason of age, infirmity, other disability, or death, could not reasonably be expected to serve as jurors if called (ch. 103, secs. 2, 3).