UNITED STATES DEPARTMENT OF LABOR

MAURICE J. TOBIN, Secretary

WOMEN'S BUREAU

FRIEDA S. MILLER, Director

The Legal Status of Women in the United States of America

January 1, 1948

REPORT FOR

MISSISSIPPI

Individual State material, constituting part of a compilation to show the present legal status of women in the United States of America

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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, May 6, 1949.

SIR: I have the honor to transmit to you a revised report on the legal status of women in Mississippi. 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 L. Buchanan, Attorney, aided by Mary L. Sullivan, Associate Economist, and Elizabeth Batson, Editorial Assistant, all of the Bureau staff.

Respectfully submitted.

FRIEDA S. MILLER, *Director.*

Hon. MAURICE J. TOBIN,
Secretary of Labor.

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

INTRODUCTION

Any conclusion bearing on woman's status under the laws of the United States of America must take into account the common law, on which the fabric of the Nation's jurisprudence is woven.

The common-law rules of property sprang from various causes, notably tradition, military or economic exigency, natural male dominance, and the social status of women. Shifts in these have effected an almost complete overturn in laws governing the property owned by a woman prior to her marriage and that coming into her individual ownership after her marriage, by gift, inheritance, will, or accumulation from her premarital possessions.

In general, it has been the rule that where specific statutes abrogating common-law principles have not been enacted, the common law applies. In the century just past, many of the old common-law injustices to women have been removed by statute. The largest remaining area to be reformed to the present-day trend lies in the matter of ownership and control of property acquired by the cooperative efforts of husband and wife after marriage.

The material considered centers largely around the woman in the marriage relation, since the legal status of the unmarried woman is practically identical with that of the unmarried man, with the exception of the discrimination in some States which bars women from jury duty; or of distinctions, such as variance between men and women in the statutory age of majority or age of consent to marriage.

MISSISSIPPI

SOURCES

Constitution of Mississippi.
Mississippi Code, Annotated, 1942.
Mississippi Reports.
Southern 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.

Code section references likewise are in parentheses, thus (sec. 366), or (1933 Supp., sec. 1755).

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."

MISSISSIPPI

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

The age of majority is 21 years for both sexes (secs. 681, 684).

2. Contractual Powers of Minors.

A child under 21 years of age is incapable of contracting, except for necessaries.[1]

A minor may petition the chancery court as provided by statute, and if the court upon hearing determines such action to be for the minor's best interests, a decree may be made removing minority disabilities either in part or altogether, as the case may require (secs. 1264–1268).[2]

[1] *Greene* v. *Greene* (1926), 145 Miss. 87, 112; 110 So. 218.
[2] *McLeiter* v. *Rackley* (1927), 148 Miss. 75, 88; 114 So. 128.

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

Personal Property.

Personal property exemptions, as enumerated in the statutes, appear to apply generally to either men or women. This class of exemptions includes clothing, household furnishings, implements and equipment necessary in obtaining a livelihood, designated quantities of provisions, and wages to the amount of $50 a month earned by the head of a family (sec. 307); also, life insurance proceeds up to $10,000, payable to specific beneficiaries, exempt from debts of the insured (sec. 308), life insurance payable to the estate of the insured, to the amount of $5,000, subject to premiums paid by others and expenses of last illness and burial, exempt to heirs of the insured (sec. 309), and judgments for personal injuries up to the amount of $10,000, exempt to the party or parties in whose favor rendered, from debts of the injured person (sec. 311).

Homestead.

Every citizen, male or female, who is a householder and has a family, is entitled to hold exempt the property owned and occupied as a residence by such person, also the proceeds of any insurance on the property not exceeding $3,000; and personal property to be selected by him or her up to $250 value, or the articles specified by statute as exempt to the head of a family, excluding wages, salaries, or commissions. Husband or wife, widower or widow, over 60 years of age, who has been an exemptionist under this law does not lose the exemptions because of not having a family or not occupying the homestead (secs. 317, 318).

Widow's Privilege.

A widow enjoys a superior right compared with a surviving husband in that she has the exclusive use during her widowhood of her husband's exempt property, real and personal, so long as she either occupies or uses it. It cannot be divided among the heirs, or sold for such division during her widowhood, unless she consents to the proceeding (sec. 478).

The object of the statute is to provide a home and a means of support for the widow to prevent her becoming a public charge or a wanderer without livelihood or abode. She need not physically occupy the property, but her right continues so long as the income from the property is used for her support.[1] [2]

For descent of exempt property see Number 15.

[1] *Tiser* v. *McCain* (1917), 113 Miss. 776, 785; 74 So. 660.
[2] *Miers* v. *Miers* (1931), 160 Miss. 746, 752; 133 So. 133.

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

The property owned by a woman prior to her marriage continues to belong to her after marriage (sec. 451).

5. Contractual Powers of Married Women.

Married women have been emancipated from the disabilities of coverture and may contract as if unmarried (Const., sec. 94).

A married woman has the same capacity to acquire, hold, manage, control, use, enjoy, and dispose of all property, real and personal, and contract concerning it; to bind herself personally, and to sue and be sued, with all incident rights and liabilities, as if she were unmarried (sec. 451). But husband and wife may not contract for the services of each other for compensation (sec. 454).

The reason for the statute is that men and women living together as husband and wife can so easily, on account of their relation to each other, "concoct contracts for work and labor" between themselves to the hurt of the public that deals with or is interested financially in them.[1]

Neither spouse may convey the homestead, or any interest in it, during the marriage, without the joinder of the other, unless the other be adjudged insane (secs. 330, 332).

[1] *Martin* v. *First National Bank of Hattiesburg* (1936), 176 Miss. 338, 353; 164 So. 896.

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

A married woman is considered on equality with her husband as to her right to own property, and earn money by her own labor.[1]

The legislature may never create by law any distinction between the rights of men and women to acquire, own, enjoy, and dispose of property of all kinds, or their power to contract in reference thereto. Married women are fully emancipated from all disability on account of coverture (Const., sec. 94).

Marriage does not impose any disability or incapacity on a woman as to the ownership, acquisition, or disposition of property of any sort, or as to her capacity to make contracts and do all acts in reference to property which she could lawfully do if she were not married.

She may sue regarding her separate property as if she were unmarried (sec. 451).

[1] *Mississippi Central R. R.* v. *Smith,* (1936), 176 Miss. 306; 168 So. 604.

7. Liability of Married Woman for Family Necessaries.

A wife is liable for family necessaries if she has made a specific contract to pay for them (sec. 451).[1] [2]

[1] *Skehan* v. *Davidson Co.* (1933), 164 Miss. 518; 145 So. 247.
[2] *East* v. *King* (1900), 77 Miss. 738; 27 So. 608.

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

No judicial proceeding is necessary to allow a married woman to engage in business on her own account.

See Numbers 5 and 6.

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

The wife may permit the husband to use the income or profits from her separate estate or to use her estate in the support and maintenance of the family; but should he otherwise receive and appropriate such property to his own use, he is debtor to his wife and legally accountable to her, if she makes claim within 1 year from the date he appropriated it (sec. 456).

All business done with the means of the wife by the husband shall be deemed and held to be on her account and for her use, and by the husband as her agent and manager in business, as to all persons dealing with him without notice, unless the contract between the spouses changing this relation be evidenced by writing, subscribed by them, duly acknowledged, and filed with the chancery clerk of the county where such business may be done, to be recorded as other instruments (sec. 454).

See Number 5.

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

Property acquired by the cooperative efforts of both spouses after marriage belongs to the husband, by operation of common law, in the absence of a valid private arrangement to the contrary, such as joint deeds, joint bank accounts, and the like.

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

A wife may sue and recover damages in her own name for her personal injuries (sec. 451). The husband is entitled also to sue for loss of consortium of his injured wife.[1] But a wife has no corresponding right of action for loss of consortium through negligent injury to her husband,[2] though the court implies that she does have such a right in cases of a direct wrong to her, as for alienation of her husband's affections, or his enticement away from her.[2]

See Number 5.

[1] *Brahan* v. *Meridian L. and R. Co.* (1919), 121 Miss. 269, 291; 83 So. 467.
[2] *Nash* v. *Mobile and O. R. Co.* (1928), 149 Miss. 823, 832, 835; 116 So. 100.

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.

Neither husband nor wife can sue the other for personal torts.[1 2]

[1] *Austin* v. *Austin* (1924), 136 Miss. 61; 100 So. 591; 33 A. L. R. 1388.
[2] *McLaurin* v. *McLaurin Furniture Co.* (1933), 166 Miss. 180; 146 So. 877.

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

Husband and wife may be introduced by each other as witnesses in all cases, civil or criminal, and are competent witnesses in their own behalf, as against each other, in all controversies between them (sec. 1689).

This statute does not authorize one spouse to testify against the other except in controversies between them.[1]

[1] *Spencer* v. *O'Bryant* (1925), 140 Miss. 474, 478; 106 So. 6.

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

Every person of 21 years or over, male or female, married or unmarried, if mentally capable, has power to dispose of his or her property by will (sec. 657). See also Topic 17.

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

Dower and curtesy have been abolished (sec. 453). If either a husband or wife dies intestate, the entire estate, both real and personal property, descends to the surviving spouse when there are no children or descendants of children living; but when a child, or children, or their descendants survive, the living spouse takes a child's portion absolutely (secs. 470, 472).

Descent of Exempt Property.

The property, real and personal, exempted by law from sale under execution or attachment descends, on the death of the husband or wife owning it, to the survivor of them, and the children and grandchildren of the decedent, as tenants in common; if there are no descendants, then to the surviving wife or husband, except where the surviving spouse owns a place of residence equal in value to decedent's homestead, and decedent has no descendants of the last marriage but does have descendants of a former marriage. In such a case, the decedent's homestead does not descend to the living spouse, but to the issue of the former marriage (sec. 476).

Estates by the Entirety.

If a deed or will conveys or devises lands to a husband and wife together, with the intention clearly expressed that the right of survivorship continues to the living spouse upon the death of either, an estate by the entirety is created; but the purpose to set up such an estate must be shown unmistakably (sec. 834).

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

There is set aside for the widow and children, or widow if there are no children, the exempt personal property of a deceased husband (sec. 552). See Number 3. Also, for the widow and children being supported by the decedent there is set apart 1 year's provisions, including any which are embraced in the exempt property, or money sufficient to purchase them; funds to purchase necessary wearing apparel for 1 year; and money for 1 year's tuition for the children (sec. 561).

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

Either husband or wife surviving may renounce the will of the deceased spouse at any time within 6 months after it has been probated, if its provisions are unsatisfactory for him or her, but only if the separate property owned by such survivor does not equal in value the portion he or she would receive by law from the decedent's estate.

After renunciation of the will, the surviving spouse is entitled to the same portion of the estate as he or she would receive if the deceased had died intestate. The only exception to this is that if no child or its descendants survive, the living spouse shall receive only one-half the entire estate (secs. 668, 670). (Compare with Number 15.)

If no provision at all is made in the will for the living spouse, the same rule applies as if an unsatisfactory provision had been made; in such a case, no formal renunciation is necessary (sec. 669).

Where the surviving spouse owns separate property less in value than his or her lawful share in the decedent's estate, he or she may dissent from the will as if no separate estate were owned, and claim to have the deficiency made up to him or her notwithstanding the will.

The rule for making up this deficiency is laid down in the statute. But if the separate estate of the survivor is valued at less than one-fifth of the statutory share in the decedent's estate, he or she may renounce the will and elect to take the statutory share, as provided in section 668 (sec. 670).

A testator who leaves a spouse or descendants may not will more than one-third of his estate to religious or ecclesiastical bodies, either directly, or in trust, as specified by statute (Const., sec. 270; sec. 671).

II.—MARRIAGE AND DIVORCE

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

Males under 21, or females under 18 years of age, must show parental consent as provided by law before a license can be issued. Such consent must be under oath, and show the ages of the contracting parties (secs. 460, 461).

The statute does not affect the right of a minor under the age of 18 or 21 years, as the case may be, to consent to a marriage; that right remains as at common law [14 years for males; 12 years for females].[1]

[1] *Hunt* v. *Hunt* (1935), 172 Miss. 732, 744; 161 So. 119.

19. Validity of Common-Law Marriage.

A marriage good at common law is valid in this State (secs. 461, 465).[1] [2]

[1] *Jones* v. *Lamensdorf* (1936), 175 Miss. 565, 576; 167 So. 624.
[2] *Sykes* v. *Sykes et al.* (1932), 162 Miss. 487; 139 So. 853.

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

There is no provision for a health certificate prior to issuance of the license. But the clerk may not issue a license when either party is drunk, insane, or an imbecile.

A 5-day waiting period must elapse between the filing of the application for license to marry and the issuance of the license, unless the judge of the circuit court having jurisdiction grants an exception (sec. 461).

21. Interstate Cooperation in Marriage Law Enforcement.

The State follows the general rule that the law of the place where the contract is made governs in determining its validity.[1]

[1] *Carroll* v. *Renich* (1846), 15 Miss. (7 S. & M.), 798.

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

Prohibited degrees of kinship, non-age, prohibited interracial marriage, mental incapacity may be grounds for annulment (secs. 457–461).[1]

[1] *Parkinson* v. *Mills* (1935), 172 Miss. 784; 159 So. 651.

23. Grounds for Divorce—Respective Availability to Spouses.

The injured party may obtain a divorce for any one of the following causes: Impotency, adultery, sentence to the penitentiary without a pardon before beginning of the imprisonment, desertion for 2 years, habitual drunkenness, habitual drug habit, habitual cruelty, insanity or idiocy at time of marriage without knowledge of complainant, a wife or husband living at time of marriage, consanguinity, incurable insanity with continuing confinement in an institution for the insane for at least 3 years next prior to commencement of action.

The husband is entitled to a divorce if the wife was pregnant at time of marriage without his knowledge or agency (sec. 2735).

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 equally charged with their care, nurture, welfare, and education, and the care and management of their estates. The father and mother have equal powers and rights, and neither has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of such minor, or any other matter affecting the minor (sec. 399).

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

See Number 24.[1]

[1] *Sinquefield* v. *Valentine* (1931), 159 Miss. 144; 132 So. 81.

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

If either father or mother die or be incapable of acting, the guardianship devolves upon the surviving parent by operation of law (sec. 399). Hence only a surviving parent can appoint a guardian by will for his or her minor child.

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

The real and personal property not disposed of by will, of a decedent who dies without descendants, is divided in equal parts among the brothers and sisters and father and mother of the intestate (secs. 468, 472, 473).

The statute contemplates an intestate who leaves no surviving spouse.[1]

[1] *Aycock* v. *Aycock* (1919), 119 Miss. 641, 647; 81 So. 482.

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

If the paternity of the child be established, as provided by statute, the adjudged father may be required under bond and penalty of imprisonment to pay such damages as may be assessed by a jury in favor of the mother, or the child if the mother be dead. The jury may direct whether damages are to be paid annually or otherwise for any term of years not exceeding 18. Upon decree of court, such assessment is made a judgment of record and becomes a first lien on the defendant's property, except as to prior liens already recorded (secs. 383–398).

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

The mother of a deceased intestate child born out of wedlock inherits from the child as if it were legitimate (sec. 474).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

Generally the domicile of the husband is that of the wife. She cannot, to suit her convenience or pleasure, adopt a different home by refusing to reside in the domicile of his choice.[1 2]

[1] *Weisinger* v. *McGehee* (1931), 160 Miss. 424; 134 So. 148.
[2] *Suter* v. *Suter* (1895), 72 Miss. 345; 16 So. 673.

31. Public Office—Eligibility of Women.

Women are eligible for public office (Const., secs. 106, 250) (secs. 3235–3236).

32. Jury Service—Eligibility of Women.

Women are not eligible for service as jurors (sec. 1762).