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UNITED STATES DEPARTMENT OF LABOR

MAURICE J. TOBIN, Secretary

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WOMEN'S BUREAU  
FRIEDA S. MILLER, Director

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

January 1, 1948

REPORT FOR  
NORTH DAKOTA

*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. 157-33 (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

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UNITED STATES DEPARTMENT OF LABOR,  
WOMEN'S BUREAU,  
*Washington, November 24, 1948.*

SIR: I have the honor to transmit to you a revised report on the legal status of women in North Dakota. This is one of 54 separate reports constituting a survey of the laws of the 48 States, the District of Columbia, the territories of Alaska, Hawaii, and Puerto Rico, and the United States possessions, the Canal Zone and Virgin Islands.

The original report for each jurisdiction represents a thorough search of statutes and decisions of appellate courts construing its statutes or establishing its judicial policy. Revision covers important changes by legislative action.

The study was made by Sara Louise Buchanan, Attorney on the Women's Bureau staff, member of the bars of the Supreme Court of the United States and of the Mississippi Supreme Court. Valuable assistance was given in the preparation of the report by Mary Loretta Sullivan, Associate Economist, and Elizabeth Batson, Editorial Assistant, both of the Bureau staff.

Respectfully submitted.

FRIEDA S. MILLER, *Director.*

HON. MAURICE J. TOBIN,  
*Secretary of Labor.*

LETTER OF TRANSMITTAL

United States Department of Labor

Women's Bureau

Washington, November 21, 1918.

Sir: I have the honor to transmit to you a revised report on the activities of women in North Dakota. This is one of 41 separate reports constituting a survey of the law of the 48 States, the District of Columbia, the Territory 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 concerning the status of establishing its judicial policy. Legislation covers labor law changes by legislative action.

The study was made by Miss Lillian Blumenthal, Attorney of the Women's Bureau staff, in honor of the day of the signature of the Federal Reserve and of the Mississippi Purchase Loan. A double set of copies is given in the preparation of the report by Miss Blumenthal, Associate Economist, and Elizabeth Berman, Bureau of Research, both of the Bureau staff.

Respectfully submitted,

Frank S. Miller, Director

Hon. Maurice J. Tobin,  
Secretary of Labor

## 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.

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.

II.—MARRIAGE AND DIVORCE

- 12. Age of Consent to Marriage—Men and Women.
- 13. Validity of Common-Law Marriage.
- 20. Health Certificate Required Prior to Issuance of Marriage License—Men and Women.
- 21. Marriage Contract in Marriage Law Enforcement.
- 22. Grounds for Marriage Annulment—Requirements Applicable to Men and Women.
- 23. Grounds for Divorce—Respective Availability to Spouse.

# THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

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## 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.

## NORTH DAKOTA

### SOURCES

Constitution of North Dakota.

Revised Code, 1943.

North Dakota Reports.

Northwestern Reporter.

### EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of section numbers following the abbreviation Const., as (Const., sec. 213) placed after the related subject matter.

References to the Revised Code are likewise in parentheses, thus (sec. 14-1001).

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."

# NORTH DAKOTA

## A.—CIVIL RIGHTS

### I.—CONTRACTS AND PROPERTY

#### 1. Age of Majority.

Males attain their majority at 21 years of age; females, at 18 years of age (secs. 14-1001, 14-1002).

#### 2. Contractual Powers of Minors.

A minor cannot give a delegation of power, nor, under the age of 18 years, make a contract relating to real property or any interest in it, or relating to any personal property not in his immediate possession or control (sec. 14-1009).

In general, a minor may make other contracts, but they are voidable either before his majority or within 1 year thereafter (secs. 14-1010, 14-1011), except those for necessities (sec. 14-1012), or contracts expressly authorized by statute (sec. 14-1013).

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

All heads of families are entitled, in general, to statutory exemptions from forced sale (Const., sec. 208) (sec. 28-2201).

The phrase "head of a family" includes in its meaning: (1) Husband or wife when the claimant is a married person; (2) every person who has residing on the premises with him or her and under his or her care and maintenance any of the dependent persons enumerated by statute (sec. 47-1802). If in any case the debtor neglects or refuses or for any cause fails to claim all or any of the exemptions permitted, his wife may make the claim and proceed in the debtor's stead (sec. 28-2211). The right of homestead exemption is extended to the family in its entirety, and not to the individual who for the time being stands at its head.<sup>1</sup>

#### Personal Property.

"A single person" is entitled to an exemption of personal property up to a total value of \$150, in addition to personal wearing apparel (sec. 28-2205).

The exemptions to heads of families are classified as "absolute" and "additional" (secs. 28-2202, 28-2203), or "specific alternative exemptions" (sec. 28-2204).

The property declared absolutely exempt includes family pictures; church pew; burial plot; family Bible, school books, and other family

library books up to \$100 value; wearing apparel of debtor and family; 1 year's supply of provisions and fuel for the family; and the homestead allowed by law. Also, except for specified liens, all crops and grain raised by the debtor on not over 160 acres in one tract occupied by him either as owner or as tenant under the homestead provision; but the choice of this crop exemption excludes the debtor from any additional or alternate exemptions (sec. 28-2202).

In addition to the "absolute exemptions" enumerated (except as to crops) selection is allowed from all other personal property up to a total value of \$1,500 (sec. 28-2203).

Instead of the "additional exemptions," the head of the family may select personal property within certain classes to the numbers or values specified by statute. Among these classes of property are included books and musical instruments up to \$500 value; household and kitchen furniture up to \$500 value; livestock and necessary food for them for 1 year; farm equipment up to \$300 in value; implements of any mechanic used in his trade or business, and in addition his stock in trade not exceeding \$200 in value; the library and instruments of any professional person up to \$600 value (sec. 28-2204).

#### **Homestead.**

The dwelling in which the homestead claimant resides and the land on which it is situated, of an area not exceeding 2 acres if town property and not above \$8,000 in value, or 160 acres if rural property, is exempt as a homestead (sec. 47-1801). If the homestead is not within a town plot, there is no limit to the value of it.<sup>2</sup> It is subject to seizure under execution only for mechanics', laborers', or materialmen's liens; for debts secured by valid mortgage on the property; for purchase money or taxes; or for other debts to the extent of any excess in homestead value above statutory exemption (sec. 47-1804).

If the homestead claimant is married, the homestead may be selected from the husband's separate property, or that of the wife with her consent. When the claimant is unmarried, the homestead may be selected from any of his or her property (sec. 47-1803).

#### **Conveyance of Exempt Property.**

The homestead of a married person cannot be conveyed or encumbered without the signature and acknowledgment of both husband and wife (sec. 47-1805). If either becomes insane, the other may be authorized by the county court where the homestead is situated to make a valid conveyance or mortgage of the homestead (sec. 47-1822).

The proceeds from the sale of a homestead, to the value allowed by statute, are protected by special provision from voluntary disposition by the husband, and from legal process (secs. 47-1814, 47-1816). As to funds obtained from the sale of a homestead when one spouse is insane, the court may set aside for such insane spouse a portion of the proceeds, not exceeding one-third of the full amount, and direct its investment for his or her benefit during life (sec. 47-1826).

No encumbrance on personal property exempt to a resident head of a family is valid, unless in writing and executed in legal form by husband and wife, if both are living (sec. 35-0405).

The household goods, effects, and furniture of a married person cannot be conveyed or encumbered by a bill of sale or chattel mortgage, unless the instrument is signed by both husband and wife (sec. 35-0404).

**Disposition of Homestead on Death of Owner.**

When the homestead owner dies, a homestead estate in the property survives, descends, and is distributed to the surviving spouse for life, or, if no spouse survives, to the decedent's minor child or children until the youngest attains majority (sec. 30-1602). "Homestead estate" includes the right to the possession, use, control, income, and rents of the real property comprising the homestead at the owner's death (sec. 30-1601). See also Number 16.

The owner may dispose of a homestead by will as of other real property, but title to the homestead passes under the will subject to the statutory "homestead estate" and to payment of the decedent's debts (sec. 47-1829).

**Insurance.**

The proceeds of a life-insurance policy or of a contract with any mutual aid or benevolent society, when made payable to the insured, his personal representatives, or his heirs or estate, are exempt upon the death of the insured from any of his debts, unless by special contract he has made them liable. Such proceeds are to be distributed to the decedent's heirs or heirs at law as provided by statute or by will (1929, p. 193) (sec. 26-1018).

The surrender value of any life-insurance policy which would, upon the death of the insured, be payable to his wife or children or any dependent relative, is absolutely exempt from claims of creditors of the insured (sec. 26-1017).

**Wages.**

The wages or salary of any person who is the head of a family and a resident of the State, to the amount of \$20 per week, are exempt from garnishment (sec. 32-0902).

The earnings of a judgment debtor for his personal services at any time within 60 days prior to a court's execution order may not be seized under the execution when the debtor shows that such earnings are necessary for the use of a family supported wholly or partly by his labor (sec. 28-2511).

<sup>1</sup> *Dieter v. Fraine* (1910), 20 N. D. 484, 490; 128 N. W. 684.

<sup>2</sup> *Proefrock v. American National Bank* (1935), 65 N. D. 308, 315; 258 N. W. 482.

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

The real and personal property of any woman in the State, acquired before marriage, remains her separate property after marriage (Const., sec. 213). See Number 5.

**5. Contractual Powers of Married Women.**

The wife after marriage has the same capacity and rights and is subject to the same liabilities as before marriage, with respect to

property, contracts, and torts. Husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried. In all actions by or against a married woman she may sue or be sued in her own name (secs. 14-0705, 14-0706).

Execution as to property may issue against a married woman, but must be directed only to her separate property (sec. 28-2105).

Husband and wife cannot by contract between them alter their marital relations, but they may agree in writing to an immediate separation, and provide by contract for the support of either of them and of their children during such separation (sec. 14-0707).

A married woman may qualify as executor, administrator, or guardian (secs. 30-0802, 30-0808, 30-1007, 30-1101).

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

The earnings of the wife are not liable for the debts of the husband. The earnings and accumulations of the wife and of her minor children living with her, or in her custody, while she is living separate from her husband, are the wife's separate property (sec. 14-0708). See also Numbers 5, 7, and 9.

## **7. Liability of Married Woman for Family Necessaries.**

Husband and wife are jointly and severally liable for any debts contracted by either while living together, for necessary household supplies of food, clothing, and fuel, and for shelter for themselves and family, and for the education of their minor children.

The separate property of the husband is not liable for the debts of the wife contracted before the marriage, but her separate property is liable for her debts contracted before or after marriage (sec. 14-0708).

Husband and wife contract toward each other obligations of mutual respect, fidelity, and support (sec. 14-0701).

The husband must support himself and his wife out of his property or by his labor. The wife must support the husband out of her separate property when he has not deserted her, has no separate property, or is unable from infirmity to support himself (sec. 14-0703). If the husband neglects to make adequate provision for the support of his wife, when they are living together, any other person may in good faith supply her with necessaries and recover the reasonable value from the husband (sec. 14-0710). If the wife abandons the husband, unless justified by his misconduct, or is living separate from him by agreement, he is not liable for her support in the absence of an agreement otherwise (sec. 14-0711).

See Number 9.

The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist to the extent of her ability (sec. 14-0908).

It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work to maintain such person to the extent of their ability (sec. 14-0910).

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

There are no statutory formalities required of a married woman who engages in a separate business. See also Numbers 5 and 9.

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

The real and personal property of any woman in the State, acquired before marriage, and all property to which she becomes rightfully entitled in any manner after marriage, is her separate property and is not liable for her husband's debts (Const., sec. 213).

Except for mutual obligations of support as declared by statute, neither husband nor wife has any interest in the property of the other. But neither can be excluded from the other's dwelling (sec. 14-0704).

When one spouse has abandoned the other, removing from the State and remaining absent for 1 year without providing for family support and maintenance, or has been sentenced to imprisonment for 1 year or more, the abandoned spouse may be empowered by the district court, as provided by statute, to manage, control, sell, or encumber the property of the deserting husband or wife for family support and payment of debts contracted prior to the abandonment or imprisonment (sec. 14-0712).

Neither husband nor wife, as such, is answerable for the acts of the other (sec. 14-0708).

See also Numbers 5 and 6.

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

In the absence of legislative enactment the common law is in effect in North Dakota [secs. 1-0103, 1-0106].<sup>1</sup> At common law, the property acquired during marriage by the cooperative efforts of husband and wife belongs to the husband. No specific statute which repeals this rule has been found.

As to the rights of the spouses in control of their respective separate property, the court has said:

"\* \* \* Neither husband nor wife has any interest in the property of the other. Each has the absolute power of disposition, whether by transfer during life, or by will at death, subject only to the homestead right of the survivor."<sup>2</sup>

<sup>1</sup> *Fitzmaurice v. Fitzmaurice* (1932), 62 N. D. 191, 196; 242 N. W. 526. (Hist.)

<sup>2</sup> *Arnegaard v. Arnegaard* (1898), 7 N. D. 475, 485; 75 N. W. 797.

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

With respect to property, contracts, and torts the wife after marriage has the same capacity and rights and is subject to the same liabilities as before marriage, and in all actions by or against her she may sue or be sued in her own name (sec. 14-0705).

## 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.

Under the provisions of section 14-0705 [see Number 11] a wife may sue her husband for a personal tort.<sup>1</sup> [The court carefully refrained from expressing an opinion as to the husband's right to sue the wife, as that point was not in issue. There is no statute so empowering the husband, and he has no such right at common law.]

<sup>1</sup> *Fitzmaurice v. Fitzmaurice* (1932), 62 N. D. 191, 200; 242 N. W. 526. (Hist.)

## 13. Competency of Spouses To Testify For or Against Each Other.

In general, neither spouse can testify for or against the other without such other's consent; nor can either, during the marriage or afterwards, be examined without the other's consent as to any communication made by one to the other during the marriage. But these restrictions do not apply to a civil action or proceeding by one against the other, nor to a civil action or proceeding where one spouse attacks the character of the other, nor to a criminal action or proceeding for a crime committed by one against the other.

A surviving husband or wife may qualify as a witness, when a party to an action by or against the executor, administrator, heirs at law, or next of kin of the deceased spouse, as to any transactions or conversations had with such decedent touching any business or property of either (secs. 31-0101, 31-0104).<sup>1</sup>

<sup>1</sup> *Truman v. Dakota Trust Co.* (1915), 29 N. D. 456, 468; 151 N. W. 219.

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

Every person over 18 years of age is declared competent to make a will disposing of real and personal property (secs. 56-0201, 56-0204).

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

When any person having title to any estate, not otherwise limited by marriage contract, dies without disposing of such property by will, a surviving spouse shares in it, subject to payment of debts, in the following manner:

1. If issue survive decedent—

(a) Equal shares to the living spouse and a surviving child or its lawful issue.

(b) One-third to the living spouse and the remainder in equal shares to issue, when decedent leaves more than one child or one child and the lawful issue of one or more deceased children. If no child survives, the remainder goes to lineal descendants of the decedent.

2. If no issue survives decedent—

(a) If decedent's parents or a parent survive: All of the first \$15,000 and one-half of the estate over \$15,000. See Number 27 as to parents.

(b) If decedent leaves no parent: All of the first \$25,000 and one-half of the estate over \$25,000, the other half of such excess going to

any surviving brothers or sisters or the children of any of them who have died.

(c) If decedent leaves no parent, brother or sister, or issue of them: All of the estate (sec. 56-0104).

Dower and curtesy estates are abolished (secs. 56-0102, 14-0709).

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

The surviving husband or widow, until he or she remarries, may continue to possess and occupy the whole homestead, as prescribed by statute, free from liability for debts existing at the decedent owner's death (sec. 30-1602). Also, the personal property exempt to the decedent if living, including all property absolutely exempt and other property selected by the survivor up to \$1,500 in value, is to be set apart absolutely for the surviving spouse, subject only to payment of charges for decedent's last illness and funeral, and administration expenses if no other assets are available (sec. 30-1606). See Number 3. The selection of homestead and exempt property is under the supervision of the court, with due regard for the rights of all interested persons (sec. 30-1607).

If the property so set apart is insufficient for the support of the widow and children or either, and there is other estate of the decedent, the court may order such reasonable allowance out of the estate as may be necessary for maintenance of the family, according to their circumstances, while settlement of the estate is in progress (sec. 30-1610). Such an allowance becomes a preferred claim, subject only to funeral and administration expenses (sec. 30-1610).

Summary administration may be allowed by the court, and the whole estate, if not in excess of \$1,500, be vested absolutely in a surviving husband or wife, subject to expenses of decedent's last illness, funeral, and administration charges, and to any existing encumbrance or lien against it (secs. 30-1701, 30-1705).

Wages up to \$400 due a deceased person may be paid to the surviving spouse when no administration has been granted (sec. 34-0112).

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

Each spouse has absolute power of disposition as to his or her property, whether by transfer during life or by will at death, subject to the homestead right of the survivor,<sup>1</sup> and subject further to the personal property exemptions, to the value of \$1,500, allowed to a surviving spouse or minor children.<sup>2</sup>

<sup>1</sup> *Arnegaard v. Arnegaard* (1898), 7 N. D. 475, 485; 75 N. W. 797.

<sup>2</sup> *Bertsch v. Clooten* (1924), 51 N. D. 733; 200 N. W. 904.

## **II.—MARRIAGE AND DIVORCE**

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

Unmarried males of the age of 18 years or over, and unmarried females of the age of 15 years or over, are capable of consenting to and consummating marriage. But if a male is under 21 years of age, or a female under 18 years, license to marry may not be issued without

consent of the parents, parent, or guardian if there be any (sec. 14-0302). Such consent may be given personally, or a certificate signed by parent or guardian and attested by two witnesses, one of whom must appear in person before the licensing officer and make oath that he saw such parent or guardian sign the certificate (sec. 14-0317).

### 19. Validity of Common-Law Marriage.

In this State the legislature has, in unmistakable language [sec. 14-0301], intentionally abrogated the common-law marriage.<sup>1</sup> Such marriages have not been recognized since July 1, 1890.<sup>2</sup>

<sup>1</sup> *Schumacher v. Great Northern Ry. Co.* (1912), 23 N. D. 231, 236; 136 N. W. 85.

<sup>2</sup> *Woodward v. Blake* (1917), 38 N. D. 38; 164 N. W. 156.

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

A standard serological test and requisite examination for the discovery of syphilis, made within 30 days immediately before the filing of application for license to marry, is required of each applicant.

No license can be issued if either party has syphilis in communicable form.

Exception may be granted by order of court for good cause, upon joint petition of the parties (secs. 14-0312 through 14-0315).

Each applicant for a license to marry must file the affidavit of a physician showing that the parties are not feeble-minded, imbeciles, epileptics, insane, common drunkards, or afflicted with advanced pulmonary tuberculosis, or with any contagious venereal disease. A false statement in the required affidavit, knowingly made, constitutes perjury and subjects the offender to the statutory punishment for that offense (sec. 14-0317).

Marriage is forbidden as to any woman under 45 years of age, or to a man of any age except he marry a woman over 45 years of age, when any such woman or man is a common drunkard, habitual criminal, epileptic, imbecile, feeble-minded person, idiot, or insane person, has been afflicted with hereditary insanity, or is afflicted with pulmonary tuberculosis in its advanced stages, or any contagious venereal disease (sec. 14-0307).

### 21. Interstate Cooperation in Marriage Law Enforcement.

All marriages contracted outside of this State, which are valid according to the laws of the State or country where contracted, are considered valid in this State (sec. 14-0308).

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

Without distinction as to sex, the statute provides the remedy of annulment in the district court for any of the following causes existing at the time of the marriage: Non-age, without affirmance of marriage after the minor reaches the age of legal consent; bigamous marriage; unsound mind, without free cohabitation upon return of reason;

consent by fraud, without ratification of marriage when fraud becomes known; consent by force, without later free cohabitation; physical incapacity to enter into the marriage state, continuing and apparently incurable (sec. 14-0401).

Marriages within the degrees of kindred forbidden by statute are declared incestuous and absolutely void. The law applies to illegitimate as well as legitimate children and relations (sec. 14-0303). A marriage contracted by a person having a former husband or wife living, without annulment or dissolution of the former marriage, is illegal and void from the beginning unless the former spouse was absent and believed by such person to be dead for a period of 5 years immediately preceding (sec. 14-0306).

See disqualifications on grounds of health in Number 20.

Also, a marriage license may not be issued nor a marriage ceremony performed when either or both contracting parties are under the influence of intoxicating liquor or any narcotic drug (sec. 14-0318).

The marriage of any minor, while under supervision or custody of the Juvenile Court or the superintendent of the State Training School, without an order from such court or superintendent, is forbidden and subject to annulment (sec. 14-1007).

### 23. Grounds for Divorce—Respective Availability to Spouses.

#### Absolute Divorce.

A divorce may be granted for any of the following causes: Adultery; extreme cruelty; willful desertion; willful neglect; habitual intemperance; conviction of felony; or, when strictly proved as required by statute, incurable insanity for a period of 5 years, upon conditions prescribed in the law (sec. 14-0503).

Among the statutory definitions of willful desertion, it is provided that:

“A husband may choose any reasonable place or mode of living, and if the wife does not conform thereto it is desertion.

“If the place or mode of living selected by the husband is unreasonable and grossly unfit and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him” (sec. 14-0506, subsecs. 8 and 9).

#### Separation from Bed and Board.

A decree of separation from bed and board forever, or for a limited time, may be granted by the district courts on complaint of a married woman or a married man, for any cause on which a divorce might be decreed, for cruelty as defined by the statute, for failure or refusal to cohabit as husband and wife for 1 year or more, for failure of either party to provide for the other as prescribed in the statute (1927, p. 167). Such a decree may be revoked on application of either party, after due notice to the other, if on hearing of the application it is found that the original decree has been in force over 4 years, and a reconciliation is improbable. Another decree may then be given, absolutely divorcing the parties and making final settlement as to property and provision for minor children (sec. 14-0605).

## III.—PARENTS AND CHILDREN

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

The father and mother of a legitimate unmarried minor child are entitled equally to its custody, services, and earnings, and neither can transfer such custody, services, and earnings to any other without the written consent of the other parent, except in case of death, desertion, or abandonment (sec. 14-0904). The mother of an illegitimate unmarried child is entitled to its custody, services, and earnings (sec. 14-0905). The wages of a minor employed in service may be paid to him or her until the parent or guardian entitled to them gives the employer notice that he claims them (sec. 14-0918).

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

Both parents have equal rights and responsibilities as natural guardians. See Number 24.

As to guardianship of the child's estate, the parent, as such, has no control over the property of the child (sec. 14-0916). No person, whether a parent or otherwise, has any power as a guardian of property except by formal appointment as provided by statute (sec. 30-1003). A guardian appointed by a court has power over the person and property of the ward unless otherwise ordered (sec. 30-1403). In appointing such a guardian for a minor the court must be guided by the best interests of the child, with respect to its temporal, mental, and moral welfare. As between parents adversely claiming custody or guardianship, neither is entitled to it as of right, but, other things being equal, if the child is of tender years it will be given to the mother; if it is of an age to require education and preparation for labor or business, then to the father (sec. 30-1006). Of two persons equally entitled to the custody in other respects, preference is to be given first to a parent (sec. 30-1007).

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

A guardian of the person or estate or of both, of a minor child, may be appointed by will or by deed, to take effect upon the death of the appointing parent. If the child is legitimate, the father may make such appointment with the written consent of the mother; or either parent may so appoint a guardian, if the other is dead or incapable of consent. If the child is illegitimate, the mother has the power of appointment (sec. 30-1001).

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

When any person having title to any estate not otherwise limited by marriage contract dies without disposing of the estate by will, the parents share in such property, subject to payment of debts, in the following manner:

If no issue, but a spouse, survives the decedent and the estate exceeds \$15,000 in value, one-half of the amount in excess of \$15,000 goes to the decedent's father and mother in equal shares, and if either is dead to the survivor.

If the decedent leaves no issue nor spouse, the estate goes to the father and mother in equal shares, and if either is dead to the survivor (sec. 56-0104, subsec. 2).

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

The parents of a child born out of wedlock and not legitimated owe the child necessary maintenance, education, and support. They are liable for the child's funeral expenses. The father is liable also for the expenses of the mother's pregnancy and confinement. The obligation of the parents to support the child under the laws for the support of poor relatives applies to children born out of wedlock (sec. 32-3601). The mother may recover from the father a reasonable share of the necessary support of the child (sec. 32-3603). Judicial proceedings are prescribed by statute to determine the paternity of the child and to compel support by the father (secs. 32-3608, 32-3634). The decree of the court for support of the child must be for annual amounts, equal or varying, as the court deems proper, until the child is 16 years of age. The order may also require payment of the mother's necessary expense incurred in connection with the child's birth (sec. 32-3621). Bond may be required for payment of the judgment (sec. 32-3623). Where paternity has been established, failure of the father, without lawful excuse, to support the child, if it is not in his custody, is declared a misdemeanor, subject to fine or imprisonment or both. Failure of the parent to support the child where it is in his or her custody is governed by the laws applicable to the failure to support a legitimate child (sec. 32-3602).

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

If an illegitimate child who has not been acknowledged or adopted by his father dies intestate without lawful issue, his estate goes to his mother or, if she is dead, to her heirs at law (sec. 56-0106).

### **B.—POLITICAL RIGHTS**

#### **30. Domicile of Married Women.**

The residence of the husband is presumptively the residence of the wife (sec. 54-0126). This rule does not apply in divorce actions. After separation each party may have a separate domicile, to be determined by actual proof (sec. 14-0518).

The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform to his choice (sec. 14-6702).

**31. Public Office—Eligibility of Women.**

Every elector is eligible to the office for which he is an elector, unless special provision is made otherwise (sec. 44-0101).

**32. Jury Service—Eligibility of Women.**

Women who meet the statutory qualifications for jurors are eligible for jury service. Any woman may be excused from jury service on written application made to the court clerk at least 5 days before the calling of the term of court (secs. 27-0901, 27-0905).



The parents of a child born out of wedlock and not legitimated are the child's natural parents. The father is liable also for the expenses of the mother's pregnancy and confinement. The obligation of the parents to support the child under the law for the support of poor relatives applies to children born out of wedlock (sec. 23-3801). The mother may recover from the father a reasonable share of the necessary support of the child (sec. 23-3802). Judgment proceedings are instituted by either parent to determine the paternity of the child and to compel support by the father (secs. 23-3803, 23-3804). The locus of the court for support of the child must be determined among several factors, as the court deems proper, until the child is 16 years of age. The order may also require payment of the mother's necessary expenses incurred in connection with the child, with reasonable notice to be required for payment of the amount (sec. 23-3805). Where paternity has been established, the father is liable without fault to support the child if it is found in his custody is a child a minor, subject to the right of imprisonment or both failure of the parent to support the child where it is in his or her custody is recoverable by the father applicable to the failure to support a legitimate child (sec. 23-3806).

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

If an illegitimate child who has not been legitimated or adopted by his father dies intestate without a will, his estate goes to his mother or, if she is dead, to his next of kin (sec. 26-0101).

**B.—POLITICAL RIGHTS**

**30. Domestic of Married Women.**

The residence of the husband is presumed to be the residence of the wife (sec. 44-0102). This rule does not apply in divorce actions. After separation each party may have a separate domicile, to be determined by actual proof (sec. 44-0318). The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform to his choice (sec. 44-0702).