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

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**REPORT FOR**

**OHIO**

as of May 1, 1963



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**WOMEN'S BUREAU BULLETIN 157-34 (Revised)**

**UNITED STATES DEPARTMENT OF LABOR**  
**W. WILLARD WIRTZ, *Secretary***

**WOMEN'S BUREAU**  
**MRS. ESTHER PETERSON, *Director***

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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.

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 laws governing property and family rights and political status.

In general, it has been the rule that in the absence of a specific statute abrogating common-law principles, the common law applies. In the century just past, many old common-law injustices to women have been removed by statute.

Material considered in Women's Bureau Bulletin 157 series centers largely around woman in the marriage relation, since the legal status of the unmarried woman is practically identical with that of the unmarried man. To increase the usefulness of the material, more attention has been given in the current revision to differences in legal treatment of men and women.

The United States Summary of the Legal Status of Women in the United States of America, Bulletin 157, last brought up to date as of January 1, 1953, is being revised. The revised Summary will be compiled from the reports for 50 States and the District of Columbia.

The President's Commission on the Status of Women (established by Executive Order 10980, December 14, 1961) has appointed a Committee on Political and Civil Rights to review the civil and political rights of women. The Commission's report, which will be submitted in October 1963, will present findings and make recommendations for constructive action.



## SOURCES

Constitution of Ohio  
Page's Ohio Revised Code Annotated  
Ohio Appellate Reports  
Ohio Circuit Decisions  
Ohio Court of Appeals Reports  
Ohio Decisions  
Ohio Law Abstract  
Ohio Nisi Prius Reports  
Ohio State Reports  
Northeastern Reporter  
Northeastern Reporter (Second Series)

## EXPLANATORY NOTE

This pamphlet, Bulletin 157-34, presents a digest of the Constitution and statutory provisions affecting the legal status of women in the State of Ohio. It includes pertinent statutory changes enacted in that State up to May 1, 1963, and supersedes the previous report for Ohio of January 1, 1958.

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation "Const.," as "(Const., art. 15, sec. 4)," placed after the related subject matter.

References to the code sections are likewise in parentheses, as "(sec. 3103.04)."

Other abbreviations used are:

Appellate Reports—App.

Circuit Decisions—C.D.

Nisi Prius—N.P.

Nisi Prius, New Series—N.P. (N.S.)

Northeastern Reporter—N.E.

Northeastern Reporter, Second Series—N.E. (2d)

Ohio Court of Appeals Reports—O.C.A.

Ohio Decisions—O.D.

Ohio Law Abstract—O.L.A.

Ohio State Reports—O.S.

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."



# OHIO

## CIVIL RIGHTS

### *Contracts and Property*

#### 1. Age of majority

The age of majority is 21 years for both sexes (sec. 3109.01). The marriage of a ward, if a female, terminates the guardianship as to her person, but not as to her estate (sec. 2111.45).

#### 2. Contractual powers of a minor

Any contracts made by a minor are voidable; that is, a minor may accept or deny such contracts upon such minor's attaining his majority, except those contracts authorized by law, those entered into in the performance of a legal duty, and those for the purchase of necessities.<sup>1 2</sup>

An infant who does not affirmatively ratify a contract from which he received no direct benefit as contractor or surety or guarantor may not be held responsible for such contract.<sup>3</sup>

Infancy is a defense against a holder in due course of a negotiable instrument to the extent that it is a defense to a simple contract, that is, a minor may elect to refuse payment to a holder in due course of such minor's note, bill, or other written security transferrable by endorsement (sec. 1303.34 (B) (1)).

When an issuer of an investment security has treated a minor as entitled to exercise any rights of ownership in its securities, no subsequent disaffirmance or avoidance is effective against the issuer (sec. 1308.19 (H)).

When a person appointed executor is under 21 at the time of proving a will, administration may be granted during his minority if there is no other executor who will accept the trust (sec. 2113.13).

Any person eligible for a loan under the Servicemen's Readjustment Act of 1944, as amended, or the Veterans' Readjustment Assistance Act of 1952, as amended, whether or not he or his spouse is a minor, may in his name, and without a court order, or intervention of a guardian or trustee, execute any instrument, take title to real property, borrow money thereon, and do all acts necessary to secure to him all rights and benefits

<sup>1</sup> *Coleman v. Coleman* (1935), 51 App. 221; 200 N.E. 197.

<sup>2</sup> *Mesletzko v. Elf Motor Co.* (1929), 19 O.S. 575; 165 N.E. 93.

<sup>3</sup> *Casella v. Tiberio et al* (1947), 87 N.E. (2d) 377.

in the same manner as if he or his spouse has attained age 21. Any person who has qualified under said acts, and has secured a loan and taken title to real property thereunder is capable of disposing of such property by deed or other conveyance, irrespective of his minority, and no such deed or other conveyance shall be voidable on the grounds of the minority of such person or his spouse (sec. 3109.02).

### 3. Property exemptions from seizure for debt

#### A. RESPECTIVE RIGHTS OF MAN AND WOMAN

When a married woman sues or is sued, judgment may be rendered and enforced against her as if she were unmarried; her separate property and estate are liable for a judgment against her; but she is entitled under such circumstances to the benefits of all exemptions allowed to heads of families (sec. 2323.09). To receive the benefits of such exemptions, it is not essential for her to be living with her husband, nor to have a child or children living with or supported by her.<sup>4 5</sup>

#### Personal property

Every person who is the chief support of a family, who is paying alimony, maintenance, or other allowance for the support of a divorced or separated spouse or a minor child, or is the chief support of any dependent person, and every widow, may hold exempt from seizure under execution, attachment, or sale, the following personal property: (a) Wearing apparel of the person or family, beds, bedsteads and bedding, cooking and heating stoves, and fuel for 60 days; (b) livestock or household furnishings to the value of \$500; (c) books and family pictures; (d) provisions to the value of \$50; (e) tools and implements necessary to the debtor's profession, trade, or business, including agriculture, to the value of \$500; (f) 80 percent of the first \$300 and 60 percent of the balance of the personal earnings of the debtor for services rendered within 30 days before issuance of an attachment or other process, rendition of judgment, or making of an order, under which it is attempted to attach such earnings, but in no event shall the amount of such personal earnings exempted be less than \$150; (g) all articles, specimens, and cabinets of natural history or science, except those kept or intended for show or exhibition for money or pecuniary gain (sec. 2329.66).

Every person who is a resident of the State not included under sec. 2329.66 may hold exempt the following personal property: (a) Wearing apparel to the value of \$100; (b) tools and implements necessary to his profession, trade, or business, including agriculture, to the value of \$200; (c) personal earnings of the debtor up to \$100 for services rendered within

<sup>4</sup> *Kimmel v. Paronto* (1895), 52 O.S. 468; 43 N.E. 1040.

<sup>5</sup> *Shaw v. Foley* (1900), 62 O.S. 30; 56 N.E. 475.



## OHIO

30 days before issuance of an attachment or other process, rendition of judgment, or the making of an order, under which an attempt may be made to attach such earnings (sec. 2329.62).

A married woman may, in her own name or by trustee, cause the life of her husband to be insured for her sole use, for any definite period or the term of his natural life, and if she becomes entitled to such insurance through its maturity or the death of her husband, she takes the amount free from claims of the representatives of the husband or any of his creditors (sec. 3911.11). A policy of insurance on the life of any person, in which the proceeds or any interest therein have been made payable to a married woman or for her benefit, must be held free from claims of her husband or his creditors, or of the insured or his creditors (sec. 3911.12).

No money or other benefit to be paid, provided, or rendered by any fraternal benefit society is liable to attachment, garnishment, or other process to pay any debt or liability of a member or beneficiary, or any other person who may have a right, either before or after payment by the society (sec. 3921.18).

No assignment of, or order for wages or salary is valid unless the wages assigned or ordered are to be paid for the support of the employee's spouse or minor child in compliance with an order of a court of record for the support of the employee's spouse or minor child (sec. 1321.32).

### B. HOMESTEADS

A husband and wife living together, or a widow or widower living with an unmarried daughter or unmarried minor son, may exempt a family homestead not exceeding \$1,000 in value. The husband, or, in case of his failure or refusal, the wife, may make the demand for exemption. But neither can be allowed such demand if the other has a homestead. In case of assignment for the benefit of creditors, upon filing the written consent of a husband and wife to the sale of a homestead property exempt by law, such homestead may be sold subject to the dower and homestead right provided for in this section (sec. 2329.73). A lessee as well as an owner is entitled to the homestead exemption (sec. 2329.74).

No sale of real property under a mortgage which is not executed by the wife or the debtor shall affect the right of the debtor's wife or family to have a homestead set off (sec. 2329.82).

A deficiency judgment rendered upon an indebtedness secured by a mortgage on real property on which there is located a dwelling or dwellings used in whole or in part as a home or farm dwelling by one or more families or which was held as a homestead at any time by the person who executed the mortgage is unenforceable after 2 years from the date of confirmation of the judicial sale (sec. 2329.08). These provisions are not

limited to a family homestead as described in the homestead exemption statute; there is no requirement that the mortgagor should be married or the head of a household.<sup>6</sup>

#### Allowance in lieu of homestead

A husband and wife living together, a widower living with an unmarried daughter or minor son, a widow, and every unmarried woman having in good faith the care, maintenance, and custody of a minor child or children of a deceased relative, resident of this State, and not the owner of a homestead, in lieu thereof may select and hold exempt from levy and sale real or personal property not exceeding \$500 in value, in addition to the chattel property otherwise exempted by law, but which may not include money, salary or wages due the debtor, a passenger automobile, or personal property on which judgment has been rendered for the purchase price (sec. 2329.81). A wife separated from her husband without any children was held entitled to this exemption under (sec. 2323.09).<sup>7</sup>

#### 4. Ownership and control of property owned at marriage

Neither spouse has any interest in the property of the other, except the right of support as provided by law, the right to dower, and the right to remain in the mansion house after the death of the other. Neither can be excluded from the other's dwelling except on court order (sec. 3103.04).

#### 5. Contractual powers of a married woman

Either spouse may enter into any engagement or transaction with the other or with any other person, as if unmarried. However, transactions between spouses are subject to the general rules governing the actions of persons between whom confidential relations exist (sec. 3103.05), and husband and wife cannot contract between themselves to alter their legal relations except that they may agree to an immediate separation, and make provisions for family support of either of them and their children during the separation (sec. 3103.06). The court has held that notwithstanding the confidential relationship of husband and wife and all that it implies, one spouse has the right to maintain an action at law against the other on contract and it follows that such action would lie upon a promissory note.<sup>8</sup> (See also number 13.)

A married person may take, hold, and dispose of property, real or personal, as if unmarried (sec. 3103.07), except that, because of the present dower provisions of the statute, both spouses must join in any deed or mortgage conveying the lands of either of them unless such dower has

<sup>6</sup> *Mutual Bldg., & Investment Co. v. Efros* (1947), Ohio App.; 75 N.E. (2d), 75; (1949), 152 O.S. 369; 89 N.E. (2d) 648.

<sup>7</sup> *Shaw v. Foley* (1900), 62 O.S. 30; 56 N.E. 475.

<sup>8</sup> *In re Lange's Estate* (1949), 56 O.L.A. 190; 91 N.E. (2d) 546.

been relinquished or barred (sec. 2103.02). Neither spouse, as such, is liable for the acts of the other (sec. 3103.08).

A married woman may sue and be sued as if she were unmarried and her husband may be joined in the action only when the suit is in favor of, or against, both (sec. 2307.09). When husband and wife are sued together, the wife may defend for her own right; and if the husband neglects to defend, she may also defend for his right (sec. 2307.10).

A woman is not disqualified from acting as a fiduciary by her marriage, whether her marriage occurs before or after her appointment and qualification as such fiduciary, and all of her acts have the same validity as though she were unmarried (sec. 2109.22).

The common-law doctrine of the unity of husband and wife is modified in Ohio only so far as it is done by specific statutory provisions.<sup>9</sup>

No husband or wife may create any lien by chattel mortgage or otherwise, exclusive of liens for purchase, upon any personal household property owned by either or both of them without the consent of the other spouse (sec. 1319.06).

## 6. Earnings of a married woman

The court has ruled that statutes enlarging the rights and liabilities of a wife and making her capable of entering into contracts for her personal services have not abrogated her relations as a wife nor released her from her wifely duties of doing and caring for her own household duties nor deprived her husband of his common-law rights to the services of his wife in the discharge of her household and domestic duties.<sup>10</sup> While the common-law rule to the effect that the husband is entitled to his wife's earnings and he could maintain an action therefor while his wife could not, was repealed under sections 3103.01 to 3103.05, the statute does not deprive the husband of his common-law right to recover for his wife's services if she acquiesces in the assertion of such claim on his part.<sup>11</sup> However, a wife may assert her right to recover for her own services.<sup>12</sup>

## 7. Liability for family support

The husband is bound under the law to support himself, his wife, and his minor children out of his property or by his labor, but, if he is unable to do so, the wife must assist him as far as she is able. If, however, he simply neglects to make adequate provision for the support of his wife, any other person, in good faith, may supply her with necessaries for her support, and recover the reasonable value of such goods from her

<sup>9</sup> *State v. Phillips* (1912), 85 O.S. 317; 97 N.E. 976.

<sup>10</sup> *Spayne v. King* (1893), 4 N.P. 299 (aff'd. by Sup. Ct. 1897), 55 O.S. 696; 48 N.E. 1114.

<sup>11</sup> *Hess, Exr. v. Clutz* (1917), 8 App. 57.

<sup>12</sup> *Bechtol v. Ewing* (1913), 89 O.S. 53; 105 N.E. 72; Ann. Cases 1915C, 1183.

husband (sec. 3103.03). Husband and wife contract toward each other obligations of mutual support (sec. 3103.01).

A married woman may contract for goods, including necessities for the family, in her own name and on her own credit, and thus bind herself for payment.<sup>13 14</sup> (See number 5.)

A parent or other person charged by law with the maintenance of a legitimate or illegitimate child under 18 or of a physically or mentally handicapped child under 21, or the husband of a pregnant woman, who leaves with intent to abandon, or fails, neglects, or refuses to provide such child or woman with shelter, care, food, or clothing, is subject to imprisonment (secs. 3113.01, 3113.99).

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

There is no statute requiring decree of court or formal consent of the husband to enable a married woman to engage in a separate business.

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

Neither husband nor wife has any interest in the property of the other, except for support as provided in sec. 3103.03, the right to dower, the right of remaining in the other's dwelling unless restrained by proper court decree, and of remaining in the mansion house after the death of the other, as provided by law (sec. 3103.04).

### **10. Property acquired by joint efforts of husband and wife**

Property acquired after marriage by the joint efforts of husband and wife belongs to the husband by rule of common law, unless other arrangement is made by private contract, such as joint deeds or joint bank accounts.

Joint tenancy and tenancy by the entireties do not exist in Ohio. Parties may contract to joint ownership with right of survivorship, and at death of one owner the survivor succeeds to title of the whole estate, not upon principles of survivorship as an incident of joint tenancy but by operative provisions of contract.<sup>15</sup>

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

A married woman may sue and be sued as if she were unmarried, and her husband may be joined with her only when the cause of action is in favor of or against both (sec. 2307.09). Her property is liable for any judgment obtained against her with benefit of all exemptions to heads of families (sec. 2323.09). (See number 3.)

<sup>13</sup> *Tille v. Finley* (1933), 126 O.S. 578; 186 N.E. 448.

<sup>14</sup> *Higbee Co. v. Crum* (1927), 27 App. 107; 160 N.E. 865.

<sup>15</sup> *In re Hutchinson's Estate*, (1929), 120 O.S. 542; 166 N.E. 687.



Neither husband nor wife, as such, is answerable for the acts of the other (sec. 3103.08).

## **12. Damages for injury by spouse to person or property**

Common-law rule prevents the husband from suing the wife for her tort against him; the same rule applies to the wife as against the husband for an injury caused to her by his negligence.

However, in deciding that the wife of a member of a voluntary unincorporated association may sue the association for damages for injury resulting from a tort, the court states that Ohio's constitution and pertinent statutes have so modified the common-law rule as to authorize the maintenance of the action by the wife against her husband and consequently against the defendants.<sup>16</sup>

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

Husband and wife are competent to testify for each other in all criminal prosecutions, and to testify against each other in all actions for personal injury of either by the other, bigamy, or violations of the marital or family relationships and duties as enumerated in the statute (sec. 2945.42).

Husband or wife may not testify concerning any communication made by one to the other, or an act done by either in the presence of the other, during the marriage, unless in the known presence or hearing of a third person competent to be a witness, the rule being the same even if the marital relation has ceased to exist (secs. 2317.02 (c), 2945.42).

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under Ohio's support of dependents' act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage (sec. 3115.13).

In proceedings involving divorce and alimony, husband and wife are competent to testify to the same extent as other witnesses (sec. 3105.11).

## **14. Right to dispose of separate property by will**

Any person of full age (21 years) and of sound mind and memory may make a will (sec. 2107.02).

A will executed by an unmarried woman is not revoked by her subsequent marriage (sec. 2107.37).

<sup>16</sup> *Damm v. Elyria Lodge, No. 465(1952)*, 158 O.S. 107; 107 N.E. (2d) 337.



## 15. Inheritance rights in deceased spouse's estate

### Life interest—dower

A surviving spouse is entitled to a life estate in one-third of the real property owned at any time during the marriage and conveyed by the decedent without the signature of the other spouse, or real property encumbered, or alienated by judicial or other involuntary sale, in which property the living spouse has not relinquished or been barred of the right of dower (sec. 2103.02).

The right to dower may be relinquished by accepting in its stead the conveyance of an estate or interest in real property, effective on the death of the grantor. But if the conveyance was made to a minor or during the marriage, the grantee may waive title to the real estate conveyed and demand dower (sec. 2103.03).

The estate by curtesy is abolished (sec. 2103.09).

Dower interest in any deed of conveyance of land having "trustee," "as trustee," or "agent" following the name of the grantee, may be protected against a bona fide purchaser of such land by having a description of the land showing the dower interest therein made of record as specified by law in the office of the recorder of the county where the land is situated prior to such purchase, or prior to the recording of the conveyance by the grantee to such purchaser (sec. 2103.02.1).

All dower interest is barred by the granting of an absolute divorce (sec. 2103.02), and either spouse who leaves the other and dwells in adultery will by such act be barred of dower right in the real property of the other unless the offense is condoned by the injured spouse (sec. 2103.05).

### Absolute interest

The real and personal property of a person who dies intestate descends and is distributed to the surviving spouse as follows:

(a) If there is one child or descendants of one child, one-half to the child or descendants and one-half to the surviving spouse.

(b) If there are two or more children, or their descendants, two-thirds to the children equally. Descendants of a deceased child take the share of such deceased child; and one-third to the surviving spouse.

(c) If there are no children or descendants, but parents, one-fourth to the parents, or if one is dead, to the survivor, and three-fourths to the surviving spouse.

(d) If there are no parents, all to the surviving spouse (sec. 2105.06).

When a married person dies without a will and without issue, possessed of any real or personal property which came to such decedent from a deceased former spouse by gift, will, or descent, then one-half of such property goes to the surviving spouse of the second marriage outright,

the other half vesting in the children of the deceased former spouse or in the kin of such spouse, as enumerated in the statute (sec. 2105.10).

## 16. Provision for survivors during administration of estate

### Provision for both spouses

A surviving spouse may remain in the mansion house of a deceased husband or wife rent-free for 1 year; but if it is necessary to sell the property to pay debts of the estate, the surviving spouse is to be paid the fair rental value for the remainder of the year, which compensation shall have the same priority in the payment of debts of the estate as the year's allowance made to the widow and children (sec. 2117.24).

A surviving spouse has the privilege of selecting, as provided by law, household goods, livestock and feed, tools, implements, utensils, wearing apparel of the deceased and relics and heirlooms of the family and of the deceased, ornaments, pictures, and books, or, in some cases, a portion in money, not to exceed 20 percent of the appraised value of real and personal property contained in the inventory, or \$2,500. When selected, the property is listed in the inventory of the estate, but is exempt from administration as part of its assets. The wearing apparel of the deceased and any money received by way of exemption are set off to the surviving spouse (sec. 2115.13).

In addition to the "set-off" just described, the appraisers of the estate also set off and allow to the widow and children under 18 years, if there are any, sufficient provisions or other property to support them for 12 months from the decedent's death only when necessary, taking into consideration the father's primary duty to care for his children. The probate judge is authorized to fix the year's allowance if the appraisers fail to do so, or if for any reason there is no appraisal (sec. 2117.20).

### Provision for the widow

Where the widow is a beneficiary, these allowances in the order mentioned are a preferred claim and debt, respectively, against the entire estate of the deceased husband, and they are deductible from the estate before determination of the share of the estate to be taken under the statute of descent and distribution.<sup>17</sup>

After payment of the costs and expenses of administration and funeral expenses, the year's allowance to the widow and children for their support is set aside before any other debts or obligations are paid (sec. 2117.25).

A widow, composing part of the decedent's family at the time of his death, so long as she remains unmarried is entitled to have set off to her the statutory homestead, when it is necessary in the administration of the estate to sell the decedent's lands to pay debts (sec. 2329.75).

<sup>17</sup> *Davidson v. Miners' and Mechanics' Savings and Trust Co.*, (1935), 129 O.S. 418; 195 N.E. 845.

If liens on the family homestead preclude its exemption to the widow and it is sold, the widow, if unmarried, is entitled on her application to the residue of the proceeds, not exceeding \$500, in lieu of the homestead (sec. 2329.76).

**Small estates and wages due**

Estates up to \$1,000 in value may be distributed, after notice prescribed by law, without formal administration (sec. 2113.03).

Wages not in excess of \$300 owing a decedent may be paid to the surviving spouse by the employer without administration of the estate (sec. 2113.04).

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

A surviving spouse has the right to elect whether to take under the will or under the statute of descent and distribution. (See number 15.) However, if the election is to take under the statute of descent and distribution, the spouse will receive not more than one-half of the net estate, and unless the will provides otherwise the balance of the net estate shall be disposed of as though the spouse had predeceased the testator. The election must be made within the time provided by law and entered in the journal of the court (sec. 2107.39). The right of election is available even though the will makes no provision for the living spouse.<sup>18</sup>

If the election is to take under the will, unless the will expressly directs otherwise, the spouse is not barred of the right to remain in the mansion of the deceased spouse, of the allowance of "set-off," nor, if a widow, of the 1 year's allowance provided by law for herself and her children (sec. 2107.42). (See number 16.)

***Marriage and Divorce***

**18. Age of consent to marriage**

Both sexes may marry at 21 years of age without the consent of parents, surviving parent, or guardian. Males at 18 and females at 16 years may marry, if consent is obtained of parents, parent, or guardian as prescribed by law, or in the absence of these, of the judge of the juvenile court of the county in which the female resides (secs. 3101.01, 3101.04).

A marriage over the common-law age of consent (12 for females and 14 for males) but below the legal age is not void, but only voidable; and if consummated by cohabitation after reaching the respective ages of 16 and 18, such cohabitation validates the marriage, notwithstanding the failure of the parents to give consent.<sup>19</sup>

<sup>18</sup> *Doyle v. Doyle* (1893), 50 O.S. 330; 34 N.E. 166.

<sup>19</sup> *Pearlman v. Pearlman* (1928), 27 N.P. (N.S.) 46.

The court may issue a marriage license, notwithstanding that either or both of the applicants for a marriage license are under the minimum age, where the female is pregnant or has a child born out of wedlock to the male in question (sec. 3101.04).

### 19. Common-law marriage

Common-law marriages are recognized in Ohio, but as a matter of public policy such marriages are not favored.<sup>20</sup>

### 20. Premarital requirements

License must not be granted when either applicant is a habitual drunkard, imbecile, or insane, or when either party at the time of making application is under the influence of an intoxicating liquor or narcotic drug, or is infected with syphilis in a form that is communicable or likely to become communicable (sec. 3101.06).

Nor shall a license be issued until each applicant files evidence that within the 30-day period immediately preceding application, he or she has submitted to an examination for syphilis, including standard serological tests; and that, in the opinion of the examining physician, syphilis is not present, or if present, is not in a form which is communicable or likely to become communicable. The court may waive the requirement of physician and laboratory statements, when the female minor is pregnant or has a child born out of wedlock to the male in question (sec. 3101.05).

### 21. Interstate cooperation in marriage-law enforcement

The validity of a marriage is determined by the law of the jurisdiction where made.<sup>21</sup>

### 22. Annulment

At present there is no statutory provision for annulment of marriage. The announced policy of the courts toward declaring any marriage void is one of great reluctance, and it appears that annulment is granted only upon satisfactory proof of such fraud as affects the relation itself. The marriage contract of an infant under the age of consent<sup>22</sup>; of an imbecile incapable of consent<sup>23</sup>; or of a person entering the relation under coercion or fraud, if not ratified, may be annulled.<sup>24 25 26</sup>

Children of marriages null in law are legitimate (sec. 2105.18).

<sup>20</sup> *Umberhower et al v. Labus et al* (1912) 85 O.S. 238; 97 N.E. 832.

<sup>21</sup> *In re Twellman*, 32 N.P. (N.S.) 201.

<sup>22</sup> *State v. Gans* (1958), 168 O.S. 174 (178), 500 (2d) 472; 151 N.E. (2d) 709.

<sup>23</sup> *Waymire v. J. Amore* (1872), 22 O.S. 271.

<sup>24</sup> *Moser v. Long* (1916), 8 App. 10, 27 O.C.A. 145, 28 C.D. 288.

<sup>25</sup> *Joy v. Joy* (1900), 12 O.D. 574.

<sup>26</sup> *Peefer v. Stats* (1931), 42 App. 276; 182 N.E. 117.



Effective September 24, 1963, an act approved June 24, 1963 establishes the following causes existing at the time of the marriage as grounds for annulment: (a) Nonage; (b) living spouse of a prior undissolved marriage of either party; (c) mental incapacity of either party unless cohabitation by such party after restoration of competency with the other party as husband or wife; (d) consent of either party obtained by fraud unless the other party afterwards with full knowledge of the fraud cohabits with the other party as husband or wife; (e) force, unless the party from whom consent was obtained by force cohabits afterwards with the other as husband or wife; (f) that the marriage between the parties was never consummated although otherwise valid (sec. 3105.31). A judgment of nullity under this act will not affect the legitimacy of offspring conceived before judgment and the issue of such marriage will be legitimate. During the pendency of the action or at any time judgment is rendered or thereafter, the court may make an order for the custody, care, education, maintenance, and support of such children during their minority (sec. 3105.33).

The act will also permit the court in its discretion to restore the maiden name of the wife or the name under which she was married, whether or not the request is included in the complaint (sec. 3105.34).

### 23. Divorce

A divorce may be granted to the injured party upon proof of one of the following causes: (a) Other party having a living spouse at the time of the marriage from which the divorce is sought; (b) willful absence for 1 year; (c) adultery; (d) impotency; (e) extreme cruelty; (f) fraudulent contract, any gross neglect of duty; (g) habitual drunkenness; (h) penitentiary imprisonment under sentence if the petition is filed during the imprisonment; (i) procurement of divorce decree in another State by which the spouse procuring it is released from the obligations of marriage, while they remain binding upon the other party (sec. 3105.01).

#### Legal separation

There is no provision in the statutes for limited divorce or legal separation. Although a husband and wife cannot by contract alter their legal relations, they may agree to an immediate separation and make provisions for the support of either of them and their children during the separation (sec. 3103.06).

Also, there is provision for an action for alimony alone (sec. 3105.17), on petition or cross-petition by either party to the marriage. In a suit for alimony alone, alimony comprehends an allowance for the purpose of maintenance and support during separation and not a division of property.<sup>27</sup>

<sup>27</sup> *Daily v. Daily* (1933), 48 Ohio App. 83; 192 N.E. 287.



**Temporary alimony**

During pendency of suit, the court may grant alimony to either party for maintenance and suit expenses and may make order for the custody, support, and care of minor children (sec. 3105.14). The court may delay entering the decree of divorce to which a husband is entitled until the husband has secured the payment of alimony or money ordered by the court for the support of a child not in his custody (sec. 3105.15). Similarly, effective September 24, 1963, this applies to cases of annulment.

**Permanent alimony**

On granting a divorce, the court may allow reasonable alimony to either party, having due regard to the property which came to either of them by marriage, their earning capacity, and the value of their real and personal estate (sec. 3105.18).

Either party to the marriage may file a petition or cross-petition for alimony. The court may grant permanent alimony for the following causes: Adultery, any gross neglect of duty, abandonment without good cause, separation in consequence of ill-treatment by the adverse party, habitual drunkenness, imprisonment of the adverse party in a State or Federal institution under sentence thereto at the time of filing the petition (sec. 3105.17).

Alimony may be allowed in real or personal property, or both, or by decreeing a sum of money, payable in gross or by installments, as the court deems equitable (sec. 3105.18). Alimony may not be decreed unless the court finds that the wife is living separate and apart from the husband.<sup>28</sup>

Under this section a husband may become entitled to a reasonable alimony award. In determining what constituted a reasonable award the court has given consideration to the fact that the marriage was only 3½ years duration, that defendant wife was a trained and skilled registered nurse in a good state of health, of 29 years, while plaintiff husband had attained 51 years, was in ill health, with time uncertain if ever, when he would be able to return to work.<sup>29</sup>

**Children**

In divorce actions or for alimony alone, the court may make orders for the disposition, care, and maintenance of the children as is just during pendency of the petition or on final decree (secs. 3105.14, 3105.21).

The court decides which parent shall have custody of the children, taking into account that which would be for their best interest, except that a child 14 years of age or more may be allowed to choose the parent

<sup>28</sup> *Smith v. Smith* (1949), 86 Ohio App. 479; 92 N.E. (2d) 418.

<sup>29</sup> *Sharkey v. Sharkey* (1955), 73 O.L.A. 321; 137 N.E. (2d) 575.

he prefers in an original or modification proceeding unless such parent is deemed unfit. If neither parent is suitable, the court may give custody to a relative or certify the proceeding to the juvenile court (sec. 3109.04).

Divorce and dissolution of marriage do not affect the legitimacy of children of the parties (sec. 3105.13).

#### Restoration of name

On granting a divorce, the court may restore to the wife any name she had before marriage (sec. 3105.16).

### *Parents and Children*

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

The wife and husband have equal powers, rights, and duties, and neither parent has any right paramount to the right of the other, concerning the custody of the minor, the control of the services and the earnings of such minor, or any other matter affecting the minor; provided that if either parent, to the exclusion of the other, is maintaining and supporting the child, such parent has the paramount right to control the services and earnings of the child. Neither parent shall forcibly take a child from the guardianship of the parent entitled to its custody (sec. 2111.08).

It has been held that an unemancipated minor's earnings belong to the father until the child attains majority.<sup>30</sup>

#### 25. Guardianship of a minor child

The wife and husband are the joint natural guardians of their minor children and are equally charged with their care, nurture, welfare, and education; also with the care and management of their estates.

In cases where husband and wife live apart, the court may award the guardianship of a minor to either parent (secs. 2111.08, 3109.03).

In a controversy as to the custody of the child, the paramount object which governs the court is the benefit to the child, and all rights must yield to that consideration. But when all else is equal, and no present reason exists for departure from the rule, the right of the father to the custody of his minor child is superior to that of any other person.<sup>31</sup>

A minor over 14 years of age may select a guardian, who shall be appointed if a suitable person (sec. 2111.12).

If the estate is \$1,000 or less and the ward is a minor, the court may, without the appointment of a guardian or giving of bond, authorize deposit in a fiduciary depository, payable to a guardian if appointed, or

<sup>30</sup> *Brown v. Schunk* (1934), 47 App. 344; 191 N.E. 886.

<sup>31</sup> *Ex Parte Coons* (1899), 11 C.D. 208.

to the ward when he attains majority, or authorize delivery to the natural guardian of the minor or the person by whom he is maintained, or to the executive secretary responsible for the administration of child welfare services in the county, or to the minor himself (sec. 2111.05).

Parent or guardian having custody of a child is charged with the control of said child and has the power to exercise parental authority over such child. In any case where the child is found delinquent and placed on probation, if the court finds that the parent has failed or neglected to subject such child to reasonable authority and such failure is the proximate cause of the act of the child upon which the finding of delinquency is based, the court may require the parent to post bond for an amount not in excess of \$500, conditioned upon the faithful performance of the probationary requirements of the child (sec. 2151.41.1).

## **26. Appointment of testamentary guardian for a minor child**

A surviving parent may, by last will in writing, appoint a testamentary guardian for his or her minor child, and such guardian shall have preference in appointment over the person selected by the minor but only with respect to the estate of the minor. A person named in such will as guardian of the person of such minor shall have no preference in appointment over the person selected by such minor, but in such event the court may appoint the guardian named in the will, the person selected by the minor, or some other person (sec. 2111.12).

## **27. Inheritance—child**

### **Inheritance from a parent**

The real and personal property of a person who dies intestate descends and is distributed to the children as follows:

(a) If there is no spouse, all is divided equally among the children or their descendants per stirpes; that is, descendants of a deceased child take the share of such deceased child.

(b) If there is a spouse and only one child or descendants of only one child, one-half to the child or descendants per stirpes.

(c) If there is a spouse and more than one child or descendants of more than one child, two-thirds is divided equally among the children or their descendants per stirpes.

### **Inheritance from a child**

The real and personal property of an intestate descends and is distributed to the surviving parents as follows:

(a) If there are no children, three-fourths to spouse and one-fourth to the parents equally, or the survivor of them.

(b) If there are no children and no spouse, all to the parents equally, or the surviving parent (sec. 2105.06).

### **28. Child born out of wedlock**

If the paternity of the child is determined by proper court proceedings either upon confession of the accused or upon jury trial, the reputed father is held under bond to perform the order of the court with respect to payment to the mother of such sum as the court may find necessary for her support, maintenance, and necessary expenses caused by pregnancy and childbirth, together with costs of prosecution and a reasonable weekly sum to be paid the mother for support of the child up to 18 years of age, or until its death, if earlier, and its funeral expenses. The father must give security for these payments and also must pay costs of the prosecution. His failure to do so subjects him to imprisonment until he complies with the court order, or for 3 months, if it is then established that he is unable to make such payments (secs. 3111.17, 3111.18).

Prosecution of a parent for failure to support, maintain, or educate, or for neglect or abandonment of a child under 18 years of age, or under 21 years of age if physically or mentally handicapped, is authorized by statute to apply to the father of any illegitimate child (sec. 2151.42).

A child born out of wedlock is legitimated by the subsequent intermarriage of his parents. When the natural father of a child born out of wedlock files in the probate court an acknowledgement that the child is his, the mother or proper authorities consent, and the court is satisfied that the establishment of the relationship is for the best interest of the child, it may enter the finding of this relationship upon its journal, following which the child is the child of the father as though born to him in lawful wedlock (sec. 2105.18).

### **29. Inheritance—child born out of wedlock**

Children born out of wedlock are capable of inheriting or transmitting inheritance from and to the mother and to those from whom she may inherit or transmit inheritance, in the same manner as legitimate children (sec. 2105.17).

## **POLITICAL RIGHTS**

### **30. Domicile of a married woman**

The place where the family of a married man or woman resides is considered his or her place of residence; except that where the husband and wife have separated and live apart, his or her legal residence is the place where he or she resides the necessary time to entitle a person to vote (sec. 3503.02 (d)). The court has held that the phrase "separated and live



apart" must be given a broad, practical interpretation in order to effectuate the purpose of the law, and the separation does not have to be due to marital difficulties.<sup>32</sup> When the spouses are living together, the husband, as the head of the family, has the right to select the matrimonial domicile, and it is the duty of the wife to follow his choice, provided he acted in good faith and with due regard to her comfort, health, welfare, safety, and peace of mind (sec. 3103.02).<sup>33</sup>

**31. Public office—eligibility of women**

Women are eligible for election to public office (Const., art. 15, sec. 4).

**32. Jury service—eligibility of women**

Women are eligible for jury service (secs. 2313.06, 2313.08). The service of jurors is compulsory for both men and women unless excused for family responsibilities and other reasons as provided by statute (secs. 2313.12, 2313.16, 2313.17).

<sup>32</sup> *Cox v. Union City* (1948); 87 N.E. (2d) 374.

<sup>33</sup> *Burke v. Burke* (1930), 36 App. 551; 173 N.E. 637.