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WOMEN'S BUREAU  
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# The Legal Status of Women in the United States of America

January 1, 1948

REPORT FOR  
OKLAHOMA

*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. 157-35 (Revised)

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UNITED STATES DEPARTMENT OF LABOR  
MARTIN J. TOBIN, Secretary  
WOMEN'S BUREAU  
ERNEST S. MILLER, Director

## 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.

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## LETTER OF TRANSMITTAL

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UNITED STATES DEPARTMENT OF LABOR,  
WOMEN'S BUREAU,  
*Washington, September 8, 1949.*

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

LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR  
WOMEN'S BUREAU

Washington, September 2, 1919.

It is my honor to transmit to you a revised report on the legal status of women in Oklahoma. This is one of 23 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 concerning its status on establishing its judicial policy. Revision covers important changes in legislative action.

The study was made by Sara F. Buchanan, Attorney, aided by Mary J. Sullivan, Associate Economist, and Elizabeth Patton, Editorial Assistant, all of the Bureau staff.

Respectfully submitted,

FRANK S. MILLER, Director

Hon. Maurice J. Taft,

Secretary of Labor.

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# 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.

## OKLAHOMA

### SOURCES

Constitution of Oklahoma.  
Oklahoma Statutes, 1941.  
Session Laws, 1941, 1943, 1945, 1947.  
Oklahoma Reports.  
Pacific Reporter.

### EXPLANATORY NOTE

References to the State Constitution are indicated by parenthetical insertions of article and section numbers following the abbreviation Const., as (Const., art. 12, sec. 1) placed after the related subject matter.

Code section references are likewise in parentheses, thus (sec. 16-32).

Session laws are referred to by year of enactment and page number, as (1945, p. 121).

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."

# OKLAHOMA

## A.—CIVIL RIGHTS

### I.—CONTRACTS AND PROPERTY

#### 1. Age of Majority.

Minors are males under 21 years of age and females under 18 years of age (sec. 15-13). See Number 2 for exceptions.

#### 2. Contractual Powers of Minors.

A minor may take and hold real estate (sec. 16-32). Persons of any age who have been legally married and are otherwise qualified may dispose of, and contract concerning, real estate acquired after marriage (sec. 16-1). "Qualified" here means not of unsound mind and not a spendthrift.<sup>1</sup> But in general, until a minor is 18 years of age he cannot contract concerning real property, nor in respect to any personal property not in his immediate possession or control, unless specially authorized to do so by the court (sec. 15-17).

The disabilities of minority as to contracts or the transaction of general or special business may be removed by the district courts on application of any person under 21 years of age. But the court must be satisfied that the minor is capable of managing his affairs and that his interest will be aided by conferring powers of majority on him (secs. 10-91, 10-92).

All persons on whom the rights of majority have been conferred by the court who own real estate in Oklahoma, may convey, mortgage, or dispose of it, or make any contract regarding it (sec. 16-1).

A minor is liable for the reasonable value of necessaries furnished him under his contract for them, entered into when he is not under the care of a parent or guardian able to provide for him or his family (sec. 15-20). He is liable also under contracts which he is authorized by statute to make (sec. 15-21).

Other contracts made by a minor under 18 years of age are voidable unconditionally before his majority or within 1 year thereafter; but if made after he is 18 years of age he may avoid the contract upon returning to the other party the consideration paid or its equivalent with interest (secs. 15-18, 15-19).

A minor receives the wages of his employment in service, unless

the parent or guardian entitled to them gives notice to the employer that he claims such wages (sec. 10-18).

Any minor over 16 years may own, control, and dispose of shares of building-and-loan stock but may not hold any office in the association (sec. 18-212c).

See Number 14 as to wills.

<sup>1</sup> *Coats v. Benton* (1920), 80 Okla. 93, 96; 194 Pac. 198.

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

#### Personal Property.

The head of every family residing in the State is entitled to reserve as exempt various items of personal property enumerated in the statute. The list includes, among other things, all household and kitchen furniture; all equipment used in the debtor's trade or profession; livestock; poultry; all provisions and forage on hand or growing for family consumption and for the use of exempt stock for 1 year; also 75 percent of all wages or earnings for personal or professional services rendered during the 90 days preceding seizure for debt (sec. 31-1).<sup>1</sup>

The term "head of the family" contemplates a person upon whom, as head of the house, there rests an obligation to support the other members of the household, and on the part of the others some state of dependency on the head.<sup>2</sup>

Persons who are not heads of families are allowed exemption on specified articles of personal property. These include all wearing apparel, equipment used in the debtor's trade or profession, and 75 percent of all current wages or earnings for personal or professional services (sec. 31-4).

None of the personal property enumerated by the statute as subject to exemption by a debtor may be reserved from attachment or execution for wages of any clerk, mechanic, laborer, or servant (sec. 31-6).

#### Homestead.

The head of every family residing in the State may hold as exempt the home of the family, whether title to the property is in the husband or the wife (sec. 31-1). A rural homestead may not contain more than 160 acres. A homestead in a city or town, owned and occupied as a residence only, may consist of not more than 1 acre of land, and its value may not exceed \$5,000. But the homestead area may not be reduced below one-fourth of an acre regardless of value. If used for both residence and business purposes, the homestead interest may not exceed \$5,000. Temporary renting of the homestead does not destroy the exemption, when no other homestead has been acquired (Const., art. 12, sec. 1) (sec. 31-2).

The homestead is subject to taxes as limited by law (Const., art. 12, secs. 3a and 3b) (sec. 31-5), to liens for purchase money, and for work and material used in constructing improvements.

Any sale or mortgage of the homestead by the owner, if married, must be with the consent and joinder of the other spouse (Const., art. 12, sec. 2) (secs. 31-5; 16-4). Valid deeds, mortgages, or contracts relating to homestead property may be made between husband and wife (1945, p. 40). Provision is made for the sole deed, mortgage, or contract by one spouse of the homestead, when the other has abandoned such spouse for 1 year or taken up residence out of the State (sec. 16-6).

When either husband or wife has become hopelessly insane, the other spouse may petition the court for power to sell and convey the homestead, mortgage, or lease it for oil and gas mining purposes. On due proof, the court will grant the petition, and after the decree is entered in the court records, the authority to convey rests entirely in the petitioning spouse (1947, p. 80).

At least 30 days before the petition is to be heard in court, the applicant or his attorney must serve a copy of it on the nearest male relative of the insane husband or wife. If no such male relative is known to the applicant, then the copy must be served on the county attorney where the homestead is situated. The county attorney then has the duty to appear in court and see that the application is in good faith and the proceedings fairly conducted (sec. 16-9).

See Number 16 as to homestead and allowance on death of owner.

<sup>1</sup> *Oil Well Supply Co. v. Galbreath* (1935), 175 Okla. 305; 52 Pac. (2d) 780.

<sup>2</sup> *Lena v. Clinkenbeard* (1935), 172 Okla. 6; 44 Pac. (2d) 2.

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

See Number 9.

#### 5. Contractual Powers of Married Women.

All persons are capable of contracting except minors, persons of unsound mind, and persons deprived of civil rights (sec. 15-11).

Husband and wife contract toward each other obligations of mutual respect, fidelity, and support (sec. 32-1).

“Either 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, subject, in transactions between themselves, to the general rules which control the action of persons occupying confidential relations with each other as defined by the title on trusts” (sec. 32-5).

A conveyance of property between spouses is valid, whether made as an outright gift or in payment of a debt, unless it is shown that fraud existed or that the interests of creditors were jeopardized.<sup>1</sup>

See also Homestead, Number 3.

A married woman may convey her separate property without her husband's consent (sec. 32-8). Either spouse may convey, mortgage, or make any contract relating to any of his or her real

estate, other than the homestead, without the joinder of the other (sec. 16-13).

A woman retains after marriage the same legal existence and legal personality that she had before marriage, and is entitled to the same protection of all her rights as a woman which her husband receives as a man (sec. 32-15).

It has been held by the court that these statutes accord to a married woman the same legal status and freedom of contract enjoyed by the husband.<sup>2</sup>

A married woman is authorized to own, control, and dispose of shares of stock in building and loan associations (sec. 18-212c).

Husband and wife cannot alter their legal relations by contract with each other, except as to property, and as to an immediate separation. They may make provisions for the support of either of them and of their children during such separation (sec. 32-6).

If a husband and wife are sued together, the wife may defend for her own right; and if her husband neglect to defend, she may defend for his right also (sec. 12-225).

Married women are not excluded by statutory provision from serving as executors, administrators, or guardians. In this connection see code sections 58-102, 58-126, and 58-769.

The surviving husband or wife of a person dying intestate has a superior right to be appointed to administer the estate (sec. 58-122).

But among relatives, claiming and equally entitled to administer, males must be preferred to females, and relatives of the whole blood to those of the half blood (sec. 58-123).

See also Numbers 6, 7, 9, 11, and 12.

<sup>1</sup> *Hasley v. Bunte* (1936), 176 Okla. 457; 56 Pac. (2d) 119.

<sup>2</sup> *Farmers' State Bank v. Keen* (1917), 66 Okla. 62, 64; 167 Pac. 207.

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

The earnings of the wife are not liable for the debts of the husband, and 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 separate property of the wife (sec. 32-9).

A married woman, though living with her husband, has a statutory right to her separate earnings.<sup>1</sup>

She may sue in her own name to protect either her statutory or her natural rights (secs. 12-224, 32-15).<sup>2</sup>

<sup>1</sup> *Enid City Ry. Co. v. Reynolds* (1912), 34 Okla. 405, 411; 126 Pac. 193.

<sup>2</sup> *Muskogee Electric Traction Co. v. Green* (1923), 91 Okla. 200, 204; 217 Pac. 155.

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

Husband and wife contract toward each other obligations of mutual respect, fidelity, and support (sec. 32-1).

Support for husband or wife is required primarily from the community property before the separate property of either is made liable (1945, p. 121).

The husband must support himself and his wife out of his property or by his labor; but the wife must support the husband out of her separate property when he has not deserted her, has no separate property, and is unable from infirmity to support himself (sec. 32-3).

Notwithstanding the husband's duty to support his wife, if the wife contracts with a third party for necessities and personally agrees to pay for them, she is individually liable for the debt.<sup>1</sup>

The separate property of the wife is liable for her own debts, contracted before or after marriage (sec. 32-9).

If a wife abandons her husband without just cause, or lives apart from him by agreement, he is not liable for her support unless agreed upon by contract (sec. 32-11).

The parent entitled to the custody of a child must support and educate him in a manner 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 him to the extent of her ability (sec. 10-4).

<sup>1</sup> *Milsap v. Kahn* (1935), 174 Okla. 158; 49 Pac. (2d) 729.

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

There is no statutory requirement for a court order or formal consent of the husband to enable a married woman to engage in a separate business.

See Numbers 5 and 6.

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

Except for mutual obligations of support imposed by statute (sec. 32-3), neither husband nor wife has any interest in the separate property of the other,<sup>1</sup> but neither can be excluded from the other's dwelling (sec. 32-4).

The separate property of a married woman, including her earnings, cannot be seized for her husband's debts. Neither spouse is responsible for the acts of the other (sec. 32-9).

The statutory purpose, unquestionably, is to remove the common-law disabilities of married women to acquire, hold, and dispose of property. A married woman occupies the same status as her husband and has the right to convey her own property as if she were unmarried. There is no presumption of ownership of the wife's property in favor of the husband. Her right and title to the property is not clouded with any presumption arising from the marriage relation.<sup>2</sup> See Number 10.

While a husband and wife may hold real or personal property together as joint tenants or tenants in common (sec. 32-8)—that is, may hold property together in the same manner that any other persons may—the common-law estate of tenancy by the entirety does not exist in Oklahoma. As to the right of husband and wife to contract for, buy, sell, and handle property, the

spouses are as separate and distinct as though the marriage relation did not exist. The husband has no more interest in or control over the wife's property than he has over property belonging to any other person.<sup>3</sup> See also Number 5. But as to *Community Property* see Number 10.

When one spouse abandons the other, removes from the State and is absent for 1 year without providing for support of his or her family, or is sentenced to imprisonment for 1 year or longer, the spouse not at fault may be empowered by the district court having jurisdiction to manage, control, sell, or encumber the property of the spouse at fault, for the benefit of the family and to pay debts contracted prior to the abandonment or imprisonment (sec. 32-12).

A married woman may make and file for public record, as provided by statute, a complete inventory of her separate personal property (sec. 32-8). But her failure to file such an inventory does not forfeit her right to assert ownership of the property nor give her husband the right to mortgage or dispose of it.<sup>2</sup>

<sup>1</sup> *Pridemore v. Duncan* (1930), 146 Okla. 70; 293 Pac. 266.

<sup>2</sup> *Caylor Lumber Co. v. Mays* (1918), 73 Okla. 30; 174 Pac. 521.

<sup>3</sup> *Helvie v. Hoover* (1902), 11 Okla. 687; 69 Pac. 958. (Hist.)

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

*Community property* is that which is acquired after marriage or after the effective date of the Act (whichever is the later date) by either spouse, except property received by gift, inheritance, will, or as compensation for personal injuries.

Community property is the common property of husband and wife, each owning an undivided one-half interest in it.

The wife manages, controls, and may dispose of her separate property, also any community property (except the homestead) standing in her name, including her earnings, and the income from her separate property.

The husband manages, controls, and may dispose of his separate property, and of all community property other than that which the wife may manage, control, and dispose of, under authority of this statute.

Bank deposits are considered the separate property of the person in whose name they are entered, without regard to the person who made the deposit.

That portion of the community under the wife's management is liable only for debts contracted by her and for civil wrongs committed by her in the course of acquiring, holding, or managing it.

That portion of the community property under the husband's management is liable only for debts contracted by him and for civil wrongs committed by him in the course of acquiring, managing, holding, or disposing of it.

Husband and wife, and each of them, retain all exemption rights they have under existing laws.

All debts created by husband or wife after marriage or after

the effective date of this Act (whichever is later) are regarded as community debts unless proved otherwise. Creditors may satisfy their claims from community property which was under the management, control, and disposition of the spouse incurring the liability at the time the debt was created, or the liability incurred, even though the property be afterward transferred to the other spouse.

Either spouse may be empowered to manage, control, or dispose of the community property when the other is incapable of acting. The wife may be given this power when the husband abandons his family without provision for its support.

A surviving spouse administers the whole community property under specified partnership laws, and may qualify as executor or administrator of the deceased spouse's estate.

This Act governs community estates created under the former elective law, as of the effective date of the agreement of husband and wife to adopt the community system (1945, p. 118).

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

"Woman shall retain the same legal existence and legal personality after marriage as before marriage, and shall receive the same protection of all her rights as a woman, which her husband does as a man; and for any injury sustained to her reputation, person, property, character or any natural right, she shall have the same right to appeal in her own name alone to the courts of law or equity for redress and protection that her husband has to appeal in his own name alone \* \* \*" (sec. 32-15).

A married woman may sue and be sued in the same manner as if she were unmarried (sec. 12-224).

In an action for personal injuries, caused by the negligent act of another, a married woman living with her husband, and suing in her own name, may recover for the loss of capacity to earn, if resulting from such negligence, and for cost of medical treatment, if paid, or to be paid, out of her separate earnings.<sup>1</sup>

See Number 20, footnote reference.

<sup>1</sup> *Enid City Ry. Co. v. Reynolds* (1912), 34 Okla. 405; 126 Pac. 193.

### **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.**

"It is the policy of our Constitution and statutes to open the doors of the courts of justice to every person without distinction or discrimination for redress of wrongs and reparation for injuries; and, under our Constitution and statutes, a married woman may maintain an action for injuries to either her natural or statutory rights the same as though she were a feme sole, including an action against a former husband for a tort maliciously inflicted during coverture."<sup>1</sup>

<sup>1</sup> *Fiedler v. Fiedler* (1914), 42 Okla. 124, 126; 140 Pac. 1022.

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

In civil actions, husband and wife may not testify for or against each other, except as to transactions in which one acted as agent of the other, or in an action growing out of personal injuries to a wife, or in cases where they are joint parties and have a joint interest in the action. In no case may either be permitted to testify as to any communication made by one to the other during marriage (sec. 12-385, as amended 1943, p. 33).

In criminal cases, neither husband nor wife may be a witness against the other except in a criminal prosecution for a crime committed by one against the other. They may be witnesses for each other, however, and are subject to cross-examination as other witnesses. In no event may their testimony disclose communications made by one to the other except on a trial of an offense committed by one against the other (sec. 22-702).

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

Every person over 18 years of age, of sound mind, may dispose of all his real and personal estate by will (sec. 84-41). A married woman may dispose of all her separate estate by will without the consent of her husband, and may alter or revoke the will as if she were single. Her will is executed and proved in like manner as other wills (sec. 84-42).

A will executed by an unmarried woman is revoked by a subsequent marriage, and is not revived by the death of her husband (sec. 84-108). A man's will is revoked by marriage only if his wife, or wife and issue of the marriage, survive him, and he has made no provision for the wife in the will (sec. 84-107).

See Number 17.

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

*Community property*—See Number 10.

*Separate property*—Subject to payment of debts as provided by statute (sec. 84-2), any person's estate not disposed of by will nor limited by marriage contract, is succeeded to by a surviving spouse in the following manner:

#### Absolute Interest.

When decedent leaves issue:

An equal share with 1 child or the lawful issue of 1 child, surviving. One-third, when more than 1 child, or 1 child and the lawful issue of 1 or more deceased children, or the lineal descendants of 2 or more deceased children, survive the decedent.

An equal part with each of decedent's living children and the lawful issue of any deceased child, by right of representation, in property not acquired during marriage with decedent, if the decedent had been married more than once.

When decedent leaves no issue:

One-half of the estate in property not acquired by joint efforts during marriage, the other half to decedent's parents (see Number 27), or, if no parent living, to decedent's brothers and sisters and the children of any of them who are dead.

The entire estate, whether parents or brothers and sisters survive or not, in property acquired by the joint industry of husband and wife during the marriage. On the death of the surviving spouse, one-half of any such property remaining undisposed of by will of the surviving spouse goes to the heirs of the husband and one-half to the heirs of the wife.<sup>1 2</sup>

The entire estate in every kind of property, if no parent nor brother nor sister of the decedent is living (sec. 84-213). See Number 16.

#### Life Interest.

Dower and curtesy are abolished (secs. 84-214, 32-9).

<sup>1</sup> *Black v. Haynes* (1914), 45 Okla. 363; 145 Pac. 362.

<sup>2</sup> *Flowers v. Flowers* (1925), 117 Okla. 209; 245 Pac. 622.

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

A surviving spouse may continue to possess and occupy the whole homestead until it is otherwise disposed of according to law. Specified articles of personal property, including the wearing apparel of the decedent and family, provisions and fuel for 1 year, and household and kitchen furniture up to \$150 in value, are to be delivered immediately to the surviving spouse and child or children. Such property and the homestead are not liable for any prior debts or claims whatever (sec. 58-311), except that the homestead is liable for record liens (sec. 58-313). See Number 3.

In addition to this property, there is set apart to the surviving spouse or minor children of the decedent, all such personal property or money as is exempt by statute, to be, with the homestead, possessed and used by them, subject only to payment of necessary expenses of decedent's last illness, funeral charges, and administration expenses if no other assets are available (sec. 58-312).

If the amount of property so set apart is less than the statutory allowance, and insufficient for support of the surviving spouse and children, or either, or if there is other estate of the decedent, the court may in its discretion make such further reasonable allowance as may be necessary during settlement of the estate (sec. 58-314).

The personal property set apart for family use becomes the property of the surviving spouse, if there is no minor child. If there is a minor child, the spouse takes one-half the property; if more than one minor child, the living spouse takes one-third (sec. 58-316).

When the value of the whole personal estate is not more than \$1,500, the court must assign for the use and support of the

widow and any minor children all of such estate after payment of administration charges and expenses of decedent's last illness and funeral. If the value is not more than \$3,000, the court has discretion to dispose of the estate under the summary administration provisions (sec. 58-317).

If the widow has a maintenance derived from her own property equal to the portion set apart to her by the preceding provisions under this subject-heading [secs. 58-311 to 58-317] the whole property set apart, other than her right in the homestead, must go to the minor children (sec. 58-318).

The proceeds of life insurance payable to a married woman are for her separate use and benefit, except as to the amount of any premiums paid on the policy in fraud of rights of creditors of the person effecting the insurance (secs. 36-211, 36-212). These sections of the statute seem to be special statutes for the protection of widows, and are to be liberally construed to effectuate that purpose.<sup>1</sup>

The effect of the homestead statute [sec. 58-311, above] is to grant to the surviving spouse the right to occupy the homestead premises during his or her life. The right is exclusive, and is purely optional with the spouse.<sup>2</sup>

<sup>1</sup> *Johnson v. Roberts* (1926), 124 Okla. 68, 71; 254 Pac. 88.

<sup>2</sup> *Sharp v. Jones* (1935), 171 Okla. 471; 43 Pac. (2d) 427.

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

Neither husband nor wife can so dispose of his or her property by will that the other would receive less in value than if the estate were distributed according to the statute (sec. 84-44). A married person is not required to will to the surviving spouse more than one-half of property not acquired during marriage by joint industry (sec. 84-44). See Number 15. If less than the statutory share is left to a surviving spouse by the decedent's will, such survivor has the right to elect whether to accept the provision of the will or to take instead the portion granted by statute.<sup>1 2</sup>

<sup>1</sup> *York v. Trigg* (1927), 87 Okla. 214, 219; 209 Pac. 417.

<sup>2</sup> *Bank of Commerce & Trust Co. v. Trigg* (1927), 138 Okla. 216, 218; 280 Pac. 563.

## II.—MARRIAGE AND DIVORCE

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

Any unmarried male at 21 years of age, or any unmarried female at 18, is capable of contracting and consenting to marriage.

Males between 18 and 21 and females between 15 and 18 years of age may contract marriage with the consent of a parent or guardian, given in due form.

Males under 18 years and females under 15 years are expressly forbidden and prohibited from entering into the marriage relation, unless by authority of court in settlement of suits for seduction or bastardy (sec. 43-3).

## 19. Validity of Common-Law Marriage.

A common-law marriage is valid in this State. Such a marriage exists where competent parties agree to be and become immediately man and wife, and under such an agreement enter into and afterward maintain the marriage relation.<sup>1 2</sup>

<sup>1</sup> *In re Love's Estate* (1914), 42 Okla. 478; 142 Pac. 305; L. R. A. 1915E, 109.

<sup>2</sup> *Puntka v. Puntka* (1935), 174 Okla. 517; 50 Pac. (2d) 1092.

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

A premarital examination for syphilis is required of each applicant for a license to marry. Ordinarily, the test must be within the 30-day period preceding application (1945, p. 137).

Any person who, after becoming contaminated or afflicted with any venereal disease and before being discharged and pronounced cured by a reputable physician in writing, marries any other person, or exposes any other person by the act of copulation or sexual intercourse to such venereal disease, or to the liability to contract it, is guilty of a felony and upon conviction is to be punished by confinement in the penitentiary for not less than 1 year nor more than 5 years (secs. 63-541, 63-543). See Number 23, Grounds for Divorce.

A woman who was an innocent party to a void marriage was awarded damages in a civil suit against the man for the communication to her by him of a venereal disease.<sup>1</sup>

<sup>1</sup> *Panther v. McKnight* (1926), 125 Okla. 134; 256 Pac. 916.

## 21. Interstate Cooperation in Marriage Law Enforcement.

The statutes have no provision prohibiting the evasion of the marriage laws of other States.

However, where citizens of the State go elsewhere and contract a marriage prohibited by Oklahoma statutes governing public policy, and then return to Oklahoma as their domicile, the law of Oklahoma governs in determining the validity of the marriage.<sup>1</sup>

<sup>1</sup> *Ross v. Bryant* (1923), 90 Okla. 300; 217 Pac. 364.

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

Marriages between forbidden degrees of kindred are illegal and void (sec. 43-2), as are prohibited interracial marriages (sec. 43-12). Marriages may be annulled by the district court in an action brought by the incapable party on proof of want of age or understanding (sec. 12-1283). A marriage in which one of the parties had been divorced less than 6 months is subject to annulment on application of either party (sec. 12-1281b).

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

A divorce may be granted for any of the following causes: An undivorced spouse living at the time of a subsequent marriage;

abandonment for 1 year; adultery; impotency; extreme cruelty; fraudulent contract; habitual drunkenness; gross neglect of duty; conviction of a felony and imprisonment in the penitentiary after marriage, insanity for a period of 5 years.

The husband may obtain a divorce if the wife was pregnant by another at the time of marriage (sec. 12-1271, as amended 1947, p. 79).

See Number 22.

### III.—PARENTS AND CHILDREN

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

The father of a legitimate unmarried minor child is entitled to its custody, services, and earnings, but cannot transfer such custody or services to any other person except the mother, without her written consent, unless she has deserted him or lives separate from him by agreement. The mother becomes entitled to custody of the child when the father is dead, or is unable or refuses to take the custody, or has abandoned his family (sec. 10-5).

See Numbers 2 and 7.

The mother of an illegitimate unmarried minor is entitled to its custody, services, and earnings (sec. 10-6).

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

Either parent, whether married or not, if competent to transact his or her own business and not otherwise unsuitable or disqualified, is entitled to the guardianship of his or her minor child. But if the parents are married and living together, the parent petitioning the court for appointment must have the endorsement or nomination of the other unless the minor is at least 14 years of age and therefore capable under the law of nominating the parent he desires as guardian. If both parents are seeking appointment, the county court, upon full investigation, may appoint the one most competent to care for the minor's interest (secs. 58-768, 58-769).

The parent, as such, has no control over the property of the child (sec. 10-8).

No person, whether a parent or not, has any power as a guardian of property until duly appointed (sec. 30-7).

As between parents adversely claiming the custody or guardianship of a minor, neither is entitled as of right, but other things being equal, if the child is of tender years, the mother is favored as guardian; but if the child is of an age to require education and preparation for labor or business, then the father is to be preferred for appointment (sec. 30-11).

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

A guardian of a minor's person or estate, or both, may be appointed by will or by deed. The father may make such an appoint-

ment with the written consent of the mother, or either parent has such power if the other is dead or incapable of consent.

The mother of an illegitimate minor child may make such an appointment by deed or will (sec. 30-6).

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

When a person dies intestate, leaving no issue, the surviving spouse takes one-half the estate and the decedent's father and mother take the other half in equal shares, or if one parent is dead the survivor takes the portion of both.

If the decedent leaves neither issue nor spouse, his parents take the estate in equal shares, or, if one is dead, the survivor inherits the whole, except that any part of the estate acquired by the joint industry of husband and wife during the marriage, remaining after the death of the decedent's surviving spouse, intestate,<sup>1</sup> is divided in equal portions between the heirs of the deceased spouses.

If the decedent was a minor, and left no issue, the estate must go to the parents equally, if living together; otherwise, to the parent who had the care of the minor (sec. 84-213).

<sup>1</sup> *Black v. Haynes* (1914), 45 Okla. 363; 145 Pac. 362.

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

When the paternity of the child has been established by judicial proceeding, the adjudged father is charged by court order with the maintenance of the child, in such amount and manner as the court directs, and with the costs of the suit. Security for performance of the order is required (sec. 10-78), and the court has continuing power in the case to change any order or judgment rendered, on due notice to the defendant and county attorney (sec. 10-79).

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

On the death of an illegitimate child, who had not been acknowledged or adopted by his father, and who leaves no lawful issue, his intestate estate goes to his mother, or, if she is dead, to her heirs at law (sec. 84-216).

## **B.—POLITICAL RIGHTS**

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

"The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform thereto" (sec. 32-2).

The residence or domicile of a married woman is that of her husband.<sup>1</sup>

But a wife who resides in the State at the time she applies for

a divorce is considered a resident of Oklahoma for that purpose, though her husband is a nonresident (sec. 12-1286).

<sup>1</sup> *Pope v. Pope* (1926), 116 Okla. 188; 243 Pac. 962.

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

Women are eligible to all public offices. [The former constitutional barrier to women in 8 major positions has been removed. See Amendment to Constitution, Art. 16, sec. 3 (1941 Laws, p. 542), ratified in the general election of November 3, 1942.]

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

Only male citizens can qualify as grand and trial jurors (Const., art. 2, secs. 18, 19) (sec. 38-10).

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