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UNITED STATES DEPARTMENT OF LABOR

MAURICE J. TOBIN, Secretary

WOMEN'S BUREAU

FRIEDA S. MILLER, Director



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

January 1, 1948

REPORT FOR  
RHODE ISLAND

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



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

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

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

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

LETTER OF TRANSMITTAL

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UNITED STATES DEPARTMENT OF LABOR,  
WOMEN'S BUREAU,  
*Washington, September 9, 1949.*

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



# CONTENTS

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## 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.

# 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.

## RHODE ISLAND

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### SOURCES

Constitution of Rhode Island.  
General Laws, 1938.  
Session Laws, 1939, 1943, 1944, 1947.  
Rhode Island Reports.  
Atlantic Reporter.

### EXPLANATORY NOTE

References to chapters and sections of the General Laws are placed in parentheses, thus (ch. 417, sec. 7).

Session laws are referred to by year of enactment, chapter, and page number, as (1947, ch. 1915, p. 363).

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."

# RHODE ISLAND

## A.—CIVIL RIGHTS

### I.—CONTRACTS AND PROPERTY

#### 1. Age of Majority.

The age of majority is 21 years for men and women, by common-law rule.

#### 2. Contractual Powers of Minors.

The general rule is followed that infants are incapable of making contracts except for necessities. Such contracts are not void, but are voidable.<sup>1</sup>

Every person, married or single, who is 18 years of age and of sane mind, may make a valid will as to personal property (ch. 417, sec. 7; ch. 566, sec. 5).

<sup>1</sup> *Jacobs v. United Electric Railways Co.* (1924), 46 R. I. 230; 125 Atl. 286.

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

The statute providing for exemptions of both real and personal property as enumerated appears to apply to both sexes, except for specific items clearly limited to one sex or the other (ch. 309, sec. 2; ch. 557, sec. 1). No exemption for homestead is made in express terms. But see Number 15 as to discretionary power of court in certain cases.

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

See Number 9.

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

A married woman may make any contract whatsoever, and has the same rights and liabilities as if she were unmarried (ch. 417, sec. 3).

She may take or convey any estate or interest in any real or personal property in the same manner and with the same effect as if she were unmarried. She may deal directly with her husband in all transactions not intended to defraud creditors (ch. 417, secs. 4, 5).

Either husband or wife may create a tenancy by the entirety by direct deed to himself or herself and the other spouse (1947, ch. 1915, p. 363).

She may bar her dower right in her husband's estate by joining with him in the deed of conveyance and releasing her claim to dower, or by executing a separate deed of release (ch. 417, sec. 6).

A married woman may enter into a trading partnership with her husband (1944, ch. 1397, p. 27).

A married woman has full power to serve in a fiduciary capacity, when duly appointed (ch. 417, sec. 10).

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

The property of a married woman acquired by her own industry is her separate property, free from the control of her husband (ch. 417, sec. 1). In all court actions, suits, and proceedings by or against a married woman, she sues or is sued alone (ch. 417, sec. 14).<sup>1 2</sup> She is entitled to sue for her own earnings.<sup>3</sup>

<sup>1</sup> *Gencarelle v. New York, N. H. & H. R. Co.* (1899), 21 R. I. 216; 44 Atl. 174.

<sup>2</sup> *Oken v. Oken* (1922), 44 R. I. 291; 117 Atl. 357.

<sup>3</sup> *Berry v. Teel* (1879), 12 R. I. 267, 268.

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

A married woman may contract for the purchase of goods and so bind herself for payment of the price on delivery of the goods, and render herself liable to be sued if she does not pay, as if she were unmarried (ch. 417, secs. 3, 12, 13).<sup>1</sup>

<sup>1</sup> *Merriam v. White* (1894), 18 R. I. 727; 30 Atl. 601.

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

A married woman may carry on any trade or business as if she were single. Her husband is not liable for her debts, contracts, or torts arising in connection with it (ch. 417, sec. 9).

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

The property owned by a married woman before marriage, or acquired by her after marriage, with the proceeds from it, remains her separate property free from the control of her husband (ch. 417, sec. 1).<sup>1 2</sup>

The wife's property is not liable for the contracts or wrongs of her husband (ch. 417, sec. 12).

<sup>1</sup> *Oken v. Oken* (1922), 44 R. I. 291, 292; 117 Atl. 357.

<sup>2</sup> *Smith v. Smith* (1898), 20 R. I. 556; 40 Atl. 417.

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

The wife has control over only her separate property. See Number 9.

In general, by common-law rule, the property acquired during marriage by the cooperative efforts of husband and wife belongs to the husband unless title to it is taken in joint ownership, such as joint deeds, or joint bank accounts.

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

Damages recovered in suits or proceedings for a married woman's benefit and compensation for her property taken for public use, are her separate property and free from her husband's control (ch. 417, sec. 1). In all actions, suits, and proceedings, at law or in equity, by or against a married woman, she sues or is sued alone (ch. 417, sec. 14).

Either spouse may sue to recover damages for the malicious alienation of the other's affections, resulting in loss of conjugal society and cohabitation.<sup>1</sup>

<sup>1</sup> *Golden v. Greene Paper Co.* (1922), 44 R. I. 231; 116 Atl. 579; 21 A. L. R. 1514.

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

The statute law relating to the property rights of married women confers no authority on a wife to sue her husband for damages for personal injuries caused by his negligence.<sup>1</sup>

The common law accords no such right to either spouse, since under its rule husband and wife are one person.

<sup>1</sup> *Oken v. Oken* (1922), 44 R. I. 291; 117 Atl. 357.

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

In civil cases, the husband or wife of either party is a competent witness, but neither will be permitted to give testimony tending to incriminate the other or to disclose any communication between them during the marriage, except in cases involving divorce, their separate property rights, or enforced prostitution (ch. 537, sec. 15).

The husband or wife of any respondent in a criminal prosecution, offering himself or herself as a witness, may not be excluded from testifying because he or she is the husband or wife of such respondent (ch. 537, sec. 17).

The husband or wife cannot be compelled to be a witness in criminal suits. There must be a voluntary offer, and upon such offer there can be no exclusion from testifying because of the marital relationship. The witness is to testify as though the relationship did not exist. The statute removes all incompetency, providing only that neither party can compel a spouse to be a witness.<sup>1</sup>

<sup>1</sup> *State v. Kenyon* (1893), 18 R. I. 217; 26 Atl. 199. (Hist.)

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

Every person of sound mind, when 21 years of age, may dis-

pose of any of his or her property by will; and may dispose of his or her personal property by will at 18 years of age (ch. 417, sec. 7; ch. 566, secs. 2, 5). But the will of a married woman may not impair the rights of her husband upon her death as tenant by the curtesy (ch. 566, sec. 12). See Numbers 15 and 17 as to wife's dower.

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

The widow's right of dower and the husband's right of curtesy are recognized in this State, as at common law (ch. 417, sec. 8; ch. 418, sec. 1).

A surviving spouse does not inherit outright and unconditionally any portion of the real estate belonging to an intestate decedent who dies without issue. If the intestate leaves no issue, the surviving spouse takes a life interest in all the real estate, and if the land is not required for the payment of decedent's debts, the probate court, upon petition properly filed, may set off to the surviving spouse, in fee, real estate not exceeding \$5,000 in value above mortgages. When under the statutes of descent of real estate, moieties of a decedent's real property would pass outright to the paternal and maternal kindred respectively of the decedent, if any survived, and no such kindred be living on one part or the other, the whole of the real estate descends to the living spouse of the intestate decedent (ch. 567, sec. 4) (1944, ch. 1421, p. 51). See Number 16.

The surviving widow or husband is entitled outright to the surplus of the personal estate of the decedent not bequeathed, up to the value of \$3,000, and one-half the remainder, if the intestate died without issue. If the deceased left issue, the living spouse is entitled absolutely to one-half of the surplus personal property. The residue in either case is distributed to the heirs of the intestate decedent by the same rule that governs the descent of real estate (ch. 567, sec. 9) (1943, ch. 1283, p. 36).

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

The wearing apparel of the deceased, other than jewels and watches, is not included among the estate's assets, but is to be distributed according to law, if not disposed of by will (ch. 577, sec. 3). See Number 15. The wearing apparel of the widow and minor children of a deceased person belongs to them respectively. The widow is entitled, for herself and for the family under her care, to household effects, supplies, and such other exempt personal property of the husband, as in the court's judgment is necessary, having regard to all the circumstances of the case (ch. 577, sec. 6). The court also makes reasonable allowance out of the estate for the support of the family until other provision can be made, for a period not exceeding 6 months from the decedent's death, and in its discretion, upon petition, a similar allowance for a second 6 months' period (ch. 577, sec. 7).

If no descendants of the deceased survive, the court also allows and sets off to the widow such portion of the real estate of her deceased husband, not required for the payment of his debts, as may be suitable for her situation and support, and in accordance with the circumstances of the estate, such allowance to be in addition to dower, and held by her subject to the same conditions and for the same time as she holds her estate of dower (ch. 577, sec. 9).<sup>1 2</sup> See also Number 15.

<sup>1</sup> *Cronshaw v. Cronshaw* (1898), 21 R. I. 126; 43 Atl. 1038.

<sup>2</sup> *Smith v. Smith* (1879), 12 R. I. 456.

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

The widow has the right to refuse to accept the provisions of her husband's will made for her in lieu of dower (ch. 566, sec. 21).

## II.—MARRIAGE AND DIVORCE

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

No minor or person under control of a parent or guardian may apply for or receive a license to marry, without the written consent of the parent or guardian given in the presence of an authorized person from the office of the town or city clerk, and proof has been submitted that the minor, if a female, has attained the age of 16 years, and if a male has attained the age of 18 years. But this rule may be waived as to persons who are 18 years of age who, if resident in the State, have no parent or guardian competent to act residing in the State, or, if the applicant is a nonresident, has no such parent or guardian residing in the United States. The rule may be waived as to a female of 16 years or a male of 18 years resident in the State, upon the consent in writing of the director of public welfare of the town or city where the minor resides, as required of parents. No license may be issued to any female under 16 or male under 18 without a formal order from the court of domestic relations as prescribed by statute (ch. 415, sec. 11).

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

The statutes do not declare marriage without solemnization to be void. In the absence of such an express provision, the statutory requirements as to license, registration, and solemnization are merely directory and do not invalidate any marriage good under the common law.<sup>1 2 3</sup>

<sup>1</sup> *Matthewson v. Matthewson* (1894), 18 R. I. 456; 28 Atl. 801.

<sup>2</sup> *Holgate v. United Electric Railways Co.* (1926), 47 R. I. 337; 133 Atl. 243.

<sup>3</sup> *Silva v. Merritt Chapman & Scott Corporation* (1931), 52 R. I. 30, 32; 156 Atl. 512.

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

Each applicant must file a physician's statement, showing that within 40 days prior to issuance of license, a physical examination and standard laboratory tests have been made to determine the

presence of syphilis, gonorrhoea, or tuberculosis, and the opinion of the physician as to whether there is danger of communication of any of these diseases if found to be present.

Exception may be allowed under requirements of public policy in the discretion of specified authorities (ch. 415, sec. 10).

Marriages are declared absolutely void where either party is an idiot or lunatic (ch. 415, sec. 5). There are no other provisions as to fitness of applicants. A woman applicant, nonresident in the State, must obtain a license at least 5 days previous to the marriage (ch. 415, sec. 10). But this requirement is waived as to immigrant women arriving in any State port from a foreign country (ch. 415, sec. 24).

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

The general rule is followed that a marriage will be recognized in the State if it is valid where contracted, unless violative of public policy.<sup>1</sup>

<sup>1</sup> *Ex parte Chace* (1904), 26 R. I. 351; 58 Atl. 978.

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

The statute declares absolutely void any marriage contracted when either of the parties, at the time of such marriage, has a former wife or husband living who has not been, by final decree, divorced from such party, or when either party is an idiot or lunatic at the time the marriage is contracted (ch. 415, sec. 5). Also, the law makes void marriages within forbidden degrees of kindred (ch. 415, secs. 1-3). The marriage is voidable if either party is below the age of consent to marriage. See Number 18.

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

Either a limited or an absolute divorce may be granted for any one of the following causes: A legally void or voidable marriage; constructive death (that is, dead so far as this law is concerned) of one party due to crime or absence; impotency; adultery; extreme cruelty; willful desertion for 5 years, or for a shorter period within the court's discretion; continued drunkenness; addiction to drugs enumerated in the statute; husband's willful neglect for 1 year to provide necessaries for the wife; and for any other gross misbehavior of either party, repugnant to and in violation of the marriage covenant; separation for at least 10 years (ch. 416, secs. 1, 2, 3, 8).

## III.—PARENTS AND CHILDREN

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

The father and mother have equal rights to the services and earnings of a minor child (ch. 427, sec. 1).

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

The father and mother are the joint natural guardians of their minor children with equal rights to the custody, services, and earnings of the children (ch. 427, sec. 1).

Neither parent has any right paramount to the other concerning the custody of their minor children. Neither parent is to have any natural priority of preference in any proceeding or suit in any matter relating to their minor children (ch. 427, secs. 1, 2).

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

Though any person competent to make a will may appoint a testamentary guardian of his minor children, subject to the approval of the probate court, a surviving parent becomes the guardian of the children of the marriage, if otherwise qualified (ch. 426, sec. 5).

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

When an intestate decedent dies without issue and leaves a husband or wife, the real estate passes to the surviving spouse for life (ch. 567, sec. 4). The title to the real estate passes to the decedent's parents in equal shares, or to the surviving parent (ch. 567, sec. 1).

Personal estate subject to distribution, where the intestate died without issue, is distributed as follows: \$3,000 plus one-half the remainder goes to the surviving spouse, and the residue to decedent's heirs as provided for real estate, but without regard to the life estate or allowance to a surviving spouse of decedent (ch. 567, sec. 9) (1943, ch. 1283, p. 36).

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

If the paternity of the child is established by proper court procedure, the adjudged father remains under the custody of the court, and is required to pay in the manner which the court shall determine, for the expenses attending the care of the mother and birth of the child, and for the support and education of the child until it is 16 years of age (ch. 424, sec. 6).

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

The mother inherits from her child born out of wedlock under the laws of inheritance that govern the descent and distribution of property from a legitimate child to its mother (ch. 567, sec. 7).<sup>1</sup>

<sup>1</sup>*Briggs v. Greene* (1873), 10 R. I. 495.

## B.—POLITICAL RIGHTS

### 30. Domicile of Married Women.

The statute governing the qualifications of voters provides that

women citizens are subject to the same requirements and restrictions in regard to age, time and place of residence, and other qualifications as male citizens, under the provisions of the constitution and laws of the State regulating their right to vote (ch. 310, sec. 4). But there is no specific provision as to the domicile of married women. The common-law rule has been recognized by the court as applying generally in an opinion holding that so long as the unity of the marriage relation continues a wife cannot acquire a domicile distinct from her husband.<sup>1</sup>

<sup>1</sup> *Howland v. Granger* (1900), 22 R. I. 1; 45 Atl. 740.

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

All general laws and public laws relating to the registering, listing, and qualification of male citizens as voters, the conduct of caucuses and elections, and the right to be nominated for or to hold office, are construed to include women citizens (ch. 310, sec. 6).

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

Women over 25 years of age who are qualified electors are liable for jury service in the superior court in the county of their residence, subject to the exemptions available to men jurors; provided, any woman who is unable or unwilling to serve, and so notifies the summoning officer or the jury commissioner, is excused from jury service; provided, also, that the accommodations and facilities of the superior court house are such as to allow the service of women as jurors (ch. 506, secs. 1, 39).

When the jury commissioner finds the courthouse facilities in his county adequate for accommodation of women jurors, he shall certify the fact to the Secretary of State, and include women in jury list drawings (1939, ch. 700, p. 361).