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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

UTAH

*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. 157-43 (Revised)

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

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

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

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

LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, November 30, 1948.

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

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

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

Respectfully submitted.

FRIEDA S. MILLER, *Director.*

HON. MAURICE J. TOBIN,
Secretary of Labor.

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

INTRODUCTION

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

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

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

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

UTAH

SOURCES

Constitution of Utah.
Annotated Code, 1943.
Supplement, 1945.
Utah 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. 22, sec. 2), placed after the related subject matter.

Code and supplement section references are likewise in parentheses, thus (sec. 40-2-5).

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."

UTAH

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Males attain majority at 21 years; females, at 18 years. All minors attain majority by marriage (sec. 14-1-1); but in the discretion of the court, a guardianship of the estate of the minor may be continued until his majority (sec. 102-13-14).

2. Contractual Powers of Minors.

A minor is bound not only for the reasonable value of necessaries but also by his contracts, unless he disaffirms them before he attains his majority or within a reasonable time afterward, and restores to the other party all money or property received through such contracts and remaining within his control at any time after attaining his majority (secs. 14-1-2, 81-1-2). No contract can be disaffirmed, however, where the other party had good reason to believe the minor capable of contracting because of his own misrepresentations as to his majority or from his having engaged in business as an adult (sec. 14-1-3).

Wages may be paid to a minor in full satisfaction for his personal services actually rendered under a contract made with him alone for his services, and when so paid the parent has no claim on the employer for such wages (sec. 14-1-4).¹

Minors may become shareholders and depositors in cooperative banks established under State law (sec. 7-7-15); and may make and draw bank deposits and draw dividends and give valid receipts for them (sec. 7-3-48).

A minor may not serve as executor (sec. 102-3-15), nor as administrator or administratrix (sec. 102-4-4).

See Number 14 as to capacity to will property.

¹ *Kuchenmeister v. R. R. Co.* (1918), 52 Utah 116, 129; 172 Pac. 725.

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

Personal Property.

Exemptions of personal property, enumerated in the statute, are available to the "judgment debtor." Unless the statute expressly provides otherwise, these exemptions are "for the benefit of the judgment debtor, regardless of whether or not he is the head of a family."¹

In addition to enumerated personal chattels, household furnishings, provisions for 3 months, wearing apparel, farming and mechanical implements, equipment used in earning a livelihood, certain livestock

with limited food supply, and personal earnings as specified by statute, exemption is allowed for life insurance benefits purchased by an annual premium not exceeding \$500 (secs. 104-37-13, 104-37-14).

No exemption exists against debts for taxes, purchase-price, or judgment on a record lien (sec. 104-37-16).

A husband cannot give a valid mortgage on exempt personal property unless the wife also joins in making it (sec. 13-0-3).

Homestead.

As authorized by the Constitution, a homestead in lands, together with improvements, having a value of at least \$1,500, may be selected by each head of a family (Const., art. 22, sec. 1).

A homestead, "consisting of lands, appurtenances and improvements" in one or more localities, not exceeding \$2,000 in value for the head of a family, a further sum of \$750 for the spouse, and \$300 for each other member of the family is declared wholly exempt from debts except for taxes, mortgage judgments, and purchase-money (sec. 38-0-1). Insurance proceeds from loss of homestead improvements are likewise exempt (sec. 38-0-3); as are water rights and interests to the extent they are necessary for supplying water to the homestead for domestic and irrigating purposes (sec. 38-0-4).

The phrase "head of a family" includes: (1) The husband or wife when the claimant is a married person; (2) every person who has residing with him and under his care and maintenance any of the relatives or dependents specified by statute (sec. 38-0-5).

If the claimant is married, the homestead may be selected from the husband's separate property, or with the consent of the wife from her separate property (sec. 38-0-6). The exemption continues to a deserted spouse (sec. 38-0-7). When the judgment debtor fails to claim and select a homestead, such debtor's husband or wife has full right to make claim and selection (sec. 38-0-8). If the owner is married no transfer of right or title to premises previously selected and recorded as a homestead is valid unless both husband and wife join in executing the instrument (sec. 38-0-13).

See Numbers 15 and 16 as to right of possession of homestead and exempt personal property on the owner's death.

¹ *Snow v. West* (1909), 35 Utah 206, 210; 99 Pac. 674; 136 A. S. R. 1047.

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

The real and personal estate which a woman acquires before marriage remains her property, and is not subject to the liabilities of her husband. She may convey it or will it as if she were unmarried (Const., art. 22, sec. 2) (sec. 40-2-1).

5. Contractual Powers of Married Women.

Contracts may be made by a wife and liabilities incurred and enforced by or against her to the same extent and in the same manner as if she were unmarried (sec. 40-2-2).

Married Woman's Liability.

For civil injuries committed by a married woman, damages may be recovered from her alone, and her husband is not liable, except in

cases where he would be jointly liable with her if the marriage did not exist (sec. 40-2-7). See also Numbers 6 and 11.

See Numbers 9 and 14 as to married woman's right to dispose of her separate property by conveyance or will.

A conveyance, transfer, or lien executed by either husband or wife to or in favor of the other is valid to the same extent as between other persons (sec. 40-2-3).

A husband or wife may make the other an attorney in fact to control property for their mutual benefit or otherwise, and may revoke the appointment the same as other persons (sec. 40-2-8).

Fiduciary Capacities.

When an unmarried woman appointed executrix marries, the court or a judge thereof may, upon the motion of any person interested in the estate, revoke her authority and appoint another person in her place. When a married woman is named in a last will as executrix she may be appointed and may serve in every respect as a feme sole (sec. 102-3-17).

A married woman may not be appointed administratrix when objection is made by any person interested in an estate. When an unmarried woman appointed administratrix marries, the court may, upon the motion of any such interested person, revoke her authority and appoint another in her place (sec. 102-4-5).

A surviving husband or wife of an intestate decedent is first in order for appointment to administer the estate (sec. 102-4-1).

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

A wife may receive the wages for her personal labor, maintain an action for them in her own name, and hold them in her own right (sec. 40-2-4). See also Number 11.

7. Liability of Married Woman for Family Necessaries.

The expenses of the family and the education of the children are chargeable on the property of both husband and wife or of either of them, and in respect to such expenses husband and wife may be sued jointly or separately (sec. 40-2-9).¹ See also Number 5 as to contracts of a married woman, and Number 9 as to her general liability for debts of husband.

When a married woman becomes liable in a statutory action for support of poor relatives, her liability may not exceed the income of the estate she holds in her own right (sec. 91-0-2).

Actions for Separate Maintenance.

An action for separate maintenance may be brought by the wife of a resident of the State when he has deserted her without good and sufficient cause, or neglected or refused to support her properly though able to do so; or when he has so deserted her or neglected or refused to provide for her while she is a resident of the State and he has property within the State; or when a wife without her fault lives separate and apart from her husband. The court will set apart to the wife as alimony the use of such part of her husband's real and per-

sonal estate or earnings as it deems just, and may tax the husband with such portion of the costs of the proceeding as appears necessary and proper (sec. 40-4-1). Like rights and remedies are extended to a dependent husband, when he is deserted by his wife, or with just cause lives apart from her; also, to either husband or wife on the imprisonment of the other in the State prison under a sentence of 1 year or more when suitable provision has not been made for the support of the one not so imprisoned (sec. 40-4-5).

Penal Provision.

Any person who, without just excuse, deserts or willfully neglects or refuses to provide for the support and maintenance of his or her minor child or children under the age of 16 years in destitute or necessitous circumstances, is guilty of a felony and punishable by imprisonment in the State prison at hard labor for a period not to exceed 18 months (sec. 103-13-1).

¹ *Berow v. Shields* (1916), 48 Utah 270; 159 Pac. 538.

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

No court proceeding, or formal record of the husband's consent, or inventory of separate property is required by statute of a married woman about to engage in an independent business.

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

A married woman retains as her own the real and personal estate which she acquired before marriage, and all property to which she becomes entitled after marriage by purchase, gift, grant, inheritance, or will. Such property is not liable for the debts, obligations, or engagements of her husband. She may convey it or dispose of it by will as if she were unmarried (Const., art. 22, sec. 2) (sec. 40-2-1).

Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, nor for the debts of the other contracted after marriage. The wages, earnings, or property, or the rents or income from the property, of either husband or wife may not be subject to the separate debts of the other (sec. 40-2-5). For exception in the matter of family expense, see Number 7.

Neither husband nor wife can remove the other or their children from the homestead without the consent of the other, unless the owner of the property provides in good faith another homestead suitable to the condition in life of the family (sec. 40-2-10). See also Number 3 as to transfer of right or title to homestead.

Tenancies by the entirety may be created by the express terms of an instrument (sec. 78-1-5), but for purposes of the State inheritance tax such estates are treated as tenancies in common and made taxable (sec. 80-12-5).

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

In the absence of an express statute, the ownership and control of property acquired during marriage by the cooperative industry of

husband and wife are governed by the principles of common law. See section 88-2-1 of the 1943 Code.

The common-law rule was applied in the case of *Anderson v. Cercone* (1919), 54 Utah 345, 348; 180 Pac. 586, the court holding that property purchased from the joint earnings of husband and wife, where the wife's contribution of services consisted in tending the home and children and assisting the husband in such ways as she could while he worked outside the home, belongs to the husband, subject only to such interest as the law gives the wife in the husband's property. The court further observed that "such interest of the wife does not constitute a separate estate in her, even in Utah, where the law is exceedingly broad and liberal in respect to the property rights of married women. * * * In other words, her rights in such property are neither more nor less than they would be if the husband had bought the property with proceeds derived from his separate estate."

However, a husband who is living with his wife cannot make a valid assignment of his wages to secure a loan of \$300 or less, if the wife does not give her written consent to the assignment (sec. 7-8-6).

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

A married woman may prosecute and defend all actions for the preservation and protection of her rights and property, as if unmarried. The husband has no right of recovery on account of personal injury or wrong to his wife, or for expenses incurred on that account, but the wife may recover against a third person for such injury or wrong as if unmarried. Such recovery includes expenses of medical treatment and other expenses paid or assumed by the husband (sec. 40-2-4).

A married woman may sue and be sued in the same manner as if she were unmarried (sec. 104-3-3); also, judgment for or against her is rendered and enforced as if she were single (sec. 104-30-6).

If husband and wife are sued together, the wife may defend for her own right, and if either neglects to defend, the other may defend for both (sec. 104-3-4).

When either spouse has deserted his or her family, the other may prosecute or defend in the name of the deserting spouse any action which he or she might have prosecuted or defended, and with the same powers and rights (sec. 104-3-5).

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.

If the husband or wife obtain possession or control of property belonging to the other before or after marriage, the owner of the property may maintain an action for such property, or for any right accruing from it, in the same manner and to the same extent as if they were unmarried (sec. 40-2-6).

Neither by statute nor at common law has one spouse a right of civil action against the other for a personal wrong or injury inflicted upon the other.

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

In criminal prosecutions, a wife may not be compelled to testify against her husband, nor a husband against his wife (Const., art. 1, sec. 12) (sec. 105-1-10). In general, neither husband nor wife may be a competent witness for or against the other in a criminal action or proceeding to which one or both are parties without the consent of the other. Exceptions to this rule include cases of criminal violence upon one by the other, and of desertion or neglect to support a wife or minor child (sec. 105-45-4).

In civil actions, neither spouse may be examined for or against the other without the consent of such other spouse; nor can either husband or wife, without the consent of the other, be examined, during the marriage or afterward, as to any communication made by one to the other during the marriage. This provision does not apply to a civil action between the spouses, nor to a criminal action or proceeding for a crime committed by one against the other, or for the crime of deserting or neglecting to support a wife or child, or where the law otherwise provides (sec. 104-49-3).

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

Every person over the age of 18 years, of sound mind, may by last will dispose of all his estate, real and personal; but a married man cannot by his will deprive his wife of more than two-thirds in value of his legal or equitable estates in real property without her consent in writing (sec. 101-1-1). See Number 16.

A married woman may dispose of all her estate by will without the consent of her husband, and may alter or revoke her will in the same manner as if she were single. Her will is to be executed and proved as other wills (sec. 101-1-3). See also Numbers 9 and 17.

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

When a person having title to any property, not otherwise limited by marriage contract, dies without disposing of the estate by will, a surviving husband or wife shares in the distributable estate as follows:

Absolute Interest.

One-half the estate, when only one child or the issue of one child survives decedent.

One-third, when more than one child survives, or one child and the issue of one or more deceased children, or when no child survives but lineal descendants are living.

The entire net estate when not more than \$25,000 in value, and decedent leaves no issue. If the estate is over that value, the first \$25,000 and one-half the remainder, when a decedent leaves parents or a parent, or brothers, sisters, or children or grandchildren of a deceased brother or sister.

The whole estate, when no issue, father, mother, brother, sister, or the children or grandchildren of a deceased brother or sister survive (sec. 101-4-5).

Wife's Inchoate Interest in Her Husband's Lands.

A surviving wife has set apart to her as her property in fee simple one-third in value of all the legal or equitable estates in real property possessed by the husband at any time during the marriage, to which she has not relinquished her rights, provided she was a resident of the State at the time the husband conveyed the lands. Such property passes to the widow free from the husband's debts except liens for labor or material for improvement of the property, purchase-money, or taxes. The value of the widow's share in the homestead is deducted from any interest she takes under this statute (sec. 101-4-3). The wife's right, here defined, is not against the husband's estate, but is in the nature of a vested and enforceable interest and encumbrance in her favor against each specific parcel of the land, to be apportioned to her one-third in value out of each parcel.¹

The share secured to the widow by right of succession in the legal and equitable estates in real property which an intestate husband possesses at his death is not in addition to the interest provided for her in section 101-4-3 [the statutory substitute for common-law dower] (sec. 101-4-5).

When a wife is permanently insane or otherwise mentally incompetent, her interest in her husband's lands may be relinquished only by a prescribed court proceeding (secs. 102-13-22 to 102-13-28).

Nature of Wife's Dower Interest.

"There shall be neither dower nor curtesy in this State" (sec. 101-4-9). This statute does not abolish the right of dower to the wife, since by the provisions of section 101-4-3 [cited above] that right is not only retained but enlarged and defined as a fee simple estate. The effect of this statute is to abolish the terms "dower" and "curtesy" and the estate they represent.²

Succession to Homestead and Exempt Property.

The homestead and exempt personal property of a decedent become the absolute property of the surviving husband or wife and minor children, or of the minor children if no spouse survives, or of the surviving spouse if there are no minor children. Such property passes wholly exempt from the decedent's debts, and is to be set apart on petition and notice, at any time after inventory is made of the estate (sec. 101-4-6). See also Number 16.

If the surviving spouse remarries, or when all minor children become of age, the homestead may be partitioned, one-half to the surviving spouse and the other half to the children (sec. 101-4-7). The value of such part of the homestead and exempt personal property as may be set aside to the surviving husband or wife or minor children is to be deducted from the distributive share provided for such survivors (sec. 101-4-8).

¹ *In re Park's Estate* (1906), 31 Utah 255, 261; 87 Pac. 900.

² *Hilton v. Thatcher* (1907), 31 Utah 360, 369; 88 Pac. 20. (Hist.)

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

Upon the death of husband or wife, the right to remain in possession of the homestead, and to have the use of other property exempt

from execution, is assured to a surviving spouse, or if no spouse, to decedent's minor children, until the court directs otherwise. During administration of the estate, a living spouse, or if no spouse the minor children, may receive such allowance for support from the estate as the court finds necessary and reasonable, though the court has discretion to exclude from the family allowance, except homestead rights, any person having separate property or income. Such an allowance is a preferred claim against the estate except as to expenses of decedent's last illness and funeral, administration charges (sec. 102-8-1), and taxes against the homestead and exempt property.¹ See Number 15 as to succession to homestead and exempt property and Number 3 as to when exemption does not avail.

Summary Administration.

In proper proceeding, the court may set apart and distribute all the property of a decedent, if the total value does not exceed \$1,500; but before distribution is ordered, expenses of last illness, funeral charges, and administration costs must be paid. Such property passes to the surviving spouse if there is no minor child; but if there are minor children the living spouse takes one-half. A surviving spouse or minor child having separate property or income may be excluded, in the court's discretion, from the distribution of the decedent's property, other than the homestead. In all cases where the estate has a greater value than \$1,500, the court may set apart and distribute from the estate property not exceeding \$1,500 in value.

This statute does not affect the decedent's right to dispose of the estate by will according to law (sec. 102-8-2). But this concluding sentence does not permit the disposition by will of homestead rights; and, regardless of the statute, a person whose estate is less than \$1,500 cannot by will take such estate from his or her surviving spouse and minor children.²

When the estate of a decedent does not exceed \$1,500 in value, the surviving spouse, or the decedent's children if no spouse survives, may without obtaining letters of administration collect from banks total deposits not exceeding \$300 which the decedent had at death. An affidavit in statutory form is sufficient release to the bank in such cases (sec. 7-3-49).

Wages or other specified forms of compensation due a deceased person, not over \$300 in amount, are payable without administration to a surviving husband or widow, (1945 Supp., sec. 102-8-3), or if neither of these survives, then to the children of the deceased person.

¹ *In re Mower's Estate* (1937), 93 Utah 390, 406; 73 Pac. (2d) 967.

² *In re Mower's Estate* (1937), 93 Utah 390, 402; 73 Pac. (2d) 967.

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

If the husband makes any provision in his will for his widow, it will be presumed that the provision is in lieu of, and not in addition to, her inchoate share in her husband's lands. This presumption controls unless it appears from the will itself that the provision for her was intended to be in addition to the inchoate share given her by statute under section 101-4-3.¹ See Number 15.

If it is not evident that the husband's provision for her by will is to be additional, the widow must choose between the will and her statutory share in his lands secured to her by section 101-4-3. Unless she files her written acceptance of the terms of the will within the period provided by law, she is conclusively presumed to have renounced the will and accepted the statutory share (sec. 101-4-4). She is limited thereby to a one-third interest in real property, and receives no personal property.²

If she is insane or incompetent, her guardian elects for her (sec. 101-4-4).

See Number 14. Note that the wife may dispose of her property by will (except any homestead out of her lands³). No provision is made by statute for the husband to renounce his wife's will.

¹ *In re Kohn's Estate* (1920), 56 Utah 17, 22, 23; 189 Pac. 409.

² *In re Hansen's Guardianship* (1926), 67 Utah 256, 264; 247 Pac. 481.

³ *In re Mower's Estate* (1937), 93 Utah 390, 402; 73 Pac. (2d) 967.

II.—MARRIAGE AND DIVORCE

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

Marriage is prohibited and declared void when at the time of marriage the male is under 16 or the female is under 14 years of age (sec. 40-1-2, subsec. 4). Consent of parent or guardian of the party under age is required if at the time application is made for license to marry the male is under 21, or the female under 18 years of age, and not previously married (sec. 40-1-9).

“* * * When marriage licenses are issued to parties under age without the written consent of father, mother, or guardian, the marriage is not void unless the male is under 16 or the female under 14 years of age * * *, and a marriage is not invalidated by the fact that the male had not reached the age of 21 or the female the age of 18.”¹

No marriage may be solemnized without a license issued by the county clerk of any county of the State (1945 Supp., sec. 40-1-7).

¹ *State v. Stewart* (1920), 57 Utah 224, 228; 193 Pac. 855.

19. Validity of Common-Law Marriage.

Only ceremonial marriages, as distinguished from common-law marriages, may be consummated in this State. By reason of this established rule of law, it was held that a woman living in an illicit relationship with a man at the time he was killed in the course of his employment was not a member of his family for the purpose of recovery under the Workmen's Compensation Act, even though the two intended to assume in good faith the marriage relationship.¹

¹ *Schurler v. Industrial Commission* (1935), 86 Utah 284, 288; 43 Pac. (2d) 696; 100 A. L. R. 1085.

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

A standard serological test and examination for syphilis or other venereal disease, must be made of each applicant (secs. 40-1-18 through 40-1-25; 1945 Supp., secs. 40-1-18 and 40-1-20) within 30 days before issuance of license to marry (1941, ch. 36; 1945, ch. 64).

A statute prohibits and declares void marriage with “an idiot or lunatic, with a person afflicted with syphilis or gonorrhoea that is un-

cured, or with a person subject to chronic epileptic fits; *provided*, that the last disqualification shall not apply to a female over the age of 45 years" (sec. 40-1-2, subsec. 1). Nor is chronic epilepsy a bar to the marriage of any male or female who has been sterilized (1939, p. 66). For application of this statute, as to syphilis and chronic epilepsy, see *Sharp v. Seventh District Court* (1932), 81 Utah 236; 17 Pac. (2d) 261, in which the court said (page 241):

"* * * There is no language in the act from which it may be inferred that if the parties cohabit together in good faith, believing that they are husband and wife, or if they both hold each other out as husband and wife fully relying on the marriage as being valid, that the effect of the statute should be modified. Such construction would defeat the purpose of the enactment which expresses a policy of this State to prevent the marriage of and the rearing of children by such people as may pass on to succeeding generations the afflictions aimed at by the statute."

21. Interstate Cooperation in Marriage Law Enforcement.

The only statutory provision relating to interstate cooperation in regard to marriage laws is that "Marriages solemnized in any other country, State, or territory, if valid where solemnized, are valid here" (sec. 40-1-4).

But when a resident of the State contracts a marriage elsewhere which is positively forbidden by Utah statute, and returns to Utah to live, the marriage is declared invalid.¹

¹ *Sanders v. Industrial Commission* (1924), 64 Utah, 372, 375; 230 Pac. 1026.

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

When doubt is felt as to the validity of a marriage either party may, in a court of equity, demand its avoidance or affirmance, but when one of the parties was within the age of consent at the time of the marriage, the other party, being of proper age, may have no proceeding for that cause against the party under age (sec. 40-1-17).

A marriage between persons within the degrees of kinship forbidden by statute is incestuous and void from the beginning (sec. 40-1-1). Marriage is prohibited and void: (1) With an idiot or lunatic, or a person afflicted with syphilis or gonorrhoea that is uncured, or with a person subject to chronic epileptic fits unless the epileptic is a female over 45 years of age; (2) when there is a husband or wife living from whom the person marrying has not been divorced; (3) in general, when the marriage was not solemnized by an authorized person; (4) when the male is under 16 or the female under 14 years of age; (5) between a Negro and a white person; (6) between a Mongolian and a white person; or (7) between a divorced person and any person other than the one from whom the divorce was secured until the divorce decree becomes absolute (secs. 40-1-2, 40-1-5, 40-3-8).

Unless an appeal is taken, a decree of divorce ordinarily becomes absolute at the expiration of 6 months from the date it is entered of record (sec. 40-3-7).

23. Grounds for Divorce—Respective Availability to Spouses.

The court may decree a dissolution of the marriage contract when the party making complaint has been an actual resident of the State in good faith for 1 year immediately preceding suit, and of the county where suit is filed for 3 months, for any of the following causes: (1) Impotency at the time of marriage; (2) adultery committed after marriage; (3) willful desertion for more than 1 year; (4) willful neglect to provide necessaries; (5) habitual drunkenness; (6) conviction for felony; (7) cruel treatment causing bodily injury or great mental distress; (8) permanent insanity, if established as required by statute (sec. 40-3-1); (9) living apart for 3 consecutive years without cohabitation under a decree of separate maintenance of any State (1945 Supp., sec. 40-3-1).

"The husband may in all cases obtain a divorce from his wife for the same causes and in the same manner as the wife may obtain a divorce from her husband" (sec. 40-3-2).

When a divorce is decreed the guilty party forfeits all rights acquired by marriage (sec. 40-3-9).

III.—PARENTS AND CHILDREN

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

Husband and wife living together are joint guardians of their minor children, with equal powers, rights, and duties as to the control, custody, services, and earnings of such children. Neither husband nor wife has any right paramount to that of the other with respect to such custody, control, or earnings (sec. 102-13-18). See also Number 2 as to minor's right to his wages.

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

A general guardian is the guardian of the person, or of all the property of the ward within the State, or of both person and property (sec. 102-13-1).

No person, whether the parent or not, has any power as a guardian of property, except by appointment from the court (sec. 102-13-3).

When formal appointment of a guardian is necessary, the court will give preference generally to a parent. But as between parents adversely claiming the guardianship, neither is entitled to it as of right. Other things being equal, the mother will be chosen if the child is of a tender age; the father, if the child is of an age to require education and preparation for labor or business (sec. 102-13-13).

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

A guardian of the person or estate, or of both, of a child born or likely to be born, may be appointed by will or by deed to take effect upon the death of the parent appointing. Such appointment may be made by the father, with the written consent of the mother; or by either parent if the other is dead or incapable of consenting (sec. 102-13-2).

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

When a decedent dies intestate, leaving no issue but survived by husband or wife, his parents inherit nothing if the estate, exclusive of debts and expenses, does not exceed \$25,000 in value. When the estate is of greater value, one-half of the amount above \$25,000 goes to the living spouse and the other half to the decedent's father and mother in equal shares, or, if either parent is dead, the survivor receives the shares of both.

If the decedent leaves no issue or spouse, the estate goes to his father and mother in equal shares; if either is dead, the other takes the entire estate (sec. 101-4-5, subsec. 3).

See also Number 15.

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

When the paternity of a child has been determined in a bastardy proceeding, the district court will order the adjudged father to pay toward the child's support, maintenance, and education not exceeding \$200 for the year after the child's birth, and not exceeding \$150 for each of the 17 years succeeding, unless the child dies before the period expires. The adjudged father must pay all costs of the proceeding, and may be required to give bond to secure the payment, in equal quarterly installments, of the amount fixed by the court's decree (secs. 14-2-7, 14-2-13). Default under the bond may subject the defendant and his sureties to court process to enforce payment of an unpaid installment (sec. 14-2-10). If the default is willful, the defendant may be adjudged in contempt of court and committed to jail until payment is made (sec. 14-2-11).

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

If an illegitimate child dies intestate, leaving neither spouse nor lawful issue, his estate goes to his mother, or, if she is dead, to her heirs at law (sec. 101-4-11).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

Ordinarily the husband has the right to establish or change the family domicile, and the wife must follow him if he requests her to do so and supplies her with the necessary means.¹

¹ *Speak v. Speak* (1933), 81 Utah 423, 427; 19 Pac. (2d) 386.

31. Public Office—Eligibility of Women.

"The rights of citizens of the State of Utah to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall enjoy equally all civil, political and religious rights and privileges" (Const., art. 4, sec. 1).

32. Jury Service—Eligibility of Women.

Women are eligible for trial and inquest jury service under the same qualifications that are required of men (sec. 48-0-8). A female citizen who has the active care of minor children is entitled to exemption from jury service (sec. 48-0-10) if she claims her exemption by affidavit in the required form upon receiving summons as a juror (sec. 48-0-11).

“A grand jury must consist of seven eligible male citizens of the United States” (sec. 105-18-2).

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