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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 STATE COLLEGE LIBRARY

REPORT FOR

WISCONSIN

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. 157-48 (Revised)

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UNITED STATES DEPARTMENT OF LABOR
WOMEN'S BUREAU
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.



Pamphlet for the Women's Bureau, No. 157-42 (Revised)

OFFICE OF THE DIRECTOR
WOMEN'S BUREAU
WASHINGTON, D. C.

For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C.

LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, September 12, 1949.

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

III

LITTEE OF THE WEST

Journal of the Western States

Volume 1, Number 1

Published by the Western States

The purpose of this journal is to provide a forum for the publication of original research and articles of interest to the general public. The journal is published quarterly and is available to all subscribers. The journal is published by the Western States and is available to all subscribers. The journal is published by the Western States and is available to all subscribers.

Editor: J. M. Smith

Volume 1, Number 1

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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.

WISCONSIN

SOURCES

Constitution of Wisconsin.
Wisconsin Statutes, 1947.
Wisconsin Reports.
Northwestern 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. 1, sec. 17), placed after the related subject matter.

References to the statutes are likewise in parentheses, thus (sec. 319.03).

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."

WISCONSIN

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

All persons under the age of 21 years are minors (sec. 319.01).

2. Contractual Powers of Minors.

Contracts made by minors are voidable, unless for personal necessities.¹ The fact of marriage does not enlarge a female minor's capacity to contract.² A married woman of the age of 18 and upward, of sound mind, may dispose of her own lands and personal property by will (secs. 238.01, 238.05).

A woman under 21 years of age may assent to the barring of her dower rights in all the lands of her husband, by a jointure as defined by statute, settled on her before the marriage, such assent being given by her joining with her father or guardian in the conveyance (secs. 233.09, 233.10).

¹ *Schoenung v. Gallet* (1931), 206 Wis. 52; 238 N. W. 852.

² *Wallace v. Newdale Furniture Co.* (1925), 188 Wis. 205; 205 N.W. 819.

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

The very liberal provisions for the exemption from seizure for debts of certain personal property owned by debtors, and of the homestead occupied by the owner, appear to apply to both sexes (Const., art. 1, sec. 17; secs. 272.18, 272.20).

The statute expressly provides that if the husband neglects or fails to claim his exempt property, the wife, if living with him, may select it before sale, and in her own name maintain action for recovery of it if it has been taken away, provided the exemption claim has been made (sec. 272.18, subsec. 23).

The homestead exemption provided by statute is to "any resident of this State" owning and occupying the premises included in such exemption (sec. 272.20, subsec. 1). The privilege is not restricted to married owners.¹ See Number 5 as to application of section 6.015.

See also Number 5 as to exempt insurance.

¹ *Estate of Fish* (1934), 214 Wis. 464, 466; 253 N. W. 387.

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

The real and personal property of a woman which she owns at the time of her marriage, as well as any rents, issues, and profits from it, continues to be her separate property, not subject to the disposal of her husband (sec. 246.02).

5. Contractual Powers of Married Women.

Women have the same freedom of contract and the same rights in holding property as men (secs. 6.015, 246.01, 246.03). The provisions of section 6.015 apply to married as well as unmarried women, and remove entirely the disabilities previously imposed upon married women. They are to be so construed and applied by the courts as to confer upon women, including married women, all the rights and privileges under the law now enjoyed by men. The disabilities which occasioned resort to equity courts for relief no longer exist, and the liabilities of a married woman, contractual or otherwise, may be enforced as similar liabilities may be enforced against men. She is therefore liable in an action at law, including action on her contract as surety for another.¹

A married woman may enter into a contract of partnership with her husband, and in so doing subject her property to the liabilities of the partnership business.²

A transfer or assignment of real or personal property between husband and wife creates a joint tenancy if the conveyance shows this was the purpose of the grantor (sec. 230.45).

In 1932, the court held that because of the so-called Equal Rights Act [sec. 6.015] a widow's creditors might attach the proceeds of her husband's insurance payable to her, despite attempted statutory exemption to her of such funds.³ But in 1933 the former exempting statute was amended to exempt from claims by her creditors insurance funds payable to a married woman to the extent of \$5,000 (sec. 246.09).

In the administration of her intestate husband's estate, the widow, if suitable and competent, is entitled first to appointment as administratrix, or she may request appointment of such person as she desires (sec. 311.02).

¹ *First Wisconsin National Bank v. Jahn* (1922), 179 Wis. 117; 190 N. W. 822. (Hist.)

² *Sparks v. Kuss* (1927), 195 Wis. 378, 396; 216 N. W. 929, 934.

³ *First Wisconsin National Bank v. Strelitz* (1932), 209 Wis. 335, 340; 245 N. W. 74.

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

The individual earnings of every married woman, except those accruing from labor performed for her husband, or in his employ or payable by him, are her separate property and are not subject to her husband's control or liable for his debts (sec. 246.05).

When her husband has deserted her, or from drunkenness, profligacy, or any cause neglects or refuses to provide for her support or the support and education of her children, a married woman has the right to transact business in her own name and to collect and receive the profits of such business, her own earnings and the earnings of her minor children in her charge or under her control, and apply such earnings for her own support and the support and education of such children. Such business and earnings are not subject to her husband's control or interference, nor liable for his debts (sec. 246.06).

She may sue in her own name, and has all the remedies of a single woman in recovering the earnings set apart as her separate property by the preceding statutes (sec. 246.07).

7. Liability of Married Woman for Family Necessaries.

The father, mother, husband, wife and children of any dependent person who is unable to maintain himself, is liable for his maintenance, as prescribed by law (sec. 49.07).

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

No formal procedure is required. But note section 246.06 under Number 6.

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

All real and personal property that a married woman owns at the time of marriage, and that acquired by her after marriage, remains her separate property, free from the disposal of her husband and from liability for his debts (secs. 246.01, 246.03, 246.05). See Number 6.

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

Wisconsin does not have community property law. The real and personal property, including money in the bank, accumulated from the husband's earnings and the income from a farming enterprise conducted on the land principally by the wife and children, were held to have been derived from the husband and a part of his estate for final division between the spouses in a divorce action, even though the title to part of the property is in the name of the wife.¹

¹ *Cevenc v. Cevenc* (1910), 148 Wis. 393; 127 N. W. 942.

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

Every married woman may sue in her own name and has all the remedies of an unmarried woman in regard to her separate property or business and to recover the earnings secured to her by statute, accruing from labor performed for others than her husband or in his employ or payable by him. She is liable to be sued in respect to her separate property or business, and judgment may be enforced against her and her separate property in all respects as if she were unmarried. Any married woman may sue in her own name for any injury to her person or character as if she were single.¹ She may sue in her own name, for her own benefit, for the alienation and loss of the affection and society of her husband. Any judgment recovered in such an action is her separate property (sec. 246.07). See Number 9 as to control of such property.

See Number 6 for statutory limitations as to separate earnings and business.

¹ *Singer v. Singer* (1944), 245 Wis. 191; 14 N. W. (2d) 43.

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.

A wife may bring an action against her husband for injuries to her person or character as if she were unmarried.^{1 2}

A husband may recover damages from his wife for personal injuries to him caused by her wrongful act, neglect, or default (sec. 246.075).

¹ *Wait v. Pierce* (1926), 191 Wis. 202, 217, 232; 209 N. W. 475.

² *Fontaine v. Fontaine* (1931), 205 Wis. 570, 577; 238 N. W. 410.

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

A husband or wife may be a competent witness for or against the other in all cases, except that neither one without the consent of the other, during marriage, nor afterwards, may disclose a private communication made during marriage by one to the other, unless the case involved includes both as parties, or the communication concerns a charge of personal violence by one upon the other, or it concerns an act of agency by one for the other (sec. 325.18).

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

Every person of full age, and every married woman 18 years of age or over, may dispose of both real and personal property by will (secs. 238.01, 238.05).

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

The husband of every wife dying after September 1, 1947, has the right of curtesy, that is, one-third of all lands which she owned at her death, subject to inheritance by her heirs, and not disposed of by her will. But a homestead owned by the wife is subject to the curtesy right only as to its proceeds if sold while the husband has homestead rights in it (sec. 233.23).

A surviving wife has the right of dower, defined as a one-third part of all the lands owned by her husband at any time during their marriage, unless she has released such right.

The homestead owned by husband or wife at the time of his or her death is not subject to the dower or curtesy, but descends, clear of debts other than those of record against it, to the widow or widower if no children survive, or to the widow or widower until death or remarriage, if children survive. Should the homestead be sold, the surviving spouse has dower or curtesy right in its proceeds (secs. 233.01, 237.02).

If there is neither will nor lawful issue, the surviving spouse takes all of the real estate (sec. 237.01).

Personal property remaining after award to the widow and minor children, or either, for maintenance during the administration of the estate and an allowance of personal effects up to \$200 in value, is distributed as provided for real estate; that is, if no issue of the marriage survive, the living spouse receives the entire remainder. If lawful issue survive, the widow or widower takes one-third of the residue

unless there is only one child, in which event she or he takes one-half (secs. 313.15, 318.01).

Estates by the entirety no longer exist in the State, either in real or personal property.^{1 2}

¹ *In re Will of Ray* (1925), 188 Wis. 180; 205 N. W. 917.

² *Aaby v. Citizens National Bank* (1928), 197 Wis. 56, 58; 221 N. W. 417.

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

The widow is allowed all articles of wearing apparel, unless they have been disposed of by will, as well as household furniture, all provisions and fuel on hand for family use, and other personal property to the value of \$200, to be selected by her. This allowance is made whether or not the widow accepts or rejects the provisions made for her by the will of the husband, or when no provision is made for her, or he dies without a will.

Also, a family maintenance allowance to the widow is provided for, to extend over the period of administration in such sum as the county court finds proper.

Furthermore, if any personal property remains after payment of the husband's funeral expenses and the estate's administration expenses, together with the allowance described in the foregoing paragraphs, the court may set aside out of such remainder a sum or value not exceeding \$1,000 for the use and support of the widow and minor children (sec. 313.15). See Number 15 as to homestead right of surviving spouse.

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

The widow has the right of election between the provisions for her in her husband's will as to his lands, and her statutory dower and homestead right, together with the share of personal property distributable if he has died without a will (secs. 233.13, 233.14). The husband of a deceased wife has no such election (sec. 233.23).

II.—MARRIAGE AND DIVORCE

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

Men at 21 and women at 18 years of age may marry without parental consent. Between the ages of 18 and 21 years for men, and 15 and 18 for women, marriage may be contracted upon consent of the parents, or of the parent having actual care of the minor, or of the guardian having such care; or, where there is neither parent nor guardian, the judge of the probate court may allow marriage upon good cause, after proper hearing. The age of consent to marriage is 18 for males and 15 for females (secs. 245.02, 245.16). If either party is under the marriageable age of consent, no license may be issued (sec. 245.16).

19. Validity of Common-Law Marriage.

A valid marriage may be contracted only upon issuance of a license and solemnization as required by law (sec. 245.12). The attorney general has held that this statute abolishes common-law marriages

(7 Opinions of Attorney General 525). However, marriages in violation of the statute may be validated by compliance with the requirements of the marriage laws (sec. 245.32).

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

Each male person applying for a marriage license is required to be examined for any venereal disease within 15 days prior to application for the license. No license may be issued if he fails to file a certificate from a licensed physician to the effect that he is free from venereal disease as nearly as can be determined by thorough examination and by clinical and laboratory tests when necessary.

In addition to this requirement, both parties to a proposed marriage must, within 15 days prior to application for a license to marry, take the Wassermann or other standard blood test for syphilis. If the test is negative, the physician's certificate to that effect must be filed with the application (sec. 245.10).

No person who has ever been afflicted with gonorrhea or syphilis may be granted a marriage license until he or she shall furnish the license clerk a prescribed certificate, evidencing standard examinations and tests by which his or her freedom from either disease in the infective or communicable stage is established.

Violation of any of these provisions is punishable on conviction by fine or imprisonment or both (sec. 245.11).

Application for license must be made at least 5 days before the license is issued, as a general rule (sec. 245.14).

21. Interstate Cooperation in Marriage Law Enforcement.

Marriages in other States or countries to evade Wisconsin laws, or marriages within the State to evade the laws of other jurisdictions, are null and void for all purposes in the State (sec. 245.04).

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

Incurable physical impotency, prohibited degrees of kinship, bigamous marriage, contract obtained by fraud, force, or coercion, mental incompetence, or non-age may be a ground for annulment, if existing at the time of marriage (sec. 247.02).

The marriage of any person before the expiration of 1 year from the granting of an absolute divorce to such person within the State, is unlawful and void (sec. 245.03).

In the decree granting annulment of a marriage, the court may restore to either party property transferred by one of them to the other during the supposed marriage (sec. 247.34).

23. Grounds for Divorce—Respective Availability to Spouses.

The court may grant an absolute divorce for any one of the following causes: Adultery; impotency; sentence to imprisonment subsequent to marriage for a period of 3 years or more; willful desertion for 1 year; cruel and inhuman treatment, or if the wife is given to intoxication; habitual drunkenness for 1 year; voluntarily living apart for 5 years or more (sec. 247.07).

A divorce from bed and board forever or for a limited time may be granted on any of these grounds: Willful desertion for 1 year; cruel and inhuman treatment, or if the wife is given to intoxication; habitual drunkenness; extreme cruelty; the husband's refusal or neglect to provide for the wife, even though sufficiently able to do so; or for such conduct on his part toward her as may render it unsafe and improper for her to live with him.

In the court's discretion, an absolute divorce may be decreed on the last three enumerated causes in the preceding paragraph (secs. 247.08, 247.09).

III.—PARENTS AND CHILDREN

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

If living together, the father and mother are entitled to the custody of their minor child and to the care of his education (sec. 319.03). The Child Protection Act provides that if "a parent" of a minor neglects or refuses to provide for his support, or support and education, by reason of abandonment, drunkenness, or profligacy, such parent is not entitled to the child's earnings (sec. 48.34). The Equal Rights Act (sec. 6.015) gives women the same rights as men in regard to the care and custody of children, and "in all other respects." These acts seem to contemplate an equal right in each parent to the child's earnings. However, no such express construction of the statute has been found.

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

The court may in every case appoint separate guardians of the person and of the property of a ward. The guardian of the person has the custody of the ward and the care of his education. The guardian of the property has the care and management of it (sec. 319.01).

The father and mother of a minor child, if living together, are entitled to his custody and the care of his education. If the parents are living apart, either parent may have the custody, as the court may determine for the best interests of the child (sec. 319.03). Women have the same rights as men in regard to the care and custody of children (sec. 6.015). There is no prohibition against the appointment of the mother as guardian of the property.

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

The surviving parent of every legitimate minor child, and the mother of every illegitimate minor child, has the right to the custody of the child and the controlling right to appoint a testamentary guardian (secs. 319.03, 319.04).

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

When a person dies intestate leaving no lawful issue, widow, or widower, the parents of the decedent inherit his or her estate; or if one is dead the surviving parent takes it all (sec. 237.01).

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

When the paternity of the child is established, the adjudged father is then charged by court decree with payment of all expenses incident to the care of the mother for 6 months prior to the birth of the child as well as medical attention at its birth, also the future support of the child until it is 18 years old. Bond to secure payment is required (secs. 166.11; 166.13).

Penalties may be imposed on either parent for failure to support their child born out of wedlock, until the child is 18 years of age (sec. 351.30).

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

When a person born out of wedlock dies intestate, without lawful issue, his estate goes to his mother; or if she be dead, then to her heirs at law (sec. 237.05).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

Women have the same rights and privileges under the law as men in the choice of residence for voting purposes (sec. 6.015).

There is no general statute establishing the status of married women in respect to domicile for other purposes. It is assumed that the common-law rule governs; that is, the domicile of the wife follows the domicile of the husband. This rule is embodied in the statute which designates the "legal settlement" of a married woman as that of her husband if he has any within the State, for purposes of benefit under the Public Assistance Act (sec. 49.10).

31. Public Office—Eligibility of Women.

"Women shall have the same rights and privileges under the law as men * * * in holding office * * * and in all other respects" (sec. 6.015).

Statutes relating to the appointive offices of court commissioner and election officer do not specify sex (secs. 61.08, 61.13) and another act expressly provides that "no person shall be denied admission or license to practice as an attorney in any court on account of sex" (sec. 256.28).

32. Jury Service—Eligibility of Women.

Women are eligible for jury service. However, any woman drawn to serve as a juror may be excused upon her request to the presiding judge or magistrate before the commencement of the trial (sec. 6.015).

Special Topic.

Immunity from Civil Arrest.—No female shall be arrested in any action except for a willful injury to person, character, or property (sec. 264.02).

