

L13.3:157-48

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

REPORT FOR
WISCONSIN
as of January 1, 1964



WOMEN'S BUREAU BULLETIN 157-48 (Revised)

UNITED STATES DEPARTMENT OF LABOR

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U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1964

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C., 20402 - Price 15 cents

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The Legal Status of Women in the United States of America

INTRODUCTION

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

Common-law rules of property sprang from various causes, notably tradition, military or economic exigency, and "natural male dominance." Economic and social advances in the position of women in the United States have brought about marked changes in laws governing property and family rights and political status.

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

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

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

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

SOURCES

Constitution of Wisconsin
Wisconsin Statutes, Annotated
Wisconsin Reports
Northwestern Reporter
Northwestern Reporter (Second Series)

EXPLANATORY NOTE

Bulletin 157-48 presents a digest of the State constitutional and statutory provisions affecting the legal status of women in the State of Wisconsin. It includes pertinent statutory changes enacted in that State up to January 1, 1964, and supersedes the previous report for Wisconsin of January 1, 1957.

References to code sections are indicated by parenthetical insertion of section numbers, as "(sec. 319.03)," placed after the related subject matter.

Other abbreviations are:

Northwestern Reporter—N.W.

Northwestern Reporter, Second Series—N.W. (2d)

Wisconsin Reports—Wis.

Opinions of the Attorney General of Wisconsin—Op. Atty. Gen.

Case citations definitely construing statutes or declaring judicial policy in the absence of express statutory provision are indicated by footnote references.

Numbered subject headings are the same as those used in the U.S. Summary. Cross references employ these numbers for brevity, as "(See number 6.)" which refers to the subject heading "Earnings of a married woman."

WISCONSIN

CIVIL RIGHTS

Contracts and Property

1. Age of majority

All persons under the age of 21 years are minors (secs. 319.01 ; 990.01 (3)).

2. Contractual powers of a minor

A minor is liable for the reasonable price of necessities sold and delivered to him. Necessaries means goods suitable to the condition in life of such minor, and to his actual requirements at the time of delivery (sec. 121.02). Contracts made by minors are voidable, unless for personal necessities.¹

Marriage emancipates (relieves of the disabilities of minority) a minor insofar as the guardianship of his or her person is concerned. Also, upon application, the court may release to a minor all or part of his estate upon marriage (sec. 319.04).

Marriage does not enlarge a female minor's capacity to contract.²

A married minor woman may join her husband or his guardian in the conveyance of real estate, and may alienate (renounce) her rights, including dower and homestead rights, in the property. When her husband's title has been conveyed, she may, before or after the decease of her husband, alienate these rights by quitclaim deed, that is, a deed that conveys only the interest of the grantor at the time of conveyance (sec. 235.27). (See number 3B and number 15, Dower.)

A contract made by a minor may be ratified by acts or words after the minor reaches majority.³

Credit union shares

Credit union shares may be issued in the name of a minor and may be withdrawn by such minor. A minor over 16 years of age is entitled to vote in the member meetings (sec. 186.10).

Share accounts and bank deposits

Minors under 14 years of age may own share accounts held by a trustee or guardian. Minors above the age of 14 may own share ac-

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 *In re Kane's Estate. Holden v. First Trust Co., First Trust Co. v. Holden* (1918), 38 Wis. 643 ; 168 Wis. 1 ; 168 N.W. 402.

counts in a savings and loan association, subject to the same duties, liabilities, and benefits as adult members (secs. 215.12, 215.18).

Share accounts in an association or bank deposits made by and in the name of a minor, or a female who is married, or thereafter marries, shall be held for the exclusive benefit of such minor or female, free from the control or lien of all persons except creditors. Such deposits and any interest due thereon shall be paid to the person in whose name the deposits were made, and the receipt of such minor or female shall be a discharge for such share accounts or bank deposits to the association or the bank (secs. 215.18, 221.44).

Small estates

If a minor, except for his incapacity (of minority), is entitled to personal property valued at \$1,500 or less, the court, in its discretion, may order that such payment be made to the minor without requiring the appointment of a guardian (sec. 319.04). Also, when the estate of a minor ward is below \$1,500, and reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate the guardianship and authorize disposition of the remaining assets as provided, including payment to the minor (sec. 319.26).

Student loans

Minors who enter into contracts for loans to defray the expenses of attending any college or university shall, if they are at least 18 years of age, have full legal capacity to act in their own behalf in the matter of such contracts, and with respect thereto shall have all the rights, powers, and privileges, and be subject to the obligations of persons of full age. The text of such loan contract shall state that the loan is to be used only to further the education of the recipient (sec. 48.985).

(See number 14 concerning the capacity of minors to make valid wills.)

3. Property exemptions from seizure for debt

A. RESPECTIVE RIGHTS OF MAN AND WOMAN

The following personal property of a debtor is exempt from seizure for debt: the family Bible; pictures and schoolbooks; library; a pew in a place of worship; cemetery lots; family wearing apparel; jewelry not exceeding \$400 in value; beds and bedding; stoves; cooking utensils and other household furniture not exceeding \$200 in value; a television set; a radio; sewing machines; firearms not exceeding \$50 in value; an automobile not exceeding \$1,000 in value; a tractor not exceeding \$1,500 in value; small tools and implements not exceeding \$300 in value; provisions and fuel necessary for family support for 1 year;

tools of a trade not exceeding \$200 in value; insurance policies on the life of the debtor; accident insurance not over \$150 per month; fire insurance; U.S. bonds and other government issues up to \$200 in value; savings and loan shares up to \$1,000 in value; pension moneys; employee retirement benefits; and other miscellaneous items. If a debtor fails or neglects to claim an exemption, his wife may do so, unless she has deserted him (sec. 272.18).

Chattel mortgage

No mortgage of personal property which is exempt by law from seizure and sale upon execution, except a purchase money mortgage of personal property, is valid unless signed by the wife of the person making such mortgage, if he is a married man and his wife at the time is a member of his family, and unless the wife's signature is witnessed by two witnesses (sec. 241.08).

Also, none of the personal exemptions can be claimed against a purchase money mortgage on such personal property. "Purchase money mortgage" means a mortgage given to the vendor as a part of a transaction of a sale to secure all or part of the purchase money, or a mortgage given to a third person who advances all or part of the money with which to make such purchase (sec. 241.08).

Wages and income

A debtor who has dependents is allowed a basic exemption of 60 percent of his income for each 30-day period prior to service of the process to collect the debt, but not less than \$100 nor more than \$120 plus an additional \$20 for each dependent. The total amount allowed as exemption for a debtor with dependents is limited to 85 percent of the debtor's income. A debtor without dependents is allowed an exemption of 60 percent of his income, but not less than \$75 nor more than \$100. Either class of debtors may elect to have the exemption computed on a 90-day basis (sec. 272.18 (15)).

In cases of garnishment, a debtor is entitled to receive a subsistence allowance from his employer, payable on the date when his wages or salary would normally be paid, in the sum of \$15 in the case of an individual without dependents or \$25 in the case of an individual with dependents, but in no event in excess of 50 percent of the wages or salary owing (sec. 272.18 (15)).

Insurance

An insurance policy expressly for the benefit of, or assigned or made payable to, a married woman is exempt from claims or creditors to the amount of \$5,000 (sec. 246.09).

Damages for wrongful death

Proceeds of an action for wrongful death are not liable for any debts of the deceased if he is survived by a spouse or certain specified heirs (sec. 331.04 (2)). (See number 15, Damages for wrongful death.)

B. HOMESTEADS

A homestead exemption to the amount of \$10,000 is available to any resident owner who is occupying the premises. Such exemption is not impaired by temporary removal with the intention to reoccupy, nor by sale thereof, but extends for 2 years to the proceeds of a sale not exceeding \$10,000. Such exemption extends to land owned by husband and wife jointly or in common; and when they reside in the same household, it may be claimed by either or may be divided in any proportion between them, but not to exceed \$10,000 for such household. If they fail to agree on the division, the exemption shall be divided between them by the court (sec. 272.20).

No mortgage or other alienation by a married man of his homestead, exempt from execution, or any interest therein, is valid without his wife's consent evidenced by her act of joining in or executing a separate deed, mortgage, or conveyance, except a conveyance from husband to wife (sec. 235.01 (2)).

No mortgage or other alienation by a married woman of any interest in a homestead held by her and her husband as joint tenants is valid without her husband's consent evidenced by his act of joining in or executing a separate deed or mortgage (sec. 235.01 (3)).

A homestead shall not be sold by an executor or trustee given such power of sale in a will, without the written consent of the widow. In the case of such sale, where the widow has a dower interest she shall be paid one-third of the net proceeds thereof, and where the widow has homestead rights she shall be paid the value to be computed as the value of a life estate. Title to the lands so sold shall be free and clear from any dower or homestead interests of the widow (sec. 233.16).

Inheritance rights in homestead

The homestead owned by husband or wife at the time of his or her death is not subject to dower or curtesy, but descends, clear of debts other than those of record against it, as follows: (a) if no children survive, to the widow or widower; (b) if children survive, to the widow or widower until death or remarriage; (c) if no issue nor spouse survive, all to the parents, if living, or to the survivor of them. Upon marriage or death of the decedent's widow, all goes to the original decedent's heirs, provided that the \$10,000 limitation shall not apply

to a widow or the heirs of her husband during widowhood (secs. 233.01, 233.23, 237.02, 272.20).

(See also number 15.)

4. Ownership and control of property owned at marriage

The real and personal property owned by a woman at the time of her marriage, as well as any rents, issues, and profits from it, continues to be her sole and separate property, not subject to disposal by her husband nor liable for his debts (sec. 246.02).

5. Contractual powers of a married woman

A married woman of full age may convey and devise her separate real and personal property, and any interest or estate therein of any description, including that held in joint tenancy with her husband, and the rents, issues, and profits thereof, or release her dower in any land of her husband in the same manner as if she were unmarried; and her separate property is not subject to disposal by her husband nor liable for his debts. Any conveyance, transfer, or lien executed by either husband or wife in favor of the other is valid to the same extent as it is between other persons (secs. 6.015, 246.01, 246.03, 235.26).

A married woman, by letter of attorney, executed and acknowledged in the manner prescribed, may authorize and empower her attorney to bar her dower, or to convey any other interest in any real estate in the same manner and in the same cases as she might do personally (sec. 235.28). Every such conveyance and letter of attorney executed by a married woman, whether executed alone or in conjunction with her husband with regard to real estate, may be acknowledged by her, or proof of the execution may be taken and certified to, the same as if she were unmarried (sec. 235.29).

Every married woman may sue in her own name and shall have all the remedies of an unmarried woman in regard to her separate property or business and to the recovery of her separate earnings. She is liable to be sued with respect to her separate property or business, and judgment may be rendered against her and be enforced against her and her separate property as if she were unmarried (sec. 246.07).

No female shall be arrested in any civil action as specified, which includes an action to enforce the duty of support under the Uniform Reciprocal Enforcement of Support Act, except for a willful injury to person, character, or property (sec. 264.02).

A married woman may be appointed and act as assignee or receiver, except of the estate of her husband or of property in which he is interested; and she is subject to the same liabilities upon her bond and otherwise and may exercise the same powers as other assignees or receivers (sec. 246.10).

Insurance

A married woman, in her own name or in the name of a third person as her trustee, with his assent, may cause to be insured for her sole use the life of her husband, son, or other person (sec. 246.09).

A married woman may assign, encumber, or dispose of any right, title, or interest that she may have under any life insurance policy as if she were unmarried (sec. 246.11).

Wage assignment and chattel mortgage

No assignment of the salary or wages of any married man is valid unless it is signed by the wife and her signature is witnessed by two disinterested persons (sec. 241.09).

Under the Small Loan Act, no assignment, order, or any chattel mortgage or other lien on household furniture of a married person is valid unless it is signed by both husband and wife. Written assent of a spouse is not required when they have lived separate and apart for 6 months prior to the making of the assignment (sec. 214.15).

Fiduciary position

In the administration of the estate of a deceased intestate, the widow or widower, if suitable and competent, is entitled first to appointment as administratrix or administrator, or she or he may request appointment of such person as desired (sec. 311.02).

(See number 2, Share accounts and bank deposits.)

6. Earnings of a married woman

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 not subject to her husband's control nor liable for his debts (sec. 246.05).

When the husband of any married woman has deserted her or neglects or for any cause refuses to provide for her support or the support and education of her children, she 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 to apply such earnings for her own support and the support and education of her children. Such business and earnings are not subject to her husband's control or interference nor liable for his debts (sec. 246.06).

A wife may lawfully contract with a firm of which her husband is a member to run a boardinghouse for them for a stipulated share of the profits, and the share earned by her will be her separate estate.⁴

⁴ *Brickley v. Walker* (1887), 68 Wis. 563 ; 32 N.W. 773.

7. Liability for family support

Any husband who, without lawful or reasonable excuse, fails or refuses to provide for the support and maintenance of his wife and minor children may be compelled to do so by the court upon initiation of civil action by the wife. The court may direct the husband to pay any part of or all fees and costs of such support action (sec. 247.08).

Any person who, without just cause, deserts or willfully neglects or refuses to provide for the support and maintenance of his wife or child under 18 years (legitimate or born out of wedlock) in destitute or necessitous circumstances is guilty of a misdemeanor, subject to fine, or imprisonment, or both (secs. 52.05, 52.055). A wife is in necessitous circumstances when she does not have property or money available for such necessities or ordinary comforts of life as her husband can reasonably furnish, even though she has the clothing, furniture, and ornaments usually owned by a woman in her station in life, or receives aid from others.⁵

The law requires a husband to support and provide for his wife in sickness as well as in health. Such requirement is grounded upon principles of public policy, and the husband cannot shirk it, even by express contract with his wife. Husband and wife may contract with each other before marriage as to their mutual property rights, but they cannot vary the personal duties and obligations to each other which result from the marriage contract.⁶

A wife's agreement to relieve her husband from supporting her is invalid.⁷

The husband's obligation to support a wife arises from the duties imposed by law, and continues unless there is a specific finding that the wife, because of misconduct, has forfeited her right to support.⁸

A father's primary duty to support his children continues unless removed or shifted in some way recognized by law, and a father ordinarily has the primary duty to support, maintain, and educate minor children of a marriage regardless of the mother's financial resources. Section 52.01 in the code providing for support of dependent children by husband or wife, and section 6.015 giving women the same rights as men in the care and custody of children, do not impose the primary duty upon a wife to support minor children of a marriage whom she had removed from home when she left following her unsuccessful divorce action and her husband's return to the home.⁹

⁵ *Brandel v. State* (1915), 161 Wis. 532; 154 N.W. 997.

⁶ *In re Ryan's Estate* (1908), 134 Wis. 431; 114 N.W. 820.

⁷ *In re Cortte's Estate* (1939), 230 Wis. 103; 283 N.W. 336.

⁸ *Buss v. Buss* (1948), 252 Wis. 500; 32 N.W. (2d) 253.

⁹ *Schade v. Schade* (1957), 274 Wis. 519; 80 N.W. (2d) 416.

The husband alone is liable for money advanced for the board of his wife and minor child, unless the wife expressly makes it chargeable on her separate estate.¹⁰

A married woman may contract for medical services in her own right, but in the absence of an express contract between her and the person rendering service, her husband is liable for such expenses.¹¹

Relief laws

The parent, spouse, and child of any dependent person (that is, a person who cannot provide himself with the necessary food, shelter, clothing, medical and dental care, and other commodities and services adequate for health and decency) shall maintain such dependent person, so far as able, in a manner provided by the authorities having charge of the dependent, or by the board in charge of the institution where such dependent person is staying; but no child of school age shall be compelled to labor contrary to the child labor laws. Where there are children of school age, the relief furnished shall include necessities for which no other provision is made by law (secs. 49.01, 52.01).

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

No formal procedure is required for a married woman to engage in a separate business.

Women shall have the same rights and privileges under the law as men in the exercise . . . of freedom of contract . . . holding and conveying property . . . and in all other respects (sec. 6.015). This section giving women the same legal rights and privileges as men places husband and wife on the same basis of equality before the law and means that women shall be as free as men to make personal contracts.¹² A married woman does not have the power to engage in trade, on her own exclusive account, except so far as may be necessary to manage the property which she may own separately. An unlimited power of a married woman to engage in trade and business on her own account, and to sue and be sued, is not to be inferred or upheld but by the clearest import of the statute.¹³ The legal existence of a corporation is not affected by the fact that one of the three incorporators was a married woman and the wife of one of the other incorporators. A wife may enter into a partnership contract with her husband.¹⁴

¹⁰ *Israel v. Silsbee* (1883), 57 Wis. 222; 15 N.W. 144.

¹¹ *Puhl v. Milwaukee Automobile Insurance Co.* (1959), 8 Wis. (2d) 343; 99 N.W. (2d) 163.

¹² *In re Nikolay's Estate* (1946), 249 Wis. 571; 25 N.W. (2d) 451.

¹³ *Wooster v. Northrup* (1856), 5 Wis. 245.

¹⁴ *Good Land Co. v. Cole* (1907), 131 Wis. 467; 110 N.W. 895.

(See number 6 concerning the right of a married woman to transact business in her own name when her husband deserts her or fails to provide for support of the family.)

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

All real and personal property that a married woman owned at the time of marriage, and that acquired by her after marriage by inheritance, gift, grant, devise, or bequest from any person, including all property held in joint tenancy with her husband and the rents, issues, and profits thereof, remains her separate property, free from disposal by her husband and from liability for his debts (secs. 246.01, 246.03).

No judgment of annulment, divorce, or legal separation shall in any way affect the right of a wife to possession and control of her separate property, real or personal; and no court shall divest any party of title in any real estate further than expressly provided (sec. 247.35).

A husband is not liable for his wife's antenuptial debts, but such debts may be enforced against her and her separate property as if she were unmarried (sec. 246.08).

A married woman can pledge her property as security for a loan for the benefit of a corporation even though it is not for her benefit.¹⁵ She may pledge her credit for anything of value acquired by her in a transaction as freely as an unmarried woman.¹⁶

While it is easier to find agency relationship between spouses than strangers, the mere fact of marriage does not empower a husband to act as agent for his wife.¹⁷

(See also number 5.)

10. Property acquired by joint efforts of husband and wife

By common-law rule, in the absence of statute, property acquired during marriage by the joint efforts of husband and wife belongs to the husband, unless joint ownership is created by private arrangement.

Joint tenancy

All grants and devises made to two or more persons, except a husband and wife, are construed to create an estate in common, and not in joint tenancy, unless expressly declared to be in joint tenancy (sec. 230.44).

Any deed, transfer, or assignment of real or personal property from husband to wife or from wife to husband which conveys an interest in the creditor's lands or personal property creates a joint tenancy if

¹⁵ *Shapiro v. Heller* (1930), 201 Wis. 529; 230 N.W. 705.

¹⁶ *Kris v. Peege* (1903), 119 Wis. 105; 95 N.W. 108.

¹⁷ *Lee v. Junkans* (1962), 18 Wis. (2d) 56; 117 N.W. (2d) 614.

terms so indicate; and such husband and wife shall hold such property as joint tenants (sec. 230.45).

When lands are deeded to a husband and wife, a joint tenancy is created, with the right of survivorship as at common law; and this right cannot be defeated by a devise of the property by the one who dies first.¹⁸

Estates by the entirety

Estates by the entirety in personal and real property, that is, an undivided possession of property by husband and wife, do not exist under Wisconsin law.

The enactment of the Married Woman's Property Act of 1878 (sec. 246.03) and code section 6.015 passed in 1921, permitting a married woman to hold and convey real and personal property separate from her husband, destroy the common-law basis for creating an estate by the entirety.^{19 20}

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

Every married woman may sue in her own name and shall have all the remedies of an unmarried woman in regard to her separate property or business and to the recovery of the earnings secured to her by statute that accrue 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 and business, and judgment may be enforced against her and her separate property in all respects as if she were unmarried. A married woman may sue in her own name, as if she were single, for any injury to her person or character. 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). A husband is not a proper party defendant to an action by his wife for alienation of his affection.²¹

(See number 9 concerning control of property.)

A married woman has no cause of action for loss of consortium of her husband caused by the negligent act of a third person.²² Actions for breach of promise are abolished (sec. 248.01).

A married woman who carries on a separate business in her own name can recover, in her name, damages for any injury to her earning power in that business.²³

¹⁸ *Friedrich v. Huth* (1913), 155 Wis. 196; 144 N.W. 202.

¹⁹ *In re Will of Ray* (1925), 108 Wis. 180; 205 N.W. 907.

²⁰ *Aaby v. Kaupanger* (1928), 195 Wis. 56; 221 N.W. 417.

²¹ *White v. White* (1909), 140 Wis. 538; 122 N.W. 1051.

²² *Nickel v. Hardware Mutual Casualty Co.* (1955), 269 Wis. 647; 70 N.W. (2d) 205.

²³ *Hutchinson v. City of Oshkosh* (1914), 159 Wis. 141; 149 N.W. 711.

12. Damages for injury by spouse to person or property

Sections 246.07 and 6.015 of the code, authorizing a married woman to sue in her name and conferring equal rights upon women as well as enlarging rights and privileges of married women, do not grant to a married woman all the remedies of an unmarried woman, and the actions which a married woman may commence against her husband are limited by statute.²⁴

A wife may bring an action against her husband, as if she were unmarried, for injuries to her person or character. A married woman cannot maintain an action against her husband for conspiracy to injure her in her marital rights.²⁵

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

13. Competency of husband or wife 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 or afterwards, may disclose a private communication made during marriage by one to the other unless the case involved includes both as parties, or unless the communication concerns a charge of personal violence by one upon the other, or an act of agency by one for the other, or relates to a charge of pandering or prostitution (sec. 325.18).

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under the Uniform Reciprocal Enforcement of Support Act. In such proceedings husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage (sec. 52.10 (24)).

When the paternity of a child born during a marriage is in question, the husband and wife are competent to testify as witnesses to the facts. The mother of the child shall not be excused or privileged from testifying fully in an action in which the legitimacy of such child is involved or is in issue, when ordered to testify by a court of record. But she shall not be prosecuted or subjected to any penalty or forfeiture on account of any transaction or matter to which she testifies or produces evidence, except for perjury committed in giving such testimony (sec. 328.39).

²⁴ *Fehr v. General Accident Fire and Life Assurance Corp.* (1944), 246 Wis. 228; 16 N.W. (2d) 787.

²⁵ *Singer v. Singer* (1944), 245 Wis. 191; 14 N.W. (2d) 43.

14. Right to dispose of separate property by will

Every person of full age, every married woman 18 years of age or over, or any minor who is a member of the military or naval forces of the United States, being of sound mind, may dispose of real and personal property by will (secs. 238.01, 238.05).

15. Inheritance rights in deceased spouse's estate

Curtesy

The husband of every wife dying after September 1, 1947, has the right of curtesy, that is, a one-third part of all lands which the wife owned at her death and which were not disposed of by her will. However, such surviving husband has no curtesy in any homestead his wife owned at death; instead he has homestead rights in it, that is, he has inheritance rights in the homestead not devised by will, which descends to him as specified (secs. 233.23, 237.02). (See number 3B, Inheritance rights in homestead.)

Dower

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. However, the widow has no dower rights in any homestead which her husband owned at the time of death; instead she has homestead rights, that is, she has inheritance rights in the homestead not devised by will, which descends to her as provided (secs. 233.01, 237.02). (See number 3B, Inheritance rights in homestead.)

A widow has a dower right in her husband's land mortgaged by him before marriage, and land which he purchased during marriage and on which he executed a purchase money mortgage to secure the payment of all or part of the purchase price, as against all persons except the mortgagee and those claiming under him, even though she did not unite in such mortgage (secs. 233.04, 233.05).

When a widow is entitled to a dower out of any lands which have been alienated by the husband in his lifetime and such lands have enhanced in value after alienation, such lands shall be estimated, in setting out the widow's dower, according to their value at the time they were so alienated (sec. 233.08).

A woman who is a nonresident of the State shall be entitled to dower only in the lands which her husband owned at the time of his death (sec. 233.02).

Bar to dower

When a widow has accepted assignment of dower in satisfaction of her claim on lands of her husband, it shall be a bar to any further claim of dower against his heirs or grantees, unless the widow has been lawfully evicted from the lands assigned to her (sec. 233.21).

A woman may be barred of dower by jointure, that is, a settlement in lieu of dower with her assent before the marriage, provided such jointure consists of a freehold estate (an estate which has descended to a person with right of entry therein) in lands for her lifetime at least, to take effect in possession or profit before or immediately on the death of her husband (sec. 233.09).

Any pecuniary provision that shall be made for the benefit of an intended wife and in lieu of dower, if formally assented to as provided by statute, bars her dower right in lands of her husband (sec. 233.11).

The dower or homestead interest of an insane wife can be released only by court order upon hearing, following a petition by the husband or his grantee and the appointment of a guardian, with proper notice as specified having been given to such wife and such next of kin, if any, that the court shall direct before the date of the hearing (secs. 235.30, 235.31, 235.32).

(See number 23 concerning dower and curtesy in case of divorce.)

Intestate estate*Real property*

When a person dies without having disposed of his real property by will, such real property, subject to curtesy, dower, homestead rights, and debts, descends as follows: (a) in equal shares to the surviving children, and to the lawful issue of any deceased children by representation, that is, such issue take the share of their deceased parent; (b) if no child is living upon the death of the intestate, all to his lineal descendants equally if in the same degree of kindred, otherwise by representation; (c) if no lawful issue, all to the surviving spouse; (d) if no issue, nor spouse, to the parents, if living, or to the survivor of them; (e) if no issue, spouse, father, nor mother, to persons specified (secs. 237.01, 237.07).

(See number 3B, Inheritance rights in homestead.)

Personal property

Personal property remaining after award to the widow and minor children, or either, for maintenance during the administration of the estate, and after an allowance of personal effects up to \$400 in value and not disposed of by will, is distributed as provided for real estate, that is, if no issue of the marriage survive, the living spouse receives the entire remainder. However, if lawful issue survive, the widow or

widower is entitled to receive the greater of: (a) one-half of the residue when there is only one child, and one-third in other cases; or (b) up to \$10,000 of the residue when the deceased leaves no lawful issue by a previous marriage. Any remainder over the said \$10,000 value is distributed to the lawful issue of the marriage (secs. 313.15, 318.01).

Right of election of dower, homestead right, and share of personal property

A widow may elect between any jointure or pecuniary provision made for her benefit in lieu of dower without her assent before or after the marriage, and her statutory dower, homestead right, and share of personal property, provided the husband dies intestate, leaving lawful issue. Election by the widow must be made to the court in writing within 1 year after the filing of a petition for the appointment of an administrator of the estate (secs. 233.12, 233.14).

Damages for wrongful death

Damages recovered in actions for wrongful death are paid to the surviving spouse, except that if minor children under 18 years of age whom the deceased was legally liable to support also survive, they are entitled to an amount fixed by the court for their protection, not to exceed 50 percent of the net amount received after deduction of collection costs. If no spouse nor such minor children survive the deceased, then the amount is distributed to the lineal or other heirs of the deceased as specified by law. Every settlement in wrongful death cases in which minor children under 18 years of age survive the deceased shall be void unless approved by an authorized court of record. A surviving nonresident alien wife and minor children are entitled to these benefits (sec. 331.04 (2)).

However, in cases where an injured or deceased person is covered by the Workmen's Compensation Act, the foregoing provision applies only to the surviving spouse's interest in the amount recovered in a tort action permitted under such act against a third party liable for the injury or death of the person in question (secs. 102.29, 331.04 (2)).

16. Provision for survivors during administration of estate

When a married man dies possessed of personal property, whether or not disposed of by will, the widow is allowed all her articles of apparel and ornaments, family pictures, and ornaments of the deceased except those which he specifically 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 \$400, 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 (sec. 313.15 (1)).

The minor children are allowed all their articles of apparel and ornaments. If their father dies without making a will, leaving no widow, the minor children also are allowed his household furniture, wearing apparel and ornaments, not exceeding \$1,000 in value, and other personal property selected by their guardian not exceeding \$400 in value. Before the settlement of the estate, the court may order an allowance for the necessary maintenance of any child under 21 years of age having no mother, until he reaches a specified age, but not beyond his 21st birthday. The allowance may be charged by the court either to the personal estate, or the real estate, or both, as may be equitable (sec. 313.15 (3)).

Also, a family maintenance allowance to the widow and minor children, or either, is provided for, out of the personal or real estate, or both, of the deceased, to extend over the period of administration in such sum as the county court finds proper (sec 313.15 (2)).

Furthermore, if any personal property remains after payment of the allowances described in the foregoing paragraphs, the court may set aside out of such remainder a sum or value not exceeding \$2,000 for the use and support of the widow and/or minor children (sec. 313.15 (4)).

The court may grant to the minor children out of the estate of their mother all such allowances as they would be entitled to out of the estate of their father if he died without making a will and left no widow (sec. 313.15 (6)).

Wages payable upon death of employee

Upon demand, an employer shall pay wages due a decedent to the wife, children, husband, or other dependent living with an employee at the time of the employee's death. In the case of an employee of the State, the amount of the wages or salary due shall include all unused vacation allowance. Any county or municipality may include unused vacation allowance for any employee who died after January 1, 1961. If no relative as specified survives, an employer may apply such payment, or so much thereof as may be necessary, to pay creditors of the decedent in the order of preference prescribed for satisfaction of debts by executors and administrators (sec. 103.39 (2)).

Small estates

When a resident of the county dies, leaving property which does not exceed in value the selections and allowances of the surviving widow or minor child, funeral expenses, expenses of last illness, and cost of administration, the court may authorize final disposition of said estate without the appointment of an executor or a general or special administrator (sec. 311.05 (1) (a)).

General administration of an estate may be terminated at any time by summary proceedings approved by the court, after it is established that such estate is one which can be settled in such manner. The court may issue all orders necessary for the payment of debts, and the delivery and transfer of all forms of property. Persons making such delivery, transfer, or issuance shall be released the same as if such transaction had been made to an executor or administrator of the deceased. When title to real estate is involved, heirship may be determined by notice as prescribed (sec. 311.05).

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

A 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 as if he died without a will, leaving lawful issue, which amount shall not exceed one-third of his net personal estate. She shall not be entitled to both her statutory share and the devise in the will unless it plainly appears by the will to have been so intended by the testator. When no provision is made for a widow in her husband's will, she is entitled to the same share without the necessity to elect. Election by the widow must be made to the court in writing within 1 year after the filing of a petition for the probate of the husband's will (secs. 233.13, 233.14).

The husband of a deceased wife has no such election (sec. 233.23).

(See number 15, Intestate estate, Right of election of dower, homestead right, and share of personal property.)

Marriage and Divorce

18. Age of consent to marriage

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 16 and 18 years for women, marriage may be contracted upon consent of the parents, or of the parent or guardian having actual care, custody, and control of the minor. Consent must be given in person before the county clerk, or in writing under oath, and filed of record in such county clerk's office at the time of application for license. When there is neither parent nor guardian, the judge of the probate court may allow marriage after hearing upon showing of proper cause (sec. 245.02).

19. Common-law marriage

Common-law marriages were abolished in Wisconsin in 1917.²⁶

²⁶ *In re Van Schaick's Estate* (1949), 256 Wis. 214 ; 40 N.W. (2d) 588.

A valid marriage may be contracted only upon issuance of a license and solemnization before an authorized official in the manner prescribed by law (sec. 245.16). Marriages contracted in violation of this provision are void (sec. 245.21).

20. Premarital requirements

Each applicant for a marriage license must submit to an examination to determine the presence of any venereal disease and the standard blood test for syphilis, within 20 days prior to application. A physician's certificate of negative finding as to each of the parties must be filed before the license may be issued, and it is unlawful for the clerk to issue the license if such certificates are not filed. If the examination results in a positive finding of venereal disease, a certificate may be issued by the health officer when, in the opinion of the applicant's physician, the individual does not have a venereal disease in an infective or communicable state (secs. 245.06, 245.07).

Upon satisfactory documentary evidence that the medical examination or blood test required is contrary to the tenets and practices of the religious creed of an applicant, a judge may authorize issuance of the license without the certificate or certificates of negative finding if the public health and welfare will not be injuriously affected (sec. 245.07).

Application for a marriage license must be made at least 5 days before the license is issued. However, upon application to the court by the parent or guardian (Wisconsin residents) of either party, or upon application of either of the parties to the marriage supported by documentary evidence, the judge may authorize issuance of the license before the expiration of 5 days if either party is dangerously ill and such illness is likely to result in death, if the female is pregnant, if either party is in the military service, or if other circumstances warrant special dispensation (sec. 245.08).

The marriage license must be obtained from the clerk of the county where one of the parties has resided at least 30 days prior to the application, or if both parties are nonresidents, from the clerk in the county where the ceremony is to be performed (sec. 245.05).

At the time of the application for a marriage license, the clerk is required to give to each applicant (or mail to an applicant who completed his part of the application outside of the State) a printed card with language from section 245.001(2) of the Family Code, emphasizing the seriousness and significance of the marriage contract and its consequences to society; the importance of the stability of marriage in relation to the family and the State, morality, and civilization; and the desirability of all persons contemplating marriage to take courses in premarital counseling and education for family living (sec. 245.05).

No application or license may be issued if the parties are lawfully married to each other. However, the clerk may issue the license with the consent of the judge, who may then determine whether the prior marriage was legal (sec. 245.09).

Prohibited marriages

If either applicant for a marriage license has minor children of a prior marriage not in his custody and whom he is under obligation to support by court order or judgment, no license may be issued without permission of a court with divorce jurisdiction in the county of application. Within 5 days after such permission is sought, the court will grant the order or direct a hearing to allow the applicant to submit proof of his compliance with the prior court obligation, and show that the children are not likely to become public charges. After such proof the court will grant the order. Marriages contracted without compliance with this provision are void whether entered into in this State or elsewhere (sec. 245.10).

No marriage may be contracted while either party has a husband or wife living; between persons nearer in kinship than second cousins, except that where the woman is over 55 years of age marriages of first cousins are permitted; or where one of the parties has such want of understanding as renders him incapable of assenting to marriage whether by reason of insanity, idiocy, or other causes. It is unlawful for any person who is or has been a party to an action for divorce, in the State or elsewhere, to marry again until 1 year after judgment of divorce is granted. The marriage of any such person is void (sec. 245.03). The term "void" means null and void, and not voidable (sec. 245.002(3)).

However, a subsequent marriage, if entered into by one of the parties in good faith, in full belief that the former spouse was dead, or that the former marriage had been dissolved, or without knowledge of former marriage, becomes valid after the impediment to the marriage has been removed, and if the parties continue to live together in good faith as husband and wife. The issue of such subsequent marriage are the legitimate issue of both parents (sec. 245.24).

Violation of any of the provisions with respect to premarital requirements is punishable on conviction by fine, or imprisonment, or both (sec. 245.30).

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 void for all purposes in the State (sec. 245.04).

An annulment, divorce, or legal separation obtained in another jurisdiction for a cause which occurred while the parties resided in this State, or for a cause which is not a ground for annulment, divorce, or legal separation under the laws of this State, is of no effect in the State when both parties to the marriage were domiciled in the State at the commencement of the proceedings (secs. 247.21, 247.22).

22. Annulment

No marriage may be annulled or held void except through a judicial proceeding. A marriage may be annulled for any of the following causes existing at the time of marriage: (a) incurable physical impotency; (b) prohibited degrees of kinship; (c) bigamous marriage; (d) contract obtained by fraud, force, or coercion; (e) mental incapability of assenting to marriage; and (f) nonage. A parent may bring such suit when parental consent was not obtained as required by law, if the action is commenced before the party reaches the age of 21 if a male or 18 if a female, and within 1 year after the marriage. A marriage may be annulled when it is prohibited or declared void for other reason as provided by law (sec. 247.02).

(See number 20.)

Alimony

When a judgment of annulment is granted on the basis of misrepresentation of the guilty party's capacity to contract marriage, relating to not having a prior spouse living, or of having completed the 1-year waiting period for his divorce, the court may grant alimony payments to the injured party (sec. 247.245).

(See number 23 concerning the care, custody, maintenance, and education of minor children in the event of annulment.)

Division of property

Upon rendering a judgment of annulment, the court may make provision for restoring to the wife, in whole or in part, any property or the value thereof which the husband may have received from her, and may compel him to disclose what property he has received and how the same has been disposed of. The court may provide for restoration to the husband of any property which he has transferred to his wife (sec. 247.34).

No judgment of annulment shall in any way affect the right of a wife to the possession and control of her separate property, real or personal, except as otherwise provided; and the court is not authorized to divest any party of his title in any real estate except as expressly stated (sec. 247.35).

23. Divorce

The court may grant an absolute divorce for any of the following causes: (a) adultery; (b) sentence and commitment to imprisonment, subsequent to marriage, for a period of 3 years or more; (c) willful desertion for 1 year; (d) cruel and inhuman treatment of one spouse by the other; (e) habitual drunkenness for 1 year; (f) being of sufficient ability, husband's refusal or neglect to provide adequately for his wife; (g) voluntarily living apart for 5 years or more; and (h) living apart for 5 years pursuant to a legal separation (sec. 247.07).

Legal separation

A legal separation for a limited time, or forever, may be granted for any of the causes for an absolute divorce listed in the preceding paragraph as (a), (b), (c), (d), (e), (f), and (g) (sec. 247.07).

Provisions during any action affecting marriage

Pending any action affecting marriage, the court or family court commissioner may make temporary orders concerning the care, custody, and suitable maintenance of the minor children, requiring the husband to pay for the support of the wife and minor children in her custody and to enable her to carry on or defend the action, and concerning the persons and property of the parties, as are deemed just and reasonable. The court also may prohibit either spouse from imposing any restraint on the personal liberty of the other (sec. 247.23).

Provisions when decree is granted*Children*

In rendering a judgment of annulment, divorce, or legal separation, the court may make further provisions concerning the care, custody, maintenance, and education of the minor children of the parties, and give the care and custody of the children to one of the parties to the action, or may, if necessary, declare the children dependent and give the care and custody to some other relative or a child welfare agency (sec. 247.24).

When divorce or legal separation from his wife is granted the husband, and he is given the care, custody, and maintenance of any of their minor children, the court may award him sums for the support and education of such children out of the separate property or income of the wife, considering the ability of the parties and the circumstances of the case (sec. 247.27).

Alimony and division of property

In every judgment of divorce or legal separation for any cause except adultery committed by the wife, the court is empowered to

adjudge alimony to the wife out of the property or income of the husband and such allowance for the support and maintenance of the minor children as is just and reasonable. The court may also divide and distribute the estate of the husband, and so much of the estate of the wife as has been derived from the husband, between the parties and divest and transfer title accordingly, after having given due regard to all circumstances of the case. A certified copy of the judgment affecting title to real estate shall be recorded in the office of the register of deeds of the county where such lands are situated (sec. 247.26).

No judgment of annulment, divorce, or legal separation shall in any way affect the right of a wife to the possession and control of her separate property, real or personal, except as otherwise provided; and the court is not authorized to divest any party of his title in any real estate except as expressly stated (sec. 247.35).

Dower and curtesy rights

When a judgment of divorce is granted, and also when the court upon granting a legal separation makes a final division of the estate, neither party shall be entitled to dower or curtesy in any lands of the other (sec. 247.36).

Restoration of name

The court, on granting a divorce in which alimony jurisdiction is terminated, may allow the wife to resume her maiden name, or the name of a former deceased husband, or the name of a husband of a former marriage of which there are children in her custody, unless there are children of the current marriage as to whom the parental rights of the wife have not been terminated (sec. 247.20).

Remarriage

Any person who is a party to a divorce action, in this State or elsewhere, may not marry again until 1 year after judgment of divorce is granted. Marriage entered into before the expiration of the stated period is void. However, if either party dies within this period, the judgment of divorce, unless vacated or reversed, is deemed to have entirely severed the marriage relationship immediately before such death (secs. 245.03, 247.37).

Provisions when decree is denied

In a judgment in an action for divorce or legal separation, although such divorce or legal separation is denied, the court may make order for the custody of any of the minor children and for support and maintenance of the wife and children out of the husband's property or income, and make any further order for support of any child by

the wife or from her separate property or income as the nature of the case renders just and reasonable (sec. 247.28).

Parents and Children

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

There is no statute which specifically governs the parents' right to the services and earnings of a minor child. However, the earnings of a minor are his sole property when his parents neglect or refuse to provide for his support and education, and neither the parents nor creditors of the parents have any right with respect to such earnings (sec. 48.99).

25. Guardianship of a minor child

Women have the same rights as men with regard to the care and custody of children. However, this does not change the husband's primary duty to support his children (sec. 6.015).²⁷

All minors are subject to guardianship. The court may appoint a separate guardian of the person, and a separate guardian of the estate of a minor (sec. 319.03). The guardian of the person has the custody and control of the person of the minor and the care of his education; the guardian of the estate has the care and management of the minor's estate (sec. 319.01).

The parents of a minor are preferred as his guardians, and if they are suitable and willing, the court will appoint one or both of them (sec. 319.09).

A parent's right to custody of a child must yield when exercise thereof will be detrimental to the child's interest, since the welfare of the child is the primary consideration.²⁸

When parents are charged with abandonment of their child, their natural rights to the custody and companionship of the child will not be taken from them except on clear and satisfactory evidence of abandonment of such child.²⁹

A minor over 14 years of age, in writing in the county court, may nominate his own guardian, and the court shall consider such nominee in appointing a guardian. If the minor is in the Armed Forces or outside the State, or if other good reason exists, the court may dispense with the right of nomination (sec. 319.09).

Guardianship of the person of a minor terminates when the minor reaches the age of majority or lawfully marries. Guardianship of the estate of a minor terminates when the minor reaches the age of ma-

²⁷ *Schade v. Schade* (1959), 274 Wis. 519; 80 N.W. (2d) 416.

²⁸ *Jones v. State* (1933), 211 Wis. 9; 247 N.W. 445.

²⁹ *In re Rice* (1923), 179 Wis. 531; 192 N.W. 56.

majority, or obtains approval from the court for such termination upon marriage (sec. 319.26).

When the court determines that the estate of a minor is below \$1,500, and it is to the minor's advantage to dispense with the guardianship, the court may terminate the guardianship and authorize disposition of the remaining assets as provided, including payment to the minor (sec. 319.26).

When a ward dies leaving an estate which can be settled by summary proceedings under sec. 311.05, the court may approve such settlement and distribution by the guardian without the necessity of appointing an administrator or executor (sec. 319.28).

(See number 16, Small estates.)

Relief laws

The county agencies specified to provide welfare services for mentally defective, dependent, neglected, delinquent, and illegitimate children have the authority to contract with any parent or guardian or other person for the care and maintenance of any such child (sec. 48.57(h)).

26. Appointment of testamentary guardian for a minor child

Subject to the rights of a surviving parent, a parent may nominate a guardian of the person of his minor child by will. A parent may also nominate a guardian of the estate of his minor child by will, and waive the requirement of a bond as to such estate derived through the will (sec. 319.09).

27. Inheritance—child

Real property

Children inherit from parents as follows: When a person dies intestate, his real property descends in equal shares to his surviving children and to the lawful issue of any deceased children by right of representation (sec. 237.01).

A child born after the making of his parent's will, which contains no provision for such child, is entitled to the same share in his parent's estate as if the parent had died intestate, unless it is apparent from the will that the parent did not intend to make provision for such child (sec. 238.10).

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

Personal property

Personal property remaining after award to the widow and/or minor children as specified is distributed the same as real estate (sec. 318.01).

(See also number 15.)

28. Child born out of wedlock

In any case in which the father and mother of a child born out of wedlock intermarry, except where the parental rights of the mother were terminated prior thereto, such child is legitimated and enjoys all the rights and privileges of legitimacy as if born in lawful wedlock. The issue of all marriages declared void under the law are nevertheless legitimate (sec. 245.25).

Paternity proceedings may be had upon a written complaint under oath of the mother of a child born, or to be born, out of wedlock. If the mother of an illegitimate child commences an illegitimacy proceeding and fails to prosecute, the district attorney, if he determines that it is to the best interest of the child, shall prosecute the proceeding commenced by the mother to final judgment. If a child born, or to be born, out of wedlock is likely to become a public charge, the district attorney may institute an illegitimacy proceeding. The adjudged father shall be ordered by the court to pay all expenses incurred for lying-in and attendance of the mother during pregnancy, past care and support of the child, costs of the action, and future support of the child until 18 years of age. If the child is dead, the adjudged father must pay the funeral and last illness expenses. The adjudged father is subject to imprisonment for failure to comply with the court order (secs. 52.21-52.45).

In every paternity action the court, either during the pendency thereof or in approving a settlement agreement, or rendering judgment, or in revising judgment, may make and enforce such orders or provisions for the suitable care, custody, support, and maintenance of the child as provided for in an action for annulment or divorce, unless or until parental rights to such child are terminated as provided by law, provided that the court shall make no order relating to support and maintenance of such child until paternity has been established; provided that the court shall never give the custody of the child to the defendant unless the welfare of such child will be promoted thereby, and unless the defendant has admitted paternity, or has been adjudicated the father of such child (sec. 52.21 (2)).

When the impediment to a bigamous marriage entered into in good faith by one of the parties has been removed, and the parties to such marriage continue to live together as husband and wife, the marriage

is thereafter considered valid, and the children are the legitimate issue of both parents (sec. 245.24).

Any person who, without just cause, deserts or willfully neglects or refuses to provide for the support and maintenance of his or her illegitimate minor children under 18 in necessitous circumstances is subject to fine, or imprisonment, or both, unless such parent made provision for the support of the child by giving bond or making settlement as specified (secs. 52.05, 52.055).

Relief laws

For relief purposes, illegitimate children have the legal settlement of their mother, unless her parental rights are terminated; and if her settlement is lost, theirs is lost (sec. 49.10). (See also number 25.)

29. Inheritance—child born out of wedlock

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

Every child born out of wedlock is the heir of the person who in writing, signed in the presence of a competent witness, acknowledges himself to be the child's father, or who is adjudged to be such father in paternity proceedings, or who admits in open court that he is such father. In all cases, a child born out of wedlock is the heir of his mother, and inherits in the same manner as if born in lawful wedlock; but such child may not claim as representing his father or mother, either lineally or collaterally, unless before his death he was legitimated by the marriage of his parents (sec. 237.06).

POLITICAL RIGHTS

30. Domicile of a married woman

In the absence of statutory provision, the common-law rule prevails that the domicile of the wife is that of her husband.

Divorce

Under the statute giving women the same rights and privileges as men in enumerated respects and "in all other respects," a wife may maintain a separate residence from that of her husband for purposes of divorce, notwithstanding the general rule that the domicile of a wife follows that of her husband. A wife may acquire a separate domicile from that of her husband if his misconduct has given her adequate cause for divorce.³⁰

³⁰ *Lucas v. Lucas* (1947), 251 Wis. 129; 28 N.W. (2d) 337.

Voting and tax situs of income

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

When a woman residing in this State marries a man residing in another State, her voting residence automatically becomes that of her husband under the theory that a married woman is presumed to intend to live with her husband not temporarily, but permanently.³¹

Residence for voting purposes and tax situs of income is the same.³²

Relief laws

For relief under the Public Assistance Act, a wife has the legal settlement of her husband, if he has any within the State; but if he has none, she has none. When a wife is living separate from her husband, and criminal proceedings have been instituted under the nonsupport statute, or support proceedings have been commenced under the Uniform Reciprocal Enforcement of Support Act, she shall begin to acquire a legal settlement in her own right as of the date of instituting the criminal proceedings or commencing the support proceedings (sec. 41.10 (1)).

When a divorce has been granted, the date from which a new settlement may be acquired by a married woman is the day on which the divorce is granted, and not the termination of the period when the divorce judgment becomes final (sec. 49.10 (8)).

Marriage emancipates minors so that they acquire a legal settlement in their own right for relief purposes (sec. 49.10 (6)).

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).

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).

³¹ 17 Op. Atty. Gen. 489 (1928).

³² Op. Atty. Gen. 92 (1943).