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The Legal Status of Women in the United States of America

as of January 1, 1948

*Reports and Summary for the
Territories and Possessions*

BULLETIN OF THE WOMEN'S BUREAU 157-50

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UNITED STATES DEPARTMENT OF LABOR

MAURICE J. TOBIN, Secretary

WOMEN'S BUREAU

FRIEDA S. MILLER, Director

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United States of America

as of January 1, 1948

REPORTS AND SUMMARY FOR THE TERRITORIES AND POSSESSIONS

ALASKA, HAWAII, PUERTO RICO
CANAL ZONE, VIRGIN ISLANDS

*Individual material for each Territory and Possession, 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. 157-50

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FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

The Legal Status of Women in the
United States of America

ALASKA, HAWAII, PUERTO RICO,
CANAL ZONE, VIRGIN ISLANDS

LETTER OF TRANSMITTAL

UNITED STATES DEPARTMENT OF LABOR,
WOMEN'S BUREAU,
Washington, March 30, 1951.

SIR: I have the honor to transmit a report on the legal status of women for the territories of Alaska, Hawaii, and Puerto Rico, also for the Canal Zone and Virgin Islands. This is the concluding section of the Bureau's survey under this topic for the entire United States, and will be issued as Bulletin No. 157-50.

These studies are based on original examination of organic acts and statutes with particular attention to women's status under political, family, property, and contract law as it existed January 1, 1948.

The digest of the pertinent provisions of law for each jurisdiction has been referred to an active member of the bar in that area for critical review. Grateful acknowledgment is made by the Bureau to these lawyers for their readiness to help and for the valuable services they have contributed.

The survey has been made by Sara Louise Buchanan, attorney on the legislative division staff of the Bureau. Hana Taffet, labor economist in the division, assisted with research for the Alaska report.

Respectfully submitted.

FRIEDA S. MILLER, *Director.*

HON. MAURICE J. TOBIN,
Secretary of Labor.

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LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

TERRITORIES AND POSSESSIONS

Introduction

Legislative Authority.

The Congress of the United States determines the form of political and administrative control for Territories and Possessions, also the extent of participation to be allowed the inhabitants in their local government. However, Congress does not necessarily retain exclusive control over the private rights of persons and property among the people of these subdivisions. Actually, the Congress grants to territorial legislative bodies considerable authority in development of their private law, subject, as are the States, to the provisions of the Federal Constitution and Statutes.

Characteristics of Women's Legal Status.

Viewed all together, the Territories and Possessions evidence a progressive attitude toward women in most of their legislation. Some traces of colonial laws are discernible in the regulation of family and property relationships. But for the most part the status of women as compared with that of men under territorial laws differs little from the status of women under the laws of the continental United States. Sex distinctions found in the laws of the Territories occur also in similar provisions of certain State laws. The few distinctions which obviously discriminate against women are of the same type as those found in some State laws, and are traceable to similar social policies or legal traditions; for example, the headship of the husband or the father for his family in some respects, or the ineligibility of women because of sex to serve as jurors. On the other hand, it is noteworthy that a majority of the sex distinctions in the law are of advantage to women, especially to wives, mothers, and widows.

The bulk of the laws apply alike to men and women, guaranteeing to both sexes the same degree of enjoyment of fundamental rights and privileges, including the right to vote and to qualify for public office or service.

SUMMARY OF LAW DIGESTS, BY TOPIC, ALL JURISDICTIONS COMBINED

As of January 1, 1948

This summary of the status of women under municipal law for the five jurisdictions in the Territorial report permits general comparison among the Territories and Possessions, and between these jurisdictions and the corresponding summary for the States, on any topic within the study.

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Twenty-one years is the age of majority generally for persons of either sex in Puerto Rico, Canal Zone, and Virgin Islands, also for males and unmarried females in Alaska. Hawaii sets 20 years as the adult age for males and females resident in the Territory.

2. Contractual Powers of Minors.

The general rule is that minors who have not been emancipated from parental control, as provided by statute, cannot make enforceable contracts except for actual necessities suitable to their needs. Exceptions are provided in Alaska for married female minors (at least 16 years of age), in Canal Zone for such minors at least 18 years of age, and in Puerto Rico and Virgin Islands for legally married minors of either sex.

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

Statutory exemptions under this head are allowed without distinction between sexes, when a person is otherwise eligible to claim the right. All jurisdictions except Canal Zone allow a homestead exemption. The Zone permits a right of redemption to a judgment debtor under specified conditions. All units allow personal exemptions within limited values and classes of property, which usually include household furniture and goods; necessary clothing for debtor and family; tools, implements and equipment required for the debtor to earn a livelihood. Alaska, Hawaii, Puerto Rico, and Canal Zone allow exemption on a certain part of debtor's earnings payable to him at the time judgment execution is issued against him.

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

A married woman retains full ownership, control, and powers of disposition over the property she owns at the time of her marriage, according to statute law in each of the Territories and Possessions.

5. Contractual Powers of Married Women.

Generally speaking, the married women of the Territories and Possessions have extensive capacities for making contracts, both as to their own property, and as to personal transactions. Specifically, the individual capacities of married women are subject to limited minor restrictions in some of the jurisdictions, as shown by the following summaries of provisions covering contracts, liabilities, and powers.

Separate Real and Personal Property.

Married women in all five jurisdictions convey their separate property by deed or mortgage as freely as other persons may do, except that in Puerto Rico husband and wife may not sell property between themselves unless their property has been declared separate by agreement or court decree, and in Virgin Islands a resident wife must execute a special form of acknowledgment in conveyance of Island real property with her husband.

General Contracts.

Canal Zone specifies that while husband and wife may engage freely in transactions between themselves, these acts are subject to the law regulating trusts, that is, they are subject to tests for good faith. Hawaii forbids most contracts between husband and wife, but permits either to be surety or agent for the other, and authorizes a business partnership between them. Virgin Islands permits either spouse to appoint the other as attorney in fact to manage property in the appointor's absence. No specific provisions or restrictions are made in other jurisdictions with respect to the general contracts of a married woman apart from her separate property.

Appointment to positions of trust.—No statutory restrictions due to sex or marital status apply to appointment of a woman as an executor, administrator, guardian, or trustee, except that Puerto Rico specifies preference for male relatives over females in the same degree of kinship when a tutor (guardian) is to be appointed for certain classes of handicapped persons. In Virgin Islands, the statute qualifies the husband's right to administer the estate of his deceased wife only by his competence and the fact of his application to serve, while the widow's appointment to serve alone as administrator of her husband's estate depends upon additional factors.

Litigation.—Generally, a married woman's capacity to sue or be sued in her own name is coextensive with her right of independent contract. Puerto Rico, however, enumerates the circumstances under which a wife sues or is sued alone, requiring that in other cases the husband must be a party to the action, though the wife may defend in

her own right if sued with her husband. Actions between spouses are limited in all jurisdictions to such as are expressly permitted by law.

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

In Alaska and Virgin Islands, a married woman owns the wages of her personal labor, and sues alone to collect them. Hawaii (as of January 1, 1948), Puerto Rico, and Canal Zone, consider the personal earnings of each spouse community property, which the husband manages and controls, while the spouses are living together. [Since June 30, 1949, Hawaii regards the wife's earnings from strangers as her separate property. The community property law was repealed as of that date.]

7. Liability of Married Woman for Family Necessaries.

Unless a married woman voluntarily assumes liability for necessities furnished to her and to the family, she is not responsible at law for such debts in any of the five jurisdictions, as a rule; but in each of them either parent may become criminally liable for willful neglect or failure to give his or her minor child under a specified age, such support, care, and education as the parent can provide. Canal Zone imposes on a wife the legal duty to support her husband out of her separate property when they are living together, if he has no separate property, there is no community property, and he is unable because of infirmity to support himself. Puerto Rico and Virgin Islands require mutual support between husband and wife.

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

In none of the jurisdictions is a married woman required to obtain a court order or formal consent of record from her husband to set up a business of her own.

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

Each of the jurisdictions grants to a married woman the right to own, control, and dispose of her separate property as provided by law. *Separate property* includes that which a woman owns at the time of her marriage, and that acquired after marriage by gift, will, or inheritance. In addition, Alaska and Virgin Islands declare the personal earnings of a married woman are her separate property. [See Number 6 also for recent action in Hawaii.]

The extent of a married woman's capacity to dispose of her separate property is the same as that granted a married man over his property in Alaska, Hawaii, Puerto Rico, and Virgin Islands. Canal Zone gives the wife full right of ownership and control, declaring that she may convey her separate property without her husband's consent.

As to liability of the wife's separate property for the husband's debts or claims arising against him, Puerto Rico subjects one-half the

benefits, increase, and proceeds from her property to an execution under a judgment against the husband.

The four other jurisdictions declare that the wife's property is not liable for debts or claims against the husband. Canal Zone provides that if the husband is disabled, has no separate property, and there is no community property, the wife's separate property may become liable for necessities furnished the family. [See Number 7.]

Generally, a married woman in any of the jurisdictions may sue and be sued in her own name with respect to her separate property. [See Number 5 under the Territorial Reports.]

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

Alaska and Virgin Islands have only the law of separate property. [See Number 9.] Whatever property is acquired during marriage by the cooperative efforts of husband and wife, not defined by law as the separate property of the wife or declared to be jointly-held property by private agreement, is the property of the husband, by common-law rule.

As of the conclusive date for this report (January 1, 1948), Hawaii, Puerto Rico, and Canal Zone were under community property law. Effective June 30, 1949, the Hawaiian community law was repealed, and presumably the former system of separate property was restored as it existed before adoption of the community regime in 1945.

The general provisions of the community property laws are similar in the three jurisdictions where the system is operative. That is, each spouse has an undivided half-interest in all property acquired during the marriage which is not within the definition of separate property and is subject to the law of the Territory; on the death of one spouse, the surviving spouse continues to own his or her one-half interest and the other half passes to the heirs of the decedent or to beneficiaries under his or her will. However, before the property is divided it is subject to payment of debts, charges, and family allowances authorized by law to be paid out of it.

During the marriage, the community property is liable for the debts incurred by either husband or wife for the benefit of the community, and usually for the debts of each spouse.

On dissolution of the marriage by court decree a fair division of the marital property depends on the circumstances surrounding the particular case.

The husband has the control and management of the community, for the most part, and represents it in all litigation. If he is absent or incapable of handling the property, the wife may be empowered to take charge of it. Certain limitations are imposed on the husband's power to dispose of real property and of household goods or family clothing.

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

Hawaii declares that compensation for injury to the wife's person is her separate property and subject to her control. Puerto Rico

provides only that the wife may sue in her own name and receive the compensation in damages for injury to her separate property, without specific mention of injuries to her person or character. Alaska, Canal Zone, and Virgin Islands have no specific provision covering this point, but Alaska's and Canal Zone's emancipation statutes for married women appear broad enough to warrant the conclusion that a married woman sues and recovers in her own right for injuries to person, property, or character.

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.

None of the jurisdictions has positive provision for civil action between husband and wife to recover damages for willful or negligent injury to the person of one spouse by the other.

Alaska, Puerto Rico, and Virgin Islands authorize action by one spouse against the other to recover his or her separate property wrongfully withheld by the other spouse.

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

In each of the jurisdictions (except Hawaii) the general rule is that neither husband nor wife may testify for or against the other without the other's consent in civil actions. Hawaii provides that the husband or wife of a party to the suit is competent and may be compelled to give evidence on behalf of any party to the proceeding, except that neither spouse can be compelled to disclose confidential communications between husband and wife during the marriage.

This restriction on disclosure of confidential communications between husband and wife is common to each jurisdiction, and is relaxed only if both spouses give consent, or in specified actions between them.

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

Each of the jurisdictions authorizes a married woman who is of sound mind and of specified legal age to make a will disposing of her separate real and personal property, subject to no more restrictions than are applied to a married man in making his will.

In Hawaii, marriage revokes the will of a single woman, but the will of a single man is not revoked after marriage unless a child is born for whom the will makes no provision.

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

Rights of inheritance from an intestate married person by a surviving spouse are alike for husband or widow as to *absolute shares* in the separate estate, in each of the Territories and Possessions. The extent of the right is set out as follows:

Alaska.—Surviving spouse gets one-half the property if descendants are living; or all if no descendants survive. Same interests are allowed also in personal property.

Hawaii.¹—Surviving spouse does not inherit the *separate estate in lands* if descendants living; gets one-half if no descendants but parent, brother or sister or their issue living; gets all if no specified descendants or kindred survive. Each spouse is entitled to one-third part of all *separate property* owned by the other at death, remaining after payment of decedent's debts.

Puerto Rico.¹—Surviving spouse takes all the *separate property* when no legitimate descendant, ascendant, collateral kindred, or recognized natural child survives decedent.

Canal Zone.¹—Surviving spouse shares the *separate property* equally with one child; gets one-third when more than one child or descendants of them are living; gets one-half when no descendants of the decedent are living, but a parent, or brother or sister or issue of either survive; takes all when none of these relatives survive the decedent.

Virgin Islands.—Surviving spouse inherits real property only when no descendant of the decedent survives, and in such a case takes one-half; gets all the property when decedent leaves no descendant, parent, brother or sister or descendant of either. St. Croix gives the surviving spouse all the real property, if the decedent leaves no lineal descendants.

The respective right of a surviving husband or wife to a *life interest* in the real estate of a deceased married person varies somewhat in Alaska, Hawaii, and Virgin Islands. Alaska grants dower to a widow but no like interest to a husband; Hawaii grants dower to the widow (that is, a life interest in one-third part of all lands owned by her husband during the marriage unless she has waived or forfeited the right), and curtesy to the husband (that is, an interest for life in one-third of the wife's lands owned at the time of her death); Virgin Islands provide dower for a widow (that is, the use during her life of one-half part in value of all lands owned by her husband at his death), and curtesy to a surviving husband (that is, a life interest in all his wife's lands which her heirs may inherit, whether or not a child is born of the marriage).

¹ For testamentary disposition of community property see Ownership under Number 10.

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

Each of the jurisdictions makes provision of some sort for a widow during the period when the estate is being settled; four also include surviving husband or wife in certain provisions, as for family maintenance or use of exempt property during administration. Variations in provisions for surviving spouse are shown below.

1. *Use of Family Home*.—A widow may stay in the family home for a limited period without liability for rent to the heirs; the length of the period ranges from 60 days after death of the husband in Hawaii to 1 year in Alaska and Virgin Islands. Puerto Rico and Canal Zone have no such provision.

2. *Family Maintenance*.—The widow, also the minor children, are entitled to reasonable provision for support until administration begins in Alaska, Canal Zone, and Virgin Islands; Hawaii provides an

allowance for the family of decedent, and Puerto Rico, for a surviving spouse.

3. *Household Goods*.—Alaska, Canal Zone, and Virgin Islands permit a widow, or the minor children, to remain in possession of the household goods until the estate's inventory is filed. After the inventory is filed, further provision for use of such property is made to a widow or minor children in Alaska and Virgin Islands and to surviving spouse in Hawaii and Canal Zone. Puerto Rico has no express provision of this sort.

4. *Wearing Apparel*.—This class of personal property may be kept by a widow and minor children in Alaska, Canal Zone, and Virgin Islands, and by a surviving spouse in Hawaii. Puerto Rico provides only that a widow's mourning apparel is to be paid for out of the estate which will pass to the heirs of the deceased husband.

5. *Summary administration* of small estates, usually by court order on petition, is provided for in Alaska, Hawaii, Canal Zone, and Virgin Islands. No provision of this sort was found in Puerto Rican law. The summary administration permits early settlement in simple cases and prevents exhaustion of assets by administration expenses. Apparently a surviving wife or husband may benefit alike by the summary procedure.

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

In Alaska and Virgin Islands the widow has a right of election between her statutory share and a portion provided for her by her husband's will, or in Alaska such election may be between the statutory share and provision in a premarital contract or settlement. Hawaii permits either husband or wife to elect between a will provision by the other spouse and the marital share of dower or curtesy. Puerto Rico and Canal Zone do not provide for election of this sort.

II.—MARRIAGE AND DIVORCE

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

Each Territory and Possession expressly sets the minimum legal age for marriage without consent of parents or guardian, except Puerto Rico where presumably the legal age of majority is applied for this purpose also. Alaska, Canal Zone, Virgin Islands, and presumably Puerto Rico, authorize marriage without parental consent at 21 years for males and 18 years for females; Hawaii sets 20 years for both sexes.

All jurisdictions except Virgin Islands have established by law the minimum ages for valid marriage where parental consent is given in prescribed form. These minimum ages with parental consent are 18 years for males and 16 years for females in Alaska, Hawaii, and Puerto Rico; and 17 years for males, 14 years for females, in Canal Zone; Virgin Islands provides only that no license will be issued without parental consent below the ages of 21 for males and 18 for females.

19. Validity of Common-Law Marriage.

Alaska recognizes a marriage that fulfills common-law requirements, regarding the statutory requirements of license, witnesses, and solemnization as directory and not mandatory. Hawaii, Puerto Rico, and Canal Zone make the statutory requirements mandatory. Virgin Islands has no clear ruling or statute on the point, simply defining marriage as a civil contract entered into by a man and a woman "in accordance with law."

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

Hawaii and Puerto Rico require of both parties a health certificate from a physician before license may be issued. The Hawaiian statute is limited, however, to control of syphilis, and follows the procedure adopted in a number of States, that is, an examination for syphilis, with serological test, is required to be made of each applicant under prescribed conditions. The Puerto Rican control is a prohibition on marriage for any person afflicted with various specified diseases and maladies.

No health examination requirement appears in the statutes of Alaska¹ or Virgin Islands. Canal Zone declares that no leper may be licensed to marry unless the action is authorized by the Chief Health Officer of the Zone.

¹ However, Alaska's 1949 legislature enacted such a law.

21. Interstate Cooperation in Marriage Law Enforcement.

Alaska, Hawaii, and Canal Zone follow the general rule under which a foreign marriage will be recognized if it is valid in the place where it is solemnized, unless it violates public policy accepted among civilized nations. No statute on the subject was found in Puerto Rico and Virgin Islands.

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

Each of the jurisdictions provides several statutory grounds for annulment. Common grounds to all are the lack of mental capacity or understanding to enter into the marriage contract, lack of legal age for marriage in either party, the use of force or fraud to obtain consent, a marriage in which one party has an undivorced spouse of a previous union, and marriages within a prohibited degree of kinship. Hawaii, Puerto Rico, and Canal Zone grant annulment for physical impotence; Puerto Rico and Canal Zone, for lack of parental consent when either party is a minor.

As to the grounds already enumerated, no distinction is made in availability to either party. However, Puerto Rico will invalidate a union in which the woman remarried after dissolution of a previous marriage (either by divorce, annulment, or death of her husband) without waiting for expiration of 301 days after the dissolution or for the birth of a child conceived during the previous marriage, as required by statute. [This requirement is characteristic of the com-

munity property system under civil law, designed to protect succession rights of the child in the father's estate.]

Certain other grounds for annulment are found in one jurisdiction only: Hawaii grants annulment for undisclosed leprosy or any loathsome disease at marriage; Canal Zone will invalidate the marriage if either party was not present in person at the solemnization; and Puerto Rico will not recognize a marriage involving persons within the following classes—guardian and ward during the guardianship, parties to an adoption while the relationship continues, persons convicted of adultery within a 5-year period not yet expired, or anyone convicted as murderer or accomplice in the death of a husband or wife of either party.

In Alaska, Hawaii, and Virgin Islands some authority is given to the court having jurisdiction of annulment proceedings to make orders concerning the custody of minor children, responsibility for family support, and adjustment of property rights between the parties.

23. Grounds for Divorce—Respective Availability to Spouses.

Absolute divorce may be obtained by the aggrieved spouse in each jurisdiction on proof of any one of several grounds permitted by statute law of the country. The number and character of the recognized causes vary among the governments; but three grounds for divorce appear in the statute law of all five units, namely adultery, cruelty (as variously described) and habitual drunkenness (Hawaii and Puerto Rico include also habitual use of narcotic drugs).

Four jurisdictions (Alaska, Puerto Rico, Canal Zone, and Virgin Islands) include as a ground for divorce conviction of felony; all except Puerto Rico include desertion over specified periods (ranging from 6 months in Hawaii to 2 years in Canal Zone). Puerto Rico has practically the same ground, but terms it "abandonment"; besides, divorce may be granted where there has been continuous separation of the spouses for more than 3 years. Impotency is a ground in Alaska, Puerto Rico, and Virgin Islands; insanity constitutes legal basis for divorce in Alaska, Hawaii, Puerto Rico, and Virgin Islands.

Several other grounds appear in the law of only one jurisdiction: Leprosy, sentence to imprisonment for at least 7 years, also intolérable neglect or indignities, are grounds peculiar to Hawaiian divorce law; Puerto Rico will allow divorce when either parent-spouse is guilty of immoral practices with offspring; Canal Zone considers a malicious attempt to kill one's spouse sufficient ground for divorce; and Virgin Islands allows the remedy for incompatibility of temperament.

All the grounds discussed thus far are available without sex distinction. However, each jurisdiction except Virgin Islands provides one ground for benefit of the wife only: Alaska grants divorce to a wife on proof of her husband's willful nonsupport for 1 year or more, Hawaii permits divorce to the wife whose husband fails during a continuous period of at least 60 days to provide suitable maintenance for her; Puerto Rico allows divorce to the wife when her husband proposes her prostitution; and Canal Zone deems willful neglect by a husband for 1 year or more ample reason to grant his wife a divorce on her petition for it.

Hawaiian procedure is to grant first a legal separation for not more than 2 years when suit entered for divorce, unless the petitioner insists on divorce. At the end of the period, absolute divorce may be granted on application of either party, if no reconciliation seems possible. The court may order the husband to provide court costs and wife's support while suit is pending, and may also decree concerning custody and care of minor children during that period. Virgin Islands enables the court hearing a divorce action to order financial aid from the husband to the wife while the suit is pending, also maintenance of minor children.

III.—PARENTS AND CHILDREN

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

Hawaii and Canal Zone declare both parents joint natural guardians of their unmarried minor children, with the same rights to custody and services. The rule is different in Alaska, Puerto Rico, and Virgin Islands, where the father has prior rights in these respects, the mother only attaining them if the father is dead, or (in Puerto Rico) is absent, or legally incapable. Canal Zone recognizes the mother of an illegitimate unmarried minor as entitled to his custody and services.

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

The statutes are not clear in all jurisdictions as to preference between parents, if any, when a guardian must be appointed by the court for any property which a minor child owns. Puerto Rico apparently permits the parents to manage the property under their legal power in that jurisdiction known as *patria potestas*; that is, by virtue of their relationship as parents. Virgin Islands indicates that no preference between parents is made on the basis of sex.

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

In each of the jurisdictions, a guardian may be appointed by will of a parent for his or her minor child or children, under specified conditions. Alaska, Canal Zone, and Virgin Islands authorize a father to make such an appointment, or, if the father is dead or fails to appoint a guardian, the mother has authority to do so. Canal Zone requires the mother's written consent to testamentary appointment by the father.

Hawaii permits either father or mother to appoint a guardian by will, with the written consent of the other parent; or by sole action if the other parent is dead, incapable of consent, or has abandoned the child. Puerto Rico empowers the father or the mother to appoint by will a guardian for minor children or for any incapacitated child; like power is accorded a surviving parent. Virgin Islands specifies that a testamentary guardian is not entitled to custody of the child's person against the right of a surviving parent who is competent to transact business matters; also the mother may appoint when she is divorced

and has been awarded custody of the minor. Canal Zone gives appointing power to the mother of an illegitimate child.

Hawaii and Canal Zone specify that a testamentary guardian may be appointed for either the person or estate, or both, of a minor child.

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

All jurisdictions (except Virgin Islands) permit the father and mother to inherit equal portions from their deceased child who dies without having made a valid will; either parent surviving takes the portions of both, when one is dead. Virgin Islands does not expressly state whether the parents share equally in inheritance from their deceased child.

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

Alaska declares both parents obligated to support their child born out of wedlock, as if the child were of legitimate birth, and each parent is subject to penalties for willful failure in meeting the obligation. Canal Zone binds the mother of an illegitimate unmarried minor child to give him support and education suitable to his circumstances, but makes no provision for compelling support from the father.

Hawaii, Puerto Rico, and Virgin Islands have procedure whereby the father may be compelled to contribute to support of the child when paternity has been established. In Hawaii, the father's support obligation continues to the child's sixteenth year; the mother is legally liable for support until the child becomes adult, that is, 20 years of age; Puerto Rico places first liability for support on the father, then on the mother, until the child is 16 years of age. Virgin Islands permits the father to make voluntary settlement with the mother, subject to court supervision. If he fails to do this, he may be compelled to pay three-fifths of the child's support, or more if the mother is unable to make her contribution without considerable hardship. Besides, the father may be required to pay special sums for birth expense, education, and expense for the child's sickness or death.

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

Alaska (if the natural parents do not intermarry), Hawaii and Virgin Islands make the mother sole heir of a child born out of wedlock who dies without a will and is not survived by a spouse (widow in Hawaii) or lawful issue; Canal Zone is not definite on the mother's right. Puerto Rico provides only that the father and mother of a legitimate natural child may inherit in equal portions, or if only one of them survives, that one takes all the estate.

B.—POLITICAL RIGHTS**30. Domicile of Married Women.**

Generally, the private domicile of the wife follows that of her husband, in all jurisdictions; subject, however, to certain exceptions. For example, Alaska permits the wife to have her own domicile when her husband separates from her permanently; Hawaii allows a woman having domicile in the Territory to retain it on her marriage to a man domiciled elsewhere, unless she voluntarily assumes the actual domicile of her husband; Puerto Rico allows individual domicile for voting purposes; and Canal Zone does not require the wife to take the domicile of her husband if the place he provides for abode or the mode of living is unreasonable or grossly unfit.

31. Public Office—Eligibility of Women.

No statutory prohibition has been found against eligibility of women for elective and appointive public office.

32. Jury Service—Eligibility of Women.

Alaska makes women eligible, but allows them to claim exemption on the basis of sex, if they choose to do so. Virgin Islands declares women are eligible for jury duty under the same conditions applicable to men. Hawaii, Puerto Rico, and Canal Zone limit jury service to males.

ALASKA

SOURCES

Compiled Laws of Alaska (Annotated), 1949.
Alaska Reports.
Alaska Federal Reports.

EXPLANATORY NOTE

References to the Compiled Laws of Alaska are in parentheses following the related subject matter, as (sec. 29-1-2).

Selected case references, 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.

Subject headings are preceded by numbers, which remain constant for their respective topics through the entire 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."

ALASKA

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

The age of majority is 21 years for males and for unmarried females. At majority, all persons have control of their own actions and business, and all the rights and liabilities of citizens of full age (sec. 20-1-1, 20-1-2).

2. Contractual Powers of Minors.

All females attain majority upon their being married according to law (sec. 20-1-2). [For age of consent to marriage see Number 18.]

Capacity to buy and sell is regulated by the general law concerning capacity to transfer and acquire property.

The Uniform Sales Act provides that a minor must pay a reasonable price for necessities sold and delivered to him, "necessaries" meaning goods suitable to the condition in life of the infant and to his actual requirements at the time of delivery (sec. 29-1-2).

Under the common law, in general, all contracts of a minor, for other than "necessaries," may be avoided by him.

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

Property exemptions from execution are available to a "judgment debtor," and appear to apply generally to either men or women, without regard to marital status (sec. 55-9-78).

Personal Property.

A judgment debtor or his agent may, by selection, reserve from seizure for debt certain articles of personal property, including: Books, pictures, and musical instruments valued up to \$75; necessary wearing apparel (jewelry included not to exceed \$100 in value); tools, animals, library, etc., necessary to carry on trade or profession, up to \$500 in value, as well as 6 months' supply of food for animals; household goods and furnishings up to the value of \$300; family seat or pew in place of public worship; and all property in any public or municipal corporation (sec. 55-9-78).

Earnings.

The earnings of the judgment debtor, up to \$100, for personal services rendered within 30 days next preceding the levy of execution or attachment, are exempt if such earnings are necessary for the use of his family supported wholly or partly by his labor (sec. 55-9-78).

Life Insurance Proceeds.

Proceeds from life insurance policies are payable to the beneficiary as designated, free from any claims of the insured, the persons effecting the policy, or the creditors or representatives of such persons or of the beneficiary (sec. 42-1-27).

Homestead.

The homestead of a family, or the proceeds thereof, is exempt from judicial sale in satisfaction of any liability or judgment thereon upon declaration by either the owner or spouse, provided that it is the actual abode of and owned by such family or members of it and does not exceed \$2,500 in value, or either 160 acres of rural property or one-fourth of an acre of urban property. This exemption does not apply to the foreclosure of a mortgage executed by both spouses when the owners of the homestead are married (sec. 55-9-79). [For conveyance of homestead see Number 10.]

Tenants by the Entirety.

A homestead to the value of \$5,000 held by tenants by the entirety is exempt from liability for the debts of either or both tenants, except by special agreement (sec. 22-1-6). [See Numbers 5 and 10.]

Disposition of Property on Death of Owner Judgment Debtor.

A homestead is exempt from sale or any legal process after the death of the owner for the collection of any debts for which it could not have been sold during his lifetime (sec. 55-9-79).

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

The property and pecuniary rights of every married woman at the time of her marriage or afterwards acquired by gift, devise, or inheritance are not subject to the debts or contracts of her husband, and she may manage, sell, convey, or dispose of them by will to the same extent and in the same manner that her husband can property belonging to him (sec. 21-2-6). [See Numbers 5 and 9.]

5. Contractual Powers of Married Women.

A married woman may make contracts and incur liabilities, sue and be sued in connection with her contracts, rights, and property, and she may receive, hold in her own right, and sue for the wages of her personal labor to the same extent and in the same manner as if she were unmarried (secs. 21-2-10, 55-3-6). [See also Numbers 1, 2, 9, and 18,]

All laws which impose or recognize civil disabilities upon a wife but not as to a husband are declared repealed, and a married woman has the same right as her husband to appeal to all courts in her name alone for any unjust usurpation of her property or natural rights (sec. 21-2-11).

A married woman is liable on her own account for all civil injuries committed by her, and her husband is not responsible for them unless he would be jointly responsible if the marriage did not exist (sec. 21-2-9).

A resident married woman conveys her real estate in the same manner as that provided for a married man. When a nonresident married woman joins with her husband in any conveyance of real estate situated within the Territory, the effect of such conveyance as well as its acknowledgment are the same as if she were single (sec. 22-3-14). [See Number 6.]

A married woman acknowledges a conveyance of real property, such as deed or mortgage, in the same manner as if she were unmarried (sec. 22-3-13). An acknowledgment is required as proof of a conveyance and must be made before the appropriate certifying officials (sec. 22-3-9).

A conveyance, transfer, or lien executed by either husband or wife to or in favor of the other is valid to the same extent as between other persons (sec. 21-2-3).

A married woman may convey real estate to herself and her husband, as tenants by the entirety (sec. 22-1-6). [See Number 10.]

Either spouse may authorize the other to be his or her attorney in fact, to control or dispose of his or her property, and may revoke the authority, as other persons may do (sec. 21-2-4).

Apparently no statutory restrictions exist as to capacity of a married woman to act as surety, guarantor, or endorser (sec. 21-2-10).

There is no distinction as to sex or marital status in qualifications for executors, administrators, or guardians (secs. 61-3-1, 61-3-2, 62-1-1).

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

A wife owns and may sue for her wages in her own name (sec. 55-3-6). [See Number 9.]

7. Liability of Married Woman for Family Necessaries.

In the absence of a voluntary contract by a married woman she is not liable for family necessaries except that she is legally responsible for the care, education, and support of any child under 16 years of age who is dependent on her either as parent or guardian (sec. 65-8-1).

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

No statutory provision exists which requires the consent of the husband to his wife's engaging in a separate business. [See Numbers 5 and 9.]

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

A married woman may manage, sell, and will the pecuniary rights and property owned by her at the time of her marriage or acquired afterward by gift, devise, or inheritance, to the same extent and in the same manner that her husband can property belonging to him (sec. 21-2-6). The property acquired by a married woman during

coverture by her own labor is not liable for the debts, contracts, or liabilities of her husband, but is in all respects subject to the same exemptions and liabilities as property owned at the time of her marriage or afterwards acquired by gift, devise, or inheritance (sec. 21-2-7).

Neither spouse, nor generally the property owned by either spouse, is liable for the premarital or separate debts, contracts, or liabilities of the other spouse (secs. 21-2-1, 21-2-5). If one spouse wishes to assume the liabilities of the other, an express contract in writing is required (sec. 58-2-2).

A married woman may receive the wages of her personal labor [see Number 5], sue in her own name to recover them, and hold them in her own right. She may prosecute and defend all actions for the preservation and protection of her rights and property as if unmarried (sec. 55-3-6). [See also Number 6.]

Should either spouse obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, as if they were unmarried (sec. 21-2-2).

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

There is no legal community of interest in property acquired during or after marriage by the cooperative efforts of spouses.

A married woman owns and controls all the real and personal property she acquires by her own labor while married (sec. 21-2-7). [See Number 9.]

Joint Deed.

The family homestead cannot be deeded or conveyed unless both husband and wife join in the instrument of conveyance (sec. 22-3-1). [See also Number 5.]

Tenancy by Entirety, Joint Tenancy, Tenants in Common.

Husband and wife may own property as tenants by the entirety, with right to survivorship; i. e., on the death of either spouse the survivor becomes full owner of the entire property, by common-law rule. Joint tenancy (excepting tenancy by the entirety or interests in personalty such as bank accounts) is abolished, and all persons having an undivided interest in real property are declared to be tenants in common (sec. 22-1-6). [See Numbers 3 and 5.]

Joint Bank Account.

When a deposit has been made in a banking institution in the names of two or more persons, payable to either or survivor, payment in whole or in part may be made to either of said persons whether the others be living or not (sec. 34-1-27).

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

"All laws which impose or recognize civil disabilities upon a wife which are not imposed or recognized as existing as to the husband are

hereby repealed; and for any unjust usurpation of her property or natural rights she shall have the same right to appeal in her own name alone to all courts for redress that the husband has" (sec. 21-2-11). [See Numbers 5 and 6.]

In the absence of a specific statute and in the absence of court cases in which the broad statute has been construed, it is not possible to say whether for the particular purposes covered by this topic a married woman owns and controls damages recovered for injury by strangers to her person, property, and character. However, it is assumed that the statute (sec. 21-2-11) is intended to confer such powers on a married woman.

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.

In the absence of a specific statute empowering husband and wife to sue each other for personal torts, neither spouse can maintain such action against the other, by rule of common law. No such statute has been found.

Should either spouse obtain possession or control of property belonging to the other, either before or after marriage, the owner of the property may maintain an action therefor, or for any right growing out of the same, as if they were unmarried (sec. 21-2-2).

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

In civil actions, generally, a husband may not be examined for or against his wife without her consent, nor a wife for or against her husband without his consent; nor can either during the marriage or afterward, without the consent of the other, be examined as to any communications made by one to the other during the marriage. This restriction does not apply to a civil action between spouses, nor to a criminal action or proceeding for a crime committed by one against the other (sec. 58-6-3).

In criminal actions, generally, when one spouse is the party accused the other is a competent witness, but may not be allowed or compelled to testify unless both spouses consent. However, in all cases of personal violence upon one by the other, the injured spouse is a competent witness and may be allowed to testify against the other (sec. 66-13-58). In all prosecutions for abandonment and nonsupport, both husband and wife may testify for or against each other (sec. 65-8-5). In certain criminal actions for immorality, a husband or wife is a competent witness against the other, and the wife may be compelled to testify on behalf of the government against her husband (secs. 65-9-17, 65-9-29).

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

A married woman may dispose of her real and personal property by will to the same extent as her husband can his property (sec. 21-2-6). [See Numbers 4 and 9.]

Every person of sound mind, when 21 years of age or over, without regard to marital status, may dispose of real and personal estate by will (sec. 59-1-2).

The will of any testator is revoked by subsequent marriage if no provision in the will or otherwise is made for issue of such marriage, living at the time of testator's death or born thereafter (sec. 59-3-1).

If an unmarried person marries after making a will, the marriage operates as a revocation of the will. A divorce granted after the making of a will revokes the will as to the divorced spouse (sec. 59-3-2).

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

The real and personal estate of any person who dies without disposing of his property by valid will descends in the following order of preference and survivorship:

ABSOLUTE INTEREST

A. Real Property.

1. One-half to surviving spouse; remaining half divided according to law among living issue.

2. All to surviving spouse, when no children or lineal descendants survive (sec. 60-1-3).

B. Personal Property.

1. The surviving spouse receives one-half of personal property remaining after payment of the debts of the deceased as well as the charges and expenses of administration, if issue survive, and all of such property if no issue survive (sec. 60-1-4, subsecs. 3, 4, 5). The one-half share to which the widow is entitled is one-half the property owned by the husband at the time of his death and is not affected by any advancement received by surviving issue from the intestate during his lifetime (sec. 60-1-8).

2. Among the charges on the estate is an allowance to the widow of "all articles of her apparel and ornament, according to the degree and estate of the intestate, and such property and provisions for the use and support of herself and minor children as shall be allowed and ordered in pursuance of section 61-12-1 to 61-12-5, inclusive [see Number 16]; and this allowance shall be made as well when the widow waives the provision made for her in the will of her husband as when he dies intestate" (sec. 60-1-4, subsec. 1).

LIFE INTEREST

Curtesy.

Estate by curtesy, as known to the common law, is abolished, and upon the death of the wife intestate, her real property shall descend to her heirs according to the laws of inheritance in Alaska (sec. 63-1-21).

Dower.

The widow of every deceased person is entitled to dower, that is, "the use during her natural life of one-third part in value of all the lands whereof her husband died seized of an estate of inheritance," unless she is barred from such right according to law (sec. 63-1-1).

Relinquishment of Dower.

A woman may be barred of her dower in all the lands of her husband by jointure settled on her with her assent before the marriage, provided that such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of her husband (sec. 63-1-7). A woman expresses her assent to the conveyance by which such jointure is settled by becoming a party to it, requiring either that she be past the age of 21 years or joined with her father or guardian in such conveyance (sec. 63-1-8). Any premarital pecuniary provision, for the benefit of an intended wife and in lieu of dower, bars a woman's dower right in all the lands of her husband if she has expressed her assent, as required (sec. 63-1-9).

Widow's Right of Election.

Within the time provided by statute, a woman may elect, after the death of her husband, between her dower right in the lands of her husband and the jointure or pecuniary provision made for her either before their marriage or without her required assent as the intended wife, but she is not entitled to both (sec. 63-1-10). If any provision expressly in lieu of dower is made for her in the will of her husband, she must elect whether she will be endowed of the lands of her husband or accept the land devised or the provision made in the will, but she is not entitled to both unless it is plain that it was so intended by the testator (sec. 63-1-11). Unless she file in the district court, within 1 year after the death of her husband, her election in writing to relinquish her rights under the jointure, devise, or provision, it will be assumed that she has elected to take such jointure, devise, or other provision (sec. 63-1-12).

Nature of Wife's Dower Interest.

The dower to which a widow is entitled is assigned to her by the district court upon application; notice of application must be given to such heirs, devisees, or other persons in such manner as the court directs (sec. 63-1-2).

A woman may not be deprived of her dower right because she is a nonresident or an alien, if the lands of her deceased husband lie in the Territory (sec. 63-1-14).

Widow's Right of Occupancy.

Without having the dower assigned, a widow residing on lands in which she is entitled to dower may continue to do so and also to enjoy the rents, issues, and profits thereof with the children or other heirs of the deceased, or if not residing thereon she may receive one-third part of the rents, issues, and profits thereof, so long as the heirs or others interested do not object (sec. 63-1-6). When the estate out of which dower is to be assigned cannot be fairly divided by boundaries, the dower may be assigned from the income, to be received by the widow as a tenant in common with the other owners of the estate (sec. 63-1-5).

As to tenancy by entirety, see Numbers 5 and 10; for homestead rights and proceeds from life insurance, see Number 3; for joint bank accounts, see Number 10.

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

Until administration of the estate has been granted and the inventory filed, the widow and the minor children of the decedent are entitled to remain in possession of the homestead, all the wearing apparel of the family, and decedent's household furniture, and also to have a reasonable provision for their support during this period, to be allowed by the commissioner (sec. 61-12-1). [For homestead provision see Number 3.]

When the estate's inventory has been filed and expenses for funeral, last illness, and administration have been provided for, the commissioner, upon petition, will award and set apart to the surviving widow or minor children for her or their maintenance estate property up to \$4,000 in value exclusive of any mortgage or lien, including the home, household goods, and all property exempt from execution (sec. 61-12-2). [For exemptions from execution see Number 3.]

The commissioner may also make any reasonable additional allowance out of the estate which he considers necessary for their maintenance according to their condition in life (sec. 61-12-3), or he may so award the whole estate if it does not exceed \$4,200 in value (sec. 61-12-4).

If the total value of the estate is less than \$1,000, the commissioner may proceed under summary administration to permit disposal of property and distribution of proceeds to heirs and distributees of decedent (sec. 61-11-1).

A widow may remain in the dwelling house of her husband for 1 year after his death without being chargeable with rent for it, and is to have reasonable sustenance out of the estate for 1 year (sec. 63-1-15).

When a married woman dies, the administration of her estate is in all cases granted to her husband, provided he is qualified and competent for the trust and applies for it within 30 days from her death, unless by marriage settlement or testamentary disposition of her property it becomes necessary and proper to grant the administration to some other person (sec. 61-3-8). In the case of a deceased married man, when the court appoints his administrator it must give preference to the wife, next of kin, or both, as against other competent and qualified persons or organizations (sec. 61-3-4). [Also see number 15.]

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

Provision is made for the widow's right of election in connection with premarital settlements or will provisions in lieu of dower (secs. 63-1-10 to 63-1-12).

No provision has been found for a surviving husband's right of election against his wife's will, nor does the husband have the right of curtesy by law (sec. 63-1-21). [See Number 15.]

II.—MARRIAGE AND DIVORCE

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

Marriage is a civil contract, which may be entered into by males at 21 years and females at 18 years, if otherwise capable (sec. 21-1-1).

The statutory ages for legal marriage with parental consent are between 18 and 21 years for males and between 16 and 18 years for females. Such consent (under oath or in writing, and verified by affidavit) is required of parents or guardian, or in the absence of either of these, permission from the commissioner of the precinct. No license may be issued to either of the contracting parties if under the ages of 18 years for males and 16 years for females (sec. 21-1-12).

In general, a period of 3 days must elapse between the application for license and the marriage, and both contracting parties must be identified to the proper commissioner and must supply him with the required information (sec. 21-1-11).

19. Validity of Common-Law Marriage.

Although there are statutory requirements as to license, witnesses, and solemnization (secs. 21-1-11, 21-1-44, 21-1-15), the courts have construed these as merely directory. Marriages have been recognized as valid if good under the common law, i. e., based on mutual consent and followed by the open assumption by both parties of marital duties and obligations.^{1 2}

¹ *McDaniels v. McDaniels* (1914), 5 Alaska 107. (Hist.)

² *Reed v. Harkrader* (1920), 4 Alaska Fed. 893; 5 Alaska 668; 264 Fed. 834.

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

There is no provision in the statutes requiring a health certificate from either applicant for a license to marry.

At common law, no premarital certificate of physical fitness is required of either party to a proposed marriage.

[See Number 18 for waiting period.]

21. Interstate Cooperation in Marriage Law Enforcement.

The provisions of the Uniform Marriage and Divorce Act have not been adopted in Alaska. In the absence of a statute on the subject, it is assumed that the general rule is followed that if a marriage was contracted by parties in another jurisdiction in which they actually resided when married, and the marriage is recognized as legal where contracted, it will be recognized as valid in Alaska.

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

The following marriages prohibited by law are *absolutely void* if solemnized in the Territory: (1) When either party has a husband or wife living at the time of such marriage; (2) when the parties are

related to each other within and not including the fourth degree of relationship by whole or half blood (secs. 21-1-2, 56-5-2). Either party may take court action to have a void marriage so declared (sec. 56-5-4).

A marriage is *voidable* by the court upon an action by the injured party whose consent was obtained by force or fraud, or who was incapable of consenting for lack of majority or sufficient understanding, unless it appears that the parties freely cohabited together as husband and wife after the force was removed, the fraud discovered, or the impediment removed (secs. 56-5-3, 21-1-3, 56-5-5).

The aggrieved party may maintain an action for dissolution of a voidable marriage by annulment (sec. 56-5-1). [See Number 23 for settlement provisions.]

Two years' residence next preceding the filing of suit is required of the person suing for annulment, if the marriage took place elsewhere (sec. 56-5-8).

23. Grounds for Divorce—Respective Availability to Spouses.

The aggrieved party may maintain an action for divorce on the following grounds: (1) Impotency existing at the time of the marriage and continuing when the suit is filed; (2) adultery; (3) conviction of a felony; (4) willful desertion for 1 year; (5) cruel and inhuman treatment calculated to impair health or endanger life, personal indignities rendering life burdensome, or incompatibility of temperament; (6) habitual gross drunkenness contracted since marriage and continuing for 1 year prior to the action; (7) willful neglect of husband for a year to provide for his wife the common necessities of life, when able to do so, or when he so fails by reason of idleness, profligacy, or dissipation; and (8) insanity for 3 years immediately prior to the action (secs. 56-5-1, 56-5-7).

Residence in the Territory for 2 years next preceding application for divorce is required of the person filing the suit (secs. 56-5-9, 56-5-10).

During the suit, the court may order the husband to furnish sufficient money for the wife to prosecute or defend the suit; provide for the temporary care, custody, and maintenance of minor children; order the freedom of the wife from her husband's control; and protect the property rights of either or both parties. On final decree, in addition to granting annulment or divorce, the court may determine the future care and custody of any minor children, with preference to the party not at fault; require contribution from the other party toward care and education of the children; allow alimony to the injured party; order return to the wife, if she is not at fault, of any of her personal property wrongfully held by the husband; appoint trustees, if necessary; make division of property between parties as justice requires; and change the name of the wife when she is not the party at fault. If changed circumstances justify, the court may on application modify or set aside provisions of the decree relating to alimony or custody and care of minor children (secs. 56-5-12—56-5-14).

III.—PARENTS AND CHILDREN

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

Under the common law, which applies in the absence of specific statutory provision, the father is entitled to the services and earnings of his minor child, by reason of his legal obligation to support, nurture, and train the child.

The common-law rule is tacitly recognized in certain statutes. For example, under provision for appointment by the court of a guardian over the person of a minor child, the rights of the parents to his personal custody are expressly preserved, and the father's preference shown, as follows: The father of a minor, if living, and in case of his death the mother, while she remains unmarried, being themselves respectively competent to transact their own business, are entitled to custody of the person of the minor and to the care of his education (secs. 62-1-4, 62-1-1). [See Number 25.]

Again, under the Code of Civil Procedure, the respective rights of parents are indicated in authorization to sue in behalf of a minor child as follows: The father, or in case of his death or desertion of his family, the mother, may maintain an action as plaintiff for the injury or death of a child, or seduction of a daughter (secs. 55-3-8, 55-3-9).

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

Every guardian appointed by the court has the custody and care of the education of the minor and the care and management of his estate until the minor attains majority or until the guardian is legally discharged, subject, however, to the rights of the father and mother to have custody of the child's person (secs. 62-1-4, 62-2-5, 62-1-6). [See Number 24.]

Generally, the parents have no right of guardianship over the minor child's estate until formally appointed by the court for that purpose. It is presumed that the common-law preference for the father as natural guardian would be applied in the choice of the guardian of the estate of a child under 14 years of age, when he is fit and competent for the duties involved.

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

The father may, by his last will in writing, appoint a guardian or guardians for any of his children, born or likely to be born, to continue in office during the minority of the child or for a less time. The mother may make appointment only in the event that the father of the child died without appointing or whenever, by judgment of divorce between such parents, the custody of the child has been awarded to the mother. Testamentary guardians have the same powers and duties with regard to the person and estate of the ward as a guardian chosen by the court. However, a testamentary guardian

does not take custody of the person of a minor child when either parent is living and is competent to transact his or her own business (sec. 62-1-6).

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

If a person dies intestate, leaving neither spouse nor direct descendants, his real and personal estate after payment of debts is distributed to the father and mother equally, or to the survivor of them. If the intestate leaves no lineal descendants, neither husband nor wife, nor father, brother, nor sister living at his or her death, such real property descends to his mother, to the exclusion of the issue of the deceased brothers or sisters of the intestate (secs. 60-1-3, 60-1-4). [See also Number 15.]

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

The parents of a child born out of wedlock have the same obligations for its support as the parents of a child legitimately born (sec. 65-8-6).

The desertion and nonsupport statute provides that any parent or guardian who, without lawful excuse, deserts, abandons, or willfully omits to provide for the support and maintenance of his or her dependent legitimate or illegitimate child or children under the age of 16 years, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$500, or by imprisonment in the Federal jail for not more than 12 months (with or without hard labor, as the court directs), or both. In place of the penalties, and subject to future change, the court may issue an order directing that specified payments be made for the benefit of the mother, guardian, or custodian of the child or children (secs. 65-8-1, 65-8-4).

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

The mother inherits the real and personal property of an illegitimate child who dies intestate without leaving spouse or lawful issue.

Intermarriage of the father and mother renders the child legitimate for purposes of inheritance. In that case, the father would share inheritance from the child equally with the mother (sec. 60-1-6). [See Number 27.]

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

In the absence of a specific statute the common-law rule apparently applies; that is, the domicile of a wife follows that of her husband. For application of common law in absence of statutes see section 21-1-2.

The rule is not applied where the husband separates from the wife, intending to leave her permanently.¹

¹ *Wilson v. Wilson* (1945), 10 Alaska 616.

31. Public Office—Eligibility of Women.

Women have the same right to hold office as men, provided they possess the necessary qualifications to vote (sec. 38-1-1).

32. Jury Service—Eligibility of Women.

Women are eligible for jury service, subject to the same qualifications as men; they are not to be discriminated against on account of sex in the selection of any grand or petit jury or because they may claim exemption from service on the basis of sex as provided by statute (secs. 55-7-21—55-7-24).

HAWAII

SOURCES

Organic Act of Hawaii.
1945 Revised Laws.
Session Laws, 1945, 1947 [1949].
Hawaii Reports.

EXPLANATORY NOTE

References to the United States Constitution are so indicated; those to the Organic Act of Hawaii appear in parentheses following the related subject matter, as (Organic Act, sec. 83).

References to the Revised Laws are by section number, as (sec. 9202). Session laws are referred to by year of enactment, and page number where text is found, as (1945, p. 313).

Selected case references, 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.

Subject headings are preceded by numbers, which remain constant for their respective topics through the entire series of reports. 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."

HAWAII

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Males and females, resident in the Territory, reach legal age at 20 years (sec. 12261).

2. Contractual Powers of Minors.

A person under the age of 20 years is a minor, and generally cannot make a legally enforceable contract.

However, where necessaries are sold and delivered to a person under this age, he must pay a reasonable price for them. "Necessaries" usually include goods suited to the minor's condition in life and his actual requirements when the goods are delivered to him (sec. 9202).

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

Property owned by any person who is "a housekeeper" and has a family is exempt from levy and sale on execution for debt, as follows:

Real Property.

Not more than 1 acre, with dwelling house and other buildings on it, for which the assessed tax valuation does not exceed \$2,750. But the exemption may not be claimed against liens for labor or material supplied in construction or repair of the buildings (sec. 10187).

Personal Property.

Various specified classes of property are exempt from attachment, execution, distress, and forced sale of every nature, except for the purchase price, foreclosure of a mortgage, taxes, fines, or other debts due the Territory.

Exempt property includes one-half the wages due to an employed person; also necessary household and kitchen equipment; food supplies for household use during a 3-month period; and tools, implements, or equipment required for making one's livelihood in the principal occupations, professions, or types of business (secs. 10188, 10189).

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

The real and personal property a woman owns at the time of her marriage remains her separate property, free from the management, control, debts, and obligations of her husband (sec. 12365). See also Number 9.

5. Contractual Powers of Married Women.

A married woman may make contracts as if she were unmarried, except that, generally, she may not contract with her husband. However, husband and wife may execute deeds or assignments between themselves, also settlements of property rights under divorce or judicial separation proceedings (sec. 12366, as amended 1945, p. 309).

Husband and wife may enter into partnership agreements for business purposes, and all such agreements previously made are validated (1945, p. 309).

The wife may be surety for her husband¹ or an agent for him.²

A married woman may be an executrix, administratrix, guardian, or trustee, and she has full authority in such capacities without any act or assent on the part of her husband (sec. 12368).

A married woman's acknowledgment is taken in the same form as if she were unmarried, and no examination separate and apart from her husband is required (sec. 12736).

All women who have reached the age of majority (20 years), and who have the required property qualifications, may become sureties on all bonds and undertakings required under Territorial law (sec. 12369).

A married woman may contract for insurance on her husband's life, with his assent. If she survives him, the proceeds of the policy are payable to her, free from claims of the husband or his creditors (sec. 12381). If the wife dies first, the proceeds of the policy become part of her estate or may be made payable to any child or children of hers (sec. 12382). But no greater annual premium than \$500 for such insurance is authorized out of the husband's property (sec. 12383).

A married woman may sue and be sued as if she were unmarried, except that generally husband and wife may not sue each other (sec. 12370). [See Numbers 7, 10, and 23.]

A wife whose husband has abandoned her, leaving the Territory without making sufficient provision for her maintenance, may be authorized by the court on her application to make contracts, to receive money or other personal property to which the husband is entitled in her right, and to use and dispose of such property as her own during the husband's absence (secs. 12377-12380).

Every married woman must adopt her husband's name as a family name (sec. 12384); but on divorce she may be authorized to resume her maiden name or the name of a former husband (sec. 12387, as amended 1945, p. 311).

¹ *Hackfeld and Co. Ltd. v. Medcalf, Et al* (1910), 20 Hawaii 47, 52.

² *Wilcox v. Hartman* (1906), 17 Hawaii 481, 482.

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

The personal earnings of both husband and wife, accruing to either of them since June 1, 1945 (effective date of the Community Property Act), or since their marriage subsequent to that date, generally become community property. Each spouse has a present, existing, and undivided half-interest in the community property, as an incident of the marriage (1945, p. 313). [For note on repeal of the Community Property Act of 1945, see Number 10, following.]

[Prior to June 1, 1945, all work and labor performed or services rendered by a married woman for or to a person other than her husband and children were presumed to be for the benefit of her separate estate, unless she had made an express agreement to the contrary (sec. 12367, repealed in 1945, p. 321).]

7. Liability of Married Woman for Family Necessaries.

The wife has no separate liability for family necessaries unless she assumes it by voluntary contract.

A husband, whether married in the Territory or in some other jurisdiction and residing in Hawaii, is bound to support his wife during the marriage in the same style and manner in which he supports himself, and he is liable for all debts contracted by his wife for necessaries for herself or family during the marriage (sec. 12372, as amended 1945, p. 321). When the wife is entitled to separate maintenance, she sues for it in her own name (sec. 12236).

Any person who shall willfully abandon or injure in health or limb any child under his legal control or shall neglect to provide the child with suitable or necessary food or clothing, or shall unreasonably strike, beat, flog, or chastise the child is criminally liable to fine or imprisonment on conviction, as provided by law (sec. 12269).

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

No formal procedure is required to enable a married woman to conduct a business.

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

[See Number 10 for note on repeal of Community Property Act in 1949.]

All real and personal property owned by a wife before marriage or before June 1, 1945 (effective date of Community Property Act), whichever is later, and all property acquired by her afterward by gift, will, or inheritance, or property received in substitution therefor (as by sale, exchange, or investment) is her separate property (1945, p. 313).

A similar provision designates the separate property of a husband.

All property or money received as compensation for personal injuries sustained by husband or wife is the separate property of the injured spouse (1945, p. 313).

The wife has the same right to manage, control, dispose of, and otherwise deal with her separate property generally that she had before the Community Property Act became effective (June 1, 1945). A similar provision applies to the husband and his separate property (1945, p. 314). This means that the wife deals with her separate property as if she were unmarried, and that it is not subject to the management, control, debts, and obligations of her husband (sec. 12365).

A married woman is not personally liable for the debts of her husband, nor is her property subject to execution or other process against him (sec. 12371, as amended 1945, p. 310).

The separate property of the wife is liable for her debts, whenever contracted, and also for her liabilities arising from tort or otherwise, including debts or liabilities incurred by her in respect to or for the benefit or protection of the community property (1945, p. 316).

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

[As of the date set for closing the entire report on the legal status of women in the United States, January 1, 1948, Hawaii applied the community property law summarized below. However, this law was repealed at the regular session of the 1949 Legislature, by Act 242, effective at midnight of June 30, 1949.]

Community and Separate Property Distinguished.

The Community Property Act of 1945 applies to the personal property wherever situated, and to real property situated in the Territory, acquired in either case by a husband or wife while domiciled in the Territory of Hawaii.

Husband and wife may hold property as joint tenants, as tenants in common, or as tenants by the entirety, but the kind of ownership must be shown in the instrument by which the property is acquired. Otherwise, for legal purposes, it will be presumed that all property, real and personal, acquired by husband and wife after marriage or after the effective date of the law (June 1, 1945), whichever is later, is community property. This presumption may be disregarded if a different form of ownership is proved.

Each spouse may have also separate property, described as real or personal property owned by him or her before June 1, 1945, or before marriage if the marriage occurs after that date, and all property acquired afterward by either of them through gift, will, or inheritance, and also property substituted therefor through exchange, sale, investment, etc. Property or cash received in compensation for personal injuries is the separate property of the spouse sustaining the injuries.

Subject to the exceptions listed above, all property, real and personal (including earnings of husband and wife, also the income and profits from the separate property of each spouse), is community property in which husband and wife each has an undivided half-interest, if acquired after June 1, 1945, or after marriage subsequent to that date. The respective interests of the spouses are present, existing, and equal, and arise as an incident of marriage.

Control and Management.

Control.—As to *separate property*, each spouse retains the same control that he or she had generally over his or her respective property before the Community Property Act became effective. [See Number 9.]

Each spouse has power to act as agent for the *community*, as prescribed by the Act, but subject to the following limitations applicable alike to both of them: (1) Neither can dispose of, encumber, or lease

for more than 1 year, any community real property unless the other joins in the transaction; (2) neither can give away, dispose of, or encumber any community property without a valuable consideration unless the other consents to the transaction; (3) neither can dispose of or encumber community furniture, furnishings, or fittings of the home without the other's consent; (4) neither can dispose of more than half the community property by will; and (5) each must exercise his or her rights, with respect to the community property, in good faith for its benefit.

Either spouse has the right to sue to protect the community against any violation by the other of the limitations described. For this purpose the wife may sue or be sued by her husband in her own name and person (subject to above limitations).

Powers.—1. The *wife* may receive, manage, control, dispose of, and otherwise deal with that portion of the community property which consists of her earnings, the rents, issues, income, and other profits of her separate property, and all other community property which stands in her name.

2. The *husband* may receive, manage, control, dispose of, and otherwise deal with all other community property, including that portion which consists of his earnings, the rents, issues, income, and other profits of his separate property, and all other community property which stands in his name.

Transfers Between Spouses.—Either husband or wife may make a valid transfer of his or her interest in all or any of the community property to the other spouse, provided the transfer does not affect creditors' rights existing at the time it is made.

Whenever one spouse is incapacitated, as specified in the Act, the other may be empowered by the court to perform his or her duties with respect to the community.

Litigation.—The husband represents the community in all actions, suits, and other legal proceedings. He is a necessary party to all such matters; the wife may be made a party, but this is not required, generally. However, no court action shall be enforced against the wife personally or against her separate property unless she has been made a party to the proceeding.

Liability for Debt.—The community property is liable for debts contracted by either spouse or by both, and for liabilities of either or both of them arising from transactions entered into or action taken by either for the protection or benefit of the community.

The earnings of one spouse, also the income, rents, issues, and other profits from his or her separate property, as well as such separate property, are liable for debts contracted or liabilities incurred by such spouse before the inception of the community.

Division of Property.—(1) *Divorce.*—The court granting a divorce decree must divide the community property between the parties in such proportions as the facts in the particular case appear to justify. The court's action is subject to revision in all respects on appeal.

(2) *Death of one spouse.*—When one spouse dies, one-half of the community continues to belong to the surviving spouse, subject to the payment of claims for which the community property is liable and subject to administration expenses; the other half passes to the heirs

or according to the will of the spouse who died, also subject to claims and administration expenses. Administration is upon the whole of the community, as well as upon the decedent's separate property.

The wife has no dower right nor the husband any curtesy right in community property (1945, pp. 312-321).

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

A married woman may sue and be sued as if unmarried, except generally as to her husband (sec. 12370). Compensation recovered for injury to the wife's person becomes her separate property (1945, p. 313).

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.

By common-law rule, which applies in the absence of statute, husband and wife may not sue each other to recover damages for injuries to the person inflicted willfully or negligently by the other spouse. (See secs. 1 and 12370.)

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

Usually in civil cases the husband or wife of a party to the suit is competent and may be compelled to give evidence on behalf of any party to the proceeding (sec. 9837), except that neither spouse can be compelled to disclose any communication made to him or her by the other during the marriage (sec. 9839). Nor can one spouse be compelled to give evidence against the other in a criminal proceeding unless the action involves an offense against the person of the spouse called upon to testify. In all criminal cases either spouse may testify for the defendant spouse (sec. 9838). In actions of desertion and nonsupport husband and wife are competent and compellable witnesses against each other as to all relevant matters, but neither can be compelled to incriminate himself or herself (sec. 12254).

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

Any married woman may dispose of her real and personal property by will as any person who is 20 years of age and of sound mind may do (secs. 12170-12171).

Revocation.—If after making a will the testator marries and has a child born to him for whom no provision has been made in the will, the marriage and the birth revoke the will (sec. 12179).

A will executed by a woman is revoked by her subsequent marriage and is not revived by the death of her husband (sec. 12180).

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

ABSOLUTE INHERITANCE

The separate real and personal property of a person dying without a will descends to the heirs in the following manner:

1. *Children* inherit the property in equal shares; the issue (that is, lawful lineal descendants) of any child who has died take the dead parent's share. When no children survive, the estate is divided among any other lineal descendants, as prescribed by law.

2. *Husband or wife* takes one-half of the estate if no issue of the deceased spouse survive; if no parent of the decedent is living, or brother or sister or descendant of either of these, then the husband or wife receives the whole estate.

3. *NEXT OF KIN* inherit the property if none of the above heirs survive the decedent (secs. 12070–12073). See Number 27 for parent's respective rights of inheritance.

LIFE INTERESTS

Dower and curtesy exist only as to *Separate Property* (sec. 12100, as amended 1945, p. 320).

A woman is endowed of one-third part of all lands owned by her husband during the marriage, unless she has forfeited her right or waived it, as prescribed by law. A wife is entitled also, by way of dower, to an absolute one-third part of all her husband's property owned at his death, remaining after payment of his debts (secs. 12100–12114, as amended 1945, pp. 297–299). A wife divorced for adultery or similar offense is not entitled to dower in her husband's real estate nor any share in his personal estate (sec. 12234).

A man has the right of curtesy, that is, a life interest, in one-third of the wife's lands owned by her at the time of her death; also, he has an absolute one-third part of all his wife's property owned at her death, remaining after payment of her debts (sec. 12115, as amended 1945, pp. 298, 299). A husband divorced for adultery or similar offense is not entitled to curtesy in the wife's separate real or personal property (sec. 12233, as amended 1945, p. 321).

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

A widow may remain in her husband's house 60 days after his death without obligation for rent, and shall have reasonable support from the estate during the period (sec. 12107). When she is entitled to dower in lands owned by her husband at his death, she may continue to occupy the property with the heirs or may receive one-third part of the rents, issues, and profits from it, without having her dower assigned, so long as the heirs make no objection (sec. 12106).

Family Allowance.—When a person dies, the widow or widower, or other members of the family living in the decedent's home who were

being maintained and supported by the decedent at his or her death, shall be entitled to have possession of the home, all wearing apparel, other personal effects, and household furnishings until this possession is terminated by the executor or administrator of the estate, in his discretion. The court must make a reasonable allowance for the support of the family, as provided by law, during settlement of the estate. This allowance takes priority over all other charges on the estate except for funeral and administration expenses (sec. 12020).

Small Estates.—When no executor or administrator has been appointed over a small estate not over \$1,500 in value, the clerk of the circuit court where the decedent was residing at the time of his death may, on petition and order of court as provided by law, be authorized to administer the property. No fees are to be allowed the clerk for this service (sec. 12037, as amended 1945, p. 295).

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

When any provision is made for the widow or widower in the will of a deceased spouse, the surviving spouse may elect, within 6 months from the probate of the will, to take either the provision under the will or instead the right of dower or curtesy to which she or he may be entitled by law (secs. 12113, 12115, as amended 1945, p. 298).

II.—MARRIAGE AND DIVORCE

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

The male must be at least 18 and the female at least 16 years of age at the time of marriage. Exception may be granted to permit marriage of a female who is at least 15 years of age by written approval of the circuit judge having jurisdiction over juvenile cases in the district where the female resides, if parental consent also has been given (sec. 12351).

Written consent under oath of parents, guardian, or other person having care or custody of a person under 20 years of age must accompany such person's application for license to marry (secs. 12352, 12358, as amended 1947, p. 405; also sec. 12359). If the minor is a ward of the juvenile court, written consent of the judge of the court must be filed with the application.

19. Validity of Common-Law Marriage.

The Territory does not recognize validity of a marriage contracted within its jurisdiction unless license to marry has been obtained as required by law (sec. 12351).¹ As to marriages contracted elsewhere, see Number 21.

¹ *Parke v. Parke* (1920), 25 Hawaii 397, 405 (Hist.).

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

Each applicant for license to marry must file with the application a physician's statement, in the form prescribed by law, showing that

within the 30 days immediately prior to the first day on which license may be issued the person has been given an examination including an approved serological test for syphilis.

The licensing agent is authorized to issue the license only (1) when in the physician's opinion syphilis infection either is not present or if present is not communicable or likely to become so; or (2) when an exception has been made to the requirement by formal order of the circuit judge, upon joint petition of both parties to the marriage application and evidence which in the court's opinion justifies the action, after due regard for the public health and welfare (1945, p. 307).

At least 3 days must elapse between the day application is filed and the day on which the license is issued (sec. 12356).

21. Interstate Cooperation in Marriage Law Enforcement.

Marriages which are legal in the country where they are contracted must be regarded as legal in the courts of the Territory (sec. 12353), unless odious by common consent of civilized nations.¹

¹ *Republic of Hawaii v. Li Shee* (1900, 12 Hawaii 329 (Dicta)).

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

A marriage contract may be declared void by a decree of nullity from the circuit court for any of the following causes existing at the time of marriage: blood relationship of any degree, nonage, an undivorced living spouse, idiocy or lunacy, impotence or physical incapacity to enter into the marriage state, forced or fraudulent marriage without subsequent cohabitation, or leprosy or any loathsome disease present and concealed from and unknown to the applicant for annulment (sec. 12201). These grounds are available without distinction between the sexes.

Any woman who has been deceived into an illegal marriage with a man who has another wife living, under the belief that he was not married, is entitled to a just allowance out of his property for support of herself and family, as provided by law (sec. 12204). The children of such illegal marriage are entitled to inherit real and personal property of both parents in the Territory, in the same manner as legitimate children inherit (sec. 12205). The children are to be considered legitimate (sec. 12207). Procedure for protection of rights or disposing custody and care of children is provided, as in divorce actions (secs. 12213, 12227).

23. Grounds for Divorce—Respective Availability to Spouses.

Absolute divorce may be granted for the following causes and no other: Adultery by either party; willful and utter desertion for a 6 months period; sentence to imprisonment for life or for 7 years or more; insanity of at least 3 years' duration; leprosy; extreme cruelty; habitual drunkenness or habitual use of specified narcotics during a period of not less than 1 year; conduct by one party toward the other through a period of 60 days or more exhibiting cruel treatment, neglect, or personal indignities (though not amounting to

physical cruelty) of a nature to make life burdensome and intolerable and further cohabitation insupportable; or when the husband neglects or refuses to provide suitable maintenance for his wife during a continuous period of 60 days or more.

If petitioner for divorce does not insist upon an absolute divorce, only a legal separation will be granted (sec. 12210). Legal separation may be decreed for a period not to exceed 2 years for any of the causes which would justify absolute divorce (sec. 12235). In the decree, the court may require such support and maintenance of the wife and her children as appears just and proper, either by the husband or out of his property (sec. 12238). A decree of separation reinstates the wife, whether or not she is the party at fault, in the legal position she had as an unmarried person (such as the right to sue and be sued, to dispose of her property, to make contracts, etc.) (sec. 12239). Where the term of separation set by the decree has expired, or where the parties have lived separate and apart for 2 years or more under a bill in equity for separate maintenance, a divorce may be granted on application of either party if it is proved that no reconciliation has been made and that the parties cannot accept the idea of living together in the relationship of marriage (secs. 12242, 12243).

When a divorce suit is filed, if it is proved that the wife is under restraint or in destitute circumstances, the court may pass such orders to secure her personal liberty and reasonable support during the suit as law and justice may require, and may enforce the orders by summary process. The court may compel the husband to advance reasonable amounts for witness fees and court costs to be incurred by the wife, and the court may revise the orders as need arises (sec. 12224). The court has similar authority to make orders and enforce them concerning the care, custody, education, and maintenance of the parties' minor children during a suit for divorce or separation (sec. 12225), and also upon annulment of a marriage (sec. 12227).

When any married woman is entitled to sue for separate maintenance she may sue in her own name (sec. 12236).

The court may include in a decree granting divorce a provision that the woman may resume either her maiden name or the name of a former husband (sec. 12387, as amended 1945, p. 311).

III.—PARENTS AND CHILDREN

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

The father and mother of an unmarried minor child are joint natural guardians of his person and property and have equal powers and duties with respect to him. Neither parent shall have any right superior to that of the other concerning his custody, control, or any other matter concerning him.

If either parent dies, or abandons the family, or is incapable for any reason to act as guardian, the guardianship passes to the other parent.

When parents live apart, the court may award the guardianship to either of them, having special regard to the interests of the child.

The father and mother of unmarried minor children are liable, jointly and separately, for civil wrongs and injuries committed by their minor children and are empowered to prosecute or defend all court actions in which the children or their individual property are concerned (sec. 12262). See also section 12264 for details of parents' duties and powers.

Refer to Number 7 for respective liability of parents for support of child, and penalties for willful neglect or abuse.

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

Guardians for the persons and estates of minors may be appointed by the circuit judges. Guardians so appointed have the custody and tuition of the minor and the care and management of his estate, continuing in office until the minor reaches 20 years of age, or until the guardian is discharged according to law. But the minor's natural guardian, if competent, is entitled to the custody of the person and to the care of his education (secs. 12500, 12502).

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

Either parent, with the written consent of the other, or without such consent if the other is dead, incapable of consent, or has abandoned the child, may by will appoint a guardian or guardians of the person or property of any of his or her children for the period of the child's minority or for any less period. Testamentary guardians have the same powers as those appointed by the court (sec. 12505). [See Number 25.]

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

When a person dies without a will, leaving a surviving spouse but no legitimate lineal descendants, one-half of his estate descends to his father and mother as tenants in common (that is, each has an undivided one-half interest in it); and if only one parent is living, that one takes the full half interest in the estate. If the person left no issue nor spouse surviving him, but parents, the whole estate descends to the parents as tenants in common, or to the surviving parent, if one is dead (sec. 12073, subsecs. 2 and 3).

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

Provision is made for paternity proceedings to determine, if possible, the identity of the father and to require him to contribute under court order to payment of expenses for prenatal medical care and childbirth in reasonable amounts, and also to pay for the child's care, maintenance, and education as may seem proper, until the child either becomes 16 years of age or is adopted, emancipated, or becomes self-supporting before that age (secs. 12301-12310, as amended 1945, p. 303, and 1947, p. 393).

Except as otherwise provided by law, children whose parents have not been legally married (as required by ch. 301 of the Revised Laws) are classed as illegitimate and are not entitled to inherit from their fathers unless by express bequest; but the mothers are compellable to maintain and support such children until they are 20 years of age. They may inherit property from the mother without a will (sec. 12279).

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

When an illegitimate person dies without a will, leaving no lawful lineal descendants or a widow, his estate descends to his mother. If he leaves a widow, she takes one-half and his mother the other half (sec. 12076).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

A woman whose domicile is in the Territory at the time of her marriage to a man domiciled in a foreign state, district, territory, or country, does not lose her Hawaiian domicile unless she assumes the actual domicile of her husband (sec. 12354).

In other cases, presumably the common-law rule applies, that the domicile of the wife generally follows that of her husband. [See sec. 1 of the Revised Laws of 1945, declaring the common law in force except as modified by law, fixed by Hawaiian judicial precedent, or established by Hawaiian usage.]

31. Public Office—Eligibility of Women.

Men and women are subject generally to the same legal qualifications to determine eligibility for election or appointment to public office, also for voting. (See secs. 34, 40, and 60 of the Organic Act, and sec. 451 of the Revised Laws of 1945. Also, sec. 5 of the Organic Act makes the nineteenth amendment of the Constitution of the United States fully applicable to assure no discrimination because of sex in the right to vote.)

32. Jury Service—Eligibility of Women.

Women are not eligible for jury service.

A person is qualified to act as a juror or grand juror if he is a male citizen of the United States and of the Territory, of the age of 21 years or over, qualified to register as a voter, has resided in the Territory for not less than 3 years, is a resident of the court circuit from which he is selected, is in possession of his natural faculties and not decrepit, is intelligent and of good character, if he can understandingly speak, read, and write the English language, and if he is selected, summoned, returned and sworn without reference to race or place of nativity (Organic Act, sec. 83; Revised Laws, sec. 9791, as amended 1945, p. 274).

PUERTO RICO

SOURCES

Organic Act of Puerto Rico, 1917.
Civil Code, 1930.
Code of Civil Procedure, 1932.
Code of Commerce, 1933.
1941 Compilation of Revised Statutes and Codes of Puerto Rico.
Session Laws—1942, 1946.

EXPLANATORY NOTE

References to the Organic Act of Puerto Rico appear in parentheses as (Organic Act, 1917, sec. 44), placed after the related subject matter.

Code section references are likewise in parentheses thus (sec. 4422). Session laws are cited by year of enactment and page number where the text is found, as (1919, p. 164).

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PUERTO RICO

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

A person attains majority at 21 years of age, and at that time is capable generally of executing all the acts of civil life (C. C. sec. 247) [See also Number 2.]

2. Contractual Powers of Minors.

The law recognizes four types of emancipation from disabilities of minority: (1) Emancipation through grant by the parent exercising the *patria potestas*; (2) emancipation by marriage; (3) emancipation by court order; and (4) emancipation by attaining age of majority.

1. Emancipation by formal declaration of the father or the mother, placed on public record, enables an unmarried minor to govern his person and property or only his property, within the limitations set by law, when he has completed the age of 18 years. Also, a minor of this age may, on his own petition or that of a relative, be enabled by court order to govern his person and property as prescribed by law.

2. Emancipation of a minor, male or female, results by right from marriage, subject to limitations on disposition of his real property or in contracting loans which require consent of parent or tutor.

3. Full emancipation for all legal purposes by court order is available to a minor over 18 years of age who has lost both parents, if he has, in the court's judgment, the necessary ability to manage his own affairs.

4. At 21 years of age a person normally attains full legal capacity (C. C. secs. 232-247).

Minors may bestow and receive gifts through their antenuptial contracts, if they are authorized by the persons whose consent is required for the minor's marriage (C. C. sec. 1281).

Minors who can marry legally may execute valid marriage contracts stipulating conditions of conjugal partnership in present and future property, as prescribed by law (C. C. secs. 1270-1275). [See Number 18 for legal minimum ages for marriage.]

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

Personal Property.

In addition to the homestead, exemption is allowed for specified classes of personal property of a debtor resident of the Island, within limited valuations. These exemptions include necessary household

furnishings and equipment for family use: 1 month's food provisions; tools, implements, articles, animals, and equipment used by the debtor in earning a livelihood; *life insurance* proceeds and benefits from any policy on the debtor's life, up to any amount represented by an annual premium of not over \$50 (C. C. P. sec. 249 (690 Cal.)).

Earnings.

Up to three-fourths of the earnings, payable to the debtor for personal services during a 30-day period before the official seizure of the property are exempt when it is shown that they are necessary for the use of the debtor's family residing in the Island, supported wholly or in part by his labor (C. C. P. sec. 249 (690 Cal.)).

Homestead.

Every person who is the head of a family is entitled to a homestead property exemption of not over \$500 in value in a parcel of land with the buildings thereon, owned or lawfully possessed and occupied by him or his family as a residence. This exemption right cannot be renounced except as to mortgages insured by or in favor of the Federal Housing Administrator or loans to veterans under the authority of the United States Veterans' Administration (1946, 3d Special Session, Law No. 15, p. 120).

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

Property brought to the marriage by either husband or wife as his or her own remains the property of the spouse owning it at the time of marriage (C. C. P. sec. 1299). [See Number 9.]

5. Contractual Powers of Married Women.

A married woman may contract, and appear in court, in all cases referring to the defense of her own rights and property, to the discharge of the *patria potestas* [see Number 24], guardianship or administration conferred on her by the law, and to the exercise of a profession, employment, or occupation (C. C. P. sec. 93). [See Numbers 7, 8, 9 and 10.]

When a married woman is a party to a civil action, her husband must be joined with her in the suit, except that she may sue or be sued alone when the action (1) concerns her separate property or her right or claim to the homestead property, or (2) is a suit between herself and her husband, or (3) when she is living separate and apart from her husband due to his desertion of her (C. C. P. sec. 54 (370 Cal.)). If the husband and wife be sued together, the wife may defend in her own right, and if the husband neglects to defend she may act for him also (C. C. P. sec. 55 (371 Cal.)).

Husband and wife cannot mutually sell property to each other, except when separation of property has been agreed upon or when there is a judicial separation of the property (C. C. sec. 1347).

Married women acting under the threats, command, or coercion of their husbands are not capable under the law of committing crimes except felonies (P. C. sec. 39 (26 Cal.)).

No distinction is made on the basis of sex in the provisions for

appointment of an administrator over a deceased person's estate (C. C. sec. 815).

In the statute which regulates the appointment of a tutor for insane or deaf-mute persons, preference is for the father as against the mother, for the brothers as against sisters, and for males as against females among grandparents of the ward (C. C. sec. 186).

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

[See Number 10.]

7. Liability of Married Woman for Family Necessaries.

A mutual obligation of support is imposed by law on husband and wife and parents and children (C. C. sec. 143).

Support includes all that is indispensable for maintenance, housing, clothing, and medical attention, according to the social position of the family (C. C. sec. 142).

The father and mother of children not emancipated [see Numbers 2 and 24] have the duty of supporting them, keeping them in their company, educating and instructing them in accordance with their means, and representing them in the exercise of all actions which may result to the benefit of the children. The parents have the power to correct and punish the children moderately (C. C. sec. 153).

Penal Provision.—Any parent of a legitimate, legitimated, natural, or acknowledged illegitimate and adopted child who willfully omits, without lawful excuse, to perform any duty imposed on him by law, or to furnish necessary food, clothing, or medical attendance to such child, commits a misdemeanor, and is subject to penalties prescribed by law (P. C. 263 (270 Cal.)).

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

A married woman may freely engage in commerce and industry without other formalities than those required for men. The separate property of the woman is liable for debts related to the business; the community property is liable also, unless the husband expresses his will against it by a written instrument in prescribed form, which shall be entered in the Mercantile Registry, and a notice of it made on the registration entry of the merchant (C. Com. sec. 6).

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

Separate property of either husband or wife consists of that brought to the marriage as his or her own; that acquired during the marriage by gift, will, or inheritance; that acquired in redemption or exchange for separate property; or that bought with separate funds (C. C. sec. 1299). [See Number 4.]

As to other property, separate ownership by the spouses is not recognized except by provisions of a court decree, when there has been no specific declaration of such property in a marriage contract (C. C. sec. 1327).

Husband and wife manage and freely dispose of their respective separate estates (C. C. sec. 92).

A *dowry* is composed of the property and rights brought as such by the wife to the marriage at the time of contracting it, and of that which she acquires during marriage by gift, inheritance, or legacy, as *dowry* property. Parents, relatives, or others may create the dowry in favor of the wife, either before or after celebration of the marriage. The husband may create it, but only before marriage. The father or the mother, or whichever one of them is alive, is bound to give a dowry to his or her legitimate daughters, except where the daughter has married without parental consent when this is required by law (C. C. sec. 1288, 1289, 1291).

A wife's personal earnings are exempt from execution for debt against her husband. However, one-half the benefits, income, and proceeds of the married woman's private property are subject to execution against the husband (C. C. P. sec. 248).

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

An estate, called the conjugal partnership, is created by law for property (other than separate property) acquired by husband and wife or either of them during the marriage. It includes property obtained by the industry, salaries, or work of husband or wife; the fruits, income, or interest accumulated from either the partnership property or the separate property of husband or wife; and property purchased with funds from the partnership property or received in exchange for it (C. C. sec. 1301).

The conjugal partnership begins the day the marriage is celebrated, and cannot be renounced during marriage except in cases of judicial separation (C. C. secs. 1296, 1297). Before the marriage, the parties may make contracts regarding the conjugal partnership, subject to restrictions specified in the Civil Code. If no such contracts are made, it is understood that the marriage has been contracted under the system of legal partnership (C. C. sec. 1267).

During the marriage, separation of the conjugal partnership property can only be accomplished by court decree, as provided by law, unless specific arrangement for such separation was included in the marriage contract (C. C. sec. 1327).

All the property of the marriage shall be considered partnership property until it is proved to belong exclusively to the husband or to the wife (C. C. sec. 1307).

If a marriage is contracted in a foreign country, and one of the parties is a foreigner, when no marriage contract regarding property is made, the following rules of property apply: If the husband is a Puerto Rican, he marries under the conjugal partnership system of his country; but if the wife is a Puerto Rican, she marries under the system of laws in force in the husband's country, "all without prejudice to what is established in this code with regard to real property" (C. C. sec. 1277). An action for recovery of real property against a person in possession cannot be prejudiced by any alienation made by such person, either before or after the commencement of the action (C. C. P. sec. 290 (747 Cal.)).

The law of partnership applies between husband and wife in all

respects when not in conflict with the law of marriage (C. C. sec. 1298).

The community of goods terminates when the marriage is dissolved by death, divorce, or is declared a nullity (C. C. sec. 1315, 1328).

Management, Control, and Representation.

The husband manages and controls the conjugal property, except as agreed otherwise by valid contract (C. C. sec. 91).

Real property belonging to the conjugal estate may not be transferred or mortgaged except by mutual consent of both spouses (C. C. secs. 1312-1313).

The husband represents the conjugal estate in all legal capacities related to it [such as making contracts, suing or being sued, and the like] (C. C. sec. 93).

The administration of the property belonging to the marriage is transferred to the wife when her husband is incapacitated or absent (C. C. sec. 1333).

Liability of Estate for Debts.

The conjugal partnership is liable for all debts and obligations contracted by the husband during the marriage; also for those contracted by the wife in cases in which she can legally bind the partnership. The wife may purchase necessaries for the use of the family suitable to its social position, for which the conjugal property may be liable (C. C. secs. 91, 1308). Generally, the conjugal property is not liable for debts contracted by either spouse before the marriage (C. C. sec. 1310).

Succession Rights.

By virtue of the conjugal partnership, the earnings or profits obtained by either husband or wife during the marriage, generally, belong to both spouses in equal shares when the marriage is dissolved (C. C. sec. 1295).

Upon dissolution of the conjugal partnership, and after payment of all debts and charges for which the property is liable under the law, the net remainder of the partnership property is divided equally between the husband and the wife or their respective heirs (C. C. secs. 1319-1322).

Disposition by Will.

Presumably, husband and wife have the same capacity to dispose of their respective shares in the conjugal partnership by will, as the only prohibitions on testamentary powers are: (1) Persons of either sex under 14 years of age, and (2) persons of unsound mind (C. C. secs. 611, 612). The testamentary power of either spouse over the conjugal partnership is specifically limited to one-half of the property (C. C. sec. 1314).

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

Presumably either the husband would bring the suit, or else, the wife would be joined with the husband in a suit for injuries to herself. [See Number 5.]

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

A married woman sues alone when the action is between herself and her husband (C. C. P. sec. 54 (370 Cal.) (2)).

No specific authority has been found enabling one spouse to sue the other for negligent or willful injury to the person of the other.

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

In civil proceedings, neither spouse may testify for or against the other without the consent of such other one; nor can either testify without the consent of the other as to any communication made by one to the other, whether testimony is sought during or after the marriage (law approved March 10, 1904. Included in 1941 Compiled Statutes, p. 1333).

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

All persons of either sex may make a will who are at least 14 years of age, and are of sound mind (C. C. secs. 611, 612).

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

As to conjugal partnership property, see Number 10.

As to separate property, a surviving spouse shares as follows in the estate of a married person who dies without a will:

When there is no living legitimate descendant (child, grandchild, etc.) or ascendant (parent, grandparent, etc.), or natural children recognized legally, or collateral relatives (brothers or nephews, of whole or half blood), the surviving husband or wife succeeds to all the property, whether or not the sisters and nephews [presumably sons of sisters] be of the whole blood or the half blood (C. C. secs. 903-911).

A surviving spouse who remarries must set apart for the children and descendants of the former spouse, unless renounced by them, the ownership of all property acquired from the deceased person, by will, gift, inheritance, or any other good consideration—but not his or her share of the conjugal profits (C. C. secs. 923, 925).

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

On petition of an interested party, the court may order, as provided by law, that from the income of the estate payments be made to the surviving spouse for support, as well as to the heirs and legatees of the decedent, in amounts proportioned to their shares as net income of the property to which they may be entitled. The court sets the amount and time for making the payments (C. C. P. sec. 583).

A widow who remains pregnant, even though she be rich, must be given support from the estate, taking into consideration the portion which may belong to the child, if born alive (C. C. sec. 919).

The mourning apparel of the widow must be paid out of the estate of the inheritance of the husband. The heirs of the husband pay it according to his standing and means (C. C. sec. 1323).

Support must be provided out of the property owned in common to the surviving spouse and to his or her children until the estate is settled; but the amount allowed as support will be deducted from their portion, insofar as it exceeds what they should have received as fruits or income (C. C. sec. 1325).

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

No statute has been found providing for election by a surviving spouse against the will of a deceased husband or wife.

II.—MARRIAGE AND DIVORCE

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

The minimum ages for consent to marriage, with sanction of parent or guardian, are 18 years for males and 16 years for females. However, marriage below these ages is considered valid if the parties live together and no action to annul is taken by either of them within 1 day after the person under age reaches the required legal age, or if the woman becomes pregnant before attaining the required age or sues for annulment (C. C. sec. 70).

19. Validity of Common-Law Marriage.

Marriage is a civil institution, originating in a civil contract, through which a man and a woman mutually agree to become husband and wife and to discharge toward each other the duties imposed by law. It is valid only when contracted and solemnized in accordance with the provisions of law, and it may be dissolved only in the cases expressly provided for in the marriage code of law.

License to marry must be obtained before the marriage can be celebrated. No fee may be charged for issuing the license (1935, Special Session, p. 160, amending 1931 Laws, p. 254, sec. 23, 1941 Comp., p. 237).

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

Marriage is prohibited as to any person while he or she is suffering from insanity, epilepsy, or idiocy, or from any contagious or transmissible disease. No marriage certificate or license may be issued unless both parties present to the licensing officer a physician's certificate that neither is afflicted with any of the maladies or abnormalities described above. Penalties are provided for violation or fraudulent statements by either party, the licensing officer, or the certifying physician (1937, as amended 1939, p. 330; appears in 1941 Comp., pp. 245 and 1311).

21. Interstate Cooperation in Marriage Law Enforcement.

No pertinent statute found under this topic.

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

One of the essentials to a valid marriage is the legal capacity of each party to enter into the contract (C. C. sec. 69). The following persons may not legally marry:

1. One who is already married.
2. One who is not of sound mind.
3. One who is under legal age for marriage (males 18, females 16).
4. A minor whose parents have not given consent.
5. One who is physically impotent to produce offspring.
6. A widow, during a period of 301 days after her husband's death, or before birth of her child if she is pregnant at the time of her husband's death; also a woman whose marriage has been annulled or dissolved, for similar periods of time after the nullity or dissolution occurs.

7. A tutor (or guardian) with his ward until the guardianship has been approved and closed (C. C. sec. 70).

Nor may the following contract marriage with each other: Persons related by blood or marriage within specified degrees of kinship; an adopting parent or the legitimate descendant of such parent with the person adopted while the relationship of adoption continues; the parties convicted by final judgment of adultery until 5 years have passed; persons convicted as murderers, or murderer and accomplice, responsible for the death of either the husband or wife (C. C. sec. 71).

Likewise a marriage is a nullity if the consent of either party is obtained by violence or intimidation (C. C. sec. 73).

23. Grounds for Divorce—Respective Availability to Spouses.

Divorce may be granted for the following causes, which apply without sex distinction, with one exception:

Adultery, conviction of felony resulting in loss of civil rights, habitual drunkenness or continued and excessive use of narcotics, cruelty, abandonment for more than 1 year, absolute and permanent impotency occurring after marriage, attempt by either party to corrupt sons or prostitute daughters of the marriage, or the husband's proposal to prostitute his wife, separation of both spouses for a continuous period of more than three (3) years, incurable insanity of either of the parties to the marriage occurring after the marriage and continuing for more than seven (7) years (1942—Supp. to 1941 Comp.).

III.—PARENTS AND CHILDREN

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

The *patria potestas* or natural guardianship over legitimate children not emancipated, belongs in the first place to the father, or if he is absent, legally incapable, or dead, then to the mother. The *patria potestas* includes the duty of the parents to support their children, to

keep them in their company, to educate and instruct them in accordance with their means, and to represent them in all actions which may result in benefit for the children. It includes also the power to correct and punish the children moderately (C. C. secs. 152 and 153).

Property acquired by an unemancipated child through his labor or industry, or for any valuable consideration, belongs to him; but the use and enjoyment of the property belongs to the parents having control of him while he lives in their company (C. C. sec. 155).

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

This is covered by statutory provisions for tutorship, which relates to minors not lawfully emancipated, among others who are incapable of governing themselves. The duty may be conferred by will or by the law (C. C. secs. 167, 168, 172). The object of tutorship is the custody of the person and property, or of only the property of a ward who is not subject to the *patria potestas* (C. C. sec. 167).

When no tutor has been appointed by the father or mother, only the following persons may become tutors of unemancipated minors under operation of the law:

1. The paternal grandfather.
2. The maternal grandfather.
3. The paternal and maternal grandmothers, in the same order, while they remain widows.
4. The oldest brother or sister of full blood, and if no brother, the oldest brother or sister on the paternal or maternal side.

These provisions do not apply to illegitimate children (C. C. sec. 178).

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

The father or the mother may appoint a tutor in his or her will for the minor children and those of age who are incapacitated (C. C. sec. 174).

Any person who leaves property of importance to minors or incapacitated persons may appoint a tutor for administration of the property. But the tutorship is not effective until the property has been accepted by the father, the mother, or the tutor of the minor, with court approval (C. C. sec. 175).

The surviving father or mother may appoint a tutor for each of their children (C. C. sec. 176).

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

When the deceased person leaves no lawful or acknowledged illegitimate issue or their issue, ancestors inherit from the decedent to the exclusion of collaterals (C. C. sec. 898).

The father and mother inherit in equal shares from their legitimate children; likewise parents inherit from their acknowledged natural child (C. C. sec. 899).

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

First the father, and then the mother, are obliged to feed, clothe, support, educate, and provide shelter for their illegitimate children under 16 years of age, whether acknowledged or not, in accordance with the needs of the minors and with regard to the available means of the parents.

Penalties provided by the Penal Code for abandonment and neglect of minors will be administered to the father or the mother who fails in this obligation or willfully refuses to fulfill it and persists in the refusal after formal demand for support and protection of the child has been made, as provided by law (1940 Law 108, secs. 1, 2; approved April 30, 1940; 1940 Comp., p. 1245).

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

As to legitimized natural child, the father and mother inherit from him in equal portions (C. C. sec. 899). If there is only one illegitimate parent, he or she succeeds to the child's property (C. C. sec. 902).

All children born out of wedlock subsequent to the date of this Act takes effect, are natural children, whether or not the parents could have married at the moment when such children were conceived. These children will be legitimized by the subsequent marriage of the parents, to each other (1942 Supp. p. 1296).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

Public domicile for the purpose of voting, is established for all persons alike, without regard to sex or marital status (1939, sec. 835 (15 L.) 3d paragraph. P. 528 in Comp. of 1941).

Private domicile of a married woman is presumed to be the same as that of her husband (1941 Comp., p. 60; sec. 11 of Pol. Code).

31. Public Office—Eligibility of Women.

No provision of organic or statute law has been found which excludes women from any public office for which they can qualify. See Organic Act (1935, pp. 18-56).

Under the Puerto Rican Civil Service Act, no distinctions are made on the basis of sex or marital status in the general provisions governing appointments, pay levels, promotions, and the like in the public service. Tests for the various positions in the classified service are to be "public, competitive, and open to all persons who may lawfully be appointed * * * with limitations specified in the rules of the Commission with respect to residence, age, sex, health, habits, moral character and other qualifications to perform the duties of such positions" (1941 Comp., p. 466. Amendment 1941, p. 1166).

Under the Retirement Act for Public Employees, the voluntary retirement age is 55 years for males and 50 years for females, after 25 years of service (1941 Comp., p. 570).

32. Jury Service—Eligibility of Women.

In Territorial courts, only male citizens of the United States or Puerto Rico between the ages of 21 and 70 years may serve as jurors (Code of Civil Pro., sec. 186; 1941 Comp., p. 1033).

In the United States District Courts, as of 1947, women were not ineligible for Federal jury duty by terms of the Organic Act of Puerto Rico (p. 38), which provides that in selection of such jurors local qualifications are not applicable, and that all citizens between the ages of 21 and 65, resident in Puerto Rico for at least 1 year, are eligible for Federal jury duty. However, administrative practice excluded women on the ground that they could claim exemption from Federal jury duty because exempt from duty in local courts. [Under the 1948 Revision of the Judicial Code of the United States, Puerto Rican women apparently would be ineligible for Federal jury duty, since it provides that grounds of incompetence applied in local courts are to be adopted for Federal courts as well.]

CANAL ZONE

SOURCES

Canal Zone Code, 1934.
Cumulative Supplement No. 2, 1934-46.
Code of Civil Procedure (1933).

EXPLANATORY NOTE

Citations to the Canal Zone Code and Supplement are by title and section numbers in parentheses following the related subject matter, as (T. 3, sec. 21).

The Code of Civil Procedure is cited as (Civ. Proc., sec. 90).

Subject headings are preceded by numbers, which remain constant for their respective topics through the entire series of reports. 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."

CANAL ZONE

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Twenty-one years is the age of majority for all persons, subject to specified exceptions. For example, see Number 2 (T. 3, sec. 21).

2. Contractual Powers of Minors.

The legal marriage of a female between the ages of 18 and 21 years enables her to make valid transactions relating to property or to make valid contracts (T. 3, sec. 21). But generally contracts by persons under 21, except for necessities, are not enforceable. A minor cannot delegate power to another person to act for him, nor, while under the age of 18, make a contract relating to real property or to personal property not in his immediate possession or control. Other contracts are permitted but are subject generally to disaffirmance as prescribed by law (T. 3, sec. 25-29).

Minors are civilly liable for wrongs done by them, as provided by statute (T. 3, sec. 33). They may enforce their rights in court through a proper guardian (T. 3, sec. 34).

A minor capable of contracting marriage may make a valid marriage settlement (T. 3, sec. 155).

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

No exemption for a homestead is provided, but a judgment debtor usually has the right of redemption as provided by law (T. 4, secs. 601-604).

Personal property exemptions are allowed to a "judgment debtor," or, in the case of pensions, to a "person." The exemption includes household furnishings and utensils of not more than \$250 value; chairs, tables, desks, and books not over \$200 in value; tools, implements, and equipment, as specified, essential to and used by the debtor in earning a livelihood or carrying on his trade, occupation or profession; wages and earnings of all seamen and seagoing fishermen of not more than \$300, in addition to all other lawful exemptions allowed them; life insurance benefits for which not more than \$500 annual premium is paid; pension money received by a resident of the Canal Zone from the United States Government; earnings from personal services of the debtor rendered within 30 days immediately preceding the levy of execution or attachment if it is shown that such earnings are necessary for use of debtor's family which he supports in whole or in part. When the debt is for necessities supplied the

debtor or his family, or when the debtor is not supporting his family residing in the Canal Zone, only one-half his earnings are exempt.

No article or species of property mentioned in the exemption law is exempt against a debt for its purchase money (T. 4, sec. 590).

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

All property of the wife owned by her before marriage is her separate property, and she may convey it without her husband's consent (T. 3, sec. 138).

5. Contractual Powers of Married Women.

Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might do if unmarried; but in transactions between themselves they are subject to the general rules governing confidential relationships as provided in the law of trusts (T. 3, sec. 134). Husband and wife cannot, by any contract with each other, alter their legal relations, except (1) as to property, and (2) as to an agreement in writing for an immediate separation; also they may make provision for support of either of them and of their children during such separation (T. 3, sec. 135).

Marriage does not bar a woman from appointment either as executrix or administratrix, nor does it affect the authority or status of a woman who marries while serving in such capacities (T. 4, secs. 1286, 1316).

A married woman may sue or be sued in all actions without her husband being joined as a party (T. 4, sec. 125; Civ. Proc., secs. 90, 91). If husband and wife are sued together, the wife may defend for her own right as well as for that of her husband if he neglects to act (T. 4, sec. 126).

Damages may be recovered from a married woman alone for civil injuries committed by her. Her husband has no liability in such cases except when he is jointly responsible for the injury and would be liable if he were not her husband (T. 3, sec. 148).

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

The earnings and accumulations of a married woman, while she is living separate from her husband, are her separate property and are not liable for the husband's debts (T. 3, secs. 144, 145). The wife may sue in her own name to recover her separate earnings (T. 4, sec. 125). But when the spouses are living together the earnings of each become community property, subject to the husband's management and control, within limitations set by law (T. 3, secs. 140, 149).

7. Liability of Married Woman for Family Necessaries.

Husband and wife contract toward each other obligations of mutual respect, fidelity, and support (T. 3, sec. 131). The husband of any wife or parent of any child lawfully chargeable with the support of

such dependent, who abandons or willfully omits, without lawful excuse, to furnish food, shelter, or medical attendance to such wife or child is guilty of a misdemeanor (T. 5, sec. 441).

If a husband neglects to make adequate provision for the support of his wife, generally any other person may in good faith supply her with articles necessary for her support and recover the reasonable value from the husband (T. 3, sec. 150), but the husband is not liable for the wife's support if she has abandoned him without justification, nor when she is living separate from him by agreement, unless such support is a condition in the agreement (T. 3, sec. 151).

The wife must support the husband out of her separate property when he has not deserted her, when he has no separate property, when there is no community property, and when he is unable because of infirmity to support himself (T. 3, sec. 152). [See Numbers 10 and 24.]

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

No formal procedure is required to enable a married woman to conduct business on her own account.

However, she may, for her own protection, prepare a complete inventory of her separate personal property and, after it is signed, acknowledged, or proved as required by law, may have it recorded by the registrar of property (T. 3, secs. 141, 142).

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

All property of the wife, owned by her before marriage and that acquired afterwards by gift, will, or inheritance, with accumulations on it, is her separate property. The wife may convey her separate property without the consent of her husband (T. 3, sec. 138). The wife's separate property is liable for her own debts contracted before or after her marriage, but is not liable for debts of her husband. However, necessaries furnished to both spouses, or to either of them while they are living together, are chargeable against any separate property received by the wife as a gift from her husband after the marriage (T. 3, sec. 147).

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

A husband and wife may hold property by joint interests, by interests in common, or as community property (T. 3, sec. 137).

Community and Separate Property Distinguished.

All property of either husband or wife owned before marriage or acquired after marriage by gift, will, or inheritance, with accumulations thereon, is the *separate property* of the spouse so owning or acquiring it (T. 3, secs. 138, 139).

All other property acquired after marriage by either spouse or by both of them, including personal property wherever situated, hereto-

fore or hereafter acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while residing in the Canal Zone, is *community property*.

But whenever personal property is acquired by a married woman under a written instrument, it will be presumed that the property is her *separate estate*; if acquired by the married woman and her husband, or by her and any other person, she will be presumed to own the part she acquires as an *interest in common*, unless the instrument of conveyance shows a different intention (T. 3, sec. 140). [In either case, the presumption may be set aside by proof of a different form of ownership.]

Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either or at joint interests or interests in common (T. 3, sec. 280).

Control and Management.

Control.—The husband has the management and control of the community personal property, with the same absolute power of disposition as he has over his separate estate, but with these limitations: He cannot dispose of the whole property by will; nor can he, without the written consent of the wife, make a gift of the community personal property, or dispose of it without valuable consideration, or dispose of or encumber the household furnishings or wearing apparel of wife or minor children which is community owned (T. 3, sec. 149). [No specific provision for control or disposition of community real property has been found.]

Litigation.—No specific provision found. The general rule is that parties who are united in interest must be joined in a legal action (T. 4, sec. 138). [See also Number 5.]

Liability for Debt.—The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by a mortgage on the property executed by the husband (T. 3, sec. 143).

Succession on Death of One Spouse.—Upon the death of either husband or wife, one-half the community property belongs to the surviving spouse. The other half is subject to the testamentary disposition of the one who has died; if no will was made, this half goes to the living spouse, subject to the laws governing administration of such property, as follows:

Community property passing from the control of the husband by reason of his death is subject to administration, his debts, family allowance, and administration expenses; however, the husband's clothing and the household effects of not more than \$2,500 value go to the widow without being subject to administration or the debts and allowances mentioned above.

Community property passing from the control of the husband under the wife's will is subject to administration, the husband's debts, and the expenses of the administration. But until administration is begun on the property, the husband retains the same power to sell, manage, and deal with the community personal property that he had in the wife's lifetime; his possession and control of the community property is not to be transferred to the wife's personal representative except to the extent necessary to carry her will into effect (T 3, secs. 648, 649).

Every interest in property, to which the heirs, husband, widow, or next of kin might succeed, may be disposed of by will (except as provided in T. 3, secs. 648, 649, cited above) (T. 3, sec. 524).

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

Every person who suffers loss or harm in person or property from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, that is, damages (T. 3, secs. 2621, 2622).

[Under the definition of community property, reported in Number 10, presumably such damages awarded to husband or wife ordinarily would become part of the community property.]

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.

There is no specific provision on this point.

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

Neither spouse, without the consent of the other, can be examined for or against the other in civil actions generally; nor can either, during the marriage or after, without consent of the other, be examined as to any communication made by one to the other during the marriage (not applicable however to a civil action or a proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, or to other specified legal action) (T. 4, sec. 1904).

Neither husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties, unless both spouses give their consent, or in criminal actions involving a crime committed by one against the person or property of the other, criminal violence upon one by the other, or criminal action for bigamy, adultery, nonsupport or abandonment (T. 6, sec. 672).

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

Every person over the age of 18 years, of sound mind, may dispose of all his estate by last will, subject to payment of all his debts, as provided by law (T. 3, sec. 521).

A married woman may dispose of all her separate estate by will, without the consent of her husband, and may change or revoke the will in like manner as if she were single (T. 3, sec. 523).

[For disposition of community property see Number 10.]

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

The property of a person who dies without disposing of it by will, not otherwise limited by marriage contract, and subject to debts and

charges, passes to the surviving husband or wife in the following manner:

1. An equal share with a surviving child of decedent or the lawful issue of such child, when decedent leaves only 1 child or his issue.
 2. One-third of the estate, when decedent leaves more than 1 child, or 1 child and the lawful issue of 1 or more deceased children.
 3. One-half the estate, when decedent leaves no issue, but father and mother or either of them, or if no parent then a brother or sister or issue of either of them.
 4. All of the estate, when decedent leaves no issue, parent, brother or sister or issue of either of them (T. 3, sec. 633).
- [See Number 10 for succession to community property.]

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

The widow or minor children are entitled to have possession of the family wearing apparel and the decedent's household estate until administration has begun. They are entitled also to a reasonable provision for their support, to be allowed by the district court or judge (T. 4, sec. 1461).

The court may on petition set apart for use of the surviving husband or wife, or the minor children if no surviving spouse, all the property exempt from execution (T. 4, sec. 1462). If this property is insufficient for support of the widow and children, or either, the court must make such reasonable allowance out of the estate as shall be necessary for their maintenance, according to their circumstances, during settlement of the estate. This period is limited to 1 year in insolvent estates (T. 4, sec. 1464). The family allowance has priority over all other charges against the estate except funeral and administration expense (T. 4, sec. 1465). If the widow has a maintenance derived from her own property equal to the portion set apart to her under these provisions, the whole allowance must go to the minor children (T. 4, sec. 1468).

Summary administration is provided for small estates, where the net value above recorded encumbrances at decedent's death does not exceed \$1,000, after public notice as required by law. The court, under this proceeding, will assign absolutely the title to the property, after payment of specified debts and charges, to the surviving spouse, or if no spouse, to the minor child or children (T. 4, sec. 1467, as amended by Public Law 219, 81st Cong.).

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

No provisions were found under this heading.

II.—MARRIAGE AND DIVORCE

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

Males at 21 and females at 18 years of age may enter into a marriage without parental consent.

Males between 17 and 21 and females between 14 and 18 years of age may enter into marriage with written consent of parents, or a

parent, or guardian, as provided by law (T. 3, sec. 60). Marriage contracted by a male under 17 or a female under 14 is voidable (T. 3, sec. 54).

19. Validity of Common-Law Marriage.

Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making that contract is necessary. Consent alone does not constitute marriage; it must be followed by a solemnization authorized by the marriage law (T. 3, sec. 51).

No marriage shall be celebrated in the Canal Zone unless a license to marry has first been secured as provided by law (T. 3, sec. 61, as amended 1937, ch. 487, sec. 3, Public Laws of United States).

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

No provision has been found for a premarital health test. However, no leper may be issued a license to marry, except on a certificate of approval by the chief health officer of the Canal Zone (T. 3, sec. 61, as amended 1937, ch. 487, sec. 3, Public Laws of United States).

21. Interstate Cooperation in Marriage Law Enforcement.

Marriages outside the Canal Zone that are valid where contracted generally will be recognized in the Canal Zone (T. 3, sec. 68).

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

Action for annulment is available, without distinction as to sex, on the following grounds if, at the time of the marriage (1) either party was an idiot or lunatic, or (2) the consent of either party was obtained by force or fraud, or (3) either party was physically incapable of entering into the marriage state, or (4) the written consent of parent or guardian was not filed in any case where it was required, or (5) either party is under the minimum legal age to contract marriage (males 17, females 14 years of age).

Such marriages are *voidable* only, and are held valid until annulment is obtained by court decree (T. 3, sec. 54).

Void marriages are those contracted under the following conditions: (1) between persons related by blood within the fourth degree of kinship, as defined by statute (T. 3, secs. 636-640), or (2) when either party has been married previously and this prior marriage has not been dissolved by death, annulment, or a final decree of divorce, or (3) either party was not present in person at the celebration of the marriage. No court decree is required, but may be rendered as a matter of record, to show that the marriage was void from its celebration (T. 3, sec. 53).

A court order of annulment does not affect the legitimacy of children begotten before the judgment (T. 3, sec. 57).

Suit for annulment may not be brought by a person who, when fully capable of contracting marriage, entered into marriage willfully and with full knowledge of the circumstances rendering the marriage voidable (T. 3, sec. 56-c).

23. Grounds for Divorce—Respective Availability to Spouses.

The injured party to a marriage may obtain divorce and dissolution of the marriage contract in the district court, upon proof of any one of the following grounds, as defined by statute: (1) adultery, (2) willful desertion and absence without reasonable cause for at least 2 years, (3) willful neglect by the husband, continuing for 1 year or more, consisting of his willful failure to provide necessaries for his wife though able to do so, or such failure due to voluntary idleness, profligacy, or dissipation, (4) habitual drunkenness for a period of 2 years, (5) a malicious attempt on the life of the other party to the marriage, (6) extreme cruelty, or (7) conviction of felony following the marriage (T. 3, sec. 71).

As to desertion, see also Domicile, Number 30. Other statutory definitions of divorce grounds apply to husband and wife alike.

III.—PARENTS AND CHILDREN

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

The father and mother of a legitimate unmarried minor child are equally entitled to its custody and services. If either parent is dead, unable or refuses to take the custody, or has abandoned the family, the other parent is entitled to the child's custody and services (T. 3, sec. 167).

The parent entitled to custody of a child must give him support and education suitable to his circumstances. If the support and education supplied by the father are inadequate, the mother must assist him to the extent of her ability. However, if a child has sufficient earnings of his own, his support and education may be provided from these (T. 3, sec. 166).

The husband and father, as such, has no rights superior to those of the wife and mother with respect to the care, custody, education, and control of the children of the marriage, while husband and wife live separate and apart from each other (T. 3, sec. 168).

The mother of an illegitimate unmarried minor is entitled to its custody and services (T. 3, sec. 170).

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

A *general* guardian [as distinguished from *natural* guardian, in Number 24] is a guardian of the person or of all the property or of both, of the minor in the Canal Zone, and is appointed by the court as prescribed by law (T. 3, secs. 201, 204). The parent, as such, has no control over the property of the child (T. 3, sec. 172).

In awarding custody of a minor or in appointing a general guardian, the court or officer must be guided by the best interests of the child. As between hostile parents neither is entitled to custody as a matter of right, but, other things being equal, the mother will be given custody if the child is of tender years, or the father will receive custody if the child is old enough to require education and training for labor and business.

Of two persons equally entitled to the custody of a minor in other respects, preference will be given to a parent; but the parent forfeits the guardianship if he knowingly or willfully abandons, or fails to maintain when able to do so, his minor child under the age of 14 years (T. 3, sec. 208).

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

A guardian of the person or estate, or of both, of a legitimate child born, or likely to be born, may be appointed by will or deed of the father with the written consent of the mother; or by either parent if the other is dead or is incapable of consent.

The mother of an illegitimate child may appoint a guardian for him by will or deed.

The appointment becomes effective on the death of the parent making it (T. 3, sec. 206).

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

If a person dies leaving property not disposed of by will, and is survived by both parents but no issue nor husband nor wife, the estate goes to his parents in equal shares, or if either is dead the whole estate goes to the other parent.

If an intestate person leaves no issue, but is survived by a husband or wife and parents or a parent, one-half his estate goes to the living spouse and the other half to the parents, or parent if only one is living (T. 3, sec. 633).

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

The parent entitled to the custody of a child must give him support and education suitable to his circumstances (T. 3, sec. 166. The mother of an illegitimate unmarried minor is entitled to its custody and services (T. 3, sec. 170).

[No provision appears for establishing the paternity of the child or for compelling his support from the father.] [See Number 7.]

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

Property of an illegitimate child who dies without making a will, not otherwise limited by marriage contract, is succeeded to as if he had been born in lawful wedlock when he has been legitimated by a subsequent marriage of his parents, or adopted by his father as provided by law.

Otherwise, his property is succeeded to as if he had been born in lawful wedlock and had survived his father and all persons related to him through his father (T. 3, sec. 635).

[Presumably, the mother inherits half the estate, if the decedent leaves a husband or wife but no issue, or all the estate if decedent leaves neither spouse nor issue. See Numbers 15 and 27.]

B.—POLITICAL RIGHTS**30. Domicile of Married Women.**

The husband may choose any reasonable place or mode of living, and if the wife does not conform to his choice, her action constitutes desertion (T. 3, sec. 81). But if the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife rejects it, the husband's action constitutes desertion on his part from the time her reasonable objections are made known to him (T. 3, sec. 82).

A married woman may establish residence in the Canal Zone for the purpose of filing a divorce action, if she already has an official residence or employment status therein (T. 3, sec. 108).

31. Public Office—Eligibility of Women.

All public office positions in the Zone are appointive, and are filled by appointment from the President of the United States or by the Governor with the approval of the President. Women are eligible for these appointments, under rules of the Federal civil service (48 USCA, sec. 1305 and Supp.) (Cum. Supp. No. 2, Canal Zone Code 1934-46, T. 2, secs. 91, 107; App. T. 5, secs. 631-a, 631-b, 633, 678, 678-a, 681-684).

32. Jury Service—Eligibility of Women.

Women may not serve on juries (Rule 3b, Selection, Summoning, and Service of Jurors, sec. 1, U. S. District Court for Panama Canal Zone).

VIRGIN ISLANDS

SOURCES

1922 Code of St. Thomas and St. John.

1922 Code of St. Croix.

Acts of Municipal Councils of St. Thomas, St. John, St. Croix.

Acts of the Legislative Assemblies.

EXPLANATORY NOTE

References to the respective codes are by title, chapter, and section numbers. The code provisions are identical for the three jurisdictions, so that other description is unnecessary.

Acts of Municipal Councils or of the Legislative Assembly are designated by source and year of enactment.

Subject headings are preceded by numbers, which remain constant for their respective topics through the entire series of reports. 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."

VIRGIN ISLANDS

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Twenty-one years is the age of majority for both sexes, after which a person has control of his own actions and business, subject to full liability and entitled to full enjoyment of rights (T. II, ch. 4, sec. 2).

2. Contractual Powers of Minors.

A minor who is at least 18 years of age may be emancipated by order of the District Court to administer his property, when the parents consent. This consent is not required when the parents have ill-treated the child, or refused to support and educate him, or when they have set a corrupt example for him. The court order has limited effect, for the emancipated minor cannot make any promise or contract which exceeds the value of his income for 1 year, nor mortgage or sell his real estate without the court's approval, nor appear in a law suit without a guardian *ad litem*.

A minor of either sex is emancipated by marriage, but is not thereby authorized to convey or mortgage real property or contract loans without consent of parent or guardian (T. II, ch. 4, secs. 3-6).

The marriage of any female who is under guardianship as a minor automatically discharges her guardian (T. III, ch. 79, sec. 20).

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

Homestead.

The homestead of any family, or the proceeds from its sale, is exempt from seizure for debt or judgment, but the homestead must be owned and occupied by the family or some of its members. The homestead exemption may not exceed \$200 in value, nor have greater area than 10 acres outside a town or one-fourth acre inside a town. The exemption does not apply to valid mortgages. Any conveyance of the homestead by husband or wife must be executed by both spouses.

Personal Property.

A judgment debtor may claim exemption for personal property within limits set by statute, which include:

- (1) The necessary clothing for the debtor and his family (but not including watches or jewelry);
- (2) Tools, implements, and equipment used by an artisan, mechanic, or professional person to earn his living;

(3) Household goods, furniture, and utensils up to \$20 value, actually owned by the head of a family for its use (T. III, ch. 30, secs. 8 and 9).

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

The property and pecuniary rights owned by a woman when she marries are not subject to the debts or contracts of her husband, and are to be managed, sold, conveyed, or willed by her to the same extent and in the same manner that her husband disposes of his property (T. II, ch. 14, sec. 1).

5. Contractual Powers of Married Women.

Marriage does not affect the capacity of a woman to make contracts, incur liabilities, or to sue or be sued in the courts. She has the same right that her husband enjoys to appeal in her own name to all courts for protection of her property or natural rights. For all civil injuries committed by a married woman, damages may be recovered from her alone; her husband is not responsible for them unless he would be jointly responsible if the marriage did not exist (T. II, ch. 14, secs. 5, 6, and 7). [See also Number 6.]

Neither husband nor wife is liable for the debts or liabilities of the other incurred before marriage, and except as otherwise specifically provided, they are not liable for the separate debts of each other; nor is the rent or income from the property of either liable for the separate debts of the other (T. II, ch. 1, sec. 6).

When a resident married woman joins her husband in a conveyance of real property situated in the district, she must make a special acknowledgment before the certifying officer, separate and apart from her husband, that she executed the deed voluntarily.

A nonresident married woman, under the same circumstances, acknowledges the deed as if she were unmarried (T. II, ch. 15, secs. 13, 14).

Both husband and wife must execute a joint deed to convey the real estate of either or both of them. However, the wife is not liable on any covenant in a joint deed conveying the property of the husband (T. II, ch. 15, sec. 2).

Husband and wife have full power to convey or transfer property or execute liens to or in favor of each other; and either may appoint the other as attorney in fact to control or dispose of the appointing person's property, subject to revocation, as may be done by any other person (T. II, ch. 1, secs. 4 and 5).

Administration of the estate of a deceased spouse is granted under the following rules: Of a husband's estate—(1) To the widow or next of kin, or both, in the discretion of the court, if qualified and competent; (2) to one or more of the principal creditors; or (3) to any other person the court selects, if qualified and competent (T. III, ch. 72, sec. 3). Of a wife's estate—To her husband in all cases, if he is qualified and competent, and he applies for the appointment as required by law, unless the wife has made other arrangement by marriage settlement or by will (T. III, ch. 72, sec. 5).

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

A wife may receive the wages of her personal labor, may sue in her own name to recover them, and hold them in her own right. She may prosecute and defend all actions for the preservation and protection of her rights and property as if unmarried (T. III, ch. 3, sec. 4). [See also Number 9.]

7. Liability of Married Woman for Family Necessaries.

Among those obliged under law to support each other are: (1) Husband and wife, (2) legitimate ascendants and descendants up to 18 years of age, (3) parents and children and the legitimate descendants of the latter up to 18 years of age, and (4) parents and illegitimate children who have been recognized by a decree of a competent court.

Brothers and sisters also are obligated to give aid necessary to the existence of brothers and sisters handicapped by physical or mental defect or other cause not the fault of such persons (T. II, ch. 5, sec. 2).

Any parent who willfully omits, without lawful excuse, to perform any duty imposed by law to furnish necessary food, clothing, shelter, or medical attention for his or her child is guilty of a misdemeanor (T. IV, Cr. Law, ch. 6, sec. 24, Code for St. Thomas and St. John and sec. 26, Code for St. Croix).

Desertion of a child under 10 years of age by a parent or by a person to whom the child is entrusted for nurture or education, with intent wholly to abandon it, is punishable by penitentiary imprisonment up to a 7-year term (T. IV, ch. 6, sec. 25, Code for St. Thomas and St. John and sec. 27, Code for St. Croix).

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

No formal action is required to enable a married woman to engage in an independent business venture.

[See Number 9 as to registration of a married woman's separate property.]

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

A married woman's property and pecuniary rights owned at the time of her marriage or acquired afterward, by gift, will, or inheritance, are not subject to her husband's debts or contracts.

She may manage, sell, convey, or will her property as freely as her husband can deal with his property (T. II, ch. 14, sec. 1).

All property, real or personal, acquired by a married woman during marriage by her own labor is not liable for the debts, contracts, or liabilities of her husband, but is in all respects subject to the same exemptions and liabilities as property owned at the time of her marriage or afterwards acquired by gift, will, or inheritance (T. II, ch. 14, sec. 2).

A married woman whose husband abandons her without a year's suitable provision for her support may have authority from the court to deal with her separate property in all respects as if she were unmarried, including the right of contract to sell or convey it, or to sue and be sued concerning it, during her husband's absence (T. II, ch. 14, sec. 3).

The husband and wife have full right to manage and dispose of their respective estates, except as otherwise provided by law (T. II, ch. 1, sec. 8).

When property is owned by either husband or wife, the other has no such interest as will make the property liable for his or her contracts, except as otherwise provided by law (T. II, ch. 1, sec. 2).

When either husband or wife obtains possession or control of property belonging to the other, the owner of the property may sue to recover it or to protect any rights incident to it, as freely as if unmarried (T. II, ch. 1, sec. 3).

A married woman may list her personal property or pecuniary rights, make affidavit that the items listed belonged to her at the time of her marriage or that she acquired them after marriage by her own labor or by will, inheritance, or gift from some other person than her husband. The list and affidavit are to be entered in the proper register kept by the recorder of deeds, and constitute primary proof of the wife's ownership. Property not so registered will be deemed primarily that of the husband rather than of the wife (T. II, ch. 14, secs. 8 and 9).

An instrument executed by the husband or wife without the signature of the other spouse operates only to convey or bind the interest of the signer, and does not affect the right of dower or curtesy of the spouse not joining in the transaction (T. II, ch. 15, sec. 15).

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

The community system of property is not in effect in the Virgin Islands.

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

No statute found.

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.

No specific statute found on this point. Refer to Number 9 for remedy each spouse has to recover property wrongfully held by the other.

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

Neither husband nor wife can be examined for or against the other without the other's consent; nor can either be examined during the marriage or afterward as to any communication made by one to the

other during the marriage. The only exceptions to this rule are made in a civil action by one spouse against the other, or in an action arising from a crime committed by one spouse against the other (T. III, ch. 90, sec. 3).

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

A married woman has the same capacity to dispose of her property, owned at the time of her marriage or acquired afterward by gift, will, or inheritance, that her husband has to dispose of his property (T. II, ch. 14, sec. 1). Neither spouse can defeat by will the dower or curtesy right of the other (T. II, ch. 10, sec. 1).

A will made by an unmarried person is deemed to be revoked by his or her subsequent marriage (T. II, ch. 10, sec. 4.).

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

LIFE INTEREST

Dower.

A widow is entitled to dower, or the use during her lifetime of one-half part in value of all the lands which her husband owned at his death (T. II, ch. 11, sec. 1). She may continue to occupy her husband's lands, if she resides there, and to enjoy the rents and other income from the land with the children or other heirs of her husband. If she does not reside on the land, she may receive one-half of the rents and other income from it without assignment of dower, unless objection is made by the heirs or other interested persons (T. II, ch. 11, sec. 6).

The widow may be barred of receiving dower by reason of a property settlement made in her behalf before marriage with her legal assent, if the settlement gives her an unconditional ownership in lands for at least her lifetime, becoming effective in possession or profit immediately on her husband's death (T. II, ch. 11, secs. 7 and 8). Likewise, the widow's valid acceptance of any pecuniary provision (such as money or that which can be valued in money) in the place of her dower right, may bar her dower right (T. II, ch. 11, sec. 9).

Right of Election.

If the settlement or pecuniary provision is made before marriage without the wife's assent, or if made after marriage, she must elect between the provision and her dower after her husband's death, as she cannot take both. Likewise, she must elect between dower and a provision of lands in her husband's will expressly made for her in lieu of dower, unless the will plainly shows that she should take both dower and the willed property (T. II, ch. 11, secs. 10, 11).

A widow is not barred of dower because of her status as a nonresident or an alien (T. II, ch. 11, sec. 14).

Curtesy.

At the death of a married woman, her husband is entitled to a life tenancy by curtesy in lands belonging to his wife which her heirs can inherit from her. The husband's curtesy right attaches even though no child of the marriage has been born alive (T. II, ch. 12, sec. 1).

ABSOLUTE INTEREST

Descent of Real Property.

Subject to dower or curtesy, and payment of a decedent's debts, his real estate which is not disposed of by valid will descends as follows:

1. In equal shares to his or her children and to the issue of any deceased child by right of representation; and if there is no child of the intestate living at the time of his or her death, the property descends to all his or her other lineal descendants.

2. If there are no lineal descendants, the half of the real property descends to the surviving husband or wife, and the other half to the decedent's father or mother or both, or to brothers and sisters of the decedent and to the issue of any deceased brother and sister by right of representation (T. II, ch. 16, p. 35).

If the decedent leaves a husband or wife, but no child or lineal descendants, or father, mother, brother, sister or the issue of a brother or sister, the surviving spouse is entitled to the whole of the lands (Amendment by ordinance of the Colonial Council for St. Thomas and St. John, appr. April 13, 1927).

If the intestate person leaves no lineal descendants, the real property descends to the surviving husband or wife; if no lineal descendants or spouse survives, the real property goes to the parents or parent surviving (T. II, ch. 16, sec. 2, St. Croix).

Distribution of Personal Property.

When the personal property of a deceased person has not been bequeathed by will, it is distributed as follows:

If the decedent leaves a widow, she is to be allowed all her articles of apparel and ornament, according to the degree and estate of the decedent, also such property and provisions for the use and support of herself and minor children as the court orders to be given them, and this allowance must be made when the widow waives any provision for her in the decedent's will as when he dies without making a will. [See also Number 16.]

After the family allowance has been set out, debts of the decedent and charges of administration are to be paid.

The remaining personal property is then to be distributed among the persons entitled to the real property and in the same proportion or share as applied to the descent of real property (T. II, ch. 17, sec. 1).

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

A widow may remain in the dwelling house of her husband for 1 year after his death without becoming liable for rent, and is entitled to 1 year's reasonable sustenance out of the husband's estate (T. II, ch. 11, sec. 15). [See also Number 15.]

Until administration is granted and inventory filed, the widow and minor children of a deceased person are entitled to remain in possession of the homestead, of all family wearing apparel, and of the household furniture; they may have also a reasonable provision for their support, to be allowed by the court.

After the inventory of the estate is filed, the court must order set apart to the widow, or to the minor children if any, all the exempt property in the estate, which becomes the property of the widow for her maintenance and that of the minor children, if any.

If the exempt property is insufficient for support of the widow and minor children, according to their station in life, during the year after the inventory is filed, the court may allow an additional amount sufficient for the purpose. If the inventory shows the value of the estate to be no greater than the allowed value for exemption from execution, the court must set apart for the widow or minor children the whole estate remaining after payment of funeral and administration expenses (T. III, ch. 74, secs. 1-4).

Summary Administration.—Estates in which the assets are less than \$300 in value may be closed without extended administration, under the supervision of the Judge of the District Court, as provided by law (T. III, ch. 71, sec. 8, as amended by Ordinance of June 21, 1923, appr. June 25, 1923, for St. Thomas and St. John, and of August 20, 1923, appr. August 25, 1923, for St. Croix).

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

Refer to Number 15 for right of widow. No provision found for a surviving husband.

II.—MARRIAGE AND DIVORCE

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

The age of consent to marriage for men is 21 years, and for women it is 18 years. A marriage license will not be issued to persons under age except upon the consent of the father if living, the mother if the father is dead, or the guardian if there is neither father nor mother living (Ordinance of St. Croix Council concerning marriages, appr. March 1, 1919; similar provision in Ordinance of St. Thomas Council appr. December 13, 1918. These ordinances deal principally with licensing and are not contained in the code).

19. Validity of Common-Law Marriage.

No provision found in this connection, except the statute which declares that marriage is a civil contract which may be entered into between a male and female in accordance with law (T. II, ch. 1, sec. 1):

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

No provision found in this connection.

21. Interstate Cooperation in Marriage Law Enforcement.

No provision found in this connection.

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

A marriage is absolutely void which is prohibited by law because of blood relationship between the parties, or contracted when either party has a living husband or wife of a prior marriage.

Either party to such a marriage may sue in equity court for a decree declaring it void. It will be held void, moreover, in any action or proceeding where its validity is questioned.

A marriage is void from the time a court decree is rendered declaring its invalidity, when either party is not of legal age, or lacks sufficient understanding, or the consent of either party has been obtained by force or fraud. Action for annulment in such cases can be brought only by the person who is under the disability, or who was the victim of the fraud or force employed to obtain the marriage. Not even such persons may sue when the parties have freely cohabited as husband and wife after the person making the complaint had reached legal age, acquired sufficient understanding, been restored to reason, been freed from the force, or discovered the fraud.

When either husband or wife attacks the marriage, either as void or voidable, the other spouse may sue to have the marriage declared valid and lawful. The court will determine from the facts in the case whether the marriage was void from the beginning or only from the time the decree is rendered, or whether it is lawful and binding on the parties.

The court is authorized to make an order providing among other things for the care, custody, and support of any minor children of the marriage; for contribution from the party in fault to the maintenance of the other; for return to the wife of her personal property held by the husband; and also to change the wife's name, when she is not the person in fault.

This authorization applies both to annulment and divorce cases (Bill No. 14, Eighth Legislative Assembly of the Virgin Islands, appr. December 9, 1944, secs. 1-6, 12-16).

The court's decree dissolving or voiding a marriage ends the relationship between the parties, but neither of them may lawfully marry a third person until the case has been either decided on appeal or the time for making the appeal has expired (Bill No. 14, above, sec. 14).

23. Grounds for Divorce—Respective Availability to Spouses.

Marriage may be dissolved at the action of the injured party for any of the following causes: Impotency existing at marriage and continuing to the time suit is brought, adultery, conviction of felony, willful desertion for period of 1 year, cruel and inhuman treatment likely to impair health or endanger life, insanity of either spouse occurring after marriage, habitual gross drunkenness developed since marriage and continuing for 1 year prior to beginning of suit, and incompatibility of temperament (Bill No. 14, above, sec. 7).

During suit, the court has discretionary power to decree that the husband provide necessary funds or security for the wife to prosecute or defend the action, as circumstances may require; to direct the care, custody, and maintenance of any minor children of the marriage

during the suit; and to declare the freedom of the wife from the husband's control during the suit. Also the court may restrain the disposition of property by either party while suit is pending (Bill No. 14, above, sec. 11). [See also Number 22 for permanent support provisions.]

III.—PARENTS AND CHILDREN

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

Apparently the father has the prior right to the services and earnings of the minor children of a marriage, though no express statute to this effect has been found. The statute does provide that when a minor child is injured or killed, or a minor daughter has been seduced, any suit for damages which can be maintained is to be brought by the father. The mother may sue in such cases if the father is dead or has deserted his family (T. III, ch. 3, secs. 7 and 8). [See also Number 25.]

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

When the court is required to appoint a guardian for a minor, the nearest relative, whether male or female, has precedence for appointment, if of good moral character and otherwise competent for the duties of the guardianship.

A guardian appointed by the court has the custody and tuition of the minor and the management of his estate until the minor is 21 years of age or the guardian's legal discharge. But the custody of the minor's person and the care of his education remains in the father, or if he is dead, in the mother while she remains unmarried, when the parents are competent to transact their own business (T. III, ch. 79, secs. 1, 4).

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

The father may appoint, by last will in writing, a guardian or guardians for his children, whether born at the time the will is made or afterward, to continue during the child's minority or for a less period. The mother may likewise appoint, if the father is dead or failed to make appointment of a guardian; also, she may so appoint when she is divorced and has been given custody of the minor. But appointment of a testamentary guardian cannot deprive a surviving parent of the custody of the child's person, when the parent is competent to transact his own business (T. III, ch. 79, sec. 6).

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

Presumably the parents share equally in inheritance from an intestate child, though the statute is not clear on this point. [See Number 15 for parents' rights.]

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

The mother of a child born out of wedlock, or an officer designated by law, may maintain a paternity suit. The father may voluntarily pay or secure payment of an amount agreed upon with the mother with approval of the government attorney, and may be discharged on payment of suit costs.

If the supposed father does not make this voluntary settlement, the court puts him to trial under bond. If he is adjudged to be the father, or if he confesses to the fact in court, he will be held responsible for the child's support up to the age of 17 years, in an amount set by the court within statutory limitations, and also for court costs. As a rule, the father should pay three-fifths of the child's support, but more can be required of him if the mother cannot pay her part of it without considerable difficulty, provided she has no other illegitimate children by another father. If the mother dies or leaves the country, the father may be ordered to give entire support to the child.

Moreover the court may require the father, after opportunity for hearing, to pay special sums for the child's birth expense, for his education, and for expenses incident to his sickness or death.

Default by the father in meeting payments subjects him to judgment process as in a civil suit and execution, and failure to satisfy the court process may result in arrest and imprisonment (T. V, ch. 38, secs. 1, 8, 9, amended by Bill No. 3 of the 14th Legislative Assembly, appr. May 18, 1949).

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

The real and personal property of a person born out of wedlock, who dies intestate and without leaving a widow, husband, or lawful issue, is inherited by the mother, or if she is not living, by her ascendants (as parents, or grandparents).

If after the birth of such a child the parents intermarry, the child is considered legitimate to all intents and purposes. [Presumably both father and mother would then inherit, if there is no surviving spouse or lawful issue] (T. II, ch. 18, sec. 2).

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

The wife shall obey the husband and follow him wherever he elects to reside (T. II, ch. 1, sec. 7).

The wife shall bear the surname of the husband (T. II, ch. 1, sec. 9) [St. Croix only].

31. Public Office—Eligibility of Women.

The statute which sets out disqualifications for membership in the municipal councils does not include sex as one of them. It provides:

"No person shall be eligible to be a member of either municipal council unless he is a citizen of the United States, over twenty-five

years of age, is a qualified voter of the municipality in which elected, has resided in the Virgin Islands for a period of not less than three years next preceding the date of election, and has not been convicted of a felony or of a crime involving moral turpitude. Each municipal council may exclude from membership therein persons receiving compensation from the Government of the United States or from either of the municipal governments of the Virgin Islands" (Public No. 749, 74th Cong., S 4524, appr. June 22, 1936).

32. Jury Service—Eligibility of Women.

Women are eligible for jury service to the same extent and under the same conditions that men are (T. V, ch. 12, sec. 2, as amended: St. Thomas and St. John, Municipal Council Bill No. 49, 4th Council, appr. September 17, 1943; St. Croix, 4th Municipal Council, 2d Session, Bill No. 16, March 27, 1944).

