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

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REPORT FOR

HAWAII

as of January 1, 1959



HAWAII

50th STATE

WOMEN'S BUREAU BULLETIN 157-52

UNITED STATES DEPARTMENT OF LABOR

JAMES P. MITCHELL, *Secretary*

WOMEN'S BUREAU

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in the
United States of America

REPORT

HAWAII

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UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1959

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington 25, D.C. • Price 20 cents

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The Legal Status of Women in the United States of America

INTRODUCTION

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

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

In general, it has been the rule that where specific statutes abrogating common-law principles have not been enacted, the common law applies. In the century just past, many of the old common-law injustices to women have been removed by statute.

The material considered centers largely around the woman in the marriage relation, since the legal status of the unmarried woman is practically identical with that of the unmarried man.

The United States Summary of the Legal Status of Women in the United States of America, Bulletin 157, has been brought up to date as of January 1, 1953. Information in the Summary is compiled from the reports for 48 States and the District of Columbia. Material for Alaska and Hawaii will be incorporated in the United States Summary when the latter is revised.

SOURCES

Organic Act of Hawaii
1955 Revised Laws of Hawaii
Session Laws, 1957

EXPLANATORY NOTE

This pamphlet, Bulletin 157-52, presents a digest of the statutory provisions affecting the legal status of women in Hawaii. It includes pertinent statutory changes enacted up to January 1, 1957, and supersedes the previous report for Hawaii.

References to the Organic Act are indicated by parenthetical insertions of section numbers, as (sec. 83, Organic Act).

References to the code sections are likewise in parentheses, as (sec. 319-14).

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

Session laws are referred to by year of enactment and page number as (1957, p. 27).

HAWAII

CIVIL RIGHTS

Contracts and Property

1. Age of majority

Males and females become of legal age at 20 years (sec. 330-1).

2. Contractual powers of a minor

A person under the age of 20 years is a minor, and generally cannot make a legal enforceable contract (sec. 330-1). However, where necessities are sold and delivered to a minor 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. 202-2).

The marriage of a female minor operates as a legal discharge so far as guardianship of her person is concerned (sec. 338-35). The disability of minority of any veteran, or his minor spouse, is removed with respect to transactions covered by the Serviceman's Readjustment Act (sec. 330-2).

A minor 15 years of age or over may contract for life or disability insurance for his benefit or that of a parent, brother, sister, child, spouse, or grandparent and is empowered to exercise all rights with respect to such insurance, except that if he is not emancipated he is not bound by any unperformed agreement to pay, by a promissory note or otherwise, any premium on such insurance contract. Insurance proceeds on a policy which has been paid by a minor are payable to him, unless the policy provides otherwise (sec. 181-412 (b) (c)).

A minor who has attained the age of 18 years is competent to receive payment not exceeding \$2,000 in any one year, made by a life insurer as benefits payable to a minor in compliance with the provisions of an insurance policy, annuity contract, or settlement agreement (sec. 181-437).

A minor may not be a partner in a business enterprise (sec. 186-1; 1957, p. 371).

3. Property exemptions from seizure for debt

A. RESPECTIVE RIGHTS OF MAN AND WOMAN

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 government debts.

Exempt property includes one-half the wages due to an employed person; necessary household and kitchen equipment; wearing apparel; family pictures and portraits; specified livestock and farm vehicles; proceeds of insurance; 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 (sec. 233-65).

All proceeds of life and endowment policies and annuity contracts payable to a surviving wife or husband of the insured, or to a child, parent or other person dependent upon the insured, are exempt from execution, attachment, garnishment, or other process, except as to premiums paid in fraud of creditors (sec. 181-439).

B. HOMESTEADS

The following property, owned by a "housekeeper" who has a family, is exempt from sale and execution: Not more than one 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. 233-64).

(For widow's right to remain in family homestead, see number 16.)

4. Ownership and control of property owned at 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. 325-1).

5. Contractual powers of a married woman

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, and make settlements of property rights under divorce or judicial separation proceedings (sec. 325-2(a) (b) (c)).

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. 325-5).

Husband and wife may enter into partnership agreements for business purposes (sec. 325-2(d)).

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. 325-3).

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 law (sec. 325-4).

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. 343-28).

No assignment of or order for payment of any salary, wages, commissions or other compensation for services, earned or to be earned, given to secure any loan made under the provisions of the Small Loan Act, or any chattel mortgage or other lien on household furniture, is valid unless it is signed in person by both the husband and wife; provided that the written assent of a spouse is not required if the husband and wife have been living separate and apart for at least 5 months (sec. 195-20).

A married woman may, without the consent of her husband, contract, pay for, take and hold a policy on the life or health of her husband or children or against loss by his or their disablement by accident. The premiums paid on the policy are her separate estate, and the policy shall inure to her separate use and benefit and that of her children, free from any claim of her husband or others (sec. 181-441(b)).

6. Earnings of a married woman

The earnings of a married woman are her separate property and are not liable for the debts of her husband (secs. 325-1, 326-8(a)).

7. Liability for family support

A husband 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 necessities for herself or family during the marriage (sec. 325-7).

Any husband who deserts or willfully fails, neglects or refuses to provide support or maintenance for his wife or children under 16 years in necessitous circumstances is guilty of a misdemeanor and upon conviction subject to fine or imprisonment (sec. 328-1).

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. 324-4).

A stepparent who acts in loco parentis must provide maintenance and support for his stepchild if the child lives with him, and if the legal parent deserts the child or is unable to support him and he is in necessitous or destitute circumstances (sec. 330-3.5; 1957, p. 88).

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

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

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

All property, both real and personal, acquired in the name of the husband or wife, is presumed to be his or her separate property, unless proven to be community property acquired at the time the Community Property Law was in effect, 1945-49 (sec. 326-1). The wife shall have the same right to manage, control, dispose of, and otherwise deal with her separate property as does her husband with respect to his separate property (secs. 326-3, 326-4). The separate property of the wife is liable for debts contracted at any time by her and is not liable for the debts of her husband (sec. 326-8(a)).

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. 325-6).

Every life insurance policy payable for or to the benefit of the spouse of the insured or to a trustee for his or her benefit shall inure to the separate use and benefit of such spouse, unless the policy provides otherwise (sec. 181-441(a)).

10. Property acquired by joint efforts of husband and wife

[NOTE.—The Hawaiian Community Property Law, enacted in 1945, was repealed in 1949, except as to marital community property which was acquired, established, accrued or vested prior to effective date. See secs. 326-1 through 326-11.]

Property acquired by joint efforts of husband and wife, other than community property as defined in section 326 of the code, is under the management and control of the husband, unless joint ownership has been established.

(For married woman's earnings, see number 6.)

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

A married woman may sue and be sued as if unmarried, except generally as to her husband (sec. 325-5), and compensation recovered for injury to her person or property is considered her separate property subject to her control (secs. 325-1, 326-4).

12. Damages for injury by spouse to person or property

Husband and wife may not sue each other (sec. 325-5).

13. Competency of husband or wife 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. 222-17), except that neither spouse can be compelled to disclose any communication made to him or her by the other during the marriage (sec. 222-19). One spouse cannot 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. 222-18). In action for 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. 328-4).

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under the Uniform Reciprocal Enforcement of Support Act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage (sec. 329-38).

14. Right to dispose of separate property by will

Any married woman may dispose of her real and personal property by will as may any person who is 20 years of age and of sound mind (secs. 322-1, 322-2).

If after making a will the testator marries and has a child born to him or marries and legally adopts a child, for whom no provision has been made in the will, the marriage and birth or adoption revoke the will (sec. 322-10).

A will executed by a woman is revoked by her subsequent marriage and is not revived by the death of her husband (sec. 322-11).

15. Inheritance rights in deceased spouse's estate

Absolute inheritance

The separate real and personal property of a person dying without a will descends to the heirs in the following manner: 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. Husband or wife takes one-half of the estate if no issue of the deceased spouse survive, and parents take the other half; if no parent is living, brothers and sisters take the other half in equal shares; if no parent of the decedent is living,

or brother and sister or their descendants then the husband or wife receives the whole estate (sec. 318-4).

Life interest

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. Dower is not applicable to community property (sec. 319-1).

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. 319-16). Dower or curtesy is barred if the wife or husband has willfully deserted the other at least one year prior to his or her death (secs. 319-9, 319-16). A woman may bar dower by a deed, jointure, or assent to a pecuniary provision prior to the marriage or after marriage (secs. 319-10—319-13).

A divorced wife is not entitled to dower in her husband's real estate nor any share in his personal estate (sec. 324-45).

A surviving spouse has priority for appointment as administrator of a decedent's estate (sec. 217-13).

16. Provision for survivors during administration of 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. 319-8). 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. 319-7).

When a person dies, the widow, widower, or family members living in the decedent's home who were being supported by her or him, are entitled to possession of the home, wearing apparel, other personal effects, and household furnishings until this possession is terminated by the executor or administrator of the estate. 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. 317-21).

When no executor or administrator has been appointed for a small estate not exceeding \$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. 317-50).

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

If any provision is made for the widow or widower in the will of a deceased spouse, the surviving spouse must elect, within 6 months from the probate of the will, to take the provision under the will or receive dower or curtesy to which she or he may be entitled by law (secs. 319-14—319-16).

Marriage and Divorce

18. Age of consent to marriage

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. 323-1).

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. If the minor is a ward of the juvenile court, written consent of the judge of the court must be filed with the application (sec. 323-2).

19. Common-law marriage

Marriages contracted within the jurisdiction are not recognized as valid unless a license to marry has been obtained as required by law (sec. 323-1).

20. Premarital requirements

Each applicant for a 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 (a) when in the physician's opinion syphilis infection either is not present or if present is not communicable or likely to become so; or (b) 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 (sec. 323-7).

At least 3 days must elapse between the day application is filed and the day on which the license is issued (sec. 323-6).

Every married woman must adopt her husband's name as a family name (sec. 327-1).

21. Interstate cooperation in marriage-law enforcement

Marriages which are legal in the jurisdiction where they are contracted must be regarded as legal in the courts (sec. 323-3).

22. Annulment

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: (a) blood relationship of any degree; (b) party below legal age of marriage; (c) an undivorced living spouse; (d) idiocy or lunacy; (e) impotence or physical incapacity to enter into the marriage state; (f) forced or fraudulent marriage without subsequent cohabitation; or (g) any loathsome disease present and concealed from and unknown to the applicant for annulment (sec. 324-1; 1957, p. 65). These grounds are available without distinction between the sexes.

A 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. 324-4).

23. Divorce

Absolute divorce may be granted for the following causes and no other: (a) Adultery by either party; (b) willful and utter desertion for a 6-months' period; (c) sentence to imprisonment for life or for 7 years or more; (d) insanity of at least 3 years' duration; (e) extreme cruelty; (f) habitual drunkenness or habitual use of specified narcotics during a period of not less than 1 year; (g) 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 (h) neglect or refusal on the part of 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 is granted (sec. 324-20; 1957, p. 65).

No divorce may be granted on the ground of insanity, unless it is proven that the defendant has been insane for at least 3 years prior to the filing of the suit (sec. 324-28).

If the parties have lived separate and apart for 2 years or more under a decree for separate maintenance, a divorce may be granted

on the application of either party, if no reconciliation has been effected and the living together of the parties is insupportable (sec. 324-81).

Where the term of the decree of separation from bed and board has expired, a divorce may be granted on the application of either party on the ground that no reconciliation has been effected and that the living together of the parties is insupportable (sec. 324-80).

Either party to a divorce may marry again at any time (sec. 324-41).

If a divorce is decreed for adultery, or similar offense of the husband, and the wife is the owner of real estate, or has in her possession any personal property given to her by her husband, acquired by her own industry, given her by devise or otherwise, to which she may be entitled by the decease of any relative, all such real and personal property shall be her sole and absolute property (sec. 324-44).

A decree for legal separation gives the wife, whether she be the wrongdoer or not, the right to sue or be sued, to alienate and convey property, to make contracts, and to do all other acts as if she were a femme sole (sec. 324-64).

On divorce a married woman may be authorized to resume her maiden name or the name of a former husband (sec. 327-5).

Following the filing of a divorce or separation suit, the court may make such orders relative to the personal liberty and support of the wife as it may deem fair and reasonable. The judge may also compel the husband to advance reasonable amounts for the compensation of witnesses and other expenses of the trial, including attorney's fees, to be incurred by the wife (sec. 324-34).

Pending a suit for annulment of a marriage, or divorce, or on granting the decree the court may make such decree as it deems expedient, concerning the care, custody, education, and maintenance of the minor children of the parties, and may determine with which of the parents the children or any of them shall remain (secs. 324-36, 324-38).

Alimony and maintenance

A married woman has the right to sue for separate maintenance and may bring the suit in her own name (sec. 324-61).

The court may issue a restraining order to prevent disposal or encumbrance of property of either spouse pending divorce or separate suit (sec. 324-35).

Upon decreeing a legal separation, the judge may make provision for the support and maintenance of the wife and her children by the husband, or out of his property, as may appear just and proper (sec. 324-63).

On granting a divorce the court may require the defendant husband to provide for the maintenance of the children and a suitable allowance for the wife. The court may also finally divide and distribute the estate, real, personal, or mixed, whether community, joint, or separate, in such proportion as shall appear just and equitable, having regard to the respective merits of the parties. No such final division shall impair the power of the court in respect to revision of allowances for minor children (sec. 324-37).

Parents and Children

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

There are no statutory provisions respecting parents' right to services and earnings of a minor child.

(See number 25 for guardianship and custody provisions.)

25. Guardianship of a minor child

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 has any right superior to that of the other concerning his custody, control, or any other matter concerning him (sec. 330-3).

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 (sec. 330-3).

When parents live apart, the court may award the guardianship to either of them, having special regard to the interests of the child (sec. 330-3).

The father and mother of unmarried minor children are liable, jointly and separately, for tortious acts committed by their children and are empowered to prosecute or defend all court actions in which the children or their individual property are concerned (sec. 330-3).

Parents or, in case they are both dead, the legally appointed guardian, have control over the actions, the conduct, and the education of minor children (sec. 330-5).

It is the duty of minor children to obey the lawful and moral commands of their parents or guardians (sec. 330-4).

Guardians for the persons and estates of minors may be appointed by the circuit judges (sec. 338-1).

If the minor is under the age of 16 years, the court may nominate and appoint his guardian; if he is over 16, he may nominate his own guardian, who, if approved by the court, may be appointed (sec. 338-2).

26. Appointment of a testamentary guardian for a minor child

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. 338-6).

27. Inheritance—child

When a person dies without a will, if he leaves a surviving spouse but no legitimate lineal descendants, one-half of his estate descends to the spouse, and one-half to his father and mother as tenants in common (that is, each has an undivided one-half interest in it). If only one parent is living, that one takes the full half interest in the estate. If the person left no issue or 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. 318-4(b)).

When a person dies without a will and there is no surviving spouse, his property is divided equally among his children, and the issue of any deceased child by right of representation (sec. 318-4(a)).

28. Child born out of wedlock

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. The court may also order the adjudged father to pay for the child's care, maintenance, and education until the child either becomes 20 years of age or is adopted, emancipated, or becomes self-supporting before that age (secs. 332-1 through 332-10).

A child born out of wedlock shall take his mother's name (sec. 327-3).

A child of a bigamous marriage, which his mother entered into in good faith, is legitimate and entitled to an allowance from his father for his support (sec. 324-4).

Children of marriages annulled on the ground of nonage, insanity, or idiocy, or of a marriage that is prohibited because of consanguinity or for any other legal cause, are legitimate (sec. 324-7).

A divorce for adultery committed by the wife does not affect the legitimacy of the issue of the marriage, but the legitimacy of such children, if questioned, shall be tried and determined by the court (sec. 324-43). A divorce for adultery committed by the husband does not affect the legitimacy of children of the marriage (sec. 324-42).

29. Inheritance—child born out of wedlock

Every illegitimate child is an heir of his mother and may inherit her estate, in whole or in part, as if born in lawful wedlock (sec. 318-6).

When an illegitimate person dies without a will, leaving no lawful lineal descendants or widow, his estate descends to his mother. If he leaves a widow, she takes one-half and his mother the other half (sec. 318-7).

A child of a bigamous marriage, entered into in good faith by his mother, is entitled to inherit the real and personal property of both parents (sec. 324-5).

POLITICAL RIGHTS**30. Domicile of a married woman**

A woman whose domicile is in Hawaii at the time of her marriage to a man domiciled in a foreign state, district, territory, or country, does not lose her domicile unless she assumes that of her husband (sec. 323-4).

In other cases, presumably the common-law rule applies, that the domicile of the wife generally follows that of her husband.

31. Public office—eligibility of women

Men and women are subject generally to the same legal qualifications to determine eligibility for election, appointment to public office, and voting (secs. 34, 40, 60, Organic Act; sec. 5-1).

32. Jury service—eligibility of women

Women may serve on both grand and petit juries subject to the same terms and conditions as men (sec. 83, Organic Act; sec. 221-1).