The Legal Status of Women
United States Summary

Bulletin of the Women's Bureau 157—Revised as of January 1, 1948

UNITED STATES DEPARTMENT OF LABOR

Maurice J. Tobin, Secretary

WOMEN'S BUREAU

Frieda S. Miller, Director

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The Legal Status of Women in the United States of America

as of

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Summary for All States Combined

By

Sara Louise Buchanan

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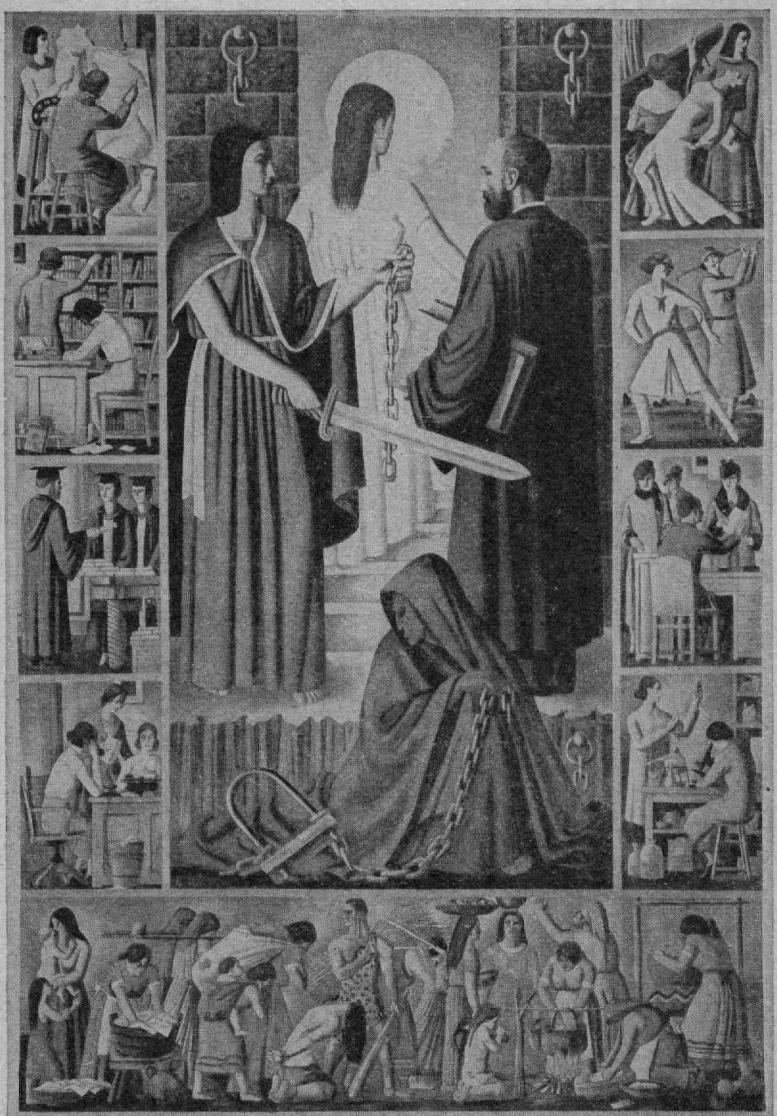

CONTEMPORARY JUSTICE AND WOMAN

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The reproduction on the opposite page is from a mural in the main lobby of the Department of Justice Building, Washington, D. C. This mural is by Emil Bisttram, who was born in Hungary, educated in the United States, and in 1931 was awarded a Guggenheim fellowship for fresco study abroad. Mr. Bisttram was one of three winners, among 283 contestants, in the national competition to do this work.

Shown in the bottom panel of the mural is the woman of earlier days and a ruder civilization when she existed as man's chattel and slave.

The large central panel pictures modern woman passing through an open door into the light of her new freedom. In the foreground of the panel Justice has severed the chains that bound woman to a man-made tradition interpreted by the artist as a crouching, sinister captor, whose harpy traits appear despite a heavy mantle.

The small border panels portray some of woman's activities made possible by her release. She is shown participating in the arts, research, education, business, the drama, sports, government, and science.

A CENTURY OF LEGISLATIVE PROGRESS FOR WOMEN IN THE UNITED STATES

1848	1948
1. Voting denied women.	1. Voting privilege universally available.
2. No share in lawmaking.	2. Participate actively in lawmaking.
3. No share in jury duty.	3. Eligible for jury duty in most States.
4. Not eligible to public office.	4. Eligible to all major elective and appointive positions, including civil-service jobs.
5. Marriage destroyed woman's legal personality for various business functions.	5. Marriage has little effect on woman's legal capacity.
6. Marriage stripped wife of valuable property rights, including her personal earnings.	6. Wife generally has full property rights; her personal earnings belong to her.
7. Wife's criminal acts were chargeable to her husband if committed in his presence.	7. Wife is generally responsible for her own wrongdoing.
8. Wife was subject to her husband; he could restrain her personal freedom and punish her for disobedience to his commands.	8. Wife is a free person, not subject to her husband's forcible restraint or punishment.
9. Divorce laws favored husbands.	9. Divorce laws generally recognize rights of both husband and wife.
10. Guardianship laws favored fathers.	10. Guardianship laws mainly recognize the mother as well as the father.
11. Women's property was taxed without representation from her sex in legislatures.	11. Women help choose the legislators who write the tax laws, and may be elected as lawmakers themselves.
12. Profitable employment generally closed to women.	12. Women have the legal right to enter professions, and practically all profitable occupations and trades.

LETTER OF TRANSMITTAL

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

SIR: I have the honor to transmit a revised survey on the position of woman under political and civil laws in the United States.

Woman's relation to government, family, property, contracts, and business enterprises is reported as found on January 1, 1948, under applicable laws of the Federal Government, the 48 States, the District of Columbia, also for the Territories and Possessions. In some cases footnotes have been added to show changes made after that date.

The present report is a revision of The Legal Status of Women in the United States of America, Bulletin 157—United States Summary. It contains summaries of legal material reported for the Federal Government and for all States combined. Separate pamphlets have already been published for the individual States and the District of Columbia (Bulletins 157–1 through 157–49). Original reports for Alaska, Canal Zone, Hawaii, Puerto Rico, and the Virgin Islands are contained in Bulletin 157–50, also transmitted as of this date.

The original study in 1938 comprised the report for the United States to the League of Nations, as part of a world-wide survey of women's status. Since that time, the material has been widely used, both internationally and at home. Government and labor officials, national trade union and cultural organizations, educational institutions, libraries, journalists, and numerous individuals maintain a steady demand for the information it provides.

With completion of a decade in legislation, and the reception of a request from the United Nations Organization through the Commission on the Status of Women for a full, current report on women's status under law, this revision became a necessity, if a true representation of woman's legal situation is to be made.

Legislative changes in the United States between 1938 and 1948 mark significant progress in the final clean-up of the relatively few remaining discriminations in law against women. The legal status of women in the United States at the close of a century of evolution, 1848–1948, bears out the confident outlook on "Woman's Half-Century of Evolution" expressed by Susan B. Anthony in the North American Review for December 1902 (p. 808): "The general tendency of legislation for women is progressive, and there is not a doubt that this will continue to be the case."

Preparation of the study has been by original search and evaluation of pertinent areas in constitutional and statutory law. In addition, leading court decisions, declaring policy in the absence of statute law or else interpreting legislative action, were reviewed for the 1938 survey, and some additions were made for the 1948 revision.

Both the original and revised reports are the work of Sara Louise Buchanan, Attorney. Valuable assistance has been given in preparation of the study by various members of the Bureau staff, especially Mary L. Sullivan, Elizabeth Batson, Ethel B. Moler, and Iva L. Bockting.

Respectfully submitted.

FRIEDA S. MILLER, *Director.*

Hon. MAURICE J. TOBIN,
Secretary of Labor.

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THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

Trends Observed in Legislation 1938–1948

During the decade 1938–48, legislative action appreciably improved women's status in relation to government, property, family, and other individuals. Activity centered in the removal of significant legal barriers to women's participation in certain functions of government and to the exercise of individual freedoms by married women in their contracts, grants of power to agents, and enjoyment of other personal rights on which some limitations existed in several States. Favorable changes were made also in the laws of family relations and of property rights, some of which were specifically for women, others for the benefit of both sexes. It is not apparent that any major change within the scope of the report discriminates against women as such.

Obviously, the legislative purpose which inspired the changes is cumulative effort toward the near goal of women's complete emancipation from the handicap of obsolete laws. Resulting action is not only a gesture of recognition that women share in the guaranty of freedoms and privileges accorded all persons under the domain of Federal and State governments, it is also a response to economic necessity. Women, as well as men, help to create, conserve, and distribute the Nation's wealth through channels of industry and commerce. Consequently, if certain laws unduly retard these contributions from half the population, those laws will receive the attention of legislators sooner or later, according to the degree of public inconvenience or business uncertainty they produce.

In some States situations arose from war conditions which showed clear need for revision of family and property laws in certain respects to permit greater freedom of action by a married woman whose husband was absent in military service, so as to assure validity of certain business transactions. Scarcity of manpower operated to admit female employees on the legislative staff of the only State that barred them by law. The same factor speeded action in the Federal Government and several States to use more women jurors.

An instance of legislative effort to recognize women's status as an individual in society is the amendment of the last State constitution that barred women from election to the highest public offices; another is the enactment of a law expressly safeguarding a married woman's right as an individual to her personal earnings from third persons in the only State that had until then retained the husband's legal right to them.

Good examples of legislative action to relieve economic pressures appear in the tightening of State control over legal obligations for support of families or dependent relatives, the removal of legal disa-

bilities arising from woman's marital status, and the adoption of a State-wide system of community for marital property to divide burdens of taxation. [However, with the passage of the 1948 Federal Revenue Act, the choice of divided income tax returns became available alike to all States; and each of the newly enacted community laws were rejected in their respective States.]

If the aggregate of legislative action in these fields seems small in comparison with the total number of States within the Union, it must be remembered that these achievements are not initial but final steps in a clean-up movement among the States to remove lingering discriminatory laws which have escaped attention in the broad reforms of the past century.

Part I
INTRODUCTION AND HISTORICAL BACKGROUND

Part I.—Introduction and Historical Background

This report is designed to give the reader a quick view of women's position under the law—Federal and State—of the United States of America.

Sir Matthew Hale, eminent English jurist of the seventeenth century, is credited with the remark that of two ends to the study of law, the first is—

> * * * to fit a man with so much knowledge as will enable him to understand his own estate, and live in some repute among his neighbours in the country.[1]

At least the female half of the inhabitants of the United States have a direct concern in the content of this report if for no other reason than to understand their "own estate." The 28 percent of gainfully employed persons who are women want particularly to be informed on their basic contract and property rights and obligations, as well as the special bearing on these of family relationships.

Previous efforts have been made to bring together the laws on these subjects, a difficult task in a federated government with 50-odd jurisdictions having separate powers, for as is well said by the late Professor Wigmore, prominent American lawyer and author:

> * * * The fact that there are half a hundred practically independent jurisdictions must be conceded and faced. What is the law? is a question which cannot be answered except as with 50 tongues speaking at once. What the law is in Illinois may well be not the law in Massachusetts or in California.[2]

More than 25 years ago the National League of Women Voters undertook such a research project. Its results were published in 1924 and revised in 1930.[3] Developments in the law and in international relationships since 1930 made research on a broader basis essential to an adequate consideration of woman's place in government. The need for this has been shown by continuous inquiry from individuals, organizations, and libraries addressed to the Women's Bureau as the agency of government charged with the conservation and advancement of women's welfare.

When, therefore, the former League of Nations in 1935 invited the United States Government to provide such information, the Women's Bureau undertook preparation of the original survey, published as of January 1, 1938. The report of this survey, with similar reports from other countries, was intended by the League to be used to sketch in broad outline the legal status of women throughout the world.

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[1] Hale, Sir Matthew. History of the Common Law of England. 6th ed. (1820), preface, p. vii.

[2] Wigmore, John H. Treatise on Evidence. 2d ed. (1923), vol. 1, preface, p. xv.

[3] A Survey of the Legal Status of Women in the Forty-eight States. National League of Women Voters, 726 Jackson Place, Washington, D. C.

After the establishment of the United Nations Organization in 1945, one of its agencies, the Commission on the Status of Women, resumed the project of a comprehensive report on women under the public and private laws of member nations, as a stimulant to promote reforms where these were shown desirable. The Women's Bureau was asked to prepare the material from the United States, which it is now doing. The report on women under Public Law has been completed, and digests of the seven sections are appended to this study as supplemental information. Subjects reported include Franchise and Public Office, Public Service, Educational and Professional Opportunities, Civil Liberties, Fiscal Laws, Nationality. (See appendix C.)

What the Study Covers.

The complete study presents, as of January 1, 1948, the status of women under public and private law. Jurisdictions reported include Federal Government, each of the 48 States, the District of Columbia, Alaska, Canal Zone, Hawaii, Puerto Rico, and the Virgin Islands. The phases selected are those within which, as a matter of history and of current record in statutes and decisions, the major legal distinctions between men and women occur.

Necessarily limited, the Bureau's study does not include labor law (reported in other Women's Bureau publications),[4] criminal law, domestic relations law applicable on divorce or separation, tax law, nor executive orders and administrative rulings.

For basic data the survey relies on an original search of statutory and case law covering the topics selected for study. The legal sources are shown by detailed references throughout the report. Abstracts for the 48 States and the District of Columbia, compiled from the respective constitutions, statutes, and decisions, have been issued as Women's Bureau Bulletins 157–1 (Alabama) to 157–49 (Wyoming) and data for these jurisdictions are summarized in this publication. Bulletin 157–50 contains original detailed reports for Alaska, Canal Zone, Hawaii, Puerto Rico, and the Virgin Islands, and also a summary of this material.

The material in this bulletin is presented in four parts:

I. Introduction and Historical Background.
II. General Summary Statement.
III. Present Legal Status of Women in Summary Form.
IV. Appendix, containing glossary, marriage law tables, and digests of United States report on Public Law to United Nations.

A SPECIAL PLEA

In this work, when it shall be found that much is omitted, let it not be forgotten that much likewise is performed; * * * —Dr. Samuel Johnson, in preface to his dictionary.

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[4] For information as to labor laws affecting women, see other Women's Bureau bulletins and mimeographed reports dealing with these, a list of which can be obtained from the Bureau.

BACKGROUND OF THE LAW

The rules that make up the whole body of law in the United States of America come from the English common and statutory law of the Revolutionary period, from civil law derived from European origins, and from customs and principles wrought out of American experience. These rules include constitutional provisions, legislative acts, and court decisions. Taken as a whole they compose jurisprudence—that is, "the science of the just and the unjust."[5] According to their form, they are known as the common or so-called unwritten law, and statutory or written law.

WHAT IS COMMON LAW?

The phrase "common law" may have any one of several applications. In its broadest sense the term means "those rules or precepts of law in any country, or that body of its jurisprudence, which is of equal application in all places, as distinguished from local laws and rules."[6] Applied to systems of law, in this country it indicates the system which either prevails already or "is steadily winning its way in English-speaking countries, as distinguished from the civil law with its Roman law foundation."[7] Concerning the primary source of American common law and its importance, Chancellor Kent, early American jurist, explains that—[8]

> * * * It is the common jurisprudence [of the people] of the United States, and was brought with them as colonists from England, and established here, so far as it was adapted to our institutions and circumstances. * * * It fills up every interstice, and occupies every wide space which the statute law cannot occupy.
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> * * * * * * *
>
> * * * A great proportion of the rules and maxims which constitute the immense code of the common law, grew into use by gradual adoption, and received, from time to time, the sanction of the courts of justice, without any legislative act or interference.

A modern commentator distinguishes original sources of the common law as follows:

> * * * The unwritten or common law * * * has its origin in ancient customs, expressive of legal rights, which have been transmuted into positive law by decisions of courts of justice.

To this he would add "that body of the law which has its origin in adjudication," of which he says:

> * * * the courts have been intrusted with and have always exercised * * * a certain power of making rules for cases not previously provided for by any well-established principle, and have even modified existing laws from time to time, in order to carry out current ideas of what is equitable, or to adapt them to the changing needs of society.[9]

In the realm of the Federal courts, strictly speaking, there is no common law of the United States in the sense of a national customary law.[10] As was said by the supreme court of Montana:

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[5] Dig. I. 1. 10. 2 (Pandects of Justinian).
[6] 15 Corpus Juris Secundum, Common Law, sec. 1, p. 611.
[7] Stone, Harlan Fiske. The Common Law in the United States, from Report of the Harvard Law School Conference on The Future of the Common Law. 1937. p. 121.
[8] Kent, James. Commentaries on American Law, vol. I, pp. 342–343, 471.
[9] Cooley, Roger W. Brief Making and the Use of Law Books, 5th ed. (1926), p. 5.
[10] 15 Corpus Juris Secundum, Common Law, sec. 16, p. 630.

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> * * * the courts of the United States enforce the law as they find it in the several States and apply the common law, as a national institution, in the interpretation of the Constitution.[11]

Of the situation among the States, an authority on American constitutional law says:

> The common law of the States consists of the principles of the English common law, developed and modified by American custom and judicial precedent. Having this great common substratum of the English common-law principles, the nonstatutory law of the several States is, in very many respects, the same throughout the United States. But in other respects, statutory enactment and divergent customs and judicial determinations have led to important differences.
>
> In general, however, excepting where statutes have expressly amended the English common law as it was at the time of the separation from England, or where clear judicial dicta to the contrary are to be found, the general doctrines of the English common law are held to be in force.[12]

WHAT IS STATUTORY LAW?

The system of governing rules issued in written form by a sovereign power is known as statute law, that is, the law effected by legislative enactment in Federal and State jurisdictions.

Legislative acts may, and often do, simply declare common-law principles without change, or may change a common-law rule in part, or may sweep aside a rule of the common law. Many of the statutes in derogation of common-law rules are based on equitable principles drawn from the Roman civil law. For example, inheritance statutes in the United States of America mainly follow the civil-law pattern.

A constitution, as well as a current legislative enactment, is a statute framed by a sovereign authority (in this country, by representatives of the people convened in a deliberative body). This is a fact not always understood, since a constitution is basic in nature, more formal in structure, and more difficult to amend than a statute enacted in a regular legislative session.

Of the written law the Supreme Court of the United States has said:

> * * * the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances.[13]

The legislative history of the various States demonstrates clearly this function of statutes in improving the legal status of women.

Committing a principle of law to the formal diction of a statute imparts authority, dignity, and permanency to State policies, and renders them definite as well as uniform within the domain; but at the same time, it narrows to the specific terms of the act the scope of rights or restrictions dealt with, and leaves beyond its control numerous cases not covered by the rule it expresses.

This latter fact accounts for and justifies the existence of two contemporary systems of law (common and statutory). Each operates as a complement to the other, in the effort to adapt rules of government to realities among the governed.

When a rule of law has been crystallized into a statute, particularly

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[11] State ex rel. *Powell* v. *State Bank* (1931), 90 Mont. 539, 557; 4 Pac. (2d) 717; 80 A. L. R. 1494.

[12] Willoughby, W. W. The Constitutional Law of the United States, 2d ed. (1929), pp. 1306–1307.

[13] *Munn* v. *Illinois* (1876), 94 U. S. 113, 134; 24 S. Ct. 77.

into a constitution, changes in its literal form must be by legislative action, often with consequent deliberation, delay, and perhaps compromise. The restraint entailed by this method of change in statute law usually is desirable and necessary to encourage full consideration of the legislative, political, or social problems involved.

The relative bulk of common law and statute law in this country is not generally considered by lay persons. An authority on interpretation of statute law gives as his opinion the following:

> Statutes are but a small part of our jurisprudence. The principles of the common law pervade and permeate everything which is subject to legal regulation. Such law defines rights and wrongs of every description and the remedies for public and private redress. By its principles statutes are read and construed. They supplement or change it, and it adjusts itself to the modification and operates in conjunction and harmony with them. If words from its vocabulary are employed in them it expounds them. If the statutes are in derogation of it, it yields and bides its time; if they are cumulative, it still continues. Rules of interpretation and construction are derived from the common law, and since that law constitutes the foundation and primarily the body and soul of our jurisprudence, every statutory enactment is construed by its light and with reference to its cognate principles.[14]

Community-Property Law in the United States of America.

A branch of statutory law governing property rights between husband and wife, called the law of community property, is in force (as of January 1, 1948) with varying provisions in 12 of the States: Louisiana retains, with modifications, the community law of France; Arizona, California, Idaho, Nevada, New Mexico, Texas, and Washington trace their community systems to Spanish or Mexican sources. Michigan, Nebraska, Oklahoma, and Oregon have recently adopted a modified community system, with the primary purpose of reducing taxation on incomes of husband and wife.[15]

Community property law declares equal ownership by husband and wife in all property acquired by either of them during marriage except such as is inherited, received as a gift, or purchased with separate funds owned before marriage. However, in the community property States, actual control of much of the community is given to the husband. Due to varied statutory forms and interpretations of the law in the several States using the system, it does not have uniform application among them.

FUNCTIONS OF THE COURTS IN ADMINISTRATION OF LAW

The common-law system is distinguished for its flexibility, its ease of adaptation to changed conditions in a developing society. This distinction is due to its character as an instrument of authority committed by the State to the hands of the courts to be wielded by them as final arbiters in all cases not governed by positive statutes. In this country the courts are guided, but not bound, by past decisions on the same or similar issues. As pointed out earlier in this report, they can,

[14] Sutherland, J. G. Statutory Construction. 1904, vol. II, p. 860.

[15] However, as of July 1, 1950, each of these 4 States had repealed the community law, following enactment of the 1948 Federal Revenue Act which permitted husbands and wives in all States to file separate returns and thus divide the family income for reduction of tax liability.

and often do, prick out new lines of decision. These decisions become "case law"—actually, common law in process of development.

An equally important function of the judiciary is the interpretation of statutes. The court that hears conflicting claims of parties to an issue as to the effect of a statute on which they rely must say what the intent of the legislative mind was. This interpretation of the statute, if unchallenged or if upheld by an appellate court, becomes law as effective as the statute itself.

This influence of the judicial mind on the effect of statutes is demonstrated by the two schools of thought interpreting the married women's acts in the United States. Under one of these, statutes conferring property rights on married women, insofar as they are in derogation of the common law, are to be strictly construed and such rights limited to those expressly mentioned in the statute. According to this view, the statutes cannot be enlarged by construction beyond the plain meaning of the language used, or what is required to give them a reasonable and proper effect. The other view is that statutes removing the disabilities of married women as to their separate estates are remedial or enabling, and therefore should be liberally construed in order to secure and enforce the rights actually given, and to carry out the intent and purpose of the law.[16]

Professor Peck, formerly of Yale University, emphasizes the power of the courts with particular reference to interpretation of married women's acts:

> It is evident that the extent to which married women are emancipated by modern legislation must depend largely upon the rule of interpretation adopted by the courts. The statutes can hardly mention and specifically repeal every rule of the common law on this subject; and if the rule of strict interpretation is followed married women, while generally emancipated by the broad provisions of the statute, may still lie under many particular disabilities.[17]

The large degree of responsibility vested in American judges received the following comment from Mr. Justice Stone:

> * * * We are coming to realize more completely * * * that within the limits lying between the command of statutes on the one hand and the restraints of precedents and doctrines, by common consent regarded as binding, on the other, the judge has liberty of choice of the rule which he applies, and that his choice will rightly depend upon the relative weights of the social and economic advantages which will finally turn the scales of judgment in favor of one rule rather than another. Within this area he performs essentially the function of the legislator, and in a real sense makes law.
>
> * * * It is the judicial process which distinguished the work of Mansfield, Marshall, Kent, and Holmes, and which has placed them among the outstanding judicial figures of the past 200 years.[18]

STEPS TO "SOFTEN THE RIGOR OF THE COMMON LAW"

The Common Law and Woman.[19]

The bulk of discriminations between men and women in American jurisprudence grew out of the feudal common-law theory that mar-

[16] 41 Corpus Juris Secundum Husband and Wife, sec. 235, p. 724.
[17] Peck, Epaphroditus. The Law of Persons and of Domestic Relations, 3d ed. (1930), p. 338.
[18] Stone, Harlan Fiske. The Common Law in the United States, from Report of the Harvard Law School Conference on The Future of the Common Law. 1937. pp. 140, 141.
[19] Summary of woman's situation under the common law of the Blackstone period appears on pp. 12 to 15.

riage destroyed a woman's separate identity. Discriminations against the unmarried woman were comparatively few in number, even under the English common law. For these reasons, the major part of the present study centers in the married woman.

The far-reaching scope of laws that regulate the rights of persons in the marital relation was noted by Chancellor Kent more than a century ago in these words:

> * * * The law concerning husband and wife has always made a very prominent and extensive article in the codes of civilized nations. * * * There are no regulations on any other branch of the law, which affect so many minute interests, and interfere so deeply with the prosperity, the honor, and happiness of private life.[20]

Equitable Separate Estates.

To relieve numerous injustices and abuses that arose in England under the provisions of feudal common law, ecclesiastical or equity courts were created to act for the sovereign on complaints of aggrieved persons. These courts employed principles borrowed from the civil law to temper the harshness of the common-law system. An invention of equity to protect property of an otherwise remediless wife from a greedy or spendthrift husband was the equitable separate estate, in which a trustee acted for the wife in management and disposition of such property, preventing its control and benefit from passing to the husband.

Statutory Separate Estates.

With the extension of educational privileges, the impact of the industrial revolution, economic advancement through new opportunities in commercial development, and other liberalizing factors, women about a century ago began to make concerted protests against unjust restrictions laid upon them by the common law.[21] Instead of the equitable separate estate administered by a trustee under supervision of an equity court, the concept of the separate estate of a married woman under her own name and control began to appear in positive statutes of the United States of America, and has now progressed through the various forms of the so-called married women's acts adopted in each of the common-law States. Though the several States have not been uniform in the extent of their modifications of common-law rules, in none of them today does a married woman experience the unwarranted restraints imposed on her by the ancient feudal system. These acts—

> * * * aim to secure to the wife the independent control of her own property, and the right to contract, sue, and be sued, without her husband, under reasonable limitations.[22]

It has been said by some authorities that the married women's property acts are "designed to effect, not so much the creation of a power which

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[20] Kent, James. Commentaries on American Law, vol. II, p. 182.

[21] Many individual women had protested previously. For example, witness the long struggle of the brilliant and wealthy Lady Elizabeth Hatton against her noted jurist husband, Sir Edward Coke, the attorney general of Queen Elizabeth, when she pleaded her own case against him in the English courts of the seventeenth century, or the protests of Margaret Brent of the colony of Maryland against taxation of her considerable property without representation.

[22] Schouler, James. Marriage, Divorce, Separation, and Domestic Relations. 6th ed. (1921), vol. I, pp. 11–12.

the wife never possessed, as a partial or complete restoration of the power she lost by marriage." [23]

The general view of these reform measures is that they—

> * * * do not, except to the extent specified therein, remove the common-law disabilities of coverture, or change the general status or relation of husband and wife, but leave the duties and responsibilities of each to the other, in matters not relating to the wife's separate property, as they were at common law.[24]

So, when jurists and text writers say broadly for some jurisdictions that "the last vestige of a wife's oppression has been swept away" or that "there no longer remains any difference in the treatment of men and women under the law," it must be recognized that they speak in general of the law governing ownership and control by a modern wife or her separate property, that is, the property she had at marriage and that acquired afterward by gift, inheritance, or other means recognized by State law.

RELATED COMMON LAW OF THE PREREVOLUNTIONARY PERIOD

In the summary of each separate topic considered in this survey (pt. III, beginning on p. 36) will be found statements as to the common law now current in the jurisprudence of the United States. A general summary of mid-eighteenth-century English common-law rules on the same topics is given in the paragraphs following, which the reader may use for comparison with the married women's acts in the United States today. Key numbers preceding paragraphs apply to the same subject-matter in the summary, as well as in separate pamphlets for States and Territories.

A.—CIVIL RIGHTS

I.—Contracts and Property

1. The age of majority was fixed at 21 years for both sexes.

2. Contracts with a minor, for other than necessaries under certain conditions, were voidable by such minor at his or her majority.

3. [The exemption of property from seizure for general debt was unknown to the common law.]

4. On marriage, a woman's personal property then owned, and that afterward acquired, usually became her husband's absolutely, and he might dispose of it as he chose.

5. On marriage, the very being or legal existence of the woman merged into that of the husband. This state of the wife created a disability at law called her coverture. The effect of this legal assumption restricted both her personal and her property rights. For example, the husband could not grant property to, nor contract with, his wife, for that would imply her separate existence. All deeds executed and acts done by the wife during marriage were void, as she was for such matters considered the inferior of her husband and acting under his compulsion. She might execute conveyances to cure defects

[23] 41 Corpus Juris Secundum, Husband and Wife, sec. 235, p. 724.
[24] Idem, p. 725.

in land titles, or like matters of record, but was then "solely and secretly examined, to learn if her act be voluntary." Nor could she be sued, ordinarily, unless the husband were sued together with her. The only exception was in the event the husband had "abjured the realm" or been banished, thus becoming "dead in law."

6. The husband was entitled to the wife's services in return for the support that the law required of him. Hence, he was entitled also to any earnings that she might receive for her labor, and to property acquired during the marriage as a result of their joint efforts.

7. The husband was bound to provide his wife, as much as himself, with necessaries. If she contracted debts for them, he was obliged to pay them, but he was not chargeable for anything besides necessaries. He was relieved of this obligation if the wife deserted him.

8. "By the custom of London, where a feme covert of a husband useth any craft in such city on her sole account, whereof the husband meddleth nothing, such a woman shall be charged as a feme sole, concerning everything which toucheth the craft; and if the husband and wife be impleaded in such case, the wife shall plead as a feme sole, and if she be condemned, she shall be committed to prison till she hath made satisfaction, and the husband and his goods shall not in such case be charged or impeached." [25] But generally, a married woman could not engage in business for herself, due to her incapacity to make valid contracts.

9. At marriage the husband received a freehold estate in his wife's lands, that is, he had full control and use of them during the marriage. Over any property held by husband and wife as an estate by the entirety, the husband, during the marriage, had full control and was entitled to all income from the property. (See Number 4 above as to personal property.)

10. The proceeds of the joint labor of husband and wife belonged to the husband. (See Number 6 above.)

11. For any injury to her person or property, the wife could bring no action for redress without her husband's joinder and suing in his name as well as her own. Any damages recovered in the action became the husband's property, if he chose.

Neither married nor single women had any remedy at law in their own right against attacks on their character by malicious persons, but were "perfectly exposed to the slanders of malignity and falsehood." The husband might sue for and recover any damage to his wife's character.

12. Neither husband nor wife could sue the other to recover damages for injuries, either willful or negligent, wrought on the person or property of one by the other, since at law the two were one person.

13. In trials of any sort, husband and wife were not allowed to be witnesses for or against each other, "partly because it is impossible their testimony should be indifferent, but principally because of the union of person; and therefore, if they were admitted to be witnesses *for* each other, they would contradict one maxim of law, 'no one is allowed to be a witness in his own cause;' and if *against* each other, they would contradict another maxim, 'no one is bound to accuse

[25] I. Blackstone Com., p. 443 (Chitty et al.), 1870, notes.

himself.'" However, the rule usually was suspended where the offense was directly against the person of the wife, as in the case of a forced marriage, where her testimony would be the only evidence in her behalf.

14. The wife could not devise her lands to her husband for she was presumed to be under his coercion at the time of making her will.

15. In inheritance of lands, male heirs had preference over females. Kindred derived from male ancestors, however remote, were to be preferred to kindred from the blood of female ancestors, however near, unless the land came from a female ancestor. Originally, under the feudal system, females were wholly excluded from inheritance of lands, not only from their inability to perform the feudal engagements, but because they might by marriage transfer the possession of the feud to strangers and enemies. A son, though younger than all his sisters, inherited the whole of real property in an estate.

When a living child was born of a marriage, if the husband outlived the wife he retained during his life the whole of her lands that were inheritable by her heirs. He had this right, called tenancy by curtesy, also in the property of his wife held for her by a trustee, known as her equitable separate estate.

For the wife's part, if she outlived her husband and was entitled to dower, she entered on the life-use of one-third of her husband's lands that were subject to inheritance by his heirs—unconditioned on birth of issue. But she had no dower right in any trust estate of her husband.

As to rights of succession in the personal estate of a deceased spouse dying without a will, a surviving husband administered his wife's estate and took any remainder after her debts were paid. A widow might have one-third of her husband's personalty after payment of debts, or one-half portion if there were no children.

16. A widow might remain in her husband's "capital mansion-house" for 40 days after his death, during which time her dower should be assigned to her. These 40 days were called the widow's *quarantine*, to signify the number of days in the period. (See also Dower and Curtesy under Number 15.)

17. A husband could make his will as he chose, except that he could not deprive his widow of her dower right in his lands.

II.—Marriage and Divorce

18. Males at 14 years of age and females at 12 were deemed capable of contracting a legal marriage.

19. Marriage at common law was considered a civil contract.

20. [No provisions existed for physical examination preceding marriage.]

21. By the law of nations, a marriage valid in the place in which contracted was valid everywhere, as a rule.

22. Marriage could be annulled for lack of legal age, use of fraud or force in obtaining consent to the marriage, lack of mental capacity to make a valid contract, or the existing prior marriage of either party.

23. An absolute divorce could be obtained only on the ground of infidelity, and was granted by act of Parliament.

III.—Parents and Children

24 and 25. The father was the sole natural guardian of the minor children of a marriage, the mother having the right only on the death of the father. As the father was required to support the children, he was entitled to their services and earnings until they became of age. If the spouses separated, the father had the superior right to the custody and control of the children.

26. No power to appoint a testamentary guardian existed at common law.

27. The real property of a deceased child was not inherited by his parents. The father took the entire personal estate of a child dying without a will who left no wife or issue. If the father had died the mother shared equally with the child's brothers and sisters.

28 and 29. The child born out of wedlock was considered by the law as the child of no one, consequently neither parent was legally responsible for his support except by bastardy proceedings charging the mother or the father with payment for that purpose. Neither parent had any right of inheritance in any property such a child might own at his death.

B.—POLITICAL RIGHTS

30. The domicile of the husband was that of his wife also, since under the law they were one person, and the husband that one.

31. Women might not participate in government, since they rendered no military service.

32. Women were not eligible for jury service, generally, but might be called in certain cases to determine pregnancy.

C.—MISCELLANEOUS PROVISIONS [26]

If the wife had incurred debt before marriage, the husband was bound afterward to pay the debt, for he had adopted her and her circumstances together.

In major criminal prosecutions, the wife could be indicted and punished separately, "for the union is only a civil union." But for the commission of some felonies, and lesser crimes and torts, she was presumed to be under the constraint of her husband and thus excused.

A husband might give his wife moderate correction, but he was prohibited from using any violence to her other than lawfully and reasonably belonged to him for her due government and correction.

While either spouse could have security of the peace against the other, the courts of law permitted a husband to restrain a wife of her liberty "in case of any gross misbehaviour."

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[26] See footnote 34, p. 24.

Part II

GENERAL SUMMARY STATEMENT

Part II.—General Summary Statement

SUMMARY OF CONCLUSIONS

The status of women under the letter of the law in the United States of America on January 1, 1948, may be summarized broadly thus:

1. As a member of the political society in its governing function, woman stands practically on an equal footing with man.

2. As a member of a governed society of individuals, her position in many respects is comparable with that of man, in a few respects it may be considered superior to man's, and in a few respects it is inferior to that occupied by man.

These conclusions are based on particularized findings from this study of woman's legal relation to State, family, and property.

SUMMARY BY SUBJECTS AND STATES[1]

as of January 1, 1948

Political Status

Nationality.

Citizenship in the United States is acquired in the same way by men and women; that is, by birth within the domain, by birth abroad of a parent who is a citizen, or by being naturalized. Mothers, as well as fathers, confer citizenship on their minor children. A married woman's citizenship does not automatically follow that of her husband. An alien wife may become a citizen whether or not her alien husband desires or qualifies for that privilege. If a woman citizen marries an alien, she retains her citizenship until she renounces it by declaring allegiance to another government.

Voting and Public Office.

Federal.—Any woman who has the qualifications required for voting in the State of her residence has full right of suffrage in the election of National Government officials and on proposals for change in the Federal Constitution; that is, in the basic law.

Likewise, any woman who meets the established qualifications for official positions in the National Government is eligible either for election or appointment to posts in the executive and legislative branches or for appointment to the judiciary, including the Supreme Court of the United States.

State.—Any woman who meets the general qualifications established for voting in the State in which she has legal residence has full right of suffrage in the election of State and local officials and in determina-

[1] For corresponding summary for the Territories and Possessions, see Women's Bureau Bulletin 157–50.

tion of public issues within the State, such as amendment of the State constitution, legislative proposals where the referendum procedure is operative, and on local matters such as special tax assessments for public improvements, school administration, and the like.

Also, any woman who has the qualifications required for elected officials of State and local governments is eligible for election to these positions.

Civil Service Positions.—Appointive positions in both Federal and State civil services are open generally to qualified women; that is, there are few legal barriers to the appointment of women. Appointing agencies for the Federal Government may designate whether male or female employees are preferred, when requesting a list of eligibles from the Civil Service Commission for selection of new personnel. Some States by statute specify the sex of appointees for certain minor positions, such as superintendents, wardens, matrons, or attendants in institutions operated by the State.

Courts—Jury Service.—Women are entitled by law to serve on juries in 35 States,[2] and the District of Columbia; by this fact they are eligible also for Federal duty in these jurisdictions. Thirteen States[3] have not yet removed the ancient English common-law "defect of sex" which bars women from all jury duty in these jurisdictions.

Nineteen States[4] require compulsory duty of qualified women; 16 States[5] and the District of Columbia permit optional service from women.

Domicile.

Private Domicile of a married woman depends on that of her husband, normally. The general rule is that when the interests of husband and wife become hostile so that dissolution of the marriage becomes necessary, an aggrieved wife may establish a separate domicile. Separate existence, interests, and rights are recognized in cases of this sort.

Public Domicile.—Most of the States limit husband and wife to the same marital domicile during marriage for voting, serving on juries, and holding public office.

However, at least 12 States under specified conditions allow a married woman to establish a separate domicile for voting:

California	Nevada	Ohio
Maine	New Jersey	Pennsylvania
Massachusetts	New York	Virginia
Michigan	North Carolina	Wisconsin

Five States permit separate domicile for eligibility to public office:

Maine	Nevada	New York
Michigan	New Jersey	

[2] As of July 1, 1950, 4 additional States had removed the bar. Wyoming requires compulsory service; Florida, Massachusetts, and Virginia permit optional service.

[3] Ala., Fla., Ga., Mass., Miss., N. Mex., Okla., S. C., Tenn., Tex., Va., W. Va., Wyo. (See footnote 2.)

[4] Calif., Colo., Conn., Del., Ill., Ind., Iowa, Maine, Md., Mich., Mont., Nebr., N. J., N. C., Ohio, Oreg., Pa., S. Dak., Vt. (See footnote 2.)

[5] Ariz., Ark., Idaho, Kans., Ky., La., Minn., Mo., Nev., N. H., N. Y., N. Dak., R. I., Utah, Wash., Wis. (See footnote 2.)

At least 4 States permit separate domicile for jury service qualification:

Maine	Nevada
Michigan	New Jersey

Three States (Nevada, New Jersey, Virginia) recognize separate domicile for the personal property tax obligation of a married woman.

Civil Status

FAMILY RELATIONS

Marriage.

The marriage laws of the various States generally do not distinguish between the sexes, except in establishing minimum ages. Most States set a lower age for females. The same minimum age applies to both sexes in 7 States [6] when parental consent is required, and in 16 States [7] when parental consent is not required. Other legal distinctions found are of minor importance, both as to number and character; for example, 2 States (Louisiana, Texas) require premarital health tests of male applicants only. One State (Louisiana) bars remarriage of a woman for a 10-month period after dissolution of her marriage.

Divorce.

Sixteen States [8] may grant a divorce to the husband on grounds that are exclusive to him. The principal ground in this category is the wife's undisclosed pregnancy by another than her husband at the time of marriage. Twenty-one States [9] may grant a divorce to the wife on grounds that are exclusive to her, generally the husband's desertion or nonsupport.

Parent and Child.

Thirty-four States [10] give both parents the same rights of natural guardianship. Fourteen States [11] and the District of Columbia prefer the father as natural guardian during the marriage, giving him the first right to custody of his minor child's person, services, and earnings. If the marriage is broken by divorce or legal separation, neither parent has any legal advantage over the other as to custody of the minor child. The best interests of the child guide the court's disposition of its custody.

Six States [12] and the District of Columbia by statute prefer the father when a guardian of property is to be appointed for his child.

Nine States [13] authorize the father to appoint a guardian, by deed or last will, to have charge of the person of his minor child after the

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[6] Colo., Conn., Maine, Mo., N. C., Pa., Tenn.
[7] Conn., Fla., Ga., Idaho, Ky., La., Nebr., N. C., Ohio, Pa., R. I., S. C., Tenn., Va., W. Va., Wyo.
[8] Ala., Ariz., Ga., Iowa, Kans., Ky., Miss., Mo., N. H., N. Mex., N. C., Okla., Tenn., Va., Wis., Wyo.
[9] Ala., Ariz., Colo., Del., Ind., Ky., Maine, Mass., Mich., Mo., Mont., Nebr., Nev., N. H., N. Mex., R. I., Tenn., Vt., Wash., Wis., Wyo.
[10] Ariz., Calif., Conn., Del., Fla., Idaho, Ill., Ind., Kans., Ky., La., Maine, Md., Miss., Mo., Mont., Nebr., Nev., N. H., N. J., N. Mex., N. Dak., Ohio, Oreg., Pa., R. I., S. C., S. Dak., Tenn., Tex., Utah, Wash., W. Va., Wis.
[11] Ala., Ark., Colo., Ga., Iowa, Mass., Mich., Minn., N. Y., N. C., Okla., Vt., Va., Wyo.
[12] Ala., Colo., La., Mont., Oreg., Tex.
[13] Ariz., Idaho, Mont., N. Dak., Okla., Oreg., S. Dak., Utah, Vt.

father's death, subject, however, in each of these States, to the mother's right to succeed the father as natural guardian of their minor child if she is the survivor. No State permits a father to will his child to a stranger without the mother's valid consent.

Seven [14] of the 13 [15] States that authorize the surviving parent to appoint a testamentary guardian for a minor child's property provide that during the marriage the father may make the appointment with the mother's written consent.

Unmarried Parents.—The mother is considered the natural guardian entitled to the custody of the child. The father becomes a natural guardian according to the law of the State only if he legally acknowledges his relationship to the child.

Inheritance by Parents from Children.—No distinction exists between the rights of the father and mother to inherit from legitimate children. Most States allow the unmarried mother to inherit from her child. Nine [16] States permit the unmarried father to share the inheritance when he has legally acknowledged or adopted the child.

Family Support.

Generally, the States under community-property law (see footnote 29, p. 23) make the common estate of husband and wife liable for family support, without relieving the husband as head of the family from his liability for its proper care. The remaining States and the District of Columbia, under common-law rule in this respect, hold the husband and his property primarily liable for family support. In 21 of these States [17] the wife and her property are declared liable also for family necessaries, but without changing the husband's primary obligation.

Eleven States [18] require the wife to support her husband out of her separate property when he has no property and because of infirmity is unable to support himself.

Unmarried Parents.—In general, the mother is primarily liable for support of the child. Most States have legal procedure for establishing paternity if satisfactory proof is submitted. Until the paternity is established or voluntarily assumed, the father has no legal obligation to support the child, or to contribute to the expenses of the mother at childbirth. Four States [19] have no statutory provision of this type.

CONTRACT AND PROPERTY LAW

Power to Make Contracts.

All States apparently recognize a married woman's legal capacity to contract her personal services in employment outside her home duties, and to collect her earnings from such work without the formal consent of her husband.

Three States [20] have limitations on the power of a married woman of legal age to make enforceable contracts with third persons that

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[14] Ariz., Idaho, Mont., N. Dak., Okla., S. Dak., Utah.
[15] Ariz., Calif., Del., Idaho, La., Mont., Nev., N. Y., N. Dak., Okla., Pa., S. Dak., Utah.
[16] Idaho, Kans., La., Mont., Nev., N. Mex., N. Dak., Okla., S. Dak.
[17] Ariz., Ark., Calif., Colo., Conn., Idaho, Ill., Iowa, La., Mass., Minn., Mo., Mont., N. Dak., Oreg., Pa., S. Dak., Utah, Wash., W. Va., Wyo.
[18] Calif., Idaho, Mont., Nev., N. Mex., N. Dak., Ohio, Okla., Oreg., S. Dak., Wis.
[19] Idaho, Mo., Tex., Va.
[20] La., Nebr., Tex.

do not concern her separate property or the common property of herself and husband.

Eight [21] of the community-property States do not ordinarily empower of a wife to contract alone concerning the common marital property, though the husband has extensive powers of sole contract, particularly over the personal property owned in common.

Five States [22] forbid a wife to obligate herself as surety for her husband.

Five States [23] limit to some extent because of sex the appointment of a woman to positions of trust, such as executor or administrator.

Seven States [24] may impose special restrictions on a woman who marries while serving in these offices of trust.

Ownership, Control, and Use of Property.

Separate Property.—In property management and control, inheritance, and freedom of enjoyment of earnings, unmarried women and unmarried men stand equal under the law. Married women in most States have the same degree of control over their separate property that married men have over their separate property. Personal earnings of married women are made their separate property by specific statute in most of the States not under the community property regime. In the 13 [25] States without such specific law, general statutes are interpreted to have the same effect.

Six States [26] still require the husband's signature, as a matter of form, to give validity to the wife's deed conveying her own land; only Texas requires a special form of acknowledgment for the married woman's deed or mortgage of her lands; this State also denies a wife full individual status in the courts, requiring her husband to be made a party to certain actions which involve the wife or her separate property.

Three States [27] and the District of Columbia retain the form of property ownership called at common law "estate by the entirety," applicable only to husband and wife. Under it, the wife has only a contingent interest in the property unless she survives her husband, no matter what amount she has contributed to the estate. The husband controls the property and receives the income during the marriage.

Five States [28] still have the so-called Free-Trader statutes, under which court sanction, and in some cases the husband's consent, is required for a wife's venture into an independent business, if she is to keep the profits for her own account.

Community or Communal Property.—Twelve States [29] have the community system of ownership between husband and wife as to property acquired by their joint efforts during the marriage. Eight [30] of these give the husband principal control of most of the communal

[21] Ariz., Calif., Idaho, La., Nev., N. Mex., Tex., Wash.
[22] Ala., Ga., Idaho, Ky., N. H.
[23] Idaho, Nev., Okla., Oreg., S. Dak.
[24] Del., Ind., Nev., N. H., N. C., S. C., Utah.
[25] Del., Ky., Md., Mass., Miss., Mont., N. Y., N. Dak., Ohio, S. Dak., Tenn., Vt., Va.
[26] Ala., Fla., Ind., N. C., Pa., Tex.
[27] Mass., Mich., N. C.
[28] Calif., Fla., Nev., Pa., Tex.
[29] Ariz., Calif., Idaho, La., Mich., Nebr., Nev., N. Mex., Okla., Oreg., Tex., Wash. [But see Number 10, footnote 4, p. 47.]
[30] Ariz., Calif., Idaho, La., Nev., N. Mex., Tex., Wash.

property while the spouses live together. Six [31] of the community property States give the wife control over her earnings, even as part of the communal estate.

Four States (Michigan, Nebraska, Oklahoma, Oregon), have adopted the community system within recent years, principally for the purpose of dividing the burden of taxation between husband and wife. These States permit the wife to control her personal earnings and any other community property to which she holds the record title. Other community property is under the husband's control.

In the 36 [32] States and the District of Columbia where the common-law background exists as distinguished from the civil-law tradition, the property accumulated during the marriage by the cooperative efforts of both husband and wife belongs to the husband and is under his control, except as the effect of this rule is overcome by private settlement. This is accomplished through voluntary agreement or other arrangement to protect the surviving spouse, such as joint ownership of lands, joint bank accounts, prenuptial agreements, and the like. But in the absence of a valid private adjustment of this sort, or a valid will, the law governs. However, in most of these States by express provision of law, and in others by interpretation, policy, and practice, the wife's earnings in outside employment are her separate property. The husband's earnings are primarily liable for support of his family, as those of the wife are not (nor any of her separate property) unless she voluntarily makes them so by her personal contract.

Wills.—Married women dispose of their separate property by will as freely as do married men. As to the communal property, only 2 [33] of the 12 community system States deny a wife full testamentary rights.

Inheritance Between Spouses.—A widow or surviving husband inherits similar portions from the deceased spouse in most of the States. In a few States, the advantage is sometimes with the wife, sometimes with the husband, according to circumstances incident to the case, such as the surviving number of children, election under the will of the deceased spouse, and the like.

Two States (Nevada and New Mexico) favor the husband over the wife in the division of community property after the death of one spouse.

Allowance During Estate Settlement.—Practically all the States require maintenance for the widow from the husband's estate during the period of its settlement. At least one-third of them provide support from the estate under administration for either spouse who survives.

Miscellaneous [34]

Prenuptial Debts.

Under the present married women's acts in most States, generally the husband is not liable for debts of the wife contracted before

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[31] Idaho, Mich., Nebr., Nev., Okla., Oreg.

[32] Ala., Ark., Colo., Conn., Del., Fla., Ga., Ill., Ind., Iowa, Kans., Ky., Maine, Md., Mass., Minn., Miss., Mo., Mont., N. H., N. J., N. Y., N. C., N. Dak., Ohio, Pa., R. I., S. C., S. Dak., Tenn., Utah, Vt., Va., W. Va., Wis., Wyo.

[33] Nev., N. Mex.

[34] Material submitted in these miscellaneous items is drawn from secondary sources, since the subjects are not included in the scope of the report for primary research.

marriage, though in some States he may be liable to the extent of the value of any property he has received from his wife.[35]

Responsibility for Crimes.

At common law a married woman is capable of and responsible for a crime committed by her, as if unmarried, except as to acts done in the presence of her husband. If she commits a criminal act in his presence, it is presumed that she did it under constraint by him, and she is therefore excused and he is presumably punishable, except in case of murder or treason. The presumption is a very slight one and may be rebutted by very slight circumstances. In view of a married woman's status at the present time, the presumption should not, and generally does not, exist.

In some jurisdictions the presumption of coercion is abolished by statute, and married women are made fully liable for their criminal acts. In others, they are declared incapable of committing crimes, except felonies, when acting under the command, coercion, or threat of their husbands.[36]

Responsibility for Torts.

Under modern statutes the husband is not liable, as a rule, for the premarital torts of his wife, that is, civil wrongs resulting from her willful act such as slander, or negligent act such as the reckless driving of an automobile. As to torts committed by a wife after marriage, the husband may be liable as at common law unless his liability has been expressly abolished by statute.

Authority of Husband Over Wife.

Under modern law in the United States of America the husband has no authority over the person of his wife apart from that he possesses as head of the family. It has long been established that the husband has no legal right to chastise his wife or restrain her person by confinement for the purpose of compelling her obedience to his wishes.[37]

DISCUSSION OF DISTINCTIONS

Distinctions or Discriminations?

Only a limited number of older statutes here and there among the States are obvious discriminations against women in the light of present-day thinking. Illustrating this point are the laws in 13 States [9 as of July 1, 1950] that bar women from jury service wholly on the basis of sex, and laws in 5 States that favor males over females when otherwise equally entitled for appointment as administrator of an estate. Actual discriminations against women in the law today doubtless reflect mass inertia in the gearing of law to social progress, rather than a deliberate perpetuation of prejudice against women as such.

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[35] 26 American Jurisprudence, p. 932, Husband and Wife, sec. 335.
[36] 14 American Jurisprudence, pp. 811–812, Criminal Law, sec. 62.
[37] 26 American Jurisprudence, p. 640, Husband and Wife, sec. 11.

On the other hand, simple distinctions between men and women are common to the laws of every age and nation. Legal provisions applicable wholly to one sex or the other appear in all systems of law, by reason of the fact that there are two sexes; consequently under given conditions, different needs must be served. For example, differing physical characteristics must be recognized in regulating the conduct and interests of men and women, such as acceptance by society of an earlier minimum age of consent to marriage among females in view of their generally earlier physical maturity in comparison with males. Certain distinctions in criminal law and in grounds for dissolution of marriage are based on physical and biological differences between men and women.

Economic expediency largely accounts for the greater degree of control given to the husband over property acquired during marriage by the cooperative efforts of himself, his wife, and their minor children. The grant to the husband of choice of domicile for his family is correlative with his legal responsibility for their support.

Statutes that provide for allowance of personal property or money from a man's estate for his widow and children while the estate is being settled are economic safeguards and not merely chivalrous or humanitarian overtures. Their purpose is to extend the husband's lifetime duty for family support to his property, thus preventing the family from becoming a public charge. As a rule, no such provision is made for the husband from the estate of a deceased wife, since he remains liable for family maintenance.

Therefore careful consideration of the social reasons which frequently justify distinctions between the sexes in law becomes essential, if wise and appropriate legislation is to be developed.

Part III

PRESENT LEGAL STATUS OF WOMEN

The Federal Government
Summary of State Laws, by Topic, All States Combined

Part III.—Present Legal Status of Women

THE FEDERAL GOVERNMENT

INDIVIDUAL RIGHTS

The National Government, in its regulation of individual rights, has to do with certain definite, delegated matters, and no other. It may not invade the powers that the States of the Union have reserved to themselves. This is a basic theory of government in the United States of America, for the most part put into practice; it has been set out in a long line of cases and is clearly restated in the following excerpt from a United States Supreme Court opinion:

> * * * Each State has all governmental powers save such as the people, by their constitution, have conferred upon the United States, denied to the States, or reserved to themselves. The Federal union is a government of delegated powers. It has only such as are expressly conferred upon it and such as are reasonably to be implied from those granted.[1]

In another case the Court observed:

> * * * Like the United States, although with more restriction and in less degree, a State may carry out a policy, even a policy with which we might disagree. [Cases cited.] It may make discriminations, if founded on distinctions that we cannot pronounce unreasonable and purely arbitrary, * * *. It may favor or discourage the liquor traffic, or trusts. The criminal law is a whole body of policy on which States may and do differ. * * * And if again it finds a ground of distinction in sex, that is not without precedent. It has been recognized with regard to hours of work. [Case cited.] It is recognized in the respective rights of husband and wife in land during life, in the inheritance after the death of the spouse. Often it is expressed in the time fixed for coming of age. If Montana deems it advisable to put a lighter burden upon women than upon men with regard to an employment that our people commonly regard as more appropriate for the former, the fourteenth amendment does not interfere by creating a fictitious equality where there is a real difference. The particular points at which that difference shall be emphasized by legislation are largely in the power of the State.[2]

That the judicial authority of a State of the Union is supreme as to the construction of legislation within that State is recognized by the United States Supreme Court in numerous instances. The following citations are representative:

> * * * no case [in Federal courts] yet has gone to the length of undertaking to correct the construction of State laws by State courts. The exclusive authority to enact those laws carries with it final authority to say what they mean. The construction of those laws by the Supreme Court of the State is as much the act of the State as the enactment of them by legislature.[3]

A later decision states:

> * * * This Court is without power to put a different construction upon the State enactment from that adopted by the highest court of the

[1] *United States* v. *Butler* (1936), 297 U. S. 1, 63; 56 S. Ct. 312; 102 A. L. R. 914.
[2] *Quong Wing* v. *Kirkendall* (1912), 223 U. S. 59, 62; 32 S. Ct. 192.
[3] *Jones* v. *Prairie Oil & Gas Co.* (1927), 273 U. S. 195, 199; 47 S. Ct. 338.

> State. * * * The meaning of the statute as fixed by its decision must be accepted here as if the meaning had been specifically expressed in the enactment. [Case cited.] Exclusive authority to enact carries with it final authority to say what the measure means.[4]

In the field of family law, the Court has pointed out that—

> * * * the whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States.[5]

The general situation is that—

> * * * Congress has full power to regulate marriage and divorce within Federal territories, and it may intrust the same to a territorial legislature; but the Federal Constitution confers no power whatever upon the Federal Government to regulate marriage or its dissolution in the States.[6]

In regard to political privileges, an outstanding authority on constitutional law has said:

> The requirement as to equal protection of the law does not operate to prevent the States from restricting the enjoyment of political privileges to such classes of their citizens as they may see fit.
>
> * * * * * * *
>
> It will have been seen that the requirement of equal protection of the law applies to all persons similarly situated or circumstanced. Hence, where there are rational grounds for so doing, persons or their properties may be grouped into classes to each of which specific legal rights or liabilities may be attached. This legislative discretionary right applies to the exercise of all the powers of the States—to their taxing and police powers as well as to their other powers.
>
> Thus, for example, the practice of certain professions may be limited to persons of the male sex, or to those of certain age, or to those possessing other qualifications that may reasonably be held to indicate a fitness for the profession.[7]

The same author, citing *Neal* v. *Delaware* (1880), 103 U. S. 370, and other cases, notes:

> * * * There thus exists the fact that the National Government though able to control its citizenship by naturalization is not able to confer the suffrage for the election even of its own officials; whereas the States may confer, and, indeed, in a number of instances have conferred, this suffrage upon persons not citizens of the United States.[8]

In this connection the highest State court of Kentucky observes:

> The nineteenth amendment, which was proclaimed on August 26, 1920, did not confer, nor purport to confer, the right of suffrage upon women, although that is a popular, but erroneous, conception. It only prohibits discrimination against them on account of their sex in the exercise of that right of citizenship.[9]

CITIZENSHIP AND NATURALIZATION

The Constitution of the United States declares that—

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.[10]

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[4] *Morehead* v. *New York ex rel. Tipaldo* (1936), 298 U. S. 587, 609; 56 S. Ct. 918.
[5] *Ohio ex rel. Popovici* v. *Agler* (1930), 280 U. S. 379, 383; 50 S. Ct. 154; 74 L. ed. 489; quoting and following *In re Burrus* (1889), 136 U. S. 586, 593.
[6] 9 Ruling Case Law, 1915, Divorce and Separation, sec. 5.
[7] Willoughby, W. W. The Constitutional Law of the United States, 2d ed. (1929), vol. 3, pp. 1933, 1937.
[8] Ibid., vol. 2, p. 629.
[9] *Prewitt* v. *Wilson* (1932), 242 Ky., 231, 233; 46 S. W. (2d) 90.
[10] Constitution of the United States of America, amendment XIV, sec. 1.

Interpretations.—Construing this amendment, adopted in 1868, the United States Supreme Court holds that it makes Federal citizenship paramount and dominant to State citizenship.[11]

Women are citizens.—Women have always been considered citizens the same as men, irrespective of the fourteenth amendment. Women are persons, and entitled as such to all the fundamental rights, privileges, and immunities which the Constitution safeguards to any citizen.[12]

The Federal Congress alone has the legislative power, under the Constitution, "to establish a uniform rule of naturalization."[13]

Adoption of the Nationality Code—1940.

In 1933 the President of the United States appointed a committee, composed of the Secretary of State, the Attorney General, and the Secretary of Labor, to review the nationality laws of the United States and codify them into one comprehensive nationality law for recommendation to the Congress. The Nationality Act, adopted September 30, 1940, embodies the unified code evolved from the labors of this committee. Enacted as Public 853 by the Seventy-sixth Congress, it was approved October 14, 1940, to become effective 90 days from that date. This Act with subsequent amendments, constitutes the statute law on nationality in the United States of America. (For text of Act and amendments, refer to United States Code, 1940, Title 8, and supplements. For substance relating to married women, see appendix C, "Nationality.")

Treaty Provisions.

On July 13, 1934, the United States of America officially adopted the Convention on the Nationality of Women, proposed in the Seventh International Conference of American States, at Montevideo, Uruguay.

By provisions of the treaty, the signatory powers agree that among them "There shall be no distinction based on sex as regards nationality, in their legislation or in their practice."[14] This agreement is now (1948) in effect among the governments of the United States of America, Brazil, Chile, Colombia, Cuba, Ecuador, Guatemala, Honduras, Mexico, and Panama. Nicaragua ratified the treaty on February 3, 1937, but has not made it effective by deposit with the Pan American Union, as required by the terms of the agreement.

Citizenship.

A person becomes a citizen of the United States, if subject to its jurisdiction, by birth or by naturalization.[15]

A Federal statute implementing the fourteenth amendment of the Federal Constitution, provides that all persons born in the United States and not subject to any foreign power are citizens of the United States.[16]

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[11] Selective Draft Law Cases (1918), 245 U. S. 366, 389; 38 S. Ct. 159.
[12] *Minor* v. *Happersett* (1875), 21 Wall. (88 U. S.) 162, 165 ff.
[13] Constitution of the United States of America, art. 1, sec. 8.
[14] U. S. Statutes at Large, vol. 49, part 2, p. 2957.
[15] Constitution of the United States of America, amendment XIV, sec. 1.
[16] Code of Laws of the United States, 1934, title 8, sec. 1.

The mother, equally with the father, if a citizen of the United States at the time of the birth of a child abroad, may transmit United State citizenship to the child.[17]

A woman citizen does not lose her own nationality upon her marriage to an alien. She may, however, voluntarily renounce citizenship before a prescribed court, or forfeit it by extended residence out of the country or by adopting voluntarily the nationality of her husband.[18]

For women citizens who lost their citizenship through marriage to certain types of aliens under former provisions of the law, repatriation through simplified procedure is available.[19]

Naturalization.

Citizenship of the United States may be conferred on an eligible alien, whether male or female, married or unmarried, upon full compliance with the laws governing naturalization proceedings. The law specifically provides that the right of any woman to become a naturalized citizen cannot be denied or abridged because of sex or marriage.[20]

An alien woman who marries a national of the United States does not automatically attain citizenship thereby, but must seek naturalization independently. An alien woman may become a citizen whether or not her alien husband becomes naturalized. In such cases, no declaration of intention is necessary, and the required residence period is 3 years instead of the usual 5 years.[21]

Admission of Alien Husbands or Wives.

At the present time, an alien husband of a citizen wife is admitted to the United States as a nonquota immigrant if the marriage occurred before January 1, 1948; otherwise he is classified as a quota immigrant.

On the other hand, since 1924, the alien wife of a citizen husband has been admitted as a nonquota immigrant without regard to the date of marriage.[22]

VOTING PRIVILEGE GUARANTEED BY THE CONSTITUTION

The nineteenth amendment to the Federal Constitution, adopted in 1920, prohibits discrimination because of sex in the granting of suffrage to citizens by any State.[23] Women, therefore, as well as men, are guaranteed the right of franchise, subject to the voting qualifications applied alike to all citizens by the laws of the several States, such as age, residence, and literacy requirements.

[17] U. S. Statutes at Large, vol. 54, pp. 1138–1140, 1145–1146.
[18] U. S. Statutes at Large, vol. 46, p. 1511.
[19] Idem, vol. 46, pp. 1511–1512; vol. 54, p. 1144.
[20] Code of Laws of United States, 1934, sec. 367.
[21] U. S. Statutes at Large, vol. 48, p. 797; vol. 54, p. 1144.
[22] United States Code, 1946, Supp. III, sec. 204 (a).
[23] Constitution of the United States of America, amendment XIX.

POSITIONS IN THE FEDERAL SERVICE

Generally speaking, both elective and appointive offices in the three branches of the Federal Government are open to women who can qualify for them. From 1933 through 1945 a woman served as head of the United States Department of Labor, on appointment by the President and confirmation by the United States Senate. Women now occupy posts in the Congress of the United States, the Government's foreign service, and Federal judgeships. They are appointed also to a considerable number of professional and technical positions.[24]

Employment in the Federal Classified Civil Service.

The majority of the permanent positions in the Federal service are classified; that is, positions, titles, and compensation have been allocated by law according to the nature of the duties to be performed. In such allocation the law enjoins the principle of "equal compensation for equal work irrespective of sex." [25] Qualified applicants for positions are obtained by the United States Civil Service Commission through standard examinations, which for the most part are open to both sexes on the same terms.

Appointing officers, when requesting from the Civil Service Commission a list of eligibles from which to select an appointee, may designate whether one sex or the other is preferred.

JURORS AND WITNESSES IN UNITED STATES COURTS

Jurors in Federal trial courts are selected or exempted in accordance with the provisions of State law for the highest court of law in the State where the court is sitting.[26]

Under the Revised Judicial Code of 1948 (Public Law 773, 80th Cong.) uniform qualifications govern the selection and exemption of Federal court jurors, except that a person is disqualified if incompetent by State law for jury duty in State courts. This results in disqualification of women as Federal jurors in the few States where they are incompetent as State jurors because of sex. Effort continues to have Congress amend the Revised Code so that juror qualifications will be in fact uniform for all Federal courts.

Witnesses.

The competency of a witness to testify in any *civil suit* in a Federal court is determined by Rule 43 (a) of Civil Procedure (Title 28, United States Code Annotated). This rule requires admission of all evidence which is admissible under United States statute law, or under rules of evidence previously applied by United States Courts in equity cases, or under the rules of evidence applied in the courts of general jurisdiction of the State in which the Federal court is held.

Hence, there is no one fixed standard governing the competency of husband or wife to testify for or against the other in civil actions.

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[24] For further details see Women's Bureau Bulletin No. 182, Employment of Women in the Federal Government, 1923 to 1939. 1941. Also the later Bulletin, No. 230, Parts I and II, Women in the Federal Service (1949).

[25] Code of Laws of the United States, 1934, title 5, sec. 664.

[26] Ibid., title 28, sec. 411.

The present broad rule is designed to admit all worthy evidence that can aid in a fair solution of the case.

In *criminal cases*, however, the standard is more definite. Rule 26 of Criminal Procedure (Title 18, United States Code Annotated, last volume), provides that "the admissibility of evidence and the competency * * * of witnesses shall be governed, except when an act of Congress or these rules otherwise provide, by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience."

Under this rule, generally, husband or wife may not testify for or against each other unless in exceptional cases as defined by Federal law or rules of court. Exceptions include criminal prosecutions under the Mann Act, bigamy cases, and cases arising out of personal violence by one spouse against the other. Some relaxation has been made by the courts of the strict common-law rule. In *Funk* v. *United States* (1933), 290 U. S. 371, 54 Sup. Ct. 212, the Supreme Court authorized a wife to testify *for* her husband. And under very exceptional circumstances, a Federal District Court considered that a wife should be allowed to testify *against* her husband to establish his felonious taking of her property, for without her testimony, the wrong doing of the husband could not have been established.[27]

But a Federal Circuit Court of Appeals (6th Circuit) reviewing the case of *Brunner* v. *United States* (168 Federal 2d, 281, 283—June 1948) refused to relax the general common-law rule, noting that the United States Supreme Court had not yet removed the incompetency of a wife as a witness in a criminal case *against* her husband, and that its policy in this respect was controlling.

Nor can a spouse generally be permitted to testify as to any statement or communication, deemed confidential at common law, made by either to the other during the marriage.[28]

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[27] *United States* v. *Graham* (Nov. 8, 1949), 87 Federal Supplement 237.
[28] Code of Laws of the United States, 1934, ttle 28, sec. 633.

SUMMARY OF STATE LAWS, BY TOPIC, ALL STATES COMBINED

General Statement

The following summary of findings from the study of the legal status of women in the United States of America made by the Women's Bureau, revised as of January 1, 1948, is an attempted grouping of States according to the tenor of their positive laws or declared policies with respect to women's status.

Law is not an exact science.[1] By its very nature it is subject to many exceptions and modifications in order that approximate justice may be administered in the maze of human relations. Obviously, in a field where variations are prevalent and classifications often delicately balanced, a statistical presentation of results of study must be only relative and indicative, rather than absolute and conclusive.

For example, such expressions as "about half the States" do thus and so, or "at least 15 States" have such-and-such a provision, are used in a number of instances, due to the difficulty in classifying with exactness the policies of some States on the topic under consideration.

The situation in the various States and the District of Columbia with regard to each particular topic studied by the Women's Bureau is given in the 49 separate abstracts on which this summary is based. These abstracts of current law should be used with the summary in the study of a particular topic. Data for Alaska, Hawaii, Puerto Rico, Virgin Islands, and the Canal Zone are given by topic and in summary form in a separate abstract.[2]

The common-law rule introducing each of the summary topics that follow is a general statement of the law that would be effective if present related statutes and States policies should be repealed or abrogated, without other legislation.

A series of consecutive key numbers, 1 to 32, introduces the topics. Respective numbers remain constant for their subjects throughout the summary and the separate State reports, simplifying references throughout the series.

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[1] *Rinehart* v. *Rinehart* (1938), 52 Wyo. 363; 75 Pac. (2d) 390.

[2] Women's Bureau Bull. 157 (Revised), The Legal Status of Women in the United States of America, January 1, 1948, in pamphlet form, from 157–1 (Alabama) to 157–49 (Wyoming), and 157–50 (Alaska, Hawaii, Puerto Rico, Virgin Islands, and Canal Zone) at 5 or 10 cents each, Superintendent of Documents, Washington, D. C.

Summary by Topic, All States

A.—CIVIL RIGHTS

I.—CONTRACTS AND PROPERTY

1. Age of Majority.

Common-Law Rule.

Twenty-one years for both sexes is the age at which infancy ceases and all disabilities of minority are removed. At that age a person becomes an adult citizen, capable at law of making valid contracts and managing his own property.

Present Status.

The common-law rule is in effect in 40 States; 21 of them apply it without legislative enactment, 19 have established it by statute.

A statutory rule fixing the ages of majority as 21 years for men and 18 years for women has been adopted in 9 States.[1]

A legal marriage confers majority for general private purposes on minors of both sexes in 5 States[2] and on female minors only in 7 States.[3] Such a marriage gives limited adult powers to all minors in 2 States[4] and to female minors only in at least 7 States.[5]

Seven States[6] permit a minor who has reached a specified age to be given adult powers by court decree under some circumstances. Three States[7] set no minimum age for the granting of such powers, the whole matter being left to the judgment of the court.

Exceptions for specific purposes are made by statute in a number of States, and have the effect of varying the age of majority according to the acts involved. For example, minors may be empowered to own and manage building and loan stock, open and control savings accounts, make valid labor contracts, or contract valid marriage settlements. The State of Georgia in 1945 adopted the minimum age of 18 years for both sexes for voting at any election by the people.

An important general exception is the age of consent to marriage adopted in the various States. This is discussed under Number 18, page 60.

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[1] Ark., Idaho, Ill., Mont., Nev., N. Dak., Okla., S. Dak., Utah.
[2] Fla., Iowa, Kans., La., Utah.
[3] Ala., Calif., Maine, Nebr., Oreg., Tex., Wash.
[4] Ariz., Okla.
[5] Ark., D. C., Ind., Ky., Md., Minn., N. Mex.
[6] Ala., Ark., Fla., La., Tenn., Tex., Wyo.
[7] Kans., Miss., Okla.

2. Contractual Powers of Minors.

Common-Law Rule.

To reduce hardships for both minors and creditors, the common law permits a minor to make valid contracts for necessaries, but his contracts are subject to careful scrutiny by the courts before he is compelled to fulfill them.

In general, all other contracts of a minor may be avoided by him.

As to transfer of property, the general rule is that though a minor may convey, the transaction is voidable by him usually at his majority or within a reasonable time afterward.

Present Status.

Contracts.

A minor is liable for the value of necessaries furnished him, but he must actually need them and be obliged to obtain them for himself. Generally, other contracts are voidable; but in the State of Washington a minor wife whose husband is adult is bound by her contracts, and in Indiana a minor husband or wife can make valid real estate contracts provided the adult spouse joins in the transaction and the proper court approves it.

Conveyance of Property.

In a majority of the States a conveyance of lands by a minor is voidable, as a rule. A legally married female minor may execute a valid conveyance of her lands in 8 States;[1] a legally married minor of either sex has this power in 4 States.[2] However, these exceptions permitted in the case of married minors are subject to certain protective restrictions. For example, a minimum age is established; the power is limited to a specified class of property; the transaction is made subject to court supervision; or the minor must be joined in the conveyance by parent, guardian, or adult husband.

In California, North Dakota, and South Dakota, a minor under 18 years of age is prohibited from making any contract relating to real property, or to personal property not in his possession and control.

In at least 13 States[3] the right of dower, or its statutory equivalent, may be released by a female minor. Six of these[4] have some protective restriction such as requiring joinder of a parent if the contract is prenuptial, or court authorization of the wife's joint conveyance with her husband after marriage, and 2[5] set 18 years as the minimum age at which dower may be released. In 3 States[6] a minor husband or wife may release his or her marital right in lands of the other spouse by joining him or her in the deed of conveyance.

(Most States have passed enabling legislation in the past few years to permit eligible minors of both sexes to share in benefits under the so-called GI Bill for land purchases and mortgages.)

Effect of Marriage on Guardianship of Minors.—At common law, marriage ends the guardianship of all minors as to their persons, and of female minors as to their estates, since at marriage a wife's property passes into her husband's control.

This rule continues as to guardianship of the person. But in general, under existing statutes, the estates of minor wives remain in the hands of their guardians. Exceptions to this rule have been indicated in the preceding paragraphs of this topic.

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[1] Ala., Calif., Del., Maine, N. Mex., Oreg., Tex., Wash.
[2] Ind., Kans., Okla., Utah.
[3] Ark., D. C., Ind., Ky., Md., Mass., Mich., Minn., N. Y., Oreg., Pa., S. C., Wis.
[4] Ark., Ky., Md., Mass., N. Y., Wis.
[5] D. C., Mich.
[6] N. H., N. C., Va.

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

Common-Law Rule.

In general, exemptions depend wholly on constitutional and statutory provisions that are contrary to the rules of the common law governing the relations between debtor and creditor.

Present Status.

The majority of the States grant exemptions of varied extent in personal and homestead property seizure and sale for the owner's debts.

Personal Property.

Personal property exemptions are granted alike to unmarried men and unmarried women in most States. A married person of either sex may become entitled to this protection allowed to the head of a family in practically all the States.

Both single and married persons may have exemption of wages, as allowed by statute, in at least 27 States,[1] though a number of these grant the privilege only to debtors with specified dependents. Wage exemption in Colorado apparently is limited to married persons.

Homestead.

In a great majority of the States a person who is "the head of a family" as defined by law may claim a homestead exemption. This privilege applies usually to the property owned and occupied by the debtor and his family as a dwelling. Statutory limits of area or value determine the extent of the exemption in each of the States granting the privilege.

As a rule the exemption does not apply to such debts as the purchase price of the property, improvements, or taxes.

Since the privilege is extended for the protection of a family and not an individual, only one representative of the family may claim it. Usually the husband declares the homestead; but if he fails or refuses to do so, in most States the wife is authorized to act.

Six States [2] have no specific provision for allowing a homestead exemption to anyone; 12 States [3] apparently do not extend the privilege to unmarried persons.

Some States allow an additional exemption of personal property to heads of families who do not own a homestead. Among this class of debtors in Ohio, an unmarried woman with specified dependents has the same exemption as a married person.

As a rule, the homestead exemption claimed by the head of a family continues after his death for the benefit of his family as against creditors. Twenty-two States [4] grant this protection to either spouse who survives; 20 States [5] allow it to a widow or toa widow and specified dependents. Seven States [6] make no such provision for either spouse.

Exempt Insurance.

In a majority of the States, all or a specified part of the proceeds of insurance taken out for the benefit of the wife on the life of her hus-

band, or, in some instances, on the life of a third person, is exempt to her from the claims of the estate or creditors of the insured. A similar provision for the benefit of the husband as to insurance on the life of the wife exists in several of these States.

[1] Ala., Calif., D. C., Fla., Ind., Iowa, La., Md., Minn., Mo., Mont., Nebr., Nev., N. J., N. Mex., N. Y., N. C., N. Dak., Okla., Oreg., Tenn., Tex., Utah, Vt., Va., W. Va., Wyo.
[2] Del., D. C., Ind., Md., Pa., R. I.
[3] Colo., Ga., Ill., Iowa, Ky., Maine, Mass., N. J., N. Mex., N. Y., Tenn., W. Va.
[4] Ariz., Calif., Colo., Conn., Idaho, Ill., Iowa, Kans., La., Minn., Mont., Nebr., N. H., N. Dak., Ohio, Okla., Oreg., S. Dak., Utah, Vt., Wash., Wyo.
[5] Ala., Ark., Fla., Ga., Ky., Maine, Mass., Mich., Miss., Mo., Nev., N. J., N. Mex., N. Y., N. C., S. C., Tenn., Tex., Va., Wis.
[6] Del., D. C., Ind., Md., Pa., R. I., W. Va.

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

Common-Law Rule.

Personal property in the wife's possession at the time of marriage becomes the property of her husband. As to real property, see Number 9.

Present Status.

In practically all the States, statutes are clear that a married woman retains the ownership of property belonging to her at the time of marriage. Though the statutes of 5 States [1] are not explicit on this point, other statutes or their interpretations indicate that during the marriage a husband has no interest in his wife's premarital property.

[1] Del., Ill., Ind., Ohio, Va.

5. Contractual Powers of Married Women.

Common-Law Rule.

By marriage the legal existence of the wife is merged in that of her husband. Because of this concept of merger, she incurs a general disability to act or contract as she could have done before marriage. In general her contracts are void; she cannot contract debts creating a personal liability against her; she has no power to appoint an agent or trustee, nor to give an effective power of attorney to convey her real estate; she cannot mortgage her real estate nor convey it by her deed.

She cannot make a valid transfer of personal property since it is subject to the husband's marital rights and she has no title to convey. She is unable to form a valid partnership with her husband or with others. Husband and wife are unable to contract with each other, to become surety for each other, or to convey directly to each other the legal title in lands. The wife may not become surety or guarantor for another. As a general rule, she may not sue or be sued alone.

The husband cannot make a valid gift of personal property to his wife, even of her own earnings, since under the rule of identity of persons all her personal property belongs to him and is subject to the claims of his creditors. In general, the wife's contractual disabilities are not removed by the insanity or absence of the husband.

A married woman may serve as administrator only if her husband consents or is joined with her in the trust. If she marries while acting as administrator or executor, her power is not extinguished, but the administration is cast upon the husband who acts in her right. She may act as executor with her husband's consent. In general, marriage does not disqualify a woman to act as guardian. She may be appointed and act as agent for a third person, but she does not thereby become subject to any personal liability.

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Present Status.

In every State a married woman has had restored to her by statute many of the contractual powers that she lost under common-law rule by marriage, particularly in regard to property set apart to her as her separate legal estate. However, it is necessary to remember that as a rule no powers are given to a married woman except those definitely expressed in the legislative acts that change her common-law status, or those declared by the courts to be implied in such acts.

The extent of a married woman's contractual powers, as to both property and personal obligations, is indicated broadly for the several States in the following paragraphs:

Separate Real Property

Full Control.

Generally, a married woman of legal age acting alone has been restored to powers of contract and conveyance when dealing with third persons in regard to her real estate, to the following extent:

Twenty-three States[1] give a wife full power to mortgage, convey, or contract concerning her separate real property. (However, see Number 3 as to conveyance of homestead property.)

Limited Control.

In 25 States[2] a married woman has restricted powers of conveyance of her separate real property; that is, under circumstances specified in the statutes of the several States, her husband must join in her mortgages and deeds. Six of these jurisdictions[3] declare that a wife may not convey her real property, unless her husband joins in the transaction, while the husband may convey his, subject to the wife's right if she outlives him. (See Number 8, Free-Trader powers.) Maine and Vermont require the husband's joinder in the wife's conveyance of a limited class of real property.

Conveyances Between Husband and Wife.

Twelve States[4] expressly permit direct conveyance of real property between spouses. Sixteen States[5] place certain restrictions on this class of transfers, usually in behalf of creditors or other interested third persons.

The remaining 21 States[6] apparently do not authorize such conveyances.

Special Form of Conveyance.

Texas requires a wife's deed to have her separate acknowledgment, and official certification to her statement in private conference apart from her husband that she is making the deed by her own wish and not under pressure from him.

Community real property is considered under Number 10.

Separate Personal Property

In 43 States a married woman appears to have full contractual powers with third persons regarding her separate personal property. Two States[7] restrict such contracts in acquiring, managing, or dis-

posing of this type of property; Alabama and Louisiana restrict such contracts of married women under 18 years of age.

Community personal property is considered under Number 10.

Contracts Between Husband and Wife.

Husband and wife may contract with each other freely regarding personal property in 8 States;[8] 23 States[9] permit contracts between spouses, with some limitations; Massachusetts and Vermont prohibit such contracts.

One State[10] forbids a wife's partnership contract with her husband.

GENERAL CONTRACTS

In a majority of the States a married woman of legal age may make contracts with third persons that do not concern her separate property or the common property of herself and husband. Three States[11] have limitations on this power. Idaho, Maine, and Michigan appear not to have specific statutes on the point.

Five States[12] do not permit a wife to assume liability as surety for her husband.

POWERS DURING HUSBAND'S ABSENCE OR INCAPACITY

In some States that restrict a wife's powers of contract or conveyance, provision has been made for her to act in a limited capacity, usually under direction of the probate court, in managing her affairs during her husband's long-continued absence or desertion or when he is insane. Such statutes have been noted in 11 States.[13]

CAPACITY TO SERVE IN POSITIONS OF TRUST

A woman, married or not, has full capacity to serve in trust relationships, such as executor of a will, administrator of an estate, guardian, or trustee, in at least 18 States by specific statutory provision.[14]

Five States[15] consider a woman eligible for such appointments, but a male person equally entitled to serve will be preferred. In 7 States[16] the marriage of a woman who is serving in a fiduciary capacity may affect her position.

Validity of contracts for personal services is considered under Number 6; contractual powers granted by free trader laws, under Number 8.

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[1] Ariz., Ark., Calif., Colo., Conn., D. C., Idaho, La., Mich., Miss., Mont., Nev., N. Mex., N. Y., N. Dak., Okla., S. C., S. Dak., Tenn., Utah, Wash., Wis., Wyo.
[2] Ala., Del., Fla., Ill., Ind., Iowa, Kans., Ky., Maine, Md., Mass., Minn., Mo., Nebr., N. H., N. J., N. C., Ohio, Oreg., Pa., R. I., Tex., Vt., Va., W. Va.
[3] Ala., Fla., Ind., N. C., Pa., Tex.
[4] Ark., Colo., Conn., Ill., Iowa, Mich., Nebr., N. J., N. Y., Oreg., Pa., Utah.
[5] Calif., Ga., Maine, Mass., Miss., Mont., Nev., N. Mex., N. C., N. Dak., Ohio, Okla., R. I., S. Dak., W. Va., Wyo.
[6] Ala., Ariz., Del., D. C., Fla., Idaho, Ind., Kans., Ky., La., Md., Minn., Mo., N. H., S. C., Tenn., Tex., Vt., Va., Wash., Wis.
[7] Ga., Tex.
[8] Conn., Fla., Idaho, Md., Mo., N. Y., N. Dak., S. C.
[9] Calif., Ga., Ill., Iowa, Ky., La., Maine, Minn., Miss., Mont., Nev., N. J., N. Mex., N. C., Ohio, Okla., Oreg., Pa., R. I., S. Dak., Utah, W. Va., Wyo.
[10] Maine.
[11] La., Nebr., Tex.
[12] Ala., Ga., Idaho, Ky., N. H.
[13] Ala., Del., Ill., Ind., Iowa, Md., Mass., N. J., N. C., Pa., Tex.
[14] Ark., Calif., Colo., Conn., Fla., Ga., Ky., La., Md., Mo., Mont., N. J., N. Dak., Ohio, R. I., Vt., W. Va., Wyo.
[15] Idaho, Nev., Okla., Oreg., S. Dak.
[16] Del., Ind., Nev., N. H., N. C., S. C., Utah.

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

Common-Law Rule.

One of the duties imposed on a wife by the marital relation is to render service to her husband in return for his legal obligation to support her. For this reason she cannot make a valid contract engaging her personal services to third persons except as agent of the husband. Her earnings from such contracts belong to him and are liable for his debts, and even if she outlives him her accumulated earnings belong to his estate. Though he may consent for her to engage her services to others and keep her earnings as her own property, such a gift is not valid against the rights and claims of his creditors.

When necessary to recover the wife's wages by court action, the husband sues for them.

Present Status.

The common-law rule as to the ownership of a wife's earnings from third persons for services outside of her household duties is not changed usually by general acts relating to married women, but only by an express statute that in definite terms gives the wife ownership, control, and disposition of such earnings and frees them from liability for the husband's debts. Accordingly, in each State the extent of a married woman's rights in regard to her earnings depends on the terms of the statutes defining those rights. The following major variations in State laws on this subject are noted:

(1) Twelve States [1] are under community-property law, by which the earnings of husband and wife, living together as such, usually become common property. As common property, the wife's earnings are under the husband's control, except in Idaho, Michigan, Nebraska, Oklahoma, Oregon, and under certain conditions in Nevada. The earnings of a wife living separate and apart from her husband are declared her separate property generally in the community-property States. (See Number 10, Community Property.)

(2) Twenty-four States [2] have explicit statutes that set apart to a wife as her separate property her earnings from third persons for personal services rendered outside of household duties. As separate property, the wife's earnings are not liable for her husband's debts.

(3) The other 13 States have statutes that emancipate married women in broad terms but show the following general aspects in regard to ownership of the wife's separate earnings:

(*a*) Two States [3] give the wife her earnings as separate property by judicial interpretation of the general statute.

(*b*) Four States [4] apparently consider the wife's earnings a part of her separate estate.

(*c*) Seven States [5] rely on presumptions as to ownership of such earnings in the absence of an agreement between husband and wife regarding the matter. Of these, Massachusetts, Montana, and New York will presume in the absence of contrary proof that the wife is entitled to her earnings. North Dakota and South Dakota appear to consider the husband owner of his wife's earnings when she is living with him, since her right to them as separate property is established by statute only when she is living separate from her husband.

Four [6] of the 7 States in this group specifically exclude a wife's earnings from liability for her husband's debts; Virginia requires the wife to prove her ownership in any contest between her husband's creditors and herself.

Right to Recover Earnings.

In general, if a wife is entitled to her personal earnings as her separate property, she has power to recover them in her own right. New York empowers a wife to sue for her earnings, though the husband may not have released his claim to them. In States where the husband manages his wife's earnings as part of the community property, he sues alone or joins his wife in the suit to recover them. See Number 10.

Compensation from Husband for Services.

Three States [7] provide that a wife may recover from her husband for her services rendered to him beyond the scope of family and household duties, when a definite agreement or intention between them can be proved. At least 13 States [8] hold contracts or agreements of this nature unenforceable, as at common law. Presumably the remaining States also follow the common law.

[1] Ariz., Calif., Idaho, La., Mich., Nebr., Nev., N. Mex., Okla., Oreg., Tex., Wash.
[2] Ala., Ark., Colo., Conn., D. C., Fla., Ga., Ill., Ind., Iowa, Kans., Maine, Minn., Mo., N. H., N. J., N. C., Pa., R. I., S. C., Utah, W. Va., Wis., Wyo.
[3] Ky., Ohio.
[4] Del., Md., Miss., Tenn.
[5] Mass., Mont., N. Y., N. Dak., S. Dak., Vt., Va.
[6] Mont., N. Dak., S. Dak., Vt.
[7] Calif., Iowa, N. C.
[8] Fla., Ill., Ind., Maine, Mich., Miss., Mont., N. H., N. J., N. Y., Pa., Vt., Wis.

7. Liability of Married Woman for Family Necessaries.

Common-Law Rule.

No legal obligation rests on the wife to support the husband. In general, necessaries bought by her are chargeable to him. It is the duty of a husband to support and maintain his wife and family.

Present Status.

In the 12 community-property States [1] the common property of husband and wife is liable for debts incurred against it for family necessaries, but this rule does not relieve the husband of his liability for support of his family.

Generally, in the remaining States wherever a married woman is able to make a valid contract in her own right she may purchase necessaries for herself and family on her own credit and make herself liable for the account, if she chooses to do so; but the duty of family support still rests primarily on the husband. His legal obligation in this respect has not been changed by the terms of the acts enlarging contractual powers of a wife, even in the 21 States [2] that make contracts for family necessaries a joint obligation against the property of husband and wife or a separate liability against the property of either of them.

Four of the States [3] that impose joint liability for family support on the property of husband and wife provide that if a wife is compelled to pay the debt she is entitled to a refund from her husband's property when he acquires any.

In 6 States [4] it is provided that when a husband has no separate property, and because of infirmity cannot support himself, the wife must support him out of her separate property. Under the same conditions, and if there is no community property, 5 States [5] require the wife to apply her separate estate to her husband's support.

[1] Ariz., Calif., Idaho, La., Mich., Nebr., Nev., N. Mex., Okla., Oreg., Tex., Wash.
[2] Ariz., Ark., Calif., Colo., Conn., Idaho, Ill., Iowa, La., Mass., Minn., Mo., Mont., N. Dak., Oreg., Pa., S. Dak., Utah, Wash., W. Va., Wyo.
[3] Conn., Idaho, Minn., W. Va.
[4] Mont., N. Dak., Ohio, Okla., S. Dak., Wis.
[5] Calif., Idaho, Nev., N. Mex., Oreg.

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

Common-Law Rule.

Under the common-law rules that a married woman's contracts are void and that her earnings are the property of her husband, she is unable to engage in trade or business in her own name for her personal profit.

Present Status.

In most of the States, by virtue of the married women's acts, a wife is enabled to engage in an independent business, employing her own funds and acting on her own liability, without interference from her husband or others claiming through him.

Five States [1] have the so-called free-dealer or sole-trader statutes that require some formal procedure to empower a married woman to engage in business on her own account. In Texas the husband must join in the wife's proceedings to establish her status as a free trader. In California and Nevada objections from the husband's creditors may defeat the wife's petition.

In Georgia and Michigan the husband's consent is necessary if the wife would enjoy in her own right the earnings from her business.

Eight States [2] have statutes that require a wife to place on public record a list of her separate personal property in order that her rights of ownership may be protected if the property is seized by her husband's creditors on the assumption that it is his property.

Contractual Powers Under Sole-Trader Laws.

In Florida the sole-trader statute enables a wife to control her separate property, contract freely, sue and be sued alone, and assume full liability for her acts and contracts. (Apparently the sole-trader law is retained to enable married women in business to transfer real property readily without the husband's signature, as required by the 1943 Woman's Emancipation Act). Pennsylvania statutes confer sole-trader powers on a wife as to her separate property under certain circumstances, as when her husband has not supported her. The effect of the statute is to cut off any right of the husband to his wife's property. California, Nevada, and Texas appear to confer sole-trader powers for business purposes only; Nevada provides that if a husband manages or superintends any branch of the business the sole-trader law no longer applies.

[1] Calif., Fla., Nev., Pa., Tex.
[2] Ark., Calif., Idaho, Mass., Mont., Nev., Okla., S. Dak.

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

Common-Law Rule.

A wife has no *separate estate* as such. She has what has been termed her *general legal estate*, that is, the legal estate which she holds subject to the interest of the husband arising from the marriage.

During the marriage, the husband has a freehold estate in all lands owned by the wife. The freehold gives him right of possession and control of his wife's lands and ownership of all the rents and profits. He may convey his freehold interest or subject it to payment of his debts. The freehold differs from curtesy in that it is enjoyed by the husband during the life of the wife, in her right, and ends with her death, while curtesy is enjoyed in possession only after the death of the wife and, like dower, is held by right of the marriage.

All personal property actually in the wife's possession at marriage, or received by her during marriage, vests absolutely in the husband. He may dispose of it in her lifetime without her consent; he may give it to whom he chooses by his will; or if he dies intestate it passes to his personal representatives, even though his wife survives him.

As to the wife's *choses in action*, such as debts due her, stocks and bonds, certificates of deposit, and claims for damages, the husband has the right and power to reduce them to his possession, receiving them as his own.

Such part of the wife's personal property as the husband reduces to his possession becomes liable for his debts.

The wife's *paraphernalia* consist of her wearing apparel and personal ornaments such as jewels. During the marriage these are the property of the husband, may be disposed of by him, and are subject to his debts. At the husband's death, however, the wife is entitled to any such property not claimed by the husband's creditors.

Conveyance or devise of property to husband and wife by deed or other instrument creates an *estate by the entirety*. This estate exists only between husband and wife, arising from the legal theory of unity of persons by marriage. The spouses take the property as one person and have but one title, each owning the whole. Neither acting alone can convey the property to bind the other, but the joint act of both owners is required to mortgage or convey the title to the whole property. During the marriage the husband has possession and control of the property and is entitled to its income. When one spouse dies, the estate continues in the survivor, and is not subject to laws of inheritance.

Present Status.

In most of the States a married woman possesses and enjoys her separate property during marriage as free from any personal right of the husband to take or control it as if he were a stranger to her. The 48 States and the District of Columbia grant to a wife by statute the right to acquire property which she may hold as her separate estate.

Separate Property Defined.

Definitions of this separate estate vary, but generally the term includes the property a woman owns at the time of her marriage and that which she acquires during marriage by gift, will, or inheritance. Many States add the property acquired by the usual means through which any person legally acquires property, including earnings from labor or business. In 6 States[1] the wife's separate estate does not include property of specified kinds given to her by her husband, the

apparent object of the exclusion being to prevent fraud against the husband's creditors. Under present married women's acts, property that by common law became the wife's paraphernalia is made her separate property.

In practically all States a wife is given management and control of her separate property.

Litigation.

Practically all the States recognize that a married woman's right of absolute ownership in her separate property includes her power to sue and be sued concerning it without requiring that her husband be made a party to the suit. An exception is Texas, which limits the wife's power to sue alone regarding her separate estate; but the husband's authorization to sue for or with his wife does not give him any right of ownership in the property.

A married woman may permit her husband to use and control her property or the income from it, if she chooses. However, in the absence of a statute authorizing her to recover her property or sue for an accounting of rents and profits within a reasonable time, New York State considers such property a gift from the wife to him, and liable for his debts. Mississippi gives the wife a legal remedy against her husband if he appropriates to his own use the income or profits from her separate property without her consent; and moreover, in the absence of a legal agreement between the spouses, any property of the wife used by the husband in his business is considered in law to belong to her against the claims of third persons, until such persons are able to prove otherwise.

Liability for Debts.

Generally, neither the separate property of a married woman nor its income or profits becomes subject to the husband's liabilities. However, 8 States [2] require a wife to place on public record an inventory of her personal property in order to protect her rights if it is seized by her husband's creditors. Several States make the wife's property liable for family necessaries under specified conditions. (See Number 7.) As a rule, neither spouse is liable for debts incurred by the other before marriage.

A wife's power to dispose of her separate property by conveyance is considered under Number 5, and by will under Number 14. The rights of the husband in the wife's property if she dies without a valid will are shown under Number 15.

[1] Colo., Kans., Maine, Nebr., N. H., Vt.
[2] Ark., Calif., Idaho, Mass., Mont., Nev., Okla., S. Dak.

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

Common-Law Rule.

The proceeds of the industry and talent of husband and wife during the marriage belong to the husband.[1] Though the husband receives the wife's property to assist him in his responsibility for family support, the wife acquires no corresponding right in the property of the husband. She has no right during the marriage to his personal property. Unless proved otherwise, the household goods belong to him while the

spouses are living together. He may dispose of his property without her consent. He may convey his real estate without her signature, but subject to her dower right after his death.

Present Status.

In a majority of the States, as shown under Number 6, positive statutes or judicial interpretations set apart as a wife's separate property her earnings from work done for others than her husband.

Other fruits of the wife's effort and talent belong to the husband as the head of the family, unless by statutory provision or by agreement between the spouses a different disposition is made of the property acquired from this source.

During marriage restraints are imposed on the disposition of certain property in which husband and wife have a common interest. For example, a number of States provide that a valid assignment of the wages of the husband can be made only if both husband and wife join in the transaction; in some States this is true of an assignment by either spouse. Homestead property as a rule cannot be mortgaged or conveyed unless both spouses join in the instrument of conveyance.

Estates by the Entirety.—This form of joint ownership exists only between husband and wife. At common law, it is the property right of husband and wife in land deeded or willed to them in that relationship, that is, as one person. During marriage, the husband has exclusive right to the control of the property and any income from it. But neither spouse can dispose of it without joinder of the other in the transaction. Four States [2] retain the common-law form of this estate.

A number of jurisdictions have modified the common-law in this respect so that husband and wife may own both land and personal property as an *estate by the entirety*, so-called, but in effect their rights are those of joint tenants, that is, each spouse has joint control, use, and benefit during marriage, with full right of ownership in the survivor on the death of either.

Other States have abolished this form of ownership.

Community Property.

Under the community system of marital property operative in 12 States,[3] [4] the legal ownership generally is divided equally as to husband and wife when the marriage is dissolved by death or by law. Control of the property during the marriage is given for the most part to the husband as manager of the community estate; disposition of it is largely in his hands, except as to real property, which usually is restricted to the extent that the wife must join in conveying title.

Ownership.—Ten [5] of the 12 community-property States recognize a right in each spouse to one-half the common property at the death of the other, and the right of each spouse to dispose of one-half the property by will. Nevada and New Mexico have provisions that favor the husband when he is the survivor, except under unusual conditions; they also favor him as to testamentary power over the common property.

Control and Disposition.—The general rule among the community States is that the husband is the head or master of the community and the duty is imposed on him to manage the property for the benefit of

his wife and family. Usually, as long as the husband is capable of managing the community the wife has no power of control over it, and acting alone, cannot contract debts chargeable against it. However, in California the wife is given some restraining power over the husband's disposition of household goods and family clothing. In 6 of the community-property States [6] both spouses join in the disposition of community real property. In Idaho and Nevada a wife may control her personal earnings and the income from her separate property, though these belong to the common fund.

Michigan, Nebraska, Oklahoma, and Oregon,[4] which adopted the community system within recent years, permit the wife to control her personal earnings and any other community property to which she holds the record title. Other community property is under the husband's control.

Comment.

At the present time the common-law reason for giving the husband exclusive ownership of marital property is nullified in the numerous instances where wives are gainfully employed and contribute substantially to family support as well as to acquisition of a family backlog, such as purchase of a home or in some other form of savings. Many husbands and wives resolve the common-law rule as between themselves, and settle their property rights to their mutual satisfaction. But where no satisfactory adjustment has been provided for, the statutory inheritance rights between spouses, particularly in real property, become important.

Marriage settlements, also called antenuptial agreements, that dispose of property rights between the parties to an intended marriage, are favored by law, tending as they do to reduce litigation over property after marriage.

As a rule, in the common-law States, when a marriage is dissolved by divorce a fair division of the marital property is attempted by the court, based on the circumstances surrounding the particular case. The trial court considers, for example, the contribution in means or energy of each spouse to the accumulation of the estate; the extent to which one or both failed in marital obligations; or the respective responsibility for support of children of the marriage.

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[1] Schouler, James. Marriage, Divorce, Separation and Domestic Relations. 6th ed. (1921), vol. 1, sec. 156, p. 177.
[2] D. C., Mass., Mich., N. C.
[3] Ariz., Calif., Idaho, La., Mich., Nebr., Nev., N. Mex., Okla., Oreg., Tex., Wash.
[4] Community property laws adopted for tax reduction purposes in Michigan, Nebraska, Oklahoma, and Oregon prior to Jan. 1, 1948, have been repealed since passage of the 1948 Federal Revenue Act permitting married persons to divide the tax burden on family income.
[5] Ariz., Calif., Idaho, La., Mich., Nebr., Okla., Oreg., Tex., Wash.
[6] Ariz., Calif., Idaho, N. Mex., Oreg., Wash.

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

Common-Law Rule.

The husband alone has right of recovery for injury to the wife by the negligence of another—for the resulting loss of her earning power and for loss of his wife's society, cooperation, and assistance in every conjugal relation, included in the term "consortium."

For an injury to the husband caused by another person's negligence, the wife has no right of action for damages, and in general cannot recover for loss of his ability to support her, for loss of his wages, services, or consortium, nor for her services in nursing him.

The husband sues alone for damages to, or loss of, the wife's personal property, when such claims arise during the marriage. For mere recovery of damages to her real property, he may sue in his own name or both spouses may join in the action.

Husband and wife must join in a suit on actionable words of slander or libel against the wife, since the reputation of the wife is not her separate property but the property of the husband.

The husband may sue for damages from a person who has enticed away his wife or alienated her affections. Authorities are divided as to the wife's right where the husband has been enticed away or his affections alienated. According to some, she has no such right; according to others, she may sue in her own name without the joinder of her husband.

Present Status.

Injuries to Person.

In most jurisdictions damages recovered for physical and mental suffering resulting to a married woman from personal injuries because of another's negligent or willful act belong to her as part of her separate estate. In 4 States[1] the wife's right in this respect is not clear. In 7 States[2] damages from personal injury to either spouse while living together become community property.

Damages for loss of the wife's services, or for impaired working capacity, caused by personal injuries, belong usually to the husband if the wife has been performing only domestic duties. But the tendency is to allow damages of this character to her also if she has been employed by a third person or engaged in an independent business, in those States which by positive statute authorize a married woman to earn money for her separate account. See Numbers 6 and 8.

Injuries to Separate Property.

Damages recovered for willful or negligent injury to the statutory separate property of a married woman appear to belong to her in all States, by right of her ownership in the property, and from authorization to a wife to sue in her own right concerning her separate property.

Injuries to Character and Reputation.

In 16 States,[3] by positive statute, damages recovered for injury to a wife's character or reputation belong to her separate estate. In the remaining States the wife's right in such suits is not clear. A general enabling statute, giving a married woman the right to sue alone regarding her separate property, may not include an action by her for injuries to her character or reputation.

Alienation of Affection.

Generally, under the married women's acts of the various States, a wife is entitled to sue to recover damages from a person who has enticed her husband from her or willfully intruded upon the marriage relation and alienated her husband's affections, thus allowing her the same redress which the husband has by common law. However,

within recent years a number of States have adopted legislation abolishing the right of any person to sue in damages for alienation of affections.

Loss of Consortium.

Consortium, as used here, refers to the exclusive right of each spouse to the conjugal society and assistance of the other; it includes those duties and obligations which by marriage both husband and wife take upon themselves toward each other in sickness and in health.[4]

The right of recovery for loss of consortium as an element of damage has been granted to a wife in at least 11 States [5] and specifically refused to her in at least 5 States.[6] Neither husband nor wife may sue for damages on this ground in Louisiana and Michigan. The remaining States presumably follow the common law on the subject.

It should be noted that, generally, the wife has been granted the right to sue in cases where the loss of consortium was caused by the willful, malicious interference of a third person between herself and her husband, but that she has been refused the right usually in cases founded on negligence of a third person resulting in physical injury to her husband.

Some States consider the loss of consortium to the wife as the gist of an action for alienation of the husband's affections. A representative opinion, stating this doctrine for the State of Wyoming, says:

> * * * the gist of the action is the loss of consortium by the plaintiff. Such a loss as it concerns the wife involves both the personal society, affection, and companionship of the husband for herself and their children and the correlative financial right to be maintained and supported * * *.[7]

South Dakota holds that under present-day common law in that State a wife has the right to sue for damages, including loss of consortium, against one who sold opium to her husband in violation of statute and against her protest, causing the husband's illness and death.[8]

The prevailing view among the States recognizing the wife's right to bring an action of this character is that "husband and wife are entitled to the affection, society, cooperation, and aid of each other in every conjugal relation, and either may maintain an action for damages against anyone who wrongfully and maliciously interferes with the marital relationship, and thereby deprives one of the society, affection, and consortium of the other * * *."[9]

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[1] Fla., N. H., Ohio, Oreg.
[2] Ariz., Calif., Idaho, Nev., N. Mex., Tex., Wash.
[3] Ala., Ark., Colo., Ind., Iowa, La., Md., Mont., N. H., N. J., N. Y., Okla., S. C., S. Dak., Wis., Wyo.
[4] *Kelly* v. *Railroad Co.* (1897), 168 Mass. 308; 46 N. E. 1063; 38 L. R. A. 631.
[5] Ala., Del., Ga., Idaho, Maine, Mass., Nebr., Oreg., S. Dak., Wis., Wyo.
[6] Ill., Md., Miss., Mo., N. Y.
[7] *Worth* v. *Worth* (1937), 51 Wyo. 488, 506; 68 Pac. (2d), 881.
[8] *Moberg* v. *Scott* (1917), 38 S. Dak. 422; 161 N. W. 998; L. R. A. 1917D 732.
[9] 13 Ruling Case Law, sec. 494, p. 1445.

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.

Common-Law Rule.

Because of the legal fiction that husband and wife are one person, suits between them during marriage have not been allowed in a court of law. Hence the rule that neither spouse can sue the other for negligent or wrongful injury to person or property.

Present Status.

A majority of the States hold to the common-law rule and do not allow either spouse to sue the other at law for willful or negligent wrongs resulting in injury to person or property. "The law still presumes that the spouses live together, and that their interests are common and identical." [1]

However, suits for personal torts between husband and wife have been upheld in 11 States [2] and suits for injuries to property of one spouse by the other in at least 10 States.[3]

Comment.

One modern view is that suits of this character foster family dissension and disunion. An opposing view is that a spouse should not be immune because of the marital relation from making amends for injuries to the other.

[1] 26 American Jurisprudence, p. 633, Husband and Wife, sec. 3.
[2] Ala., Ark., Colo., Conn., N. H., N. Y., N. C., N. Dak., Okla., S. C., Wis.
[3] Ariz., Ark., Calif., Conn., Ill., Md., N. Y., N. C., Oreg., Utah.

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

Common-Law Rule.

Broadly speaking, husband and wife are incompetent as witnesses for or against each other in either civil or criminal proceedings, but the rule of exclusion is subject to certain exceptions or modifications; for example, in prosecution for offenses by one against the other.

Present Status.

Generally, the same rules of evidence that determine the competence of a husband as a witness for or against his wife also determine the competence of a wife as a witness for or against her husband. An exception as to the husband is Indiana's provision that he, but not his wife, may testify in a suit for her seduction. Exceptions noted as to a wife are that in at least 8 States [1] she is declared competent to testify against her husband in a prosecution under desertion and nonsupport statutes; in Georgia, North Carolina and Oklahoma in a prosecution of her husband for physical violence to her; in New Jersey in a criminal prosecution against the husband if she offers to testify; and in Vermont in a suit by a husband against a bank concerning his wife's separate deposits for her credit.

Sixteen States [2] permit husband and wife to testify for or against each other generally, subject only to restraint against disclosing privileged communications.

Privileged or Confidential Communications.

Generally, at common law and under the statutes, confidences between husband and wife, considered in law as given solely because of the marriage relation, may not be required from, or given by, either spouse as testimony in civil or criminal actions. This rule is not automatically changed by statutes that allow husband and wife to testify for or against each other, or that otherwise remove common-law disqualifications formerly existing because of the marriage relation. But certain exceptions to the rule, or modifications of it, are rather generally recognized. For example, a confidential communication between husband and wife may be disclosed in testimony, if both spouses consent; or consent may not be required if the privileged information is necessary evidence not otherwise obtainable, as in a criminal prosecution at the instance of one spouse against the other, or in abandonment or desertion cases.

Exceptions and modifications regarding testimony of husband and wife in States not specifically mentioned in this summary section vary to such an extent that the statutes and court rules governing such testimony in the individual jurisdictions should be consulted for details.

Comment.

There is a growing tendency to regard husband and wife as individuals in order to obtain essential evidence in either civil or criminal cases. This is true particularly in actions between spouses, and in cases that involve failure in marital duty, violation of marital rights, or prosecutions for criminal violence and abuse inflicted by one spouse on the other or on their minor children. In cases involving agency of one for the other, some States consider husband and wife competent witnesses for or against each other.

A representative expression of the modern idea of testimony from husband and wife regarding property interests of either appears in an Arkansas opinion,[3] in which the State Supreme Court said that, in view of the enlarged rights of married women under statutes giving a wife power to make separate contracts and deal with property as if single, married persons are considered not as constantly partaking of the confidence of each other but rather as persons having adverse interests to maintain, or else that they deal with respect to the property of each other in the relation of principal and agent.

See also "Witnesses," in Federal section, page 33 of this report.

[1] Ala., Colo., Conn., Ga., Mich., Nebr., N. Mex., N. C.
[2] Ala., Del., D. C., Fla., Ill., Ind., Ky., La., Maine, Md., N. H., N. Y., S. C., Tenn., Va., Wis.
[3] *Fletcher* v. *Dunn* (1934), 188 Ark. 734, 737; 67 S. W. (2d) 579.

14. Disposition of Separate Property[1] by Will—Extent of Married Woman's Right.

Common-Law Rule.

In the United States the right to make a will depends on statute and not on common law as to real property, and in most jurisdictions as to personal property. Under the older general statutes giving power to will property, a married woman as a rule could not dispose of real

estate by will. With her husband's consent she could make a valid will disposing of any personal property that he had not taken into his possession.

Present Status.

In each of the 48 States and the District of Columbia a married woman otherwise competent may make a valid will to dispose of her separate real and personal property.

A person must be of legal age to make a valid will. For the most part, the legal age for testamentary purposes is the same for men and women, but some exceptions are noted: Missouri requires a woman to be 21 years of age to make a valid will, though a man can will personal property at 18 years; Maine allows a married woman or widow of any age to will real and personal property; Wisconsin permits a married woman at 18 years of age to dispose of her property by will, but other persons must be 21 to do so. South Carolina permits males at 14 and females at 12 years of age to dispose of personal property by will, under the common-law rule as to age.

Texas provides that a single person must be 21 to dispose of property by will, though a person who is legally married has full testamentary capacity.

Comment.

At common law the will of a man is not revoked when he marries unless a child is born of the marriage, but the will of a woman is revoked by the mere fact of marriage. This rule is in effect in a few States at the present time. However, the current trend under modern statutes emancipating married women is to modify the rule so that "a woman's will is not, any more than a man's will, revoked by subsequent marriage alone." [2]

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

[2] *Naab* v. *Smith* (1940), 55 Wyo. 181; 97 Pac. (2d) 677.

15. Estate of Deceased Husband or Wife—Share of Surviving Spouse.[1]

Common-Law Rule.

REAL PROPERTY

A surviving husband or wife does not take an absolute inheritance in the lands of a deceased spouse.

Dower.—The widow's dower is a right to have, for the remainder of her life, the use of or income from one-third of the lands belonging to her husband during the marriage. The birth of a child is not necessary to establish dower, but the marriage must be valid.

In general, dower is a claim superior to any liens or mortgages against the land in which the widow did not join, and is not affected by unsecured debts of the husband. It cannot be defeated by the husband's will. However, the wife may relinquish it by voluntary act, as by a prenuptial arrangement called a *jointure*, or by her conveyance with the husband to a third person during marriage. The legal title to the property passes to the husband's heirs at his death, but they do not enjoy its use while the dower right exists.

Courtesy.—The husband is entitled to an estate by courtesy at the death of his wife, if a child who could inherit from the mother is born following a valid marriage.

This courtesy estate is the right of the husband to possess and use for the remainder of his life all the lands owned by his wife during the marriage in which he has not released his right.

The freehold estate of the husband in the lands of his wife during the marriage is discussed under Number 9.

PERSONAL PROPERTY

A widow is entitled to one-third of her husband's personal property after debts are paid, when there are children, or to one-half if there are no children.

A surviving husband administers his wife's personal property, if there is any which he did not take into his possession during the marriage. After payment of the wife's debts, he is entitled to the surplus estate.

Present Status.

The general rules of inheritance adopted in most States come from the civil law, under which males and females in the same degree of relationship to a deceased person share alike in his estate if he dies without a will.

REAL PROPERTY

Absolute Inheritance.

In each of the 49 jurisdictions surveyed it is possible for the surviving husband or wife to share by absolute inheritance in the lands of a deceased spouse. However, this right of husband or widow to inherit does not arise in 9 States [2] unless there is no descendant of the deceased spouse, nor in 10 States [3] unless there is no descendant or other relative of the deceased spouse capable of inheritance under the statute.

Rights of Inheritance With Respect to Other Heirs.

The inheritance rights of a surviving husband or wife with regard to other heirs of a deceased spouse are indicated broadly as follows:

I. When the deceased person leaves descendants:

A surviving husband or wife has an absolute share in the lands of the other in 33 States.[4]

II. When the deceased person leaves no descendants:

1. A surviving spouse inherits the entire estate in lands in 11 States.[5]

2. A surviving spouse inherits the entire estate in lands when the estate does not exceed a value set by statute [6] but must share property in excess of the limited value with decedent's parents in 4 States,[7] or must share it with parents and other blood relatives as specified by statute in 11 States.[8]

3. A surviving spouse shares in real property, regardless of value, with decedent's parents in 4 States,[9] and with decedent's parents and other blood relatives, as specified by statute, in 13 States.[10]

4. A surviving spouse inherits all the real property if decedent leaves no parent in 5 States.[11]

5. A surviving spouse inherits all the real property if decedent leaves no parent or other blood relative appointed by statute to inherit in 34 States.[12]

Life Interests.

A widow may have a life interest in part only of her husband's lands in 17 States,[13] particulars varying according to statute.

A surviving husband may have a life interest in all the lands of his wife, in 8 States,[14] or in part of her lands in Arkansas and under certain circumstances in New Hampshire.

The surviving spouse may take a life interest in all the lands of the deceased in 3 States,[15] or in part only in 15 States.[16]

Protection Against Sole Conveyance.

In 22 States [17] the interest to which each spouse may be entitled in the other's separate property is protected against transfer by the sole conveyance or deed of the other; in 10 States [18] the wife's dower or statutory right is given this protection.

PERSONAL PROPERTY

Absolute Inheritance.

In general, after all debts of the estate are paid the widow or surviving husband may have a right of absolute inheritance in the personal property of a married person who dies without disposing of it by will.

Wife and husband inherit under similar provisions in 43 of the 49 jurisdictions studied. In the 6 States that distinguish between the spouses, Alabama gives the husband the advantage under some circumstances, while under others the spouses have the same rights; Alabama, Florida, Georgia, Indiana, Michigan, and Wisconsin give the wife the advantage in some respects.

Rights of Inheritance With Respect to Other Heirs.

In relation to other heirs of a deceased married person, a surviving husband or wife inherits from the net personal property as follows:

I. When there are descendants:

In all States but Louisiana and Vermont the surviving spouse is entitled by statute to an absolute share in the personal estate of the decedent.

II. When there are no descendants:

1. A surviving spouse receives the entire personal estate, in 20 States.[19]

2. A surviving spouse receives all the personal estate within a value set by statute [6] but must share the estate in excess of that value with decedent's parents in 4 States,[7] or must share it with parents and other blood relatives as specified by statute in 12 States.[20]

In Michigan a widow takes all the personal estate up to $3,000, sharing any balance with specified kindred of decedent; a husband shares with kindred, regardless of amount.

3. A surviving spouse shares regardless of estate value with decedent's parents in 3 States,[21] and with the parents and other blood relatives as specified by statute in 11 States.[22]

4. A surviving spouse inherits all the personal property if decedent leaves no parent, in 4 States.[23]

5. A surviving spouse inherits all the personal property if decedent leaves no parent or other blood relative appointed by statute to inherit, in 25 States.[24]

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Life Interests.

A life use in a portion of the personal property is available to the surviving spouse in Connecticut as an alternate provision to the terms of a decedent's will. In Louisiana a life use may be given to a surviving spouse under some conditions, and to a widow who is in "necessitous circumstances."

Comparison of Portions Provided for Widow or Surviving Husband.

As to the portion which may be inherited in the real property of a deceased spouse, major provisions, on the whole, are alike for a wife and husband. The principal exceptions noted are as follows:

In Arkansas a wife may take statutory dower by absolute title, but a husband takes only a life interest under similar conditions. In Florida, under some circumstances, a wife may elect to take her dower, which is a statutory absolute share; a husband has no such right. In Georgia, if there are more than 4 children a widow takes one-fifth part regardless of the number of children, but a surviving husband takes only a child's part. In Indiana a widow's statutory dower by absolute title is not limited to real property owned at the death of her husband; but a husband's statutory dower attaches only to lands owned by the wife at her death.

In at least 10 States [25] the respective life interests of a widow or a surviving husband may be on different bases; that is, the widow's life interest is usually in one-third, sometimes in one-half, of her husband's real property; the surviving husband's life interest is usually in the whole of his wife's lands owned at her death.

In 6 States [26] a widow may have a life estate, though the husband has no such right.

The specific portion of real and personal property which a surviving spouse may receive is subject generally to considerable variation within the individual State, the share of the widow varying more frequently than that of a surviving husband. These variations may rest on such factors as the size and solvency of the estate, the number of descendants, or the inheritance rights of other blood relatives; or, as to a widow, on the character of the estate, e. g., whether ancestral or not. No summary of this phase of inheritance law is attempted, but details appear under Number 15 of the various State abstracts.

Rights of Inheritance With Respect to Creditors.

Generally, all inheritance rights in personal property are subject to the rights of creditors having just claims against the decedent, and to payment of necessary expenses connected with settlement of the estate. For this, among other reasons, most States provide an allowance for the deceased person's family or surviving spouse, which allowance generally is superior to claims of creditors or heirs. (See Number 16.)

If the personal property is not sufficient to pay the general debts, the real property becomes liable for them. As a rule, neither absolute inheritance rights nor exemptions avail against valid mortgages and liens in which husband and wife have joined.

At common law, under which exemptions were unknown against general debts, the life estates of dower and curtesy postponed for

the life of the surviving spouse the claims of heirs and creditors to use of the property.

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[1] Separate property. For succession rights in community property, see under Number 10.
[2] Ala., Ariz., Ark., Del., N. J., Oreg., Tenn., Tex., Wis.
[3] Ala., Del., D. C., Ky., La., N. C., R. I., Tenn., Va., W. Va.
[4] Calif., Colo., Conn., Fla., Ga., Idaho, Ill., Ind., Iowa, Kans., Maine, Md., Mass., Mich., Minn., Miss., Mo., Mont., Nebr., Nev., N. H., N. Mex., N. Y., N. Dak., Ohio, Okla., Pa., S. C., S. Dak., Utah, Vt., Wash., Wyo.
[5] Colo., Fla., Ga., Kans., Minn., Miss., Mont., N. J. (purchased during marriage), N. Mex., Oreg., Wis.
[6] Amounts range from $1,000 in Indiana to $25,000 in North Dakota and Utah.
[7] Conn., Ind., N. Y., N. Dak.
[8] Iowa, Md., Mass., N. H., N. Y., N. Dak., Pa., S. Dak., Utah, Vt., Wyo.
[9] Ariz., Idaho, Md., Ohio.
[10] Ark., Calif., Ill., Maine, Mich., Mo., Nebr., Nev., S. C., Okla., Tex., Wash., W. Va.
[11] Ariz., Conn., Idaho., Ind., Ohio.
[12] Ala., Ark., Calif., Del., D. C., Ill., Iowa, Ky., La., Maine, Md., Mass., Mich., Mo., Mont., Nebr., Nev., N. H., N. J. (inherited lands), N. Y., N. C., N. Dak., Okla., Pa., R. I., S. C., S. Dak., Tenn., Tex., Utah, Vt., Va., Wash., Wyo.
[13] Ala., Ark., Del., D. C., Fla., Ga., Ind., Mich., Mont., N. H., N. J., N. Y., N. C., R. I., S. C., Tenn., Wis.
[14] Ala., D. C., N. H., N. J., N. C., R. I., Tenn., Wis.
[15] Del., R. I., Va.
[16] Ariz., Conn., Del., Ill., Ky., La., Md., Mass., Mo., N. J., Ohio, Oreg., Tex., Va., W. Va.
[17] Ala., Del., Ill., Iowa, Kans., Ky., Maine, Md., Mass., Minn., Mo., Nebr., N. H., N. J., N. Y., N. C., Ohio, Oreg., Pa., R. I., Va., W. Va.
[18] Ark., D. C., Fla., Ind., Mich., Mont., S. C., Tenn., Utah, Wis.
[19] Ariz., Colo., Del., Fla., Ga., Ill., Kans., Minn., Miss., Mont., N. J., N. Mex., N. C. (husband only), Oreg., Tenn., Tex., Va., Wash., W. Va., Wis.
[20] Iowa, Md., Mass., N. H., N. Y., N. Dak., Pa., R. I., S. Dak., Utah, Vt., Wyo.
[21] Idaho, Md., Ohio.
[22] Ark., Calif., D. C., Ky., Maine, Mo., Nebr., Nev., N. C. (widow only), Okla., S. C.
[23] Conn., Idaho, Ind., Ohio.
[24] Ark., Calif., D. C., Iowa, Ky., La., Maine, Md., Mass., Mich., Mo., Nebr., Nev., N. H., N. Y., N. C. (widow only), N. Dak., Okla., Pa., R. I., S. C., S. Dak., Utah, Vt., Wyo.
[25] Ala., Del., D. C., N. H., N. J., N. Y., N. C., R. I., Tenn., Wis.
[26] Fla., Ga., Ind., Mich., Mont., S. C.

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

Common-Law Rule.

A widow may stay in her husband's home rent-free for a 40-day period (known as the widow's quarantine) and receive during that time reasonable support from her husband's estate. If there is no litigation, her dower may be allotted to her within the 40 days. The income from this source, together with the portion of the personal estate that she may receive after payment of estate debts, constitutes the means of support for herself and minor children.

Title to the real estate in which the widow receives dower passes to the husband's heirs or to devisees under his will, and unless the family home is included as part of the dower the widow has no right to occupy it beyond the period of her quarantine.

A surviving husband continues to occupy the family home in his own right if it belongs to him, or by right of curtesy if he is entitled to curtesy and the wife owned the home. He receives any personal property remaining after the wife's debts are paid. His legal obligation to support his children continues and their source of maintenance thus remains undisturbed by the wife's death.

Legal title to the wife's lands passes to her heirs at her death, subject, however, to the husband's curtesy right when that right has vested in him.

Present Status.

In each of the jurisdictions surveyed (except South Carolina, which apparently follows the common law), statutory provisions safeguard

the maintenance of a deceased married person's family during settlement of the estate. Under court supervision, portions of the property, or use of such portions, may be set apart to the family or to a surviving spouse.

The character and extent of the statutory allowances are indicated generally as follows:

I.—THE FAMILY HOME

1. Absolute title under certain conditions is given to the surviving spouse in 11 States;[1] to the widow only in 3 States.[2]

2. Life occupancy may be available to the surviving spouse in 13 States;[3] to the widow only in 15 States.[4]

3. Occupancy during minority of the youngest child may be available to either spouse in West Virginia.

4. Occupancy for a limited period, as prescribed by statute, may be available to either spouse in 13 States;[5] to the widow only in 16 States.[6]

II.—FAMILY MAINTENANCE

1. An allowance for reasonable support, limited in amount or in length of time supplied, may be available to either husband or widow in 17 States;[7] to the widow only in 32 States.[8]

2. When necessary, and estate conditions justify, an allowance for a further limited period may be available to the surviving spouse in 5 States;[9] to the widow only in 11 States.[10]

III.—HOUSEHOLD GOODS

Family household equipment may be reserved for the use of the surviving spouse in 16 States,[11] and of the widow only in 20 States.[12]

IV.—WEARING APPAREL

The family clothing is reserved to the husband or widow in 18 States,[13] to the widow only in 24 States.[14]

V.—SUMMARY ADMINISTRATION

1. Unpaid wages, within limited amounts,[15] owing to the deceased person at death may be collected by the surviving spouse without formal administration in 10 States;[16] by the widow only in 5 States.[17]

2. Bank deposits, within limited amounts,[18] belonging to a deceased person may be collected without administration by the surviving spouse in 8 States;[19] by the widow only in Idaho and Kentucky.

3. When the estate is limited in value and there is no contest, a quick closing to avoid heavy administration costs and to render assets available to the family may be had in a few States. The surviving spouse may receive the property under such a statute in 13 States;[20] the widow, in 9 States.[21]

Comment.

If the family does not own a home, the allowance in exempt personal property assumes importance as a source of supply for adequate housing and support. Yet, judged by present-day conditions, many of

the exemption provisions and administration allowances seem inadequate to fulfill their purpose, which is to support the family of a deceased person during the period of administration.

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[1] Ariz., Calif., Idaho, Kans., Minn., Miss., Nev., Utah, Vt., Wash., Wyo.
[2] Ala., Fla., Wis.
[3] Conn., Ill., Ky., Minn., Mont., Nebr., N. H., N. Mex., N. Dak., Okla., Oreg., S. Dak., Tex.
[4] Ala., Ark., Fla., Maine, Mass., Mich., Miss., Mo., N. J., N. Y., N. C., Ohio, Tenn., Va., Wis.
[5] Calif., Conn., Idaho, Iowa, Ky., N. J., Ohio, Okla., Oreg., S. Dak., Utah, W. Va., Wyo.
[6] Ala., Ariz., Ark., Ga., Ind., La., Maine, Mass., Mich., Mo., Mont., Nev., N. H., N. Y., Vt., Va.
[7] Conn., D. C., La., Maine, Md., Minn., Mo., Mont., Nebr., N. Mex., N. Y., N. Dak., Okla., S. Dak., Utah, Wash., W. Va.
[8] Ala., Ariz., Ark., Calif., Colo., Del., Fla., Ga., Idaho, Ill., Ind., Iowa, Kans., Ky., La., Mass., Mich., Miss., Nev., N. H., N. J., N. C., Ohio, Oreg., Pa., R. I., Tenn., Tex., Vt., Va., Wis., Wyo.
[9] Idaho, Minn., Mont., Okla., S. Dak.
[10] Ala., Ariz., Ark., Ga., Nev., N. H., N. Dak., Oreg., R. I., Wis., Wyo.
[11] Calif., D. C., Md., Minn., Mo., Mont., Nebr., N. Y., N. Dak., Ohio, Okla., Oreg., S. Dak., Utah, Vt., Wyo.
[12] Ala., Ariz., Ark., Conn., Fla., Ga., Idaho, Iowa, Kans., Mass., Mich., Miss., Nev., N. J., R. I., Tenn., Tex., Va., Wash., Wis.
[13] Calif., D. C., Maine, Minn., Mo., Mont., Nebr., N. H., N. Mex., N. Y., N. Dak., Ohio, Okla., Oreg., S. Dak., Utah, Vt., Wyo.
[14] Ala., Ariz., Ark., Conn., Del., Fla., Idaho, Ill., Ind., Iowa, Kans., La., Md., Mass., Mich., Miss., Nev., N. J., R. I., Tenn., Tex., Va., Wash., Wis.
[15] Maximum amounts range from $75 in Delaware and New Jersey to $500 in Connecticut.
[16] Ariz., Conn., Ind., N. Mex., N. Y., N. Dak., Oreg., Utah, Wash., W. Va.
[17] Ala., Del., Ga., N. J., Pa.
[18] Maximum amounts range from $75 in Delaware to $600 in Georgia.
[19] Calif., Conn., Del., Ga., Ind., N. Mex., Oreg., Utah.
[20] Ariz., Calif., Del., Fla., Mich., Nebr., Nev., N. J., N. Dak., Ohio, S. C., S. Dak., Utah.
[21] Ark., Calif., Idaho, Ind., Mont., Okla., Oreg., Pa., Vt.

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

Common-Law Rule.

A testator cannot deprive his widow of her right to choose whether she will accept the provision made for her by his will or renounce it and receive instead her dower, unless she has lost her dower right by her voluntary consent, her own act, or provision of statute. Unless the testator clearly intends that his widow shall choose between the terms of the will and her common-law rights in his property, she takes both provisions.

(See Number 14 for wife's incapacity to will property at common law.)

Present Status.

Under the statutes of a majority of the States, neither husband nor wife can disinherit the other by will. The living spouse may renounce the will and take instead the common-law dower or curtesy, or the statutory share of the estate displacing the common-law provision for the spouse of a person dying without a will.

The nature of these statutory provisions varies to such an extent that summarization of them is not practicable.

Eight States[1] protect the property rights of the widow in the estate of her husband, without making a corresponding provision for a surviving husband.

North Dakota and South Dakota do not permit a married person by his or her will to deprive the surviving spouse and family of the right to occupy the homestead and to have the statutory allowance of exempt property.

The community-property States [2] do not restrict the will of either husband or wife in disposing of *separate property* with respect to the other spouse, but the statutory portion of the community estate provided for husband or wife cannot be disturbed by the will of either unless the other consents. (See Number 10 and footnotes.)

[1] Ala., Ark., Fla., Mich., N. C., S. C., Utah, Wis.
[2] Ariz., Calif., Idaho, La., Mich., Nebr., Nev., N. Mex., Okla., Oreg., Tex., Wash. (as of January 1, 1948).

II.—MARRIAGE AND DIVORCE

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

Common-Law Rule.

A male at 14 years of age, and a female at 12, are capable of consent to marriage.

A contract of marriage made when either party is over 7 years of age, but under the age of consent, is not void, but voidable only.

Present Status.

Most States have adopted by statute higher ages of consent to marriage than those set by common law.

Three general classes of statutes regulating the age of consent to marriage are noted: (1) Those establishing minimum ages for marriage without consent of parent or guardian; (2) those establishing minimum ages for marriage with consent of parent or guardian; and (3) those permitting exceptions to the minimum ages in class 2, for good social reasons, when parental consent or court sanction, or both, are given to the marriage.

1. Each of the 49 jurisdictions reported has statutes under class 1. The following analysis shows the ages at which males and females may marry without consent of parents in the several States:

(*a*) 21 years, both sexes—13 States.[1]
(*b*) 18 years,, both sexes—3 States.[2]
(*c*) 21 years, males; 18 years, females—32 States.[3]
(*d*) 20 years, males; 18 years, females—New Hampshire.

2. Forty-five jurisdictions have statutes under class 2. Minimum ages higher than those of the common law are established, and parental consent is required. However, the general rule is that except where the common-law ages are expressly abolished, the marriage of a person under the statutory age is not void for that reason, but voidable only, and this at the wish of a party to the marriage.

Analysis by age and State follows:

(*a*) 18 years, both sexes—Colorado.
(*b*) 18 years, males; 16 years, females—22 States.[4]
(*c*) 18 years, males; 15 years, females—6 States.[5]
(*d*) 18 years, males; 14 years, females—South Carolina.
(*e*) 17 years, males; 14 years, females—2 States.[6]
(*f*) 16 years, both sexes—5 States.[7]
(*g*) 16 years, males; 14 years, females—6 States.[8]
(*h*) 15 years, both sexes—Missouri.
(*i*) 14 years, males; 13 years, females—New Hampshire.

Apparently the common-law ages govern in Idaho, Mississippi, New Jersey and Washington.

3. Practically all jurisdictions have statutes under class 3, allowing exceptions to the minimum age in extraordinary cases, under court sanction.

Comment.

Parental consent to the marriage of a person who is under the age of majority usually is necessary to release the minor from his duty to remain in the custody of his parents and render service to them until he becomes adult. Written evidence of parental consent is required generally before a license to marry may be issued. The waiver of parental right reconciles a conflict of duties that the minor faces, since the marital status creates new obligations under the law and exacts new loyalties directly in competition with those existing between parent and child.

The State favors marriage as a social institution and will uphold it wherever possible. For this reason, lack of parental consent does not of itself render a minor's marriage void.

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[1] Conn., Fla., Ga., Ky., La., Nebr., Ohio, Pa., R. I., Tenn., Va., W. Va., Wyo.
[2] Idaho, N. C., S. C.
[3] Ala., Ariz., Ark., Calif., Colo., Del., D. C., Ill., Ind., Iowa, Kans., Maine, Md., Mass., Mich., Minn., Miss., Mo., Mont., Nev., N. J., N. Mex., N. Y., N. Dak., Okla., Oreg., S. Dak., Tex., Utah, Vt., Wash., Wis.
[4] Ariz., Ark., Calif., Del., D. C., Fla., Ill., Ind., Kans., La., Md., Mass., Mich., Mont., Nebr., Nev., N. Mex., Ohio, R. I., Va., W. Va., Wyo.
[5] Minn., N. Dak., Okla., Oreg., S. Dak., Wis.
[6] Ala., Ga.
[7] Conn., Maine, N. C., Pa., Tenn.
[8] Iowa, Ky., N. Y., Tex., Utah, Vt.

19. Validity of Common-Law Marriage.

Common-Law Rule.

The essentials of a valid marriage are capacity and mutual consent, followed by the mutual open assumption of marital duties and obligations.

Present Status.

Twenty-eight States [1] deny the validity of the common-law form of marriage when contracted within their respective jurisdictions. Whether or not a State recognizes a common-law marriage contracted in other jurisdictions where such a marriage is valid depends on the general policy of the State where the question is raised. This is considered under Number 21.

The common-law or informal marriage may be contracted in 20 States.[2]

The policy of Maine in regard to the common-law marriage is not clear. Apparently the State may recognize the validity of such marriages under some conditions, but does not do so generally.

Comment.

It is an accepted fact that the informal method of establishing the common-law union is too lax to make marriage the secure and stable institution it should be. Accordingly, laws have been enacted in all States to regulate the manner and method of creating the marriage relation. The statutes usually direct that a marriage license be obtained, that only certain classes of persons may perform the cere-

mony, that a certain number of witnesses be present, that a certificate of the marriage be signed and returned for record, and may provide also that a violation of the conditions is a criminal offense. These provisions are intended "to discourage deception and seduction, prevent illicit intercourse under the guise of matrimony, and relieve from doubt the status of parties who live together as man and wife, by providing competent evidence of the marriage. The record required to be made also furnishes evidence of the status and legitimacy of the offspring of the marriage." [3]

It is important to note that the validity of the marriage affects the right of a common-law spouse to recover for the injury or death of the other under workmen's compensation acts. Likewise, only a "legal" spouse is entitled to benefits generally under Federal and State pension systems, also other forms of social legislation.

However, the general policy of the courts is to hold that unless a marriage statute declares the common-law union a nullity all statutory requirements as to licenses, witnesses, and so forth are directory merely, and therefore do not affect the validity of the informal contract.[4]

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[1] Ariz., Ark., Calif., Conn., Del., Ill., Ky., La., Md., Mass., Minn., Mo., Nebr., Nev., N. H., N. J., N. Mex., N. Y., N. C., N. Dak., Oreg., Utah, Vt., Va., Wash., W. Va., Wis., Wyo.

[2] Ala., Colo., D. C., Fla., Ga., Idaho, Ind., Iowa, Kans., Mich., Miss., Mont., Ohio, Okla., Pa., R. I., S. C., S. Dak., Tenn., Tex.

[3] 18 Ruling Case Law, p. 397.

[4] *Meister* v. *Moore* (1878), 96 U. S. 76; 24 L. ed. 826; (cited in *Marris* v. *Sockey* (1948), 170 Fed. (2d) 602).

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

Common-Law Rule.

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

Present Status.

Most States have enacted laws which require evidence of physical fitness from applicants for license to marry. The greater number of these laws are aimed at control of venereal diseases, though a few deal with other communicable maladies.

(A comparative table of marriage-law data, as of January 1, 1950, is included in appendix B–1, p. 89.)

Venereal Diseases.

Thirty-six [1] States make a prescribed health test for both applicants by a qualified physician requisite to issuance of license; Louisiana and Texas require only the male applicant's examination; and Washington State accepts the male's affidavit that he is free from venereal disease.

The physician's report of examination must show both a physical and a laboratory test. Before license may be issued, the licensing officer must have on file the certified opinion of the physician that either venereal disease is not present, or, if present, is not in a communicable stage or likely to become so.

However, exception may be made, at the discretion of a designated

court, under circumstances where the action is justified by emergency situations or sound social policy.

Diseases Other Than Venereal.

A few States require certificates showing the applicants to be free from other communicable or transmissible diseases specified in the statutes. In 4 States [2] each applicant must submit a physician's certificate to this effect; in 3 other States [3] the applicant's own statements are sufficient.

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[1] Ala., Calif., Colo., Conn., Del., Fla., Idaho, Ill., Ind., Iowa, Kans., Ky., Maine, Mass., Mich., Mo., Mont., Nebr., N. H., N. J., N. Y., N. C., N. Dak., Ohio, Okla., Oreg., Pa., R. I., S. Dak., Tenn., Utah, Vt., Va., W. Va., Wis., Wyo.
[2] N. C., N. Dak., Oreg., R. I.
[3] Del., N. J., Wash.

21. Interstate Cooperation in Marriage Law Enforcement.

Common-Law Rule.

The general rule observed among civilized nations is that the validity of a marriage is to be determined by the law of the country where the marriage is contracted. An exception is made when application of the rule would violate public policy in the country where validity of the marriage is challenged.

Present Status.

Most of the States follow the general rule that the validity of marriage is determined by the place of contract; but with the reservation, implied or expressed, that the rule will be suspended if the marriage is one that is against public policy or violates a positive statute. See appendix B–2, page 90, for classified groups of States and citations of State laws.

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

Common-Law Rule.

Rules for annulment of marriage in the United States are not "common law" in the sense in which that term is generally used. The policy usually followed in this country when no specific statute exists is a product of blended rules of law and equity, and is stated in the following discussion of present law.

Present Status.

Forty-seven States enumerate in statutes one or more specific grounds for annulling a marriage. Of the other two, Arizona empowers certain courts to grant decrees of annulment for an impediment rendering the contract void. Ohio has no statutory ground for the action, and the policy of the courts appears to be against annulling a marriage except on satisfactory proof of such fraud as affects the relation itself.

Statutory adoption of certain grounds for annulment may not exclude other grounds that, by legal or equitable rules, make the marriage contract defective. As a general policy, "A decree of nullity has long been available in practice, in cases which touch the root of the marriage consummation, as where there was mental or physical

incapacity, fraud, force, or error, nonage, consanguinity or affinity, a former spouse living, or other fundamental impediment to the union." [1]

A marriage contracted in violation of a statute expressly forbidding it is void, and no action of the court is required to declare it so. However, in such cases the courts prefer to render a decree for record purposes in the interest of public welfare.

Generally, no sex distinction exists in the right to seek annulment on the grounds recognized in the several States. The exception noted is that New York refuses annulment to a husband for his wife's insanity until he makes satisfactory provision for her support.

Distinctions Between Annulment and Divorce

An annulment decree makes a marriage void and no marriage in law from its beginning. It leaves the parties as though no marriage had occurred, so far as property interests or other rights incident to marriage are concerned. Dower and curtesy or their statutory substitutes, alimony, and legitimacy of children are nonexistent after a nullity decree, unless provision is made by State law for safeguarding innocent persons from the harsh consequences of a voided marriage. A number of States have provisions of this nature, by which the court rendering the decree is empowered to make disposition of the interests of the parties as justice and public good require. The extent of the court's authority is determined by the statutes of the respective States.

For example, New York empowers certain courts not only to award alimony to a wife in an annulment suit and to direct suitable provision for the support and education of the children of an annulled marriage, but also to enforce their decrees under procedure like that used in divorce and separation cases. The court's authority in each function is measured by the phrase "as justice requires." [2] Several other States have procedure similar to that of New York.

An action for divorce recognizes the marriage as valid, and the union is dissolved from the date the decree is rendered. The modern tendency is against dissolution of a marriage from its beginning unless the trial court is given power to safeguard the interests of innocent parties affected by the decree. In order to prevent the radical effects of an annulled marriage, legislatures of some States have broadened the scope of divorce proceedings to include many grounds on which annulments formerly were granted.

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[1] Schouler, James. Marriage, Divorce, Separation, and Domestic Relations. 6th ed. (1921), vol. 2, p. 1413, sec. 1153.
[2] New York Session Laws, 1940, ch. 226.

23. Grounds for Divorce—Respective Availability to Spouses.

Common-Law Rule.

In England at the time of the American Revolution, divorce from bed and board (legal separation) was allowed by ecclesiastical courts, and absolute divorce (severance of the marriage bond) was granted in special cases by act of Parliament. Otherwise, divorces were not granted at common law, and there was no general act of Parliament authorizing them.

In the United States there were no ecclesiastical courts, and the common-law courts had no jurisdiction over the matter of divorce. Accordingly, divorces were granted at first by special acts of State legislatures, and later, in most States, under general statutory provisions.

Present Status.

Throughout the United States, divorce law is regulated for each State by its legislature, and the courts administer the law under powers delegated to them by the legislatures.

> * * * the whole subject of the domestic relations of husband and wife * * * belongs to the laws of the States and not to the laws of the United States.[1]

As said by the United States Supreme Court:[2]

> * * * Other contracts may be modified, restricted, or enlarged, or entirely released upon the consent of the parties. Not so with marriage. The relation once formed, the law steps in and holds the parties to various obligations and liabilities. It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress.

In 23 jurisdictions[3] both absolute and limited divorces are recognized. In many instances grounds are the same for absolute and limited divorce, and the court is empowered to grant the remedy which seems most appropriate in a given case; in other instances separate grounds are prescribed for each type of divorce.

Twenty-five States[4] grant only absolute divorce.

South Carolina[5] refuses absolute divorce on any ground, though it may recognize a divorce obtained elsewhere if the State requirements of validity are met. It grants to a wife legal separation on three grounds.

Character of Grounds on which Divorce May Be Granted[6]

As might be expected among 49 distinct legislative jurisdictions, many variations occur in the statutory forms prescribing grounds for divorce. But the 63 separate "causes" appearing in State laws fall into six main groups. These groupings are set out below, with the statutory applications by States.

I. Conduct violating the sanctity of the marriage relation.

Either spouse:

1. Adultery—all States but South Carolina.[5]
2. Gross misbehavior inconsistent with the marriage relation—Rhode Island.

Husband only:

1. Wife's undisclosed pregnancy at marriage by another man—14 States.

Alabama	Kentucky	Oklahoma
Arizona	Mississippi	Tennessee
Georgia	Missouri	Virginia
Iowa	New Mexico	Wyoming
Kansas	North Carolina	

2. Wife's unchaste conduct, though adultery not proved—Kentucky.

3. Wife a prostitute before marriage, undisclosed—Virginia.

II. Violent or gross conduct menacing life, health, or happiness.

1. Cruelty (variously qualified)—42 States.[5]

Either spouse:

Alabama
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Idaho
Illinois
Indiana
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin
Wyoming

2. Attempt on, or menacing, other spouse's life—16 States.

Either spouse:

Arizona
Arkansas
Illinois
Iowa
Louisiana
Missouri
New York
North Carolina
Tennessee
Virginia
West Virginia

Wife only: Alabama, Kentucky, Pennsylvania, South Carolina (legal separation), Wisconsin.

3. Intolerable indignities—15 States.

Either spouse:

Arkansas
Indiana
Illinois
Kentucky
Louisiana
Missouri
New Hampshire
North Carolina
Oregon
Pennsylvania
Vermont
Washington
Wyoming

Wife only: South Carolina (legal separation), Tennessee.

III. Conduct showing willful or negligent disregard of marital obligations.

1. Desertion—40 States.[5]

Either spouse:

Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Idaho
Illinois
Indiana
Iowa
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
North Dakota
Ohio
Oregon
Pennsylvania
Rhode Island
South Dakota
Tennessee
Utah
Vermont
Virginia
West Virginia
Wisconsin
Wyoming

Wife only: South Carolina (legal separation).[5]

2. Abandonment—18 States.

Either spouse:

Alabama	Maryland	Oklahoma
Indiana	Nebraska	Texas
Kansas	New Mexico	Virginia
Kentucky	New York	Washington
Louisiana	North Carolina	West Virginia

Wife only: Colorado, Pennsylvania, Tennessee.

3. Voluntary separation over extended period—16 States.

Either spouse:

Arizona	Louisiana	Utah
Arkansas	Maryland	Vermont
District of Columbia	Minnesota	Washington
Idaho	Nevada	Wisconsin
Kentucky	Rhode Island	Wyoming
	Texas	

4. Nonsupport—23 States.

Either spouse: North Dakota, Utah.

Wife only:

Alabama	Massachusetts	Oregon
Arizona	Michigan	Rhode Island
Colorado	Nebraska	Tennessee
Delaware	Nevada	Vermont
Indiana	New Hampshire	Washington
Kentucky	New Mexico	Wisconsin
Maine	New York	Wyoming

5. Willful, or gross, neglect of duty—11 States.

Either spouse:

California	Kansas	Oklahoma
Idaho	North Dakota	South Dakota
Indiana	Ohio	

Wife only: Missouri, Montana, Wyoming.

IV. Incapacity to fulfill marital obligations.

1. Impotency—33 States.

Either spouse:

Alabama	Maryland	Ohio
Arizona	Massachusetts	Oklahoma
Arkansas	Michigan	Oregon
Colorado	Minnesota	Pennsylvania
Florida	Mississippi	Rhode Island
Georgia	Missouri	Tennessee
Illinois	Nebraska	Utah
Indiana	Nevada	Virginia
Kansas	New Hampshire	Washington
Kentucky	New Mexico	Wisconsin
Maine	North Carolina	Wyoming

2. Drink habit—40 States.[5]

Either spouse:

Alabama	Kentucky	North Dakota
Arizona	Louisiana	Ohio
Arkansas	Maine	Oklahoma
California	Massachusetts	Oregon
Colorado	Michigan	Rhode Island
Connecticut	Minnesota	South Dakota
Delaware	Mississippi	Tennessee
Florida	Missouri	Utah
Georgia	Montana	Washington
Idaho	Nebraska	West Virginia
Illinois	Nevada	Wisconsin
Indiana	New Hampshire	Wyoming
Iowa	New Mexico	
Kansas	North Carolina	

3. Narcotic drug habit—8 States.

Either spouse:

Colorado	Massachusetts	West Virginia
Indiana	Mississippi	
Maine	Rhode Island	

Wife only: Alabama.

4. Mental incapacity—27 States.

Either spouse:

Alabama	Kentucky	North Dakota
Arkansas	Maryland	Oklahoma
California	Minnesota	Oregon
Colorado	Mississippi	South Dakota
Connecticut	Montana	Texas
Delaware	Nebraska	Utah
Idaho	Nevada	Vermont
Indiana	New Mexico	Washington
Kansas	North Carolina	Wyoming

5. Temperamental incapacity—2 States.

Either spouse: Florida, New Mexico.

V. Civil "death."

1. Criminal status—42 States.

Either spouse:

Alabama	Kentucky	Oklahoma
Arizona	Louisiana	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Michigan	South Dakota
Colorado	Minnesota	Tennessee
Connecticut	Mississippi	Texas
Delaware	Missouri	Utah
District of Columbia	Montana	Vermont
	Nebraska	Virginia
Georgia	Nevada	Washington
Idaho	New Hampshire	West Virginia
Illinois	New Mexico	Wisconsin
Indiana	North Carolina	Wyoming
Iowa	North Dakota	
Kansas	Ohio	

2. Prolonged absence without word of whereabouts—4 States.

Either spouse: Connecticut, Rhode Island, Tennessee, Vermont.

VI. Defective marriage.

1. Incapacity to give valid consent—

(*a*) Nonage or mental incompetence—3 States.

Either spouse: Delaware, Georgia, Mississippi.

(*b*) Fraud or force to obtain consent—10 States.

Either spouse:

Arizona	Kentucky	Pennsylvania
Connecticut	Missouri	Washington
Georgia	Ohio	
Kansas	Oklahoma	

2. Legal hindrances—

(*a*) Existing valid marriage—12 States.

Either spouse:

Arkansas	Illinois	Ohio
Colorado	Kansas	Oklahoma
Delaware	Mississippi	Pennsylvania
Florida	Missouri	Tennessee

(b) Prohibited degree of kinship between parties—4 States.

Either spouse: Florida, Georgia, Mississippi, Pennsylvania.

(c) Legally void or voidable marriage—2 States.

Either spouse: Maryland, Rhode Island.

DISTINCTION BY SEX IN GROUNDS FOR ABSOLUTE DIVORCE

For the most part, no sex distinction is made in establishing grounds for absolute divorce. The exceptions to this rule are tabulated below:

Husband only:

Absolute divorce may be granted exclusively to a husband for:

1. Wife's pregnancy at marriage by another man and the fact unknown to husband—14 States.

Alabama	Kentucky	Oklahoma
Arizona	Mississippi	Tennessee
Georgia	Missouri	Virginia
Iowa	New Mexico	Wyoming
Kansas	North Carolina	

2. Wife a prostitute before marriage unknown to husband—Virginia.

3. Wife's act of adultery, or unchaste conduct if adultery not proved—Kentucky.

4. Wife's residing outside State 10 years without returning to husband—New Hampshire.

5. Wife's desertion, shown by her refusal for at least 2 years to move into the State with husband—Tennessee.

6. Wife's habitual intoxication—Wisconsin.

Wife only:

Absolute divorce may be granted exclusively to wife for:

1. Willful or negligent failure of husband to provide reasonable support—21 States.

Alabama	Massachusetts	New Mexico
Arizona	Michigan	Rhode Island
Colorado	Missouri	Tennessee
Delaware	Montana	Vermont
Indiana	Nebraska	Washington
Kentucky	Nevada	Wisconsin
Maine	New Hampshire	Wyoming

2. Dangerously violent conduct—2 States: Alabama, Tennessee.
3. Habitual use of narcotic drugs—Alabama.

Other Distinctions in Divorce Statutes

In Louisiana, where 1 year must elapse between the first and final decrees in absolute divorce proceedings, the man may remarry when the final decree is rendered; the woman must wait another 10 months. (This provision is characteristic of civil law community property regimes, apparently to safeguard succession rights of a child of the former marriage who may be born within the 10-month period.)

In Colorado and Montana a woman who shows the court that she is financially unable to pay for divorce proceedings may prosecute her suit without costs.

Disposition of Children and Property

Custody of children.

> The statutes generally authorize the court having jurisdiction of divorce proceedings to determine who shall have the care and custody of the children of the marriage * * *.
>
> In awarding the custody of a child, a very large discretion must be permitted to the chancellor, but it must be a judicial discretion, subject to review.[7]

The general rule guiding the courts in such cases is that the child's welfare must be safeguarded, in view of all the facts of the particular case, and that neither parent has a superior right to his custody. (Refer to Vernier's American Family Laws, vol. 2, sec. 142; also to *Lyons* v. *Egan* (1942), 110 Colo. 227, 132 Pac. 2d 794 for note on current trend.)

Disposition of property rights between hostile spouses.

As a rule among the common-law States, when a marriage is dissolved by divorce, a fair division of the marital property depends on circumstances surrounding each particular case. For example, the contribution in means or energy of each spouse to the accumulation of the estate, the extent of failure by one or both of them in marital obligations, or the award of the custody of children are elements that vary considerably.

The current trend is to vest responsibility for settlement of property rights between hostile spouses in a court having jurisdiction over domestic problems, in order that fair adjustments may be made after consideration of all the circumstances attending a case. Clearly, this method entails added responsibility on the courts and manifolds their

duties, but it reflects the spirit of American jurisprudence, which insists that the law must be flexible enough to permit the administration of justice according to existing conditions.

Restrictions on Remarriage After Divorce

In at least 20 States [8] statutory restrictions exist as to the right of remarriage following a decree of divorce. Failure to observe these restrictions renders invalid a subsequent marriage to a third person. Except in Louisiana, where a woman may not remarry until 10 months after a final decree of divorce, there is no distinction between sexes in the restrictive provisions.

In 7 States,[9] a statutory "deliberating period" is established between the granting of a decree of legal separation and a decree making the divorce absolute; in 14 States [10] this period follows a final decree of divorce.

In 5 States,[11] in specified cases, the remarriage of the party from whom divorce is granted is subject to restrictions of time not applicable to the one seeking the decree. In Tennessee, in cases involving adultery, the guilty party is forbidden to marry, during the lifetime of the former husband or wife, the person with whom the act of adultery was committed.

Comment.

Recent statutes allowing divorce because of insanity, condition the decree on petitioner's satisfactory provision of support for the afflicted spouse. Arkansas and Kentucky require such provision only from a husband; but California, Kansas, Oregon, and Wyoming require it of either husband or wife filing the petition, if the defendant's circumstances justify the action.

The newest action by State legislatures to relieve legal and economic difficulties faced by dependents of absconding persons legally responsible for their support is adoption of the Uniform Support of Dependents Act. Nine States—Illinois, Indiana, Iowa, New York, New Jersey, New Hampshire, Maine, Connecticut, Oklahoma—enacted this law in their 1949 sessions. It operates across State lines through simple procedures, but only among such States as have enacted it. A dependent person need not leave home, under the terms of the Act, to enlist the aid of the courts in a cooperating State to compel the fleeing deserter to meet his legal duty of family support.

A new approach to divorce legislation and procedures is proposed in the Report of the American Bar Association Committee to the Legal Section of the National Conference on Family Life, which met in Washington, D. C., May 1948.

The committee would "abrogate the old theories of guilt and punishment and antagonistic divorce. In lieu of the former, we offer the modern philosophy of diagnosis and therapy designed to accomplish in each case what is best for the family and consequently best for society." In short, the aim is to give fair opportunity in the courts for reconciliation of marital differences before actual suit for divorce is filed. Trained personnel would be provided on family court staffs to assist in the conciliation process.

Recommendations were adopted by the conference, representing 125 national organizations concerned with interests of the family, that

the President of the United States be asked to appoint a commission which would reexamine the laws regulating marriage and divorce, also legal procedure in divorce cases, and propose desirable changes.

A special committee from the American Bar Association has requested the President to appoint this commission and has held conferences with presidential advisers about the plan. The proposals have been explained before numerous bar associations and other groups over the country, as well as through newspaper and magazine articles.

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[1] *Ohio ex rel. Popovici* v. *Agler* (1930), 280 U. S. 379; 50 S. Ct. 154; 74 L. ed. 489.
[2] *Maynard* v. *Hill* (1888), 125 U. S. 190, 211; 31 L. ed. 654.
[3] Ala., Ark., Colo., Del., D. C., Ind., Ky., La., Md., Mich., Mont., Nebr., N. J., N. Y., N. C., N. Dak., Oreg., Pa., R. I., Tenn., Vt., Va., Wis.
[4] Ariz., Calif., Conn., Fla., Ga., Idaho, Ill., Iowa, Kans., Maine, Mass., Minn., Miss., Mo., Nev., N. H., N. Mex., Ohio, Okla., S. Dak., Tex., Utah, Wash., W. Va., Wyo.
[5] As of April 1, 1949, South Carolina amended its constitution to permit absolute divorce for adultery, desertion, physical cruelty, or habitual drunkenness.
[6] No distinction is attempted under this heading between absolute and limited divorce.
[7] 17 American Jurisprudence, pp. 512, 513, Divorce and Separation, secs., 674, 675.
[8] Ala., Ariz., Calif., Colo., Iowa, La., Mass., Minn., Nebr., N. J., N. Y., Okla., Oreg., Tenn., Utah, Vt., Va., Wash., W. Va., Wis.
[9] Calif., Colo., Mass., Nebr., N. J., Utah, Wash.
[10] Ala., Ariz., Iowa, La., Mass., Minn., N. Y., Okla., Oreg., Tenn., Vt., Va., W. Va., Wis.
[11] Mass., N. Y., Tenn., Va., W. Va.

III.—PARENTS AND CHILDREN

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

Common-Law Rule.

The father, as natural guardian, is entitled to the services and earnings of his legitimate minor child as long as he fulfills his parental obligations. If the father dies, or abandons his family, the mother succeeds to his duties and rights as natural guardian.

Present Status.

Twenty-six States [1] recognize, generally, the father and mother as joint natural guardians of their legitimate unmarried minor child and as such entitled jointly to his custody, services, and earnings.

Eight of the community-property States [2] consider the child's earnings as community property, owned jointly by the parents while living together but controlled generally by the father, except in Nevada under special circumstances. In each of these except Louisiana and Texas, a mother separated from her husband retains as her separate property the earnings of her minor children in her custody.

The 15 remaining States [3] give the father the first right to a child's custody, services, and earnings; the mother succeeds to the father's right after his death, or in some States, if he is mentally incapable or has deserted his family.

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[1] Conn., Del., Fla., Ill., Ind., Kans., Ky., Maine, Md., Miss., Mo., Mont., Nebr., N. H., N. J., N. Dak., Ohio, Oreg., Pa., R. I., S. C., S. Dak., Tenn., Utah, W. Va., Wis.
[2] Ariz., Calif., Idaho, La., Nev., N. Mex., Tex., Wash.
[3] Ala., Ark., Colo., D. C., Ga., Iowa, Mass., Mich., Minn., N. Y., N. C., Okla., Vt., Va., Wyo.

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

Common-Law Rule.

Guardianship by nature extends only to the custody of the person of the ward and not to his property. When a guardian of the child's estate is to be appointed by the court, the parents generally are entitled to preference over all other persons, since they are natural guardians of the child's person. The father usually is entitled to the appointment, or if he is dead, then the mother. But the first consideration is the interest of the child, by which is meant his lasting good.

Present Status.

The parental relation does not authorize the father or mother to take control over property belonging to their minor child. In each State a qualified person must be appointed under court supervision to function as guardian of the estate.

Either parent may qualify for appointment in 29 States,[1] but in Florida and Virginia the mother is eligible for selection for small estates only; the father is preferred in 7 States.[2]

In the 13 remaining States [3] no express provision on the point appears in the statutes, and presumably the common-law preference for the father controls when a guardian of the child's estate is to be selected.

Illegitimate Child.

The mother is the natural guardian of an illegitimate child, and ordinarily will be appointed guardian of the child's property unless his interests require another arrangement. On her death the father, as a rule, has superior right to the child's custody and may be appointed guardian.

Comment.

After separation or divorce, when appointment of a guardian for a child's estate becomes necessary, the court will be governed by the best interests of the child in selecting the guardian.

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[1] Ariz., Ark., Calif., Conn., Fla., Ga., Idaho, Maine, Mich., Miss., Mo., Nev., N. H., N. J., N. Mex., N. Y., N. Dak., Ohio, Okla., Pa., R. I., S. C., S. Dak., Tenn., Utah, Vt., Va., Wash., W. Va.
[2] Ala., Colo., D. C., La., Mont., Oreg., Tex.
[3] Del., Ill., Ind., Iowa, Kans., Ky., Md., Mass., Minn., Nebr., N. C., Wis., Wyo.

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

Common-Law Rule.

The right of a parent to appoint a guardian for the person or estate of his legitimate minor child by deed or will is not derived from common law, but depends on statutes of the States or, in the absence of these, on the English statute of Charles II, which is generally accepted as part of American colonial law.

The statute of Charles II gives the father sole right to appoint a testamentary guardian. The mother has no such right even though she outlives her husband and becomes by common law the natural guardian of her child.

Present Status.

Guardian of Person.

Under the laws of the 49 jurisdictions surveyed, the right to appoint a testamentary guardian for the person of a legitimate minor child may not be exercised by the father without some consideration for the mother.

Nine States[1] grant the right of appointment during the marriage solely to the father, and in all except two of these he can appoint only with the consent of the mother. In Vermont he cannot deprive the mother of custody of her child if she is a fit person to have charge of him; in Oregon the father's appointment does not control custody of the child during the mother's lifetime, and the mother may appoint if she has been given custody of the child after divorce. In each of the 9 States except Vermont, the mother may appoint a testamentary guardian if the father died without exercising his right to do so.

In North Carolina the father has sole right of appointment while the parents are living together, but the mother must give voluntary consent. She may appoint a guardian if the father willfully deserts her, or if he dies without appointing.

Nine States[2] empower either father or mother, while both are living, to appoint a testamentary guardian of the child's person but subject to restrictions, such as the requirement of joint action with the other parent, limitation of appointment to the other parent while living, or delay in the effective date of the appointment until the death of the parent not appointing.

In 22 States[3] power to appoint a testamentary guardian of the child's person is given to either parent who survives the other. Of these, Nevada and Wyoming grant this power also to the parent who has been given custody of a child following divorce.

Eight States[4] by statute make the surviving parent guardian of the child's person without provision for the survivor to appoint a testamentary guardian.

Guardian of Estate.

Some States provide that a parent may make testamentary appointment of a guardian for the estate of his child. The conditions vary under which this right is to be exercised; for example, Alabama permits either father or mother to appoint while both are living; so does Massachusetts, but the appointment is subject to court approval; the surviving parent may appoint in 13 States,[5] though in 7 of these[6] the father may appoint during the marriage with the mother's written consent.

In California, Maryland, Pennsylvania, and Virginia either parent appoints, but only as to property the child may inherit from him or her. Georgia permits either parent to appoint a guardian of his child's property. Maine authorizes a mother to appoint only if the father died without making an appointment.

Illegitimate Children.

The mother of an illegitimate child may appoint a testamentary guardian of his person and his estate in 7 States,[7] and of the child's person only in 3.[8]

[1] Ariz., Idaho, Mont., N. Dak., Okla., Oreg., S. Dak., Utah, Vt.
[2] Calif., Ill., Ind., Minn., N. J., N. Mex., N. Y., S. C., Tenn.
[3] Ark., Colo., Conn., Del., D. C., Fla., Ga., Kans., Ky., La., Md., Mass., Mich., Nev., Ohio, Pa., R. I., Tex., Wash., W. Va., Wis., Wyo.
[4] Ala., Iowa, Maine, Miss., Mo., Nebr., N. H., Va.
[5] Ariz., Calif., Del., Idaho, La., Mont., Nev., N. Y., N. Dak., Okla., Pa., S. Dak., Utah.
[6] Ariz., Idaho, Mont., N. Dak., Okla., S. Dak., Utah.
[7] Ariz., Calif., Idaho, Mont., N. Dak., Okla., S. Dak.
[8] Tenn., Wis., Wyo.

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

Common-Law Rule.

By the English common law, parents and all lineal ancestors were excluded from inheriting the estate of an intestate child. However, the common-law rules of inheritance have not been adopted generally in the United States. If the child left no descendants, early United States statutes allowed the father to inherit from him to the exclusion of the mother, except that the mother might inherit lands that had come to the child through her ancestral line.

Present Status.

In each of the 49 jurisdictions, parents may inherit real and personal property by absolute title from the estate of a legitimate child dying intestate and without descendants. But in a number of States parental inheritance is subject to the prior right of a surviving husband or wife of the decedent. (The rights of a surviving spouse in this respect are discussed under Number 15.)

Provisions for inheritance apply alike to the father and the mother in all 49 jurisdictions as to conditions on which inheritance is granted. This seems to be true generally as to the respective portions inherited by the father and mother, though the statutes are not explicit on this point in Iowa, Kansas, Nebraska, and Wisconsin.

In Arkansas and Tennessee real estate that came to the child from the ancestral line of one parent is inherited absolutely by that parent to the exclusion of the other. Arkansas permits a parent to inherit only a life estate in lands that are not ancestral.

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

Common-Law Rule.

Generally, under early common law, an illegitimate child was considered the child of no one, and no legal responsibility for its support rested on either of its natural parents.

Under the present common law in the United States, the father of an illegitimate child is under no legal obligation for its support unless and until paternity is established under bastardy proceedings. But the rule is different as to the mother. She is considered the natural guardian of the child, with superior right to custody of its person, and therefore, in general, responsible for its support.

Present Status.

In each of the States except Idaho, Missouri,[1] Texas, and Virginia, some statutory provision exists to charge the father of an illegitimate child with its support after paternity has been established by prescribed court procedure. At least 26 States[2] have provisions to enforce the mother's responsibility for the child's maintenance.

The amount of contribution, the terms of payment, the period of liability, and the method of enforcing the liability vary widely among the States. The abstracts of State laws should be consulted for these details.

Twenty-eight States[3] may require the adjudged father to contribute also to expenses incident to the child's birth.

In four States,[4] the mother can be committed to jail unless she either discloses the name of the child's father or gives security for its support.

Comment.

The trend is toward equalizing between natural parents the legal obligation for support and education of their child.

> The most striking feature of the existing paternity laws is the large number of laws that are wholly unadapted to modern social conditions. Such laws fail to take into consideration the social progress in attitudes toward illegitimate birth and in the specialized procedure used by the courts in situations involving family relations and the welfare of children. The principle of punishing the man responsible for the birth of a child out of wedlock still dominates many of the laws; in some States, punishment may be substituted for continuing responsibility for support of the child. * * *
>
> Wide variation in the procedures authorized and in the effectiveness of the laws reveals great need for reevaluating the paternity laws of many States.[5]

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[1] Missouri requires support only if the father has custody of the child.
[2] Ariz., Ark., Calif., Del., Ga., Ind., Iowa, La., Maine, Mich., Nebr., Nev., N. H., N. J., N. Mex., N. Y., N. C., N. Dak., Pa., S. C., S. Dak., Tenn., Vt., W. Va., Wis., Wyo.
[3] Ariz., Ark., Colo., Conn., Del., Fla., Ga., Ind., Iowa, Md., Mass., Mich., Minn., Nebr., Nev., N. J., N. Mex., N. Y., N. C., N. Dak., Ohio, Oreg., Pa., R. I., S. Dak., Wash., Wis., Wyo.
[4] Ark., Ga., S. C., Tenn.
[5] "The American Family"—Report of Inter-Agency Committee, National Conference on Family Life, May 1948, Washington, D. C. Pp. 352–353.

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

Common-Law Rule.

Only descendants of a person born out of wedlock can inherit from his estate if he dies without a will. Neither his mother nor father have any share in his property.

Present Status.

In practically all the States the mother of an illegitimate person who dies intestate may inherit from his estate. Arizona has no explicit provision but simply declares that any child of natural parents is to be considered legitimate. The legality of the statute in Missouri has been questioned, and its status is uncertain. Louisiana allows the

mother to inherit from her child if she has legally acknowledged the relationship.

In at least 9 States [1] the father may share in the child's estate if he has made legal acknowledgment of paternity. But the general rule among these States is that the mother and her heirs have the superior right of inheritance.

[1] Idaho, Kans., La., Mont., Nev., N. Mex., N. Dak., Okla., S. Dak.

B.—POLITICAL RIGHTS

30. Domicile of Married Women.

Common-Law Rule.

On her marriage a woman loses her own domicile and, by operation of law, acquires that of her husband, no matter where the wife actually resides or what she believes or intends as to her domicile. The law fixes her domicile, and whenever, during the marriage, the husband changes his domicile hers follows and is drawn to it.

Since the husband is the head of the family, with the legal obligation of support, he has the right to choose the domicile; but this power must be exercised reasonably and justly. When a wife is compelled to live separate and apart from her husband without fault on her part, she may choose her own domicile.[1]

"* * * The authority of the husband as the head of the family gives him the right, acting reasonably, to direct the family's affairs and to determine where and what the home of the family shall be, and thus, to establish the matrimonial and family domicile. * * * But he must act with due regard to the welfare, comfort, and peace of mind of his wife, and to her legal status as the mistress of his home, his companion, the sharer of his fortune, and not his servant. She is under duty to submit to such reasonable governance of the family by the husband. A husband is responsible to society for the good order and decency of the household and this is true under Married Women's Acts endowing married women with separateness and equality of legal personality." [2]

Generally, when the husband dies or is incapacitated, as by insanity, the wife becomes the head of the family and as such may choose its domicile.

Present Status.

Public welfare compels the State to fix responsibility for support, control, and protection of the family on some capable representative of it. In this sense the husband usually is the natural head, and for this reason is appointed by law as the political head also. Consequently, the civil domicile of the wife, as well as that of the minor children, is determined generally in all the States by the domicile of the husband, as at common law.

The general view is that the married women's acts adopted in some form in all the States abolish the unity of persons of husband and wife, but do not abolish the unity of the "home," the domicile, and that therefore in the absence of circumstances calling for the application of an exception to the rule, the domicile of the wife is fixed as at common law.

On the other hand, some States consider that certain individual rights and duties related to administration of government do not involve necessarily the family relationship. Therefore an individual's political domicile, for such purposes as suffrage, public office,

jury service, and some forms of taxation, may be determined by actual physical residence if living apart from one's family.

A married woman may acquire her own domicile:

(1) When it is necessary for her protection, when she has been compelled to separate from her husband through no fault of her own, or when the interests of husband and wife no longer bind the spouses together and the marriage relation should be dissolved.

(2) For (*a*) voting, in at least 7 States;[3] if separated from her husband she may have her own voting domicile, in at least 5 other States;[4] (*b*) holding public office, in at least 5 States;[5] (*c*) jury service, in at least 4 States;[6] and (*d*) taxation, in 3 States.[7]

[1] *Wear* v. *Wear* (1930), 130 Kans. 205; 285 Pac. 606; 72 A. L. R. 425.
[2] 26 American Jurisprudence, p. 639, Husband and Wife, sec. 10.
[3] Maine, Mich., Nev., N. J., N. Y., Va., Wis.
[4] Calif., Mass., N. C., Ohio, Pa.
[5] Maine, Mich., Nev., N. J., N. Y.
[6] Maine, Mich., Nev., N. J.
[7] Nev., N. J., Va.

31. Public Office—Eligibility of Women.

Common-Law Rule.

Women under common law are greatly restricted as to political rights on the basis of sex and of marital status.

Present Status.

Elective offices in all State governments are open to qualified women on the same basis as they are open to men. Generally, women also are eligible for appointive positions in their respective States, though some minor appointments may be limited to a designated sex, considered more appropriate for the duties required. Examples are superintendents, nurses, wardens, and the like in State institutions of penal, corrective, or other type in which the sexes are segregated.

32. Jury Service—Eligibility of Women.

Common-Law Rule.

Women are not qualified to serve on either grand or trial juries.

Present Status.

Thirty-five States[1] and the District of Columbia admit women to jury service: In 19[2] of these the duty is compulsory; in 16 States[3] and the District of Columbia a woman subject to jury duty may be excused on her request presented as required by law. Connecticut makes jury duty for women compulsory, except as to those engaged in specified occupations, such as nursing, or caring for young children.

In 13 States[4] women are not eligible for jury service.

(As of July 1, 1950, 4 additional States had removed the bar; Wyoming requires compulsory service; Florida, Massachusetts, and Virginia permit optional service.)

Comment.

Compulsory service requires jury duty from all qualified persons, subject, however, to reasonable grounds for exemption or release by the presiding judge if the juror shows need for the action.

Voluntary, or *optional service*, permits a woman to refuse jury duty solely on the basis of sex.

At common law the term *jury* usually means a body of 12 men, but under statute law the number of jurors varies among many States.

A *grand jury* is charged to inquire in regard to crimes committed within its jurisdiction, and to present all offenders against the law for proper trial before a court.

A *trial jury* is sworn to try the facts of a case, as they are presented in the evidence placed before them.

Jury service is an obligation imposed on citizens of recognized qualifications. These qualifications may be established by common law, by constitution, or by legislative act in the absence of constitutional prohibition.

Exemption from jury service is a statutory privilege available to persons engaged in certain occupations specified by law, such as physicians, nurses, firemen, and so forth. It is a right distinct from the option to serve, which is also available in some States to women called for jury duty. An exemption is not a disqualification, but a mere personal privilege to be claimed or waived by the juror.

Excusing a juror from service is a discretionary power of the court for which the jury is summoned, and rests upon such supportable grounds as illness of the juror or a member of his family, or emergency situations in business or occupation which require the personal attention of the juror.

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[1] Ariz., Ark., Calif., Colo., Conn., Del., Idaho, Ill., Ind., Iowa, Kans., Ky., La., Maine, Md., Mich., Minn., Mo., Mont., Nebr., Nev., N. H., N. J., N. Y., N. C., N. Dak., Ohio, Oreg., Pa., R. I., S. Dak., Utah, Vt., Wash., Wis.

[2] Calif., Colo., Conn., Del., Ill., Ind., Iowa, Maine, Md., Mich., Mont., Nebr., N. J., N. C., Ohio, Oreg., Pa., S. Dak., Vt.

[3] Ariz., Ark., Idaho, Kans., Ky., La., Minn., Mo., Nev., N. H., N. Y., N. D., R. I., Utah, Wash., Wis.

[4] Ala., Fla., Ga., Mass., Miss., N. Mex., Okla., S. C., Tenn., Tex., Va., W. Va., Wyo.

Part IV

APPENDIXES

A.—GLOSSARY OF LEGAL TERMS USED

[Definitions are based mainly on text of Black's Law Dictionary, third edition, 1933.]

Abrogate—to repeal a former law by legislative act or by usage.

Abscond—to hide, conceal, or absent oneself secretly, with the intent to avoid legal process.

Accrue—to come into force or existence; to vest.

Acquets—profits or gains of property, as between husband and wife.

Actionable—furnishing legal ground for an action.

Adjudged—decided, passed on judicially.

Admeasured—measured out, apportioned.

Administration—management and settlement of the estate of an intestate or of a testator who has not appointed an executor in his will, performed under supervision of a court by a person duly qualified and legally appointed.

Advoutrer—in old English law, an adulterer. (South Carolina.)

Affinity—the relationship by marriage between each spouse and the kindred of the other.

Alien (or **Alienate**)—to transfer the title to property.

Allotment—a share or portion.

Antenuptial—made or done before a marriage.

Apportion—to divide and distribute proportionally.

Appraise—to fix and state the true value of a thing, usually in writing.

Appurtenant—belonging to.

Attachment—a judicial process for seizing property of debtors to bring it within the custody of the court.

Authenticate—to give authority to a statute, record, or other written instrument, or a certified copy of any one of these, so as to make it legal evidence.

Avails—profits, proceeds, or use.

Avoid—to cancel, to make void.

Bail trover—the statutory right to recover possession of any form of personal property which has been wrongfully taken from the possession of the plaintiff. (Georgia. Commonly called trover elsewhere.)

Betterment—a substantial, permanent improvement to property.

Bigamous—descriptive of a form of subsequent marriage contracted while the offending party knows that a prior marriage is still undissolved.

Bona fide—in good faith, without deceit or fraud.

Celebration of marriage—usually applied to a marriage ceremony attended with ecclesiastical functions.

Chattel—a thing personal and movable.

Chose in action—personalty to which the owner's right of immediate or future possession may be recovered by legal action.

Civil injuries—injuries to person or property for which satisfaction may be obtained by civil action.

Civil rights—those rights not connected with the organization or administration of government, which belong to every citizen of the State or country, or, in a wider sense, to all its inhabitants. They include the rights of property, marriage, protection by law, freedom of contract, and trial by jury. See **political rights** and **personal rights.**

Cohabitation—living together as husband and wife.

Collateral kindred—those who descend from the same common ancestor but not from one another, as brothers and sisters.

Commitment—the sending of a person to prison by lawful authority.

Concurrent—agreeing in the same act or opinion.

Confidential communications—certain classes of communications between persons who stand in a confidential or fiduciary relation to each other, which, for the sake of public policy and the good order of society, the law will not permit to be divulged or inquired into in a court of justice. An example of such a privileged relation is that of husband and wife.

Conjugal right—the right which husband and wife have to each other's society, comfort, and affection.

Consanguinity—having the blood of some common ancestor.

Conservator—guardian, protector.

Consortium—the right of husband or wife to the fellowship, company, cooperation, and aid of the other.

Construe—to ascertain the meaning of language by a process of arrangement and inference.

Conveyance—the transfer of the title of land from one person or class of persons to another.

Court of chancery—a court possessing general equity powers, distinct from the courts of common law.

Coverture—the condition or state of a married woman.

Criminal conversation—adultery, considered in its aspect of a civil injury to the husband entitling him to damages.

Curator—a person appointed to take care of anything for another; a guardian.

Curtesy—at common law, an estate for life which a husband takes at the death of his wife in all lands which she owned during marriage, if a child who could inherit such lands was born alive to her. Curtesy initiate describes the husband's interest before the wife's death; curtesy consummate refers to his right after her death.

Curtilage—a space about a dwelling house necessary for family purposes. It includes the garden if there be one, and it need not be separated from other lands by fence.

Damage feasant—doing damage, as when a person's cattle or beasts are found treading down crops on another's land.

Decedent—a deceased person, especially one who has died lately.

Descent—succession by rightful heirs to the real property of a person who dies without a will.

Devise—a gift of real property by the last will of the donor.

Distress—the seizure of personal property to enforce payment or obtain satisfaction, as of rent, taxes, or other duties.

Distributable portion—the share of a decedent's intestate estate remaining for distribution to those entitled to receive it under the law, after payment of all proper charges against it.

Distribution—the division among those legally entitled to it of the personal property of a person dying without a will.

Distributive share—the share or portion which a given heir receives on the legal distribution of an intestate estate.

Divorce—Absolute: A complete severance of the marriage tie. From bed and board: A partial divorce, a legal separation.

Dotal property—property that the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. (Louisiana.)

Dower at common law—the life interest of a widow in one-third of the lands of which the husband was seized in fee at any time during the marriage. The right is superior to those of the husband's heirs, creditors, or grantees under his sole conveyance.

Dowry—property that a woman brings to her husband in marriage, now more commonly called a portion. (Louisiana.) Not to be confused with **Dower**.

Duress—unlawful constraint employed to force a person to do some act that he otherwise would not do.

Emancipation—between parent and child, emancipation involves an entire surrender by the parents of the right to the care, custody, and earnings of a minor as well as a renunciation of parental duties.

Encumbrance—See **Incumbrance.**

Equitable separate estate—property set apart in trust for the sole and separate use of a married woman during coverture. For this purpose courts of equity recognize and uphold such an estate to the exclusion of the husband's general common-law rights, and free from liability for his debts. It is not recognized by courts of law, and is to be distinguished from an ordinary equitable estate or trust for a married woman to which the common-law marital rights of the husband attach. See also **Separate estate.**

Estate by the entirety (or **in entirety**)—at common law, the right of ownership of husband and wife in land deeded or willed to them as one person. During marriage, husband has absolute and exclusive right to control and income, but neither can dispose of the property without the other. At death, whole belongs to survivor.

Execution—in civil actions, the mode of obtaining out of the property of the defendant the money due by him on a judgment.

Executory contract—a contract which provides for some future act to be done, as an agreement to build a house in 6 months or to do an act on or before a future day.

Executrix—a woman appointed by a will to execute its provisions.

Extra-dotal property—property that forms no part of the dowry of a married woman; also called paraphernal property. (Louisiana.)

Fee simple—the entire and absolute interest in land.

Fee-tail—an estate of inheritance given to a person and the heirs of his body, or limited to certain classes of particular heirs.

Felony—in general, the term distinguishes the more atrocious crimes from minor offenses or misdemeanors.

Feme sole trader—a married woman who qualifies by a special statutory proceeding to trade on her own account, independently of her husband.

Feud—an hereditary right to use of land allotted for faithful military service. (Mediaeval.)

Fiduciary—a person who is entrusted with rights and powers to be exercised for the benefit of another person.

Freehold—an estate or right of uncertain duration in real property.

Free trader—See **Feme sole trader.**

Garnishment—a proceeding to have money or effects of a debtor in the hands of a third person applied to satisfy a judgment against the owner.

Gratuitous title—a title in property conferred without valuable or legal consideration. (Louisiana.) See by contrast **Onerous title.**

Guardian—one lawfully invested with the power, and charged with the duty, of taking care of the person and managing the property and rights of another who, for some peculiarity of status, or defect of age, understanding, or self-control, is considered incapable of administering his own affairs.

Guardian in socage—at common law, a guardian who has the custody of lands inherited by a minor, as also of the minor's person, until he reaches the age of 14 years. Such guardian is always "the next of kin to whom the inheritance cannot possibly descend." (New York.)

Imbecile—a person of weak mind capable only of the most common and ordinary ideas, usually those relating to physical wants and habits.

Immovables—property that cannot move itself or be removed, for example, lands. (Louisiana.)

Impotence—in medical jurisprudence, the inability to copulate; sterility.

Incestuous—descriptive of cohabitation between a man and woman related to each other within the degrees prohibited for marriage.

Inchoate dower—a wife's interest vesting on marriage in the lands of her husband, which may become a right of dower on his death.

Incriminate—to expose to an accusation or charge of crime.

Incumbrance—a claim, lien, charge, or liability binding real property.

Indictment—an accusation in writing, found and presented by a grand jury, charging a person with a public offense under the law.

Infant—a minor; a person who has not reached the legal age of majority.

In lieu of—instead of.

Insolvent—the condition of a person unable to pay his debts.

Interdiction—a judicial act by which a person is deprived of the exercise of his civil rights, as in cases of lunacy. (Louisiana.)

Intestate—without making a valid will.

Inure—to result, to take effect.

Inventory—a detailed list of articles or property.

Joinder—joint action, as in execution of a deed or mortgage.

Jointure—an agreement, usually prior to marriage, by which a wife is given a "competent livelihood of freehold" in lands, in satisfaction of her whole dower right. It is effective from the death of the husband, for her lifetime at least.

Judicial proceeding—any court action for the purpose of obtaining such remedy as the law allows.

Jurisdiction—capacity to determine the merits of a dispute or controversy and to grant the relief asked for by a litigant.

Legal representative—a person who lawfully represents another in any manner; for example, a guardian, a trustee, or a child of a deceased person entitled to share in an estate.

Legal settlement—a right acquired by continued residence for a given length of time in a town or district to claim aid or relief under the poor-laws.

Letters testamentary—the formal instrument of authority and appointment issued by the court to an executor, empowering him to act in that capacity. It corresponds to letters of administration issued to an administrator.

Levy—(1) to collect a sum of money on an execution under judgment; (2) to impose a tax.

Libel—in court practice of certain New England States, a written statement by a plaintiff of his cause of action and of the relief sought from the court.

Lien—a hold or claim which one person has on the property of another as a security for some debt or charge.

Lineal ancestor—the ancestor in direct line, as father or grandfather.

Lineal descendant—one who is in the line of descent from the ancestor, as son or daughter.

Liquidate—to clear away, to pay.

Maintenance—the furnishing by one person to another, for his support, of the means of living, as food, clothing, shelter.

Mesne process—any writ used to bring a person into court to answer an action or proceeding against him.

Mixed property—property not altogether real nor personal, but a compound of both, as title deeds to an estate.

Moiety—the half of anything.

Moral turpitude—anything done contrary to justice, honesty, modesty, or good morals. The term implies something immoral in itself, regardless of its being punishable by law.

Movables—such subjects of property as attend a man's person wherever he goes (as distinguished from things immovable). (Louisiana.)

Natural child—an illegitimate child who has been acknowledged by its father. (Louisiana.)

Necessaries—such things as are proper and requisite for the sustenance of man, including food, clothing, medicine, and habitation, as well as many of the conveniences of refined society.

Next of kin—this term properly denotes, in the law of inheritance, the persons nearest of kindred to the decedent by ties of blood.

Onerous title—a title to property obtained for valuable consideration. (Louisiana.)

Paraphernal property—property not brought in marriage by the wife, or given to her in consideration of the marriage. She has a right to administer it without the assistance of her husband. (Louisiana.)

Parcenary (also **Coparcenary**)—an estate of inheritance descending to heirs jointly and held by them as an entire estate.

Pecuniary—consisting of money or that which can be valued in money.

Personal rights—a term of rather vague import, but generally understood to mean the rights of personal security, comprising those of life, body, health, reputation, and personal liberty. See **Political rights.**

Personalty—personal property.

Political rights—the power to participate, directly or indirectly, in the establishment or administration of government, such as citizenship, suffrage, public office, and petition. See **Civil rights.**

Power—authorization by one person to another to do some act for him.

Prima facie—at first sight, presumably.

Privileged communications—See **Confidential communications.**

Probate—the act or process of proving a will.

Profligacy—continuous dissipation.

Property—that which belongs exclusively to a person. Property is the highest right a man can have to anything; term is used for that right which one has to lands or tenements, goods or chattels, which in no way depends on another man's courtesy.

Purview—the design, purpose, or scope of a legislative act.

Putative—supposed, alleged.

Quarantine—the widow's right to remain rent-free in her husband's home for a definite period after his death, usually 40 days as at common law.

Rebuttal—in reply.

Record lien—a charge upon property for payment of a debt or duty, of which notice is given by making it a matter of public record.

Remainder (Estate in)—a right in property, generally in land, that is to take effect and be enjoyed only after another right in the same property has terminated.

Rescission—the cancelation of a contract by the parties to it, or by one of them.

Residue—the surplus of a testator's estate remaining after all debts and particular legacies have been discharged.

Reversion—the returning of land to the grantor after a grant is over, as to a lessor after the expiration of a lease for a period of years.

Seized—to have possession of property with the intent to claim a freehold interest. Generally, a person is seized of lands when a deed to them has been made to him, delivered, and placed of record.

Seizin (or Seisin)—possession of land under legal title or right to hold.

Seizure—the act of taking possession of or appropriating property by authority of law, to subject it to some legal process.

Separate estate—(of a married woman) property from which the dominion and control of the husband is excluded, and from which he is to derive no benefit by reason of the marital relation. It may be equitable or statutory according to the mode of its creation.

Severance—the cutting of crops, such as corn or grass, or the separating of anything from the land.

Sole trader—see **Feme sole trader.**

Solemnize—spoken of a marriage, means to enter into a marriage contract with due publication before third persons, for the purpose of giving it publicity and certainty.

Statutory—introduced or governed by statute law as opposed to the common law or equity.

Stipulation—a material article in an agreement.

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Sui generis—of his, her, or its own kind or class; peculiar.

Surety—a person who binds himself for the payment of a sum of money, or for the performance of some other act, for another.

Sustenance—means of support, food, provisions.

Tangible property—property that may be seen, weighed, measured and estimated by the physical senses. In contrast to intangible property, which includes certificates of stock, bonds, and so forth.

Tenants in common—in general, persons who hold the same land together by separate and distinct titles but possess it as a unit. Each may dispose of his interest as he chooses, but it is not separated physically from the whole.

Tort—a legal wrong committed upon the person or property of another, independent of contract.

Traduce—to slander, to expose to contempt, to defame.

Trover—see **Bail trover.**

Trustee—a person who holds property in trust for another.

Trustee process—in some New England States, the name given to the process of garnishment or foreign attachment. See **Garnishment.**

Tuition—protection, care, custody.

Usufruct—the right of using and enjoying all the fruits or profits of property belonging to another, without impairing the substance.

Vest—to effect a present and immediate interest, as distinguished from one that depends on an event which may or may not happen.

Void—in the strict sense of the word, without legal force or binding effect. It seldom implies entire nullity, however, and in many uses has the meaning of voidable.

Voidable—subject to being made void by some act.

Waiver—the intentional or voluntary surrender of a known right.

Wantonly—with reckless disregard of rights, feelings, or safety of others.

B.—MARRIAGE LAW DATA

1. Selected Aspects of Marriage Law Data, by State, as of January 1, 1950

[Source: Martindale-Hubbell Law Directory—1951, Vol. 3, Law Abstracts.]

State	Waiting period—		Common-law marriage recognized	Premarital examination required
	Before license issued	Before ceremony performed		
Alabama			Yes	Yes.
Arizona			No	No.
Arkansas	3 days		No	No.
California			No [1]	Yes.
Colorado			Yes	Yes.
Connecticut	5 days		No	Yes.
Delaware		24 hours [2] 96 hours [3]	No [2]	Yes.
District of Columbia	4 days		Yes	No.
Florida	3 days		Yes	Yes.
Georgia	5 days [4]		Yes	Yes.
Idaho			Yes	Yes.
Illinois			No	Yes.
Indiana			Yes	Yes.
Iowa			Yes	Yes.
Kansas	3 days		Yes	Yes.
Kentucky	3 days		No [4]	Yes.
Louisiana		72 hours	No	Yes. [5]
Maine	5 days		No	Yes.
Maryland	48 hours		No	No.
Massachusetts	5 days		No	Yes.
Michigan	5 days		Yes	Yes.
Minnesota	5 days		No [1]	No.
Mississippi	5 days		Yes	No.
Missouri	3 days		No [1]	Yes.
Montana			Yes	Yes.
Nebraska			No	Yes.
Nevada			No	No.
New Hampshire	5 days		No	Yes.
New Jersey	72 hours		No [1]	Yes.
New Mexico			No	No.
New York	3 days	24 hours	No	Yes.
North Carolina	48 hours [3]		No	Yes.
North Dakota			No	Yes.
Ohio	5 days		Yes	Yes.
Oklahoma			Yes	Yes.
Oregon	3 days		No	Yes.
Pennsylvania	3 days		Yes	Yes.
Rhode Island	5 days [6]		Yes	Yes.
South Carolina	1 day		Yes	No.
South Dakota			Yes	Yes.
Tennessee	3 days		No	Yes.
Texas			Yes	Yes. [5]
Utah			No	Yes.
Vermont		5 days	No	Yes.
Virginia			No	Yes.
Washington	3 days		No	No.
West Virginia	3 days		No	Yes.
Wisconsin			No	Yes.
Wyoming			No	Yes.
Alaska	3 days		Uncertain	No.
Canal Zone			No	No.
Hawaii	3 days		No	Yes.
Puerto Rico			No	Yes.
Virgin Islands	8 days		Uncertain	No.

[1] Only common-law marriages contracted prior to a specified date are valid.
[2] Resident.
[3] Nonresident.
[4] Conditional.
[5] Male only.
[6] Nonresident women.

2. Validity of Marriage Rules—by State

[Supplements Topic 21—Interstate Cooperation in Marriage Law Enforcement.]

(*a*) Validity of marriage is determined by the law of the place where the contract was made.

Alabama—223 Ala. 155; 134 So. 651.
Arizona—1939 Anno. Code, sec. 63–108; 22 Ariz. 490; 198 Pac. 1105.
Arkansas—1937 Digest (Pope's), sec. 9023.
California—1937 Civil Code (Deering's), sec. 63.
Connecticut—119 Conn. 194, 198; 175 Atl. 574.
Florida—Common law.
Idaho—1932 Anno. Code, sec. 31–209.
Iowa—Common law.
Kansas—1935 Anno., Stats. sec. 23–115.
Kentucky—1946 Rev. Stats. sec. 402.040.
Minnesota—183 Minn. 92; 235 N. W. 529.
Mississippi—15 Miss. (7 S. & M.) 798.
Missouri—265 Mo. 718, 733.
Nebraska—1943 Rev. Stats., sec. 42–117; 121 Nebr. 635; 237 N. W. 662.
Nevada—Common law.
New Hampshire—Common law.
New Jersey—111 N. J. Eq. 579, 582; 163 Atl. 5.
New Mexico—1941 Anno. Stats., sec. 65–104.
North Dakota—1943 Rev. Code, sec. 14–0308.
Oregon—51 Ore. 10; 93 Pac. 696; 55 Ore. 145; 105 Pac. 717.
South Carolina—No information.
South Dakota—1939 Code, sec. 14.0103.
Texas—202 S. W. 175.
Wyoming—1945 Comp. Stats., sec. 50–118.

(*b*) Law of the place of contract governs unless the marriage is one violative of the State's public policy or its positive law.

Colorado—1935 Anno. Stats., ch. 107, sec. 4.
Georgia—1933 Code, sec. 53–214; 34 Ga. 407, 416.
Maryland—82 Md. 17; 33 Atl. 317.
Michigan—239 Mich. 455; 214 N. W. 428.
Montana—1935 Rev. Codes, secs. 5703, 5707.
New York—256 N. Y. S. 862, 865; 252 N. Y. S. 518, 522.
Ohio—42 App. 276, 286; 182 N. E. 117.
Rhode Island—26 R. I. 351; 58 Atl. 978.
Tennessee—87 Tenn. (3 Pick.) 244, 256; 10 S. W. 305.
Virginia—1942 Anno. Code, sec. 5089.
Washington—47 Wash. 561, 563; 92 Pac. 417.
West Virginia—76 W. Va. 352, 355; 85 S. E. 542; 1943 Anno. Code, sec. 4701.

(*c*) Law of the place of contract governs unless the marriage is contracted elsewhere by a resident of the State to evade its law and later return there for domicile. In such cases, the marriage is void.

Delaware—1935 Rev. Code, secs. 3485, 3497.
District of Columbia—1940 Code, sec. 30–105.
Indiana—1933 Anno. Stats. (Burn's) sec. 44–209.
Maine—1944 Rev. Stats., ch. 153, sec. 9.
North Carolina—76 N. C. 242, also 251.
Oklahoma—90 Oklahoma 300; 217 Pac. 364.
Pennsylvania—183 Pa. 625; 39 Atl. 16.
Utah—1943 Anno. Code, sec. 40–1–4; 64 Utah 372; 230 Pac. 1026.

(*d*) Marriage void if parties from other jurisdictions seek to evade laws of their domicile by having ceremony performed in any of these States, with the intent to return to their home State after marriage.

Illinois—1947 Rev. Stats., ch. 89, secs. 19, 20.
Louisiana—1932 Gen. Stats. (Dart's), sec. 2187. 119 La. 704.
Massachusetts—1932 Gen. Laws, ch. 207, secs. 10, 11.
Vermont—1947 Rev. Stats., secs. 3154, 3155.
Wisconsin—1947 Stats., sec. 245.04.

C.—THE STATUS OF WOMEN UNDER PUBLIC LAW IN THE UNITED STATES, 1947–48

Substance of Replies from the United States Government[1] to Part I of the Questionnaire from United Nations Economic and Social Council (Commission on the Status of Women).

SECTIONS A AND B.—GENERAL PROVISIONS; FRANCHISE; PUBLIC OFFICE—JULY 25, 1947

GENERAL PROVISIONS

It is a significant feature of the American social tradition that women have been considered as partners with men in the development of the country, hence, as full sharers in the guaranties and protections of the fundamental law, expressing the policy of the whole people.

General provisions guaranteeing equality between men and women in basic public rights and privileges are found in the constitutions and legislative enactments of Federal and State governments, also in pertinent international treaties.

1. In Constitutions.

Federal.—The Constitution of the United States implicitly includes both sexes throughout its provisions and amendments. No distinction on the basis of sex is made in respect to the fundamental rights granted by it or protected under it.

The only exception to this rule formerly appeared in Section 2 of the 14th Amendment adopted in 1868 at the close of the Civil War to define the status of citizens and to guarantee protection of certain constitutional rights, including the right of franchise. This section provided that when the right to vote is denied to "any of the male inhabitants of a State," the basis of representation of that State in the Congress should be proportionately reduced.

However, this sex distinction in relation to franchise was removed by the 19th Amendment to the Constitution, adopted in 1920, which forbids the United States or any State to deny or abridge the right of United States citizens to vote on account of sex.

Interpretation.—Women have always been considered citizens the same as men, irrespective of the 14th Amendment. Women are persons, therefore citizens, and entitled as such to all the fundamental rights, privileges, and immunities which the Constitution safeguards to any citizen.—*Minor* v. *Happersett* (1875), 21 Wallace 162, 165.

State.—The language of the State constitutions clearly contemplates the inclusion of both sexes throughout the general provisions. Some States, with extra precaution, included special provisions for safeguarding the interests of women, such as the separate property rights of married women, or the right of entering upon any lawful occupation, business, or profession.

[1] Replies prepared by the Women's Bureau, United States Department of Labor, and originally issued as a mimeographed official document. This condensed form is available in reprints for public use.

Territorial.—Nothing in the language of organic acts, Bills of Rights, or Constitutions adopted, indicates any other purpose than to have the fundamental law include women as well as men in its application.

2. In Legislative Enactments.

Women, as men, are covered by the fundamental guaranties to individuals, contained in the statutes of Federal, State, and Territorial Governments. Particular evils or hazards have been met by legislation designed for direct remedies or protection.

Rule of Interpretation.—Acts and resolutions of the Congress employing terms in the masculine gender may be applied to and include the feminine gender also (United States Code, 1940 ed., vol. 1, title I, sec. 1). Similar rules appear in most State laws.

3. In Treaty Obligations.

Treaty provisions deal with specific issues, such as the nationality of married women (Montevideo Convention of 1934—United States Statutes, vol. 49, pt. 2, ch. 2957).

The references to equality of recognition as between the sexes in provisions of the United Nations Charter are related to specific objectives or functions (Charter of the United Nations, ch. 1, art. 1 (3), ch. 4, art. 13 C, ch. 12, art. 76 C).

FRANCHISE

The right of women to vote, guaranteed by constitutional provisions, is coextensive with that of men in national, regional (States and Territories), and in local or municipal elections. This includes participation in elections related to public issues or proposals, such as public schools, or public bond issues for various special purposes, such as sanitary commissions; also on referendum issues, wherever this system obtains.

Voting qualifications apply to individuals, and a married woman therefore votes independently of her husband.

No qualifying differences between men and women which would abridge the voting right on the basis of sex can be made, since the 19th Amendment to the Federal Constitution prohibits abridgment as well as denial of the franchise on that basis.

All State Constitutions, Territorial organic laws, and statutes conform to the Federal Constitution, either by positive terms or through interpretation by conclusive judicial authority.

PUBLIC OFFICE

Generally, in all levels of Government (Federal, State, Territorial) the major elective and appointive positions are open to qualified persons of both sexes.

A few exceptions exist with respect to functions which in the opinion of the legislative body could be better performed or more appropriately rendered by an official of a designated sex. For example, the Congress designated a woman as the head of the Women's Bureau in the Department of Labor. Similar requirements are found in some State laws regulating appointment of directors or commissions to administer the affairs of wage-earning women and children.

In some States, minor appointive positions may be limited to a designated appropriate sex, such as superintendents, nurses, or wardens in State institutions of penal, corrective, or other type in which the sexes are segregated.

Legislative Committee Posts.

Rules of procedure, adopted by the legislative body for its own government, regulate the composition of its committees. No sex distinction is made in the qualifications of members for these posts. The guiding principle in these assignments is individual ability, regardless of sex, to render the required service.

SECTION C.—PUBLIC SERVICES AND FUNCTIONS

Chapter I.—Civil Service—December 1, 1948

The information given under this chapter is for the Federal Government's employees under the United States Civil Service system, also for the several States with respect to employees under their State civil service or merit systems. About one-half the States have a uniform system for the qualification, appointment, compensation, promotion, and discharge of their public employees in all agencies. The remaining States cover only a portion of their employees under a civil service or merit system.

Each system is designed to establish uniform standards within a political unit for selection of personnel, rates of compensation, and regulation of conditions under which employees are to work (such as training, rating, leave policies, and retirement provisions).

Availability of Positions.

Civil service positions are open to women both in Federal and State services. Generally, no difference is made on the basis of sex in civil service provisions covering recruitment or entrance examinations.

Qualifications.

Generally, qualifications are related to the position without regard to sex. In some States the personnel agency is specifically authorized to consider sex as a factor in deciding qualifications for certain positions.

Appointments.

Under the Federal law, the rule is that certification be made without regard to sex unless the appointing officer specifies that either a man or a woman is desired for the position.

Among the States reporting on civil service and merit system procedures, the general situation is that the law and the regulations apply to men and women alike for practically all positions. Exceptions exist with respect to a few jobs of specified types in some States in the classification schedules. In most of the States a specific request for an appointee of one sex or the other will be granted by the civil service merit system authorities if a valid reason is given for the selective request.

Typical classes of such positions are: Male appointees as guards in men's penal institutions, fire suppression crews in forestry, highway police patrols or highway laborers; female appointees as guards for women's reformatories, nurses (especially for care of women and children in State institutions), or girls' group supervisors in youth authority divisions.

Quota Restrictions.

No quota is set in the Federal civil service law, and generally none appears in State civil service systems. In a few instances a proportion of men and women appointees is designated in a law, such as a flat number of females within a total number of police personnel to be appointed, or a minimum of women within a total of appointees for particular jobs, as for labor inspectors.

Types of Position.

Generally, any person may apply to take any examination for any position for which he believes he is qualified. However, the nature of certain types of employment creates classes of positions which would normally be filled only by women or by men. Typical examples are stenographic positions, normally filled by women, and highway patrolmen, normally filled by men.

Rates of Compensation.

The Federal law requires equal compensation for equal work irrespective of sex. State laws follow this principle with respect to duties at the same job level.

Under the law, opportunities for advancement and promotion in Federal service are without regard to sex. This is also true generally as to State civil service and merit system laws and regulations.

Pension Privileges.

In Federal civil service, retirement and benefit provisions are the same for men and women.

Among the States, ages for compulsory retirement are usually the same for men and women. Three States reported lower retirement ages for women—two on voluntary retirement, one as to compulsory retirement.

The *length of service* requirement is the same for both sexes in Federal service, and also as to all States reporting on this point.

Benefit amounts are computed without regard to sex in the Federal service.

Under State systems, six report allowance for women's greater longevity by setting a slightly higher rate of contribution for women employees which enables them to receive a rate of annuity comparable with that paid to men. One State reports a system of paying lower benefits to women but over a longer period based on actuarial rules.

Survivors' Benefits.

Under the Federal civil service system, a married male employee may arrange at the time of his retirement to take a reduced annuity himself and provide an annuity after his death for his widow, if she is, or later becomes, 50 years of age. A married female employee does

not now have this privilege. [Under provisions of U. S. Public Law 310, approved September 30, 1949, amending previous law, a married female employee may arrange an annuity for her husband if he survives her.]

The widow and dependent children of a married male employee who retires, and later dies, will receive benefits as provided in the law. But the surviving husband and dependent children of a female worker under like conditions are not now entitled to such benefits.

In State retirement systems providing for dependents, the provisions generally apply equally to both men and women.

Disability Provisions.

There are no differences in the law as to disability provisions in either Federal or State services. Annuity benefits would be slightly higher for men than for women, due to the actuarial finding of greater longevity for women, wherever this principle is applied.

Civil Service Staff Positions.

Women are eligible for posts on both the examination and appointment boards of the civil service, in Federal and State systems.

There is no arbitrary segregation by sex, either in Federal or State systems, in the working and seating arrangements for public employees.

Marriage is not a bar to appointment or to continuation in office under the law.

Maternity Leave.

Maternity leave, in the Federal civil service and in many of the State systems, may be granted up to the amount of accrued annual and sick leave, with full pay and full retention of employed status. If additional leave of absence is required, the personnel officer may grant it as leave without pay for a period not to exceed the limit set by law for such leave. The employee retains employed status to the end of such period.

Foreign Office Posts.

Diplomatic and consular posts are open to women on the same basis as men in regard to qualifications, disqualifications, and examinations.

Promotion is on a numerical pattern basis; that is, Classes 1, 2, 3, etc. Promotions are recommended by a board on the basis of prescribed elements, including fitness, performance, and the like, within the class in which the job falls. The Department of State reports that sex is not an included element.

All types of positions are open to women with the exception of courier. This exception is due to the technical nature of the duties required, which include carrying heavy pouches of materials, and guarding them constantly.

Preliminary training for both sexes must be acquired through private education. The Department of State provides indoctrination courses, after the individual has passed a qualifying examination, and received appointment.

Religious Office.

Religious positions are not under civil service or other governmental control in the United States, since there is absolute separation of affairs of church and state by virtue of the fundamental law of the land.

Teaching Positions.

Wherever the civil service systems include the teaching profession, such positions are open to men and women on the same basis. Not all State civil service or merit systems include teachers in their coverage. Some include only teachers in State institutions.

Forced Labor.

Slavery or involuntary servitude for any person, except as a judicial penalty for crime, is prohibited by the United States Constitution in all territory within the jurisdiction of the United States (Amendment 13).

CHAPTER II.—MILITARY AND LABOR SERVICE—DECEMBER 1, 1948

General.

Women are allowed, but not required, to enter the armed forces. Their military units are not under separate control and administration from the regular armed forces, but are component parts of them.

The Women's Armed Services Integration Act of 1948 makes applicable to the personnel of the several women's corps of the armed services all laws applicable to the male personnel of the same departments in the armed services, unless otherwise specifically provided, and except as may be necessary to adapt the laws to the respective women's corps.

The relative strength of the women's corps is limited to 2 percent of the authorized strength of the respective departments, personnel officers are likewise prorated.

Female officers have certain limitations on rank in appointments and promotions. Any requirement of sea or foreign service in grade prescribed by law for promotion is not applicable to promotion of women officers of the Regular Navy.

Married women and women who marry after enlistment must serve one full year on current enlistment before they will be eligible for discharge by reason of marriage, unless request for discharge is because of pregnancy.

Qualified female recruiting personnel are required to assist in interviewing female applicants and processing their records for enlistment in the armed services.

The present Federal laws regulating the composition of the State Militia declare that only males, with specified qualifications, are to compose the National Guard, the Naval Militia, and the Unorganized Militia.

Specific Differences.

Provisions for women in the armed services differ specifically in these respects from those for men:

Age limits.—At present, basic enlistment ages for women are 18 to 35 years. Voluntary enlistments for men begin at 17 years. Parental

consent is required for enlistments of women under 21, and of men under 18.

Qualifications.—Applicants of both sexes must meet fully the qualifications for general military service, as prescribed by official regulations from time to time.

Duties.—The secretary of each department of the armed services prescribes the kind of military duty to which the female personnel may be assigned. Women in the Air Force are not to be assigned to duty in aircraft while the aircraft are engaged in combat missions. Women in the Regular Navy or in the Naval Reserve are not to be assigned to aircraft under such conditions, nor to duty on vessels of the Navy except hospital ships and naval transports.

[Women in the armed services typically have been assigned to professional, nursing, clerical, technical, and scientific duties, according to their qualifications and training.]

Remuneration.—Men and women in the services are governed by the same provisions of law relating to pay, leave, money allowances for subsistence and rental of quarters, mileage and other travel allowances, benefits, or emoluments, except that husbands of female personnel are not considered dependents unless they are in fact dependent on their wives for their chief support, and children of female personnel are not considered dependents unless their father is dead or they are in fact dependent on their mother for their chief support. Male personnel are primarily responsible under law for support of wives and children; therefore, military allowances for their legal dependents are made on their request and proof of relationship.

Retirement and compensation provisions are in general the same for male and female personnel.

Chapter III.—Jury Service—December 1, 1948

Jury service in the United States may be rendered in trial courts of either the Federal, State, or Territorial governments.

Qualifications of jurors are established by Congress for Federal courts, and by State and Territorial legislatures for their respective jurisdictions. Considerable variation exists in qualification provisions among the States and Territories, but Federal juror qualifications are uniform except as to grounds of incompetence. These are dependent on the law of the State or Territory where the Federal court is being held.

The women of 13 States,[1] Hawaii, and Puerto Rico are not eligible for service on either a grand jury or a petit jury. Due to this ineligibility, they are barred also from jury duty in the Federal courts which convene in these jurisdictions.

However, women in 35 States, District of Columbia, and 2 Territories may serve in both Federal and State courts.

Women in 19 States are subject to compulsory jury service on the same basis as men; that is, they may be exempted from service on reasonable grounds recognized by law.

Under the 1948 Federal statute, jury service in Federal courts is compulsory wherever the citizen is competent under the law. In a

[1] As of July 1, 1950, Ala., Ga., Miss., N. Mex., Okla., S. C., Tenn., Tex., W. Va.

few States additional grounds for excuse from duty are allowed to women. In other States such grounds will usually be sufficient to secure exemption from the court.

Women in 15 States, the District of Columbia, Alaska, and the Virgin Islands may be excused from service on grand and petit juries if they so request.[2] In one State, Utah, where women may serve only on trial juries, they may be excused from this service upon request.[3]

In the jurisdictions where women are eligible they may serve on both civil and criminal juries.

Wherever women are eligible as jurors, statutory qualifications and disqualifications are identical between men and women. In 16 States, the District of Columbia, Alaska, and Virgin Islands, optional grounds for release from duty are broader for women than for men by reason of the voluntary basis of women's service in these jurisdictions.

Marital status of women is not a factor in legal qualifications for jury duty. Realistically, a married woman with small children or in pregnant condition would more frequently seek to be excused from jury duty than either a man or a single woman. As a rule, wherever women are competent under the law for jury duty, they are being called and are rendering satisfactory service. This is the impression gained from the public press and informal comments of judges.

SECTION D.—EDUCATIONAL AND PROFESSIONAL OPPORTUNITIES—JULY 1, 1947

Replies to the ECOSOC Questionnaire on the Legal Status and Treatment of Women, Part I, Section D, on Educational and Professional Opportunities, summarize the legal situation under the Federal Government, the 48 States, the District of Columbia, and 5 Territorial Governments—a total of 55 jurisdictions. Since, under the Federal-State system in the United States of America, it is within the jurisdiction of the several States and Territories legally to establish their own educational standards, these standards are not uniform throughout the subdivisions and Possessions of the United States, but vary in particulars from one jurisdiction to another.

Compulsory Education.

Each of the 48 States requires by law that children of both sexes within specified age limits attend school. The usual provision is that the child attend either public school or a private or parochial school of equivalent standards of instruction. The minimum and maximum ages for compulsory attendance are the same for boys and girls. Minimum ages range from 6 years to 8 years, and maximum ages from 14 to 18 years, among the several States.

Each of the Territories[4] has compulsory attendance school laws applicable alike to both sexes. The usual compulsory ages are between 6 and 16 years. Public elementary and secondary schools are

[2] Also true of Florida and Massachusetts, under 1949 revisions.
[3] Also true of Virginia, under 1950 revision.
[4] Territories are included in the general replies to subsequent inquiries unless otherwise noted.

provided for both sexes, most of which are coeducational; some separate ones for girls and boys operate without distinction as to sex or future career. Standards for qualifications of teachers and for courses of study are set by authority of law.

Generally, there are no differences as to academic courses. Occasionally there are variations in the schools set up separately for girls or boys to provide vocational or industrial training, since the purpose of the school will determine the courses of study. However, no law prohibits students from choosing which of the prescribed courses they will take, and their choices are governed mainly by the practical use of the training to them.

Public trade and technical schools on a high school level generally are coeducational, though most States have some such schools for girls separately or schools which have a girls' department. Canal Zone and Virgin Islands do not report any schools of this type.

Where different trade and technical schools are maintained for boys and girls, the standard of girls' schools is the same as for boys' as to entrance requirements, personnel of administration and remuneration offered, amount allowed for expenses and facilities, number of schools, curricula, diplomas, and so forth.

Public universities and colleges, open to women as well as to men, are provided. Most of them are coeducational, but a small number are for women only and a few for men only. None are reported for either sex in the Virgin Islands.

Private universities and colleges are open to women as well as to men in all parts of the continental United States and in Puerto Rico. About half are coeducational, and the other half are either for women only or for men only. None are reported for either sex in the Virgin Islands.

Coeducational universities and colleges admit women on an equal basis with men as to entrance requirements, examination offered for entrance, curricula offered, promotion and graduation, admission to examination leading to a degree, and conferring of degree, diploma, or certificate. Both public and private institutions must conform to legally prescribed standards before conferring degrees on graduates, either men or women.

Most public, technical, and professional schools at university level are open to women. Private schools frequently limit students to one sex or the other, according to the purpose for which they are established.

Public institutions generally do not distinguish between women and men as to entrance requirements for examinations, curricula, promotion and graduation, candidacy for degree, or conferring of degree, diploma, or certificate.

No quota system of admissions, based on sex, is established by law for either public or private institutions.

Private institutions are under no legal limitation on treatment between the sexes; each has authority to decide for itself whether it will accept students of one or both sexes, the courses of study to be taught, and the method of instruction to be used. Such schools are typical of free enterprise as it is conducted in the United States.

Access to Professions.[5]

All major professions are open to qualified women. No quota system is authorized; qualifications and remuneration, so far as provided for by law, are on equal basis for women and men.

Examinations for license to practice a profession are open to men and women on equal terms when given by the Government or recognized institutions.

The laws establishing qualifications refer to "citizen," "person," "applicant," or "individual." The general rule of statutory interpretation adopted among the States is that words of masculine gender will also include feminine and neuter genders, unless the subject-matter plainly shows an intention to limit the law to one sex.

No difference is made between the sexes in subject matter of examination, grading, or otherwise.

Generally, membership in professional societies or associations is not governed by law, but is determined by the rules which the association adopts for its government. For the most part, associations of national or State scope admit women members on the same basis with men.

SECTION E.—CIVIL LIBERTIES—DECEMBER 1, 1948

Constitutional or legislative safeguards of civil liberties are found in the Federal Constitution, the several State constitutions, and the organic acts of Territories and Possessions, each containing specific declarations commonly known as the "Bill of Rights." The terms used vary in form, but the intent in each case is clearly one of universal application without regard to sex, and the law has been so interpreted consistently.

Accordingly, women have the same degree of privilege as men in freedom of religion, freedom of speech, freedom of assembly, and freedom from unwarranted searches and seizures.

Women have equal status with men before the courts in practically all respects. Limited exceptions exist in a few States, such as protection of certain community property rights in which the husband either represents both spouses or must be joined as a party. In one State the husband usually must be a party to a suit for recovery of the wife's separate property.

Women have at least equal status with men in representation by counsel. Any special provisions favor the woman. For example, in some jurisdictions, a wife who is entitled to a divorce for the husband's fault, but is without funds, may prosecute her suit without court costs. Also, the wife who must sue for support for herself or her children may be allowed attorney's fees at the husband's expense.

Men and women have equal status before the courts as to notice for appearance and to right of trial by jury.

Body execution of judgments in civil cases is generally prohibited as to any person by constitutional and statutory provision. Some State constitutions and statutes permit body execution in civil cases involving fraud or for alimony or nonsupport. Women are in this

[5] "Professions," as used in the replies to the Questionnaire, refer to those employments for which a high degree of skill and technical training is required by law.

respect better off than men, since a wife is generally not subject to body execution for nonsupport of her husband.

The Federal Government does not regulate marriage. This subject is within the domain of the respective States. No statutory restrictions, as to either men or women, exist on the basis of nationality (apart from race), religion, or political affiliation, with respect to choice of a marital partner. No discrimination exists against women in the marriage statutes because of sex.

SECTION F.—FISCAL LAWS—DECEMBER 1, 1948

Poll tax requirements apply alike to men and women, except in 10 States where males under certain circumstances, but not females, are liable for tax. As to Federal income tax law, married women may file separate returns or joint returns with their husbands, as they choose, the choice of form usually being guided by the method which will result in the lowest amount of tax for the taxpayer.

Provisions and exemptions in the Federal *income tax law* are the same for men and women. State income tax laws apply alike to men and women, generally. Most States taxing individual incomes permit joint returns of husband and wife. In most States where a joint return may be filed, husband and wife are taxed on their aggregate income with a slightly larger exemption than for persons filing separate returns. In States with the community property system, the husband and wife each are taxed on one-half of the community income.

Federal inheritance tax provisions and exemptions apply without sex distinctions. As to State laws, there are no substantial differences between men and women. In a few States the rates of transfer of property on death from husband to wife are lower than the rates on such transfers from wife to husband and the exemption from tax of legacies to the wife is greater than the exemption of legacies to the husband.

Federal gift tax provisions or exemptions apply alike to men and women and there are no substantial differences in State provisions or exemptions. In a few States the tax rates on gifts from husband to wife are lower than the rates on gifts from wife to husband and the exemption from tax on gifts to the wife is greater than the exemption on gifts to the husband.

The only other tax provision of widespread incidence which distinguishes between women and men is the required payment of *road taxes*. Wherever assessed, these taxes are imposed only on males, as the modern counterpart of the States' former requirement of communal service from male citizens in building and maintaining public roads.

SECTION G.—NATIONALITY—JUNE 15, 1948

Immigration, naturalization, and the nationality status of United States citizens are regulated solely by Federal law, the States having no authority in this respect.

Consequently, the law of the nationality of women [as of any citizen] in the United States is found in certain international treaties, in some provisions of the United States Constitution, and in numerous acts of Congress.

Effect on Nationality of Marriage to an Alien.

Under the present law, a woman citizen does not lose her United States nationality by marriage to an alien. Citizens who under former provisions of law lost their United States nationality through marriage to certain types of aliens may be repatriated by abridged procedure.

A woman who at birth was a United States citizen, but lost her citizenship solely by marriage to an alien before September 22, 1922, may regain her citizenship simply by taking the oath of allegiance as prescribed by law, provided her marital status with the alien has terminated and she has not acquired another nationality by some affirmative act other than her marriage.

Independent Naturalization of Alien Spouse.

An alien spouse of either sex must seek naturalization independently. If the person is eligible for naturalization, certain exemptions are applicable in such cases, principally that, as to marriages on or after a specified date (or upon the naturalization of the other spouse after that date), no declaration of intention is necessary. Also, the usual 5-year residence period in the United States required before the filing of the petition is reduced as follows: If the marriage occurred after September 21, 1922 and prior to May 24, 1934, the required period of continuous residence is 1 year before the petition for naturalization is filed; if the marriage took place after May 24, 1934, the residence required is 3 years.

General.

Expatriation, or loss of nationality, results solely from the individual's performance of acts or fulfillment of conditions specified in the law. Revocation of the husband's naturalization, except for actual fraud, has no effect on the rights of the wife and minor children.

If an alien husband or wife acquires United States nationality after marriage, the acquisition does not extend to the other spouse.

Either wives or husbands in such cases may be naturalized individually under facilitated procedure, and without the consent of the other spouse. "The right of a person to become a naturalized citizen of the United States shall not be denied or abridged because of sex or because such person is married" (8 United States Code, sec. 702). Dissolution of marriage has no effect on citizenship status of the wife in the United States (8 United States Code, secs. 800–809).

Under conditions prescribed by law, a citizen may voluntarily renounce her nationality before a designated official. A married woman renounces her nationality independently; her husband's consent is not required. A person may forfeit citizenship by specified acts, such as unauthorized extended residence outside the United States or by voluntarily obtaining naturalization in another country.

If a woman citizen of the United States married prior to January 1, 1948, her alien husband may enter on visa as a nonquota immigrant unless he is inadmissable under the immigration laws.

If the woman citizen married on or after January 1, 1948, her husband may be admitted only as a preference quota immigrant; i. e., included in the 50 percent per annum preferred class who are first entitled to visas. When husband and wife are of different nationalities,

the right of a wife who is a United States citizen to transmit her nationality to her children is equal to that of a husband under like conditions. The children have the privilege, either while minors or within a limited time after majority in certain cases, to choose their nationality.

The alien wife of a United States citizen may enter as a nonquota immigrant without regard to the date of marriage. A child of either a man or woman citizen, if unmarried and under 21 years of age, may enter as a nonquota immigrant.

If the parent is a citizen member of the United States armed forces or has an honorable discharge therefrom, his or her alien, unmarried child, under 21 years of age, may enter as a nonquota immigrant and be naturalized under simplified procedures.

Alien parents of a United States citizen may be admitted as preference quota immigrants; that is, they are included in the 50 percent per annum preferred class in each nation's quota as those first entitled to visas.

1. Law Governing Personal Status of Married Persons.

As a general rule, the validity of marriage is governed by the law of the place where the marriage ceremony takes place.

Legislative power over the marriage relationship rests in the State of the matrimonial domicile, and not in the United States Government except in the Territories.

The legislature prescribes who may marry, the procedure and form essential to constitute the marriage, the duties and obligations that marriage creates, and the effect of marriage on the property rights of the spouses. The legislature also prescribes what shall be the grounds for dissolution of the marriage.

Every State has the right to determine the marital status of the persons bona fide domiciled within its limits, and the courts may acquire, under legislative sanction, authority to dissolve the marriage relation of such persons irrespective of where the marriage was celebrated, of where the case of divorce arose, or of where the domicile of the defendant may be, even though the parties never cohabited together as husband and wife within the State.

Aliens may obtain divorces on proper grounds where they in good faith have made their homes within the State for the statutory period of time required to begin the suit.

A suit for alimony or maintenance without divorce may be brought where either of the parties is actually, legally, and in good faith domiciled in the State where the suit is brought, particularly where personal service is made upon the husband.

2. Effect of Nationality on Marriage.

No statutory restrictions as to choice of a marital partner, whether man or woman, exist on the basis of nationality.

3. Effect of Nullity of Marriage Upon the Nationality of Women.

The alien spouse of a United States citizen does not acquire United States nationality automatically by virtue of marital status, but only by conformity with one of two methods of procedure prescribed by the naturalization law. If the naturalization is obtained under the general (or "long") method, it is on an individual basis, wholly apart

from marital status. In such a case the fact that the marriage is declared invalid would have no effect on the wife's United States citizenship.

On the other hand, if the alien wife obtains naturalization through the shorter, simplified procedure available to alien spouses of United States citizens, her marriage is a material fact in the granting of the citizenship. In this case, annulment of the marriage would not automatically revoke her United States citizenship, but would subject it to possible cancellation in a court action instituted in the discretion of the United States Government. This right of cancellation reserved to the Government is a necessary control against abuse of the privilege available to the alien spouse of a United States citizen, but is exercised with caution and with due regard to the circumstances in a particular case.

An alien wife, if she acquires citizenship through simplified procedure on the basis of her marital status, and if her United States citizenship is cancelled after appropriate legal proceedings, would be regarded as having retained her former nationality unless the law of her state of origin provides otherwise.

A United States citizen who marries an alien man, under present United States law, does not automatically lose her United States nationality on her marriage. Consequently, annulment of the marriage has no effect on her nationality status.

If, under previous law, a woman who was a United States citizen lost her nationality, she may reacquire it by compliance with the simplified naturalization procedure provided for the purpose. If the marriage was invalid, however, she would be regarded as never having lost her United States citizenship.

4. Effect of Marriage on Domicile.

In as much as the law of each State makes the husband primarily responsible for the support of his wife and children, the State laws declare that for the purpose of the marriage relationship his domicile usually shall determine the domicile of his wife and children during continuance of the marriage and the minority of the children. This rule facilitates fulfillment of his legal duty to his family, and enforcement by the State if he fails to discharge it.

But the husband's choice of a marital domicile must be made with due regard to the welfare, comfort, and peace of mind of his wife, and to her legal status as his helpmeet and companion.

A wife may establish a separate domicile for herself, if she is compelled by the husband's conduct to leave him. Her separate domicile will be recognized by the court for purposes of divorce or legal separation. This is the policy in practically all jurisdictions.

5. Jurisdiction Over Family Problems of Aliens.

As a general rule, aliens (other than enemy aliens) who are capable of acting for themselves under the law of the place where the action is brought may maintain suits in the proper courts to vindicate their rights and redress their wrongs.

The courts have generally accorded to alien friends the same privilege of suit that they have extended to citizens. The essential test of the right to sue is residence and not nationality.

Aliens residing in the United States, while they are permitted to remain, are in general entitled to the protection of the laws with regard to their rights of person and property and to their civil and criminal responsibility. They are entitled likewise to safeguards of the Constitution with regard to their rights of person and property.

If the petitioner is domiciled abroad, domestic courts of the United States would have no jurisdiction. If the defendant has a foreign domicile, domestic courts in the United States could not have jurisdiction over any action for which personal service on the defendant is required.

6. Domicile of Children.

When family unity has been broken, either by divorce or judicial separation, and the father and mother have different domiciles the rules of law which generally determine the children's domicile are:

(1) That the minor child's domicile is that of the parent to whose custody it has been given by the court;

(2) That if there has been no court order awarding custody, then the child's domicile is considered to be that of the parent with whom it lives; or

(3) That if the child lives with neither parent, it normally retains the domicile of the father.

The general rule applied among the States for awarding custody of minor children is that the court which has jurisdiction of a dispute between the parents, or of an action to dissolve or annul a marriage, shall so dispose the custody of the child that his welfare is safeguarded, in view of all the facts of the particular case, neither parent having a superior right to the custody of the child.

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