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UNITED STATES DEPARTMENT OF LABOR  
WOMEN'S BUREAU  
Bulletin No. 157—United States Summary

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

January 1, 1938

UNITED STATES DEPARTMENT OF LABOR

FRANCES PERKINS, Secretary

WOMEN'S BUREAU

MARY ANDERSON, Director

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

January 1, 1938

*Final Report, Giving Summary for All  
States Combined*

By

Sara Louise Buchanan



BULLETIN OF THE WOMEN'S BUREAU, No. 157—UNITED STATES SUMMARY

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The local status of Wyoming the  
United States of America

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Note.—Abstracts for the 48 States and the District of Columbia, published as Women's Bureau Buls. 157-1 (Alabama) to 157-49 (Wyoming), are available from the Superintendent of Documents, Washington, D. C., at 5¢ a copy.

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## GUIDE TO RELATED INFORMATION

[The topic numbers referred to indicate the number of the chief topics where related material may be found.]

The statement of major sex distinctions and the general summary statement, both given in Part II, are arranged according to the headings Public (or State) Relationships; Private (or Family) Relationships; and Business, Wages, and Property. The more detailed summary, in Part III, like the reports for the separate States, has a different arrangement. The following guide has been prepared to show the numbers of the topics that will give information on the various phases of public, private, and business relationships.

Public Relationships:	Topic Number
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## (b) Ownership, Control, and Use of Property:

Property owned at marriage-----	4
Property acquired after marriage-----	6, 9, 10, 11
Liability for debts of spouse-----	9
Power to transfer property-----	5, 9, 14
Rights to exemption from seizure for debts-----	3, 16
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## (c) Inheritance and Marital Rights of Surviving Spouse in—

Estate of deceased person-----	15
Renunciation of will-----	17



## LETTER OF TRANSMITTAL

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UNITED STATES DEPARTMENT OF LABOR,  
WOMEN'S BUREAU,  
*Washington, April 22, 1941.*

MADAM: I have the honor to transmit the final report on the legal status of women in the various States, and in the United States as a whole. As originally undertaken, this work, based on a search of statutes and decisions of appellate courts, comprised the United States information for the League of Nations survey of the legal status of women in the various countries of the world, but the information presented has been much in demand in this country for many years.

Reports for the various States have been issued separately, and this final presentation includes chiefly the general summary for the United States as a whole for each of the 32 points of law covered. The abstracts for the States, issued over the years 1938 to 1940, have been used widely.

The research and writing of the entire report are the work of Sara Louise Buchanan of the Women's Bureau research staff, a member of the bar of Mississippi and the District of Columbia, under the general direction of Mary Elizabeth Pidgeon, chief of the Research Division. Miss Buchanan was assisted by Mary Loretta Sullivan, of the Bureau's editorial staff.

After completion of the report for each State, the material was sent for approval or suggestions by competent persons within the State.

Respectfully submitted.

MARY ANDERSON, *Director.*

HON. FRANCES PERKINS,  
*Secretary of Labor.*



CONTEMPORARY JUSTICE AND WOMAN

By courtesy of  
*Art in Public Buildings, Inc.*  
 Washington, D. C.

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.



## LIST OF TOPICS

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### A.—CIVIL RIGHTS

#### I.—CONTRACTS AND PROPERTY

1. Age of Majority.
2. Contractual Powers of Minors.
3. Property Exemptions from Seizure for Debt—Respective Rights of Men and Women.
4. Property of Married Woman Owned at Marriage—Ownership After Marriage.
5. Contractual Powers of Married Women.
6. Separate Earnings of Married Woman—Ownership and Control.
7. Liability of Married Woman for Family Necessaries.
8. Formal Procedure Required for a Married Woman to Engage in a Separate Business.
9. Married Woman's Separate Property—Control During Marriage—Liability for Husband's Debts.
10. Property Acquired After Marriage Through Cooperative Efforts of Spouses—Ownership and Control.
11. Damages Recovered for Injury by Strangers to a Married Woman's Person, Property, or Character—Ownership and Control.
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.
13. Competency of Spouses to Testify For or Against Each Other.
14. Disposition of Separate Property by Will—Extent of Married Woman's Right.
15. Estate of Deceased Husband or Wife—Share of Surviving Spouse.
16. Provision for the Surviving Spouse During Administration of the Estate.
17. Disinheritance of Husband or Wife by Will of Deceased Spouse—Survivor's Alternative.

#### II.—MARRIAGE AND DIVORCE

18. Age of Consent to Marriage—Men and Women.
19. Validity of Common-Law Marriage.
20. Health Certificate Requisites Prior to Issuance of Marriage License—Men and Women.
21. Interstate Cooperation in Marriage Law Enforcement.
22. Grounds for Marriage Annulment—Respective Availability to Man or Woman.
23. Grounds for Divorce—Respective Availability to Spouses.



**III.—PARENTS AND CHILDREN**

24. Services and Earnings of Minor Children—Parents' Respective Rights.
25. Guardianship of Minor Children—Parents' Respective Rights.
26. Appointment of Testamentary Guardian for Minor Children—Parents' Respective Rights.
27. Inheritance from an Intestate Child—Parents' Respective Rights.
28. Support of Children Born Out of Wedlock—Parents' Respective Responsibility.
29. Inheritance from Child Born Out of Wedlock—Mother's Right.

**B.—POLITICAL RIGHTS**

30. Domicile of Married Women.
31. Public Office—Eligibility of Women.
32. Jury Service—Eligibility of Women.

## FOREWORD

This summary of legislation affecting property rights, domestic relations, and political responsibilities of women in the United States, with its many separate jurisdictions, was preceded by studies directed by the National League of Women Voters begun some 15 years ago, and in its present form it has incorporated the combined knowledge of many able lawyers in all parts of the country.

The first such study was planned in 1922 and issued in 1924, and a supplement was published in 1926. A revised edition in 1930 included a wider coverage of subject matter. The earlier edition, prepared under the direction of Catherine Waugh McCulloch and later of Esther A. Dunshee, was based on reports from persons in the State for about half the States, the remainder being compiled by Elizabeth Perry, a Chicago lawyer.

For the Women Voters' later edition, further subjects were added to those originally covered. In its preparation, members of the Committee on the Legal Status of Women were consulted in every State where there was such a member, and in many cases this member conferred with other experienced lawyers. The work was carried on under the direction of Sophonisba P. Breckinridge and prepared by Savilla Millis Simons.

Further details as to the methods used, policies followed, and sources consulted will be found in the author's foreword to the 1924 edition and the preface to the revision of 1930, both given in the 1930 edition and reproduced as appendix C in the present compilation.

When the Women's Bureau undertook a revision of this work as of January 1, 1938, the number of subjects covered was almost doubled and the judicial interpretations were more fully investigated. When the section for a State was completed it was sent to an authority within the State and usually was sent independently to two separate agents, each of whom was in a position to furnish competent legal advice: The League of Women Voters chairman, where there was one, and an official State authority—the legislative reference bureau, if one existed, or the legal authorities of the State library, the Attorney General's office, or in some cases the law school of the State university. The cooperation and advice of these persons in all the States have been of inestimable value and their assistance has been an important factor in assuring the completeness and accuracy of the work.

It was the original intention to republish, as part III of the final report by the Women's Bureau, the abstracts of State laws previously issued as separate bulletins by State. Due to the expense of republication in sufficient quantity for public distribution, this plan is abandoned temporarily. However, an edition of the full report, including the State abstracts, is to be issued for public libraries. A limited part of this edition will be available for purchase as Women's Bureau Bulletin 157—Library Edition, from the Superintendent of Documents, Washington, D. C. The separate State abstracts (numbered, including the District of Columbia, from 157-1, Alabama, to 157-49, Wyoming) may be purchased from the same agency at 5 cents a copy.

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Part I  
INTRODUCTION AND HISTORICAL  
BACKGROUND

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# THE LEGAL STATUS OF WOMEN IN THE UNITED STATES OF AMERICA

## Part I.—Introduction and Historical Background

This report is designed to give the reader a fair grasp in small compass of women's special position under the law in the dual form of government—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.<sup>1</sup>

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 one-fourth of the 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.

Within recent years efforts have been made to bring together the laws on these subjects, a difficult task in a federated government with some 50 jurisdictions having separate powers, for as is well said by Professor Wigmore, prominent American lawyer and university dean:

\* \* \* 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.<sup>2</sup>

More than 15 years ago the National League of Women Voters undertook such a research project. Its results were published in 1924 and revised in 1930.<sup>3</sup> Developments in the law since 1930 made current 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.

<sup>1</sup>Hale, Sir Matthew. *History of the Common Law of England*. 6th ed. (1820), preface, p. vii.

<sup>2</sup>Wigmore, John H. *Treatise on Evidence*. 2d ed. (1923), vol. 1, preface, p. xv.

<sup>3</sup>A Survey of the Legal Status of Women in the Forty-Eight States. National League of Women Voters, 726 Jackson Place, Washington, D. C.



When, therefore, the League of Nations invited the United States Government to provide such information, the Women's Bureau undertook its preparation. 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.

### What the Study Covers.

This report presents, as of January 1, 1938, the special status of women in certain of their civil and political relations in the Federal Government, each of the 48 States, and the District of Columbia.<sup>4</sup> 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<sup>5</sup>), 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, controlling as of January 1, 1938, on 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). (See last paragraph on p. XIII.)

The material is presented in four parts:

Part I. Introduction and Historical Background.

II. General Summary Statement.

III. Present Legal Status of Women in Summary Form.

IV. Appendix, containing glossary, bibliography, and forewords of earlier studies.

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### 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.

<sup>4</sup>The Federal Territories have been omitted to expedite publication of the report. For the purpose of this survey, the District of Columbia is considered as a State. For additions made in 1938, 1939, or 1940 to the laws of a few States, see p. 89.

<sup>5</sup>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.”<sup>6</sup> 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.”<sup>7</sup> 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.”<sup>8</sup> Concerning the primary source of American common law and its importance, Chancellor Kent, early American jurist, explains that—<sup>9</sup>

\* \* \* 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.

\* \* \* \* \* \* \* \*

\* \* \* 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

<sup>6</sup> Dig. I. 1. 10. 2. (Pandects of Justinian).

<sup>7</sup> 15 Corpus Juris Secundum, Common Law, sec. 1, p. 611.

<sup>8</sup> 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.

<sup>9</sup> Kent, James. Commentaries on American Law, vol. I, pp. 342-343, 471.

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.<sup>10</sup>

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.<sup>11</sup> As was said by the supreme court of Montana:

\* \* \* 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.<sup>12</sup>

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.<sup>13</sup>

### 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.<sup>14</sup>

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

<sup>10</sup> Cooley, Roger W. *Brief Making and the Use of Law Books*, 5th ed. (1926), p. 5.

<sup>11</sup> 15 *Corpus Juris Secundum*, Common Law, sec. 16, p. 630.

<sup>12</sup> *State ex rel. Powell v. State Bank* (1931), 90 Mont. 539, 557; 4 Pac. (2d) 717; 80 A. L. R. 1494.

<sup>13</sup> Willoughby, W. W. *The Constitutional Law of the United States*, 2d ed. (1929), pp. 1306-1307.

<sup>14</sup> *Munn v. Illinois* (1876), 94 U. S. 113, 134; 24 S. Ct. 77.

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 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.<sup>15</sup>

### **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 with varying provisions in eight 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. This marital-property law is thought to be of Teutonic origin, though its early history is not fully known. In theory it subscribes to 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, the actual control of much of this property 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

<sup>15</sup> Sutherland, J. G. *Statutory Construction*, 1904, vol. II, p. 860.



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, 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.<sup>16</sup>

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.<sup>17</sup>

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.<sup>18</sup>

<sup>16</sup> 30 Corpus Juris, Husband and Wife, sec. 437, p. 803.

<sup>17</sup> Peck, *Epaphroditus. The Law of Persons and of Domestic Relations*, 3d ed. (1930), p. 338.

<sup>18</sup> 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.



## STEPS TO "SOFTEN THE RIGOR OF THE COMMON LAW"

### The Common Law and Woman.<sup>19</sup>

The bulk of discriminations between men and women in American jurisprudence grew out of the feudal common-law theory that marriage 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.<sup>20</sup>

### 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.<sup>21</sup> 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 remain entirely under the legal "black-out" created for her by the ancient feudal system. These acts—

<sup>19</sup> Summary of woman's situation under the common law of the Blackstone period appears on pp. 10 to 14.

<sup>20</sup> Kent, James. Commentaries on American Law, vol. II, p. 182.

<sup>21</sup> 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.

\* \* \* 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.<sup>22</sup>

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 the wife never possessed, as a partial or complete restoration of the power she lost by marriage."<sup>23</sup>

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, nor 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.<sup>24</sup>

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 of 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 PREREVOLUTIONARY PERIOD

In the summary of each separate topic considered in this survey (Part III, beginning on p. 32) 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 are the same throughout.

### 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 necessities 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

<sup>22</sup> Schouler, James. *Marriage, Divorce, Separation, and Domestic Relations*. 6th ed. (1921), vol. I, pp. 11-12.

<sup>23</sup> 30 *Corpus Juris, Husband and Wife*, sec. 435, p. 801.

<sup>24</sup> *Idem*, pp. 801-802.

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 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."<sup>25</sup> 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 No. 4 above as to personal property.]

10. The proceeds of the joint labor of husband and wife belonged to the husband. [See No. 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

<sup>25</sup> I. Blackstone Com., p. 443 (Chitty et al.), 1870, notes.

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 himself.'" However, the rule usually was suspended where the offence 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 No. 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 <sup>20</sup>

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.

<sup>20</sup> See footnote 3, p. 22.



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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Part II  
GENERAL SUMMARY STATEMENT

**Summary of Conclusions**

**Summary of Status Under Federal Law**

**Summary of Major Sex Distinctions in the Laws**

THE FEDERAL RESERVE BANK OF ST. LOUIS  
ST. LOUIS, MISSOURI  
DEPARTMENT OF THE TREASURY  
WASHINGTON, D. C.

## 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, 1938, 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 as far as the letter of the law is concerned.*

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 some important respects it is definitely inferior to that occupied by man.*

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

#### **Public Relationships.**

Woman enjoys full citizenship under the nationality laws; she votes in all elections; with a few exceptions she may hold public office by election and appointment; she has the remedies afforded any citizen in taxation matters; in one-half the jurisdictions<sup>1</sup> she renders jury service. A married woman and her husband testify in the courts as individuals in most respects in approximately a third of the jurisdictions; a wife's domicile as voter, office holder, and juror is individual in several States, but her domicile for practically all other purposes (except divorce) is that of her husband while they live together as husband and wife.

#### **Family Relationships.**

A married woman's status as a member of her family has achieved more nearly that of a partner with her husband, as to both rights and responsibilities.

Marriage laws of the several States generally make no distinction between sexes. Exceptions noted are few and minor. For the most part, annulment and divorce provisions are without sex distinctions. Of the two principal exceptions in divorce laws, one favors a husband, the other favors a wife.

In half the States parents are declared joint natural guardians of their minor children, with equal rights and privileges in regard to

<sup>1</sup> For names of the States referred to, both here and in the pages following, see the more complete summary of each separate topic, pp. 32 to 76.

custody, services, and earnings. In more than half the States parents are equally eligible to qualify for appointment as guardian of the estates of their minor children.

The husband is first liable for support of his family, but a number of States have placed liability on the wife also, usually under condition or limitation. Practically all States make some provision for maintenance of the widow, also of any minor children of the deceased, during the settlement of the estate; about one-fourth of the States make some provision for support of either spouse who survives.

### **Property Relationships.**

In each of the 49 jurisdictions a married woman may own property in her right and name. In a number of States she may control such property, contract concerning it, and dispose of it without restriction; in some States she may exercise these rights as freely as a married man is able to do with respect to his separate property. However, in a few States she is subject to restrictions in dealing with her separate property which do not apply to a married man.

In several States a married woman's power to incur personal liability in general contracts apart from her separate property is limited. In most States she is free to contract her services and skill to persons outside her household and enforce such contracts in her name for her benefit. Except in a few States her power to engage in an independent business is unrestricted.

In many States contracts and transfers of property between husband and wife are legal, provided such transactions are not entered into to defraud the rights of others.

A majority of the States recognize a married woman as capable of acting in representative and fiduciary capacities.

In each of the States a married woman may make a valid will disposing of her real and personal property.

In most of the States succession rights in the estate of a married person dying without a will are the same for husband and wife; a very few States favor a surviving husband under some conditions, while under other conditions a widow may have the advantage.

In a majority of the States it is true by rule of common law that, except as to earnings by a married woman from work done for others than her husband, or gains from her independent business, the proceeds of the cooperative industry and talent of husband and wife during the marriage belong to the husband as head of the family.

## **SUMMARY OF STATUS UNDER FEDERAL LAW**

It frequently has been pointed out that the Government of the United States is one of "delegated powers," that is, those specified, or definitely implied, in the Constitution. That instrument itself specifically reserves to the States all other powers.

Citizenship in the United States is acquired by a woman the same as by a man: By being born in the United States or born of parents



one or both of whom are citizens; or by being naturalized in her own right. A married woman's citizenship does not automatically follow that of her husband. She may elect to become a citizen whether or not he wishes to do so, and she does not automatically become a citizen because he takes out his papers; if she is a citizen but marries an alien, she retains citizenship until she specifically renounces it by claiming allegiance to another government.

Women were enfranchised politically by the passage of the nineteenth amendment to the Constitution. In order to vote, of course, a woman must qualify within the jurisdiction where she wishes to cast a ballot, just as a man must. So far as the laws are concerned, both elective and appointive offices in the Federal service are for the most part open to women and men on the same terms. Service as jurors or as witnesses in civil suits in a Federal court is controlled by the law of the State or Territory in which the court is situated.

## SUMMARY OF MAJOR SEX DISTINCTIONS IN THE LAWS

For readers who want to scan quickly outstanding differences in the legal status of men and women under this Government, a résumé of sex distinctions by subject is given in the next few pages.

For proper perspective of woman's position, it must be remembered in consulting this résumé that *not all differences are discriminations*.

To locate references giving the more complete information on each of the topics covered in the following summary, consult the guide following the table of contents, page v, or the discussion of each separate topic beginning on page 32.

### PUBLIC RELATIONSHIPS

#### Public Office.

Oklahoma's constitution excludes women from election to eight major State offices. Wisconsin's legislative employees must be men. One of the three commissioners of the District of Columbia<sup>2</sup> must be a member of the Engineer Corps of the Army.

#### Jury Service.

Twenty-three States exclude women from jury service; 13 States permit women to serve at their option; Connecticut allows special exemptions to women in certain occupations. Utah excludes women from grand jury service.

#### Domicile.

Generally the husband's domicile governs that of the wife; but she may have her separate domicile for divorce proceedings, usually when the husband is the one at fault. Several States allow separate domicile for voting, public office, or jury service; at least two States allow it for taxation purposes.

<sup>2</sup> For the purpose of this report, the District of Columbia is counted as a State.

## PRIVATE RELATIONSHIPS

### Marriage.

In most States females have a lower age of consent to marriage. In five States only males are required to file health certificates to obtain a license to marry.

Louisiana forbids remarriage of a divorced woman until 10 months after the divorce becomes absolute.

### Annulment of Marriage.

New York requires assurance of support from a husband seeking annulment of marriage on his wife's insanity; there is no such restriction on a wife seeking annulment for her husband's insanity.

West Virginia allows annulment to a husband for the wife's premarital pregnancy without his knowledge or act.

### Divorce.

Exclusive grounds for absolute divorce available respectively to husband and to wife are as follows:

#### To the husband.

1. Wife's pregnancy at marriage by another man and the fact unknown to the husband—14 States.
2. Wife's fornication before marriage unknown to husband—2 States.
3. Wife's act of adultery, or unchaste conduct if adultery not proved—1 State.
4. Wife's residing outside State for 10 years—1 State.
5. Wife's desertion for 2 years, shown by her refusal to move into the State with her husband—1 State.
6. Wife's habitual intoxication—1 State.

#### To the wife.

1. Husband's willful or negligent failure to provide reasonable support—21 States.
2. Husband's cruelty—2 States.
3. Husband's habitual use of narcotic drugs—1 State.

### Parent and Child.

Fifteen States give the father the first right to the custody, services, and earnings of his legitimate minor child; the mother succeeds to the father's right after his death. Seven States give statutory preference to the father for appointment as general guardian of his child's property.

Appointment of a guardian for a legitimate minor child by the last will of the father is authorized in 10 States. Seven of these require the mother's written consent to the appointment, 1 gives custody of the child to the mother when she is the survivor and competent, 1 leaves the child with the mother until his education requires the guardian to take charge of him, and 1 gives to the mother the right of appointment if she has been given custody of the child after divorce.

In practically all the States an unmarried mother may inherit from her child's estate; the unmarried father is not an heir of his child, except in 9 States where he may inherit if he has acknowledged or legitimated the child.

### Responsibility for Family Support.

Eight States that have community-property law make family support a charge against the common property of husband and wife.

Forty-one States hold the husband and his property primarily responsible for family expenses, but 21 States make the wife and her property liable for family necessities without relieving the husband of his prior obligation. In a majority of the States the wife's voluntary contract on her own credit for family necessities is enforceable against her separate property.

In 45 States unmarried fathers must contribute to support of their offspring when paternity has been legally proved. Three States have no express provision for compelling the father of an illegitimate child to support it; one State requires support only if the father has the legal custody of the child. Twenty-three States require unmarried mothers to support their children so far as they are able.

## BUSINESS, WAGES, AND PROPERTY

### Power to Make Contracts.

In nine States women reach legal maturity earlier than men. Several States give female minors limited adult powers to contract and to convey property rights after legal marriage.

General right of contract apart from her separate property is restricted for a married woman in a few States, particularly as to suretyship, partnership, or accommodation endorsement. Six States lay restrictions on a wife's contracts concerning her separate property that do not apply to a husband and his separate property.

In the eight community-property States, a wife cannot ordinarily contract alone concerning the common property of herself and husband, though the husband generally has sole power of contract over the personal property.

Sex or marriage is a basis for discrimination against a woman in at least 13 States as to service in representative or fiduciary capacities, such as executor, administrator, or guardian.

### Ownership, Control, and Use of Property.

In eight States property acquired through the combined efforts of spouses during marriage may become their common property, that is, it is managed by the husband for the family benefit. In six of these States, at the death of either spouse the survivor takes one-half the property regardless of heirs, after payment of debts against the community, but in two of them ordinarily the wife's community share after the husband's death is less than his if he is the survivor.

In 41 States property accumulated during marriage by the combined efforts of husband and wife is the separate property of the husband in the absence of any agreement to the contrary which can be clearly proved.

Property acquired after marriage by husband or wife through gift, will, or inheritance, or purchased with individual funds, usually becomes the separate property of the spouse receiving it, subject for the most part to his or her control.

In seven States a wife conveys her separate real property under restrictions not applicable to her husband. In the control of her separate personal property, she is subject in three States to restrictions which do not apply to her husband.

At least four jurisdictions retain the common-law *estate by the entirety* under which the husband is entitled during the marriage to the use and income of property held by himself and wife under such a title.

In six States gifts of certain separate property by the husband to his wife may become liable for his debts.

Except for homestead laws of two States favoring the husband in exemptions from seizure for debt, most exemption laws apply alike to men and women.

A number of States allow exemption to a married woman of a certain amount of life-insurance proceeds as against the creditors and heirs of the insured.

In six States that have community-property law, the personal earnings of husband and wife become common property but the husband controls them.

In five States the husband may claim his wife's earnings unless he has agreed that she may receive them as her own property. In two States the husband apparently may claim his wife's earnings unless she is living separate and apart from him.

Eight States have restrictions on a married woman's engaging in business apart from her husband.

In general, in Florida and Texas a wife must have her husband sue for or with her to recover her separate property.

### **Succession Rights of a Surviving Husband or Wife in the Other's Estate.**

Indiana does not permit a widow who has remarried to will away real estate inherited from her former husband if children of the earlier marriage are living. Nevada, New Mexico, and California in some cases, give a husband greater testamentary power over the community property.

Under certain conditions, several States make distinction between husband and wife in the right of absolute inheritance of one in real property owned by the other at death. Eight States make a distinction in the share of personal estate inherited by a surviving spouse.

In at least 16 States the life interest of a surviving spouse in the estate of the other is different for husband and wife.

In most States a widow is given the right to occupy the family home after her husband's death for a period prescribed by law, during which period the home cannot be taken by either heirs or creditors of the husband.

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

## **MISCELLANEOUS <sup>3</sup>**

### **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 mar-

<sup>3</sup> 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.



riage, though in some States he may be liable to the extent of the value of any property he has received from his wife.<sup>4</sup>

### **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.<sup>5</sup>

### **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.<sup>6</sup>

## **DISCUSSION OF DISTINCTIONS**

### **Distinctions or Discriminations?**

Study of the provisions of law that distinguish between men and women shows that not all these differences are discriminations. A few statutes represent social ideas that are hang-overs from ancient eras. The same is true of judicial policies; though in general decisions announcing these doctrines are not recent ones, and, in justice to the State, cannot be said to represent current thought. As the most recent recorded expression on the subjects under research, however, these decisions must be considered for purposes of discussion. Major sex discriminations in the body of the law doubtless reflect mass inertia in the gearing of law to social progress, rather than a prejudiced attitude of the State toward any particular group of citizens.

<sup>4</sup> 26 American Jurisprudence, p. 932, Husband and Wife, sec. 335.

<sup>5</sup> 14 American Jurisprudence, pp. 811-812, Criminal Law, sec. 62.

<sup>6</sup> 26 American Jurisprudence, p. 640, Husband and Wife, sec. 11.



### Reasons for Legal Distinctions Between Sexes.

Simple distinctions between men and women are common to the laws of every age and nation. From the earliest known codes to the "Restatement of American Law" now in preparation, there are legal provisions that apply wholly to one sex or the other.

Why these distinctions? Inevitably some of them arise because there are two sexes, and because physical differences must be recognized in regulating the conduct and interests of men and women. For example, differences in legal age of maturity, and age of consent to marriage, are due in part to different rates of physical development of the male and the female. Certain distinctions in criminal law and in grounds for dissolution of marriage are based on physical and biological differences.

Other sex distinctions in law can be traced to social traditions; for example, eligibility for public office or for jury service, restriction on appointment to fiduciary positions because of sex or marriage, recognition of property right accorded to the husband but not to the wife.

Economic expediency is the most prolific root stock of legal sex distinctions. This proposition is demonstrated by the degree of control vested in the husband over (1) property acquired by the cooperative labor of the spouses, (2) the earnings of wife and children, and (3) property belonging to the wife, and the liability of gifts from husband to wife for husband's debts.

The grant to the husband of choice of domicile and of custody of minor children is due largely to the policy of fixing responsibility for family support on one person as head of the family.

More liberal inheritance provisions for a husband than for a wife in the estate of a deceased spouse are framed to safeguard preservation of ancestral estates.

Statutes that make an allowance of personal property or money from a deceased husband's estate for a widow and children while the estate is being closed are economic safeguards and not wholly chivalrous or humanitarian provisions. They are designed to transfer to the husband's estate his lifetime responsibility for family support, thereby preventing the family from becoming a public charge. As a rule, no such provisions are made for the husband from the estate of a deceased wife, since he continues liable for family maintenance.

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Part III  
PRESENT LEGAL STATUS OF WOMEN IN  
SUMMARY FORM

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

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## Part III.—Present Legal Status of Women in Summary Form

### 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 was restated by the United States Supreme Court in a recent 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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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 State. \* \* \* The meaning of the statute as fixed by its decision must

<sup>1</sup> *United States v. Butler* (1936), 297 U. S. 1, 63; 56 S. Ct. 312; 102 A. L. R. 914.

<sup>2</sup> *Quong Wing v. Kirkendall* (1912), 223 U. S. 59, 62; 32 S. Ct. 192.

<sup>3</sup> *Jones v. Prairie Oil & Gas Co.* (1927), 273 U. S. 195, 199; 47 S. Ct. 338.

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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup>

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 a certain age, or to those possessing other qualifications that may reasonably be held to indicate a fitness for the profession.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup>

## Provisions Specially Affecting Women

### 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.<sup>10</sup>

<sup>4</sup> *Morehead v. New York ex rel. Tipaldo* (1936), 298 U. S. 587, 609; 56 S. Ct. 918.

<sup>5</sup> *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.

<sup>6</sup> 9 Ruling Case Law, 1915, Divorce and Separation, sec. 5.

<sup>7</sup> Willoughby, W. W. *The Constitutional Law of the United States*, 2d ed. (1929), vol. 3, pp. 1933, 1937.

<sup>8</sup> *Ibid.*, vol. 2, p. 629.

<sup>9</sup> *Prewitt v. Wilson* (1932), 242 Ky. 231, 233; 46 S. W. (2d) 90.

<sup>10</sup> Constitution of the United States of America, amendment XIV, sec. 1.



Construing this amendment, adopted in 1868, the United States Supreme Court holds that it makes Federal citizenship "paramount and dominant" to State citizenship.<sup>11</sup>

The Federal Congress has the legislative power, under the Constitution, "to establish a uniform rule of naturalization."<sup>12</sup> No individual State may adopt laws governing the naturalization of aliens.<sup>13</sup>

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.<sup>14</sup>

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." This agreement is now [1940] in effect among the governments of the United States of America, Chile, Honduras, Mexico, Guatemala, Colombia, Ecuador, Brazil, 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.<sup>15</sup>

#### Citizenship—How Acquired.

A person becomes a citizen of the United States, if subject to its jurisdiction, by birth or by naturalization.<sup>16</sup>

A Federal statute provides that all persons born in the United States and not subject to any foreign power are citizens of the United States.<sup>17</sup>

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 States citizenship to the child.<sup>18</sup>

#### Naturalization of Women.

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.<sup>19</sup>

Independent citizenship for women was the objective sought in the adoption of the Cable Act,<sup>20</sup> effective September 22, 1922, and its amendments.<sup>21</sup>

<sup>11</sup> Selective Draft Law Cases (1918), 245 U. S. 366, 389; 38 S. Ct. 159.

<sup>12</sup> Constitution of the United States of America, art. 1, sec. 8, clause 4.

<sup>13</sup> *United States v. Wong Kim Ark* (1898), 169 U. S. 649; 18 S. Ct. 456.

<sup>14</sup> The Nationality Act of 1940, adopted September 30, 1940, embodies the unified code evolved from the labors of this committee. Enacted as Public 853 by the 76th Congress, it was approved October 14, 1940, to become effective 90 days from that date.

<sup>15</sup> U. S. Statutes at Large, vol. 49, part 2, p. 2957.

<sup>16</sup> Constitution of the United States of America, amendment XIV, sec. 1.

<sup>17</sup> Code of Laws of the United States, 1934, title 8, sec. 1.

<sup>18</sup> *Ibid.*, sec. 6.

<sup>19</sup> *Ibid.*, sec. 367.

<sup>20</sup> U. S. Statutes at Large, vol. 42, part 1, p. 1021, ch. 411.

<sup>21</sup> Code of Laws of the United States, 1934, title 8, secs. 368-369a.

In a statement on "American Citizenship Rights of Women," presented on March 2, 1933, to a subcommittee of the Senate Committee on Immigration, Representative John L. Cable, author of the Cable Act, made the following remarks:

The second amendment of the women's independent citizenship act did in fact place men and women on exactly the same footing, so far as citizenship is concerned. The last vestige of discrimination against women was eliminated. Our law for the first time now completely recognizes the dignity of an American woman's citizenship and permits her to feel that her allegiance to our government is as fine, intimate, and sincere as a man's.

Within a decade this great transformation of our law has taken place. No longer will an American-born woman ever be deprived of her American citizenship, regardless of whom she may marry or where or how long she may reside, unless she herself formally renounces her allegiance to the United States, becomes naturalized in some foreign country or takes the oath of allegiance to another sovereign. The woman who lost her citizenship by marriage to an alien before 1922 or because of her residence abroad after marrying an alien subsequent to 1922, may now return to the United States as a nonquota immigrant and regain her native citizenship by a simple process of repatriation. No proof of residence here is required. She is no longer dominated by the will of her alien husband in this regard.

An alien woman who marries an American now is permitted to be naturalized by shortening proceedings requiring only 1 year's residence<sup>22</sup> before filing her petition, instead of the customary 5.

Whether an alien man wishes to be naturalized or not, his alien wife may become a citizen in her own right by the regular naturalization proceedings. That is true, even though her husband himself be ineligible for citizenship.

Today women in America enjoy citizenship status truly equal to and independent of that of men. Woman's citizenship victory is complete.

### VOTING PRIVILEGE GUARANTEED BY THE CONSTITUTION

Adoption of the nineteenth amendment to the Federal Constitution in 1920 guaranteed to women the right to vote by its prohibition of discrimination because of sex in the granting of suffrage to citizens.<sup>23</sup> However, women voters, like men voters, are subject to the particular voting regulations in the State in which they vote.

### 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. Women now occupy with distinction posts in the Cabinet, the Congress of the United States, the Government's foreign service, and Federal judgeships. They are appointed also to positions in a vast number of professional and technical types of work.<sup>24</sup>

Women may, in the discretion of the head of any department, be appointed to any of the positions therein authorized by law, on the

<sup>22</sup> Three years' residence is required of an alien man or woman marrying a citizen of the United States since May 24, 1934, by provisions of an amendment of that date to the Cable Act. (Ibid., sec. 368.)

<sup>23</sup> Constitution of the United States of America, amendment XIX.

<sup>24</sup> For further details see Women's Bureau Bulletin No. 182, Employment of Women in the Federal Government, 1923 to 1939. 1941.

same requisites and conditions, and with the same compensations, as are prescribed for men.<sup>25</sup>

### 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."<sup>26</sup> 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 TRIAL COURTS

Jurors in Federal trial courts are selected or exempted in accord with the provisions of State law for the highest court of law in the State where the court is sitting.<sup>27</sup>

A bill has been under consideration for some time by the National Congress to amend the Judicial Code so as to permit women to be chosen for all jury service in any Federal trial court regardless of the qualifications established by a particular State. However, little progress is reported on the proposed legislation.

The competency of a witness to testify in any civil suit in a Federal court is determined by the law of the State or Territory in which the court is held.<sup>28</sup>

In criminal proceedings, the common-law rule, which excluded either spouse as a witness in behalf of the other, has been modified by a rule more in accord with modern trends and experience. A spouse may now testify in behalf of the other in such cases.<sup>29</sup> No rule has been made by Congress or court changing the common-law incompetence of spouses to testify against each other, except as to certain marital offenses, when the complaining spouse may be called as a witness but cannot be compelled to testify without the consent of the husband or wife. Nor can a spouse be permitted to testify as to any statement or communication, deemed confidential at common law, made by either to the other during the marriage.<sup>30</sup>

To expedite the disposition of cases, the Department of Justice has sponsored a bill in the National Congress to make one spouse a competent witness against the other in Federal criminal cases, but final action has not been taken on the measure.

<sup>25</sup> Code of Laws of the United States, 1934, title 5, sec. 33.

<sup>26</sup> *Ibid.*, sec. 664.

<sup>27</sup> *Ibid.*, title 28, sec. 411.

<sup>28</sup> *Ibid.*, sec. 631.

<sup>29</sup> *Funk v. United States* (1923), 290 U. S. 371; 54 S. Ct. 212; 93 A. L. R. 1136.

<sup>30</sup> Code of Laws of the United States, 1934, title 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 as of January 1, 1938, must be taken simply as an approach to a grouping of States according to prevailing rules of law concerning women, prepared as an aid to popular use of the study.

Law is not an exact science.<sup>1</sup> 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 other 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 abstracts, issued in the years 1938-40, on which this summary is based.<sup>2</sup> These abstracts of current law should be used with the summary in giving a particular topic thorough study.

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 State policies should be repealed or abrogated.

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.

<sup>1</sup> *Rinehart v. Rinehart* (1938), 52 Wyo. 363; 75 Pac. (2d) 390.

<sup>2</sup> Women's Bureau Bulletin 157, *The Legal Status of Women in the United States of America*, January 1, 1938, in pamphlet form, from 157-1 (Alabama) to 157-49 (Wyoming), at 5 cents each, Government Printing Office, Washington.



## SUMMARY, BY TOPIC

### 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.<sup>1</sup>

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

Six States<sup>6</sup> permit a minor who has reached a specified age to be given adult powers by court decree under some circumstances. Three States<sup>7</sup> 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.

An important general exception is the age of consent to marriage adopted in the various States. This is discussed under topic 18, page 57.

<sup>1</sup> Ark., Idaho, Ill., Mont., Nev., N. Dak., Okla., S. Dak., Utah.

<sup>2</sup> Fla., Iowa, Kans., La., Utah.

<sup>3</sup> Ala., Calif., Me., Nebr., Oreg., Tex., Wash.

<sup>4</sup> Ariz., Okla.

<sup>5</sup> Ark., D. C., Ind., Ky., Md., Minn., N. Mex.

<sup>6</sup> Ala., Ark., Fla., La., Tenn., Tex.

<sup>7</sup> Kans., Miss., Okla.

##### 2. Contractual Powers of Minors.

###### COMMON-LAW RULE.

###### Contracts.

To reduce hardships for both minors and creditors, the common law permits a minor to make valid contracts for necessities, 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.

#### Conveyance of property.

The general rule is that though a minor may convey his property, 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 Washington a minor wife whose husband is adult is bound by her contracts, and in Indiana such a wife can make valid real estate contracts provided her husband 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 eight States;<sup>1</sup> a legally married minor of either sex has this power in three States.<sup>2</sup> 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<sup>3</sup> the right of dower, or its statutory equivalent, may be released by a female minor. Six of these<sup>4</sup> 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<sup>5</sup> set 18 years as the minimum age at which dower may be released. In 3 States<sup>6</sup> 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.

*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.

<sup>1</sup> Ala., Calif., Ind., Maine, N. Mex., Oreg., Tex., Wash.

<sup>2</sup> Kans., Okla., Utah.

<sup>3</sup> Ark., D. C., Ind., Ky., Md., Mass., Mich., Minn., N. Y., Oreg., Pa., S. C., Wis.

<sup>4</sup> Ark., Ky., Md., Mass., N. Y., Wis.

<sup>5</sup> D. C., Mich.

<sup>6</sup> 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 liberal exemptions in personal and homestead property from 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, though Georgia appears to favor a man over a woman in defining "head of a family" for exemption purposes.

Both single and married persons may have exemption of wages, as allowed by statute, in at least 27 States,<sup>1</sup> 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, the wife is authorized to act.

Six States<sup>2</sup> have no specific provision for allowing a homestead exemption to anyone; 12 States<sup>3</sup> 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<sup>4</sup> grant this protection to either spouse who survives, 20 States<sup>5</sup> allow it to a widow or to a widow and specified dependents.

Seven States<sup>6</sup> 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 husband,

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.

<sup>1</sup> 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., Ore., Tenn., Tex., Utah, Vt., Va., W. Va., Wyo.

<sup>2</sup> Del., D. C., Ind., Md., Pa., R. I.

<sup>3</sup> Colo., Ga., Ill., Iowa, Ky., Maine, Mass., N. J., N. Mex., N. Y., Tenn., W. Va.

<sup>4</sup> Ariz., Calif., Colo., Conn., Idaho, Ill., Iowa, Kans., La., Minn., Mont., Nebr., N. H., N. Dak., Ohio, Okla., Ore., S. Dak., Utah, Vt., Wash., Wyo.

<sup>5</sup> 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.

<sup>6</sup> 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 topic 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 five States<sup>1</sup> 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.

<sup>1</sup> 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.

#### 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-two States<sup>1</sup> give a wife full power to mortgage, convey, or contract concerning her separate real property. (However, see topic 3 as to conveyance of homestead property.)

Connecticut gives this power to a woman who has married since 1877. Vermont grants it to a wife whose real property was acquired after February 13, 1919, or acquired before that year under an instrument declaring the property to be "to her sole and separate use." Georgia allows a wife free disposition of her real property except to her husband or trustee.

##### Limited control.

In 25 States<sup>2</sup> 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. Seven of these jurisdictions<sup>3</sup> 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. 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.

Eleven States<sup>4</sup> expressly permit direct conveyance of real property between spouses. Sixteen States<sup>5</sup> place certain restrictions on this class of transfers, usually in behalf of creditors or other interested third persons.

The remaining 22 States<sup>6</sup> apparently do not authorize such conveyances.

##### Special form of conveyance.

Delaware and North Carolina require a wife's deed to have her separate acknowledgment, and require official certification to her state-



ment 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 topic 10.

#### SEPARATE PERSONAL PROPERTY

In 43 States a married woman appears to have full contractual powers with third persons regarding her separate personal property. Four States<sup>7</sup> restrict such contracts in acquiring, managing, or disposing of this type of property, and Alabama and Louisiana restrict such contracts of married women under 18 years of age.

Community personal property is considered under topic 10.

#### Contracts between husband and wife.

Husband and wife may contract with each other freely regarding personal property in 7 States;<sup>8</sup> 23 States<sup>9</sup> permit contracts between spouses, with some limitations; Massachusetts and Vermont prohibit such contracts.

Three States<sup>10</sup> forbid a wife's partnership 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. Six States<sup>11</sup> have limitations on this power. Idaho, Maine, and Michigan appear not to have specific statutes on the point.

Six States<sup>12</sup> 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 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 12 States.<sup>13</sup>

#### 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 17 States.<sup>14</sup>

Six States<sup>15</sup> consider a woman eligible for such appointments, but a male person equally entitled to serve will be preferred. In seven States<sup>16</sup> 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 topic 6; contractual powers granted by free trader laws, under topic 8.

<sup>1</sup> Ariz., Ark., Calif., Colo., D. C., Idaho, La., Mich., Miss., Mont., Nev., N. Mex., N. Y., N. Dak., Okla., S. C., S. Dak., Tenn., Utah, Wash., Wis., Wyo.

<sup>2</sup> 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.

<sup>3</sup> Ala., Fla., Ind., Ky., N. C., Pa., Tex.

<sup>4</sup> Ark., Colo., Conn., Ill., Iowa, Mich., N. J., N. Y., Oreg., Pa., Utah.

<sup>5</sup> Calif., Ga., Maine, Mass., Miss., Mont., Nev., N. Mex., N. C., N. Dak., Ohio, Okla., R. I., S. Dak., W. Va., Wyo.

<sup>6</sup> Ala., Ariz., Del., D. C., Fla., Idaho, Ind., Kans., Ky., La., Md., Minn., Mo., Nebr., N. H., S. C., Tenn., Tex., Vt., Va., Wash., Wis.

<sup>7</sup> Fla., Ga., N. C., Tex.

- <sup>8</sup> Conn., Idaho, Md., Mo., N. Y., N. Dak., S. C.  
<sup>9</sup> 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.  
<sup>10</sup> Maine, Mich., R. I.  
<sup>11</sup> Fla., La., Nebr., N. C., Pa., Tex.  
<sup>12</sup> Ala., Ga., Idaho, Ky., N. H., Pa.  
<sup>13</sup> Ala., Del., Fla., Ill., Ind., Iowa, Md., Mass., N. J., N. C., Pa., Tex.  
<sup>14</sup> Ark., Calif., Colo., Fla., Ga., Ky., La., Md., Mo., Mont., N. J., N. Dak., Ohio, R. I.,  
 Vt., W. Va., Wyo.  
<sup>15</sup> Idaho, Ind., Nev., Okla., Oreg., S. Dak.  
<sup>16</sup> 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 provision of statute that in definite terms gives to 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) Eight States<sup>1</sup> 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 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.

(2) Twenty-five States<sup>2</sup> 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 16 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) Four States<sup>3</sup> give the wife her earnings as separate property by judicial interpretation of the general statute.

(b) Four States<sup>4</sup> apparently consider the wife's earnings a part of her separate estate.

(c) Seven States<sup>5</sup> 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. Vermont and Virginia will presume that the wife's earnings belong to her husband unless she can prove her ownership. 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<sup>6</sup> of the seven States in this group specifically exclude a wife's earnings from liability for her husband's debts.

(d) Georgia by judicial ruling gives the wife's earnings to her husband unless he consents, by express or implied agreement, for her to keep them as her separate property. This is said to be the established law, despite the provisions for married women in constitution and statute.

#### 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 may claim his wife's earnings and the wife is not authorized to sue alone for them, he sues alone or joins his wife in the suit to recover them.

#### Compensation from husband for services.

Three States<sup>7</sup> 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<sup>8</sup> hold contracts or agreements of this nature unenforceable, as at common law. Presumably the remaining States also follow the common law.

<sup>1</sup> Ariz., Calif., Idaho, La., Nev., N. Mex., Tex., Wash.

<sup>2</sup> Ala., Ark., Colo., Conn., D. C., Fla., Ill., Ind., Iowa, Kans., Maine, Mich., Minn., Mo., Nebr., N. H., N. J., N. C., Pa., R. I., S. C., Utah, W Va., Wis., Wyo.

<sup>3</sup> Ky., Ohio, Okla., Oreg.

<sup>4</sup> Del., Md., Miss., Tenn.

<sup>5</sup> Mass., Mont., N. Y., N. Dak., S. Dak., Vt., Va.

<sup>6</sup> Mont., N. Dak., S. Dak., Vt.

<sup>7</sup> Calif., Iowa, N. C.

<sup>8</sup> 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 eight community-property States<sup>1</sup> 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 41 States remaining, 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<sup>2</sup> 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<sup>3</sup> 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 five States<sup>4</sup> 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, four States<sup>5</sup> require the wife to apply her separate estate to her husband's support.

<sup>1</sup> Ariz., Calif., Idaho, La., Nev., N. Mex., Tex., Wash.

<sup>2</sup> Ariz., Ark., Calif., Colo., Conn., Idaho, Ill., Iowa, La., Mass., Minn., Mo., Mont., N. Dak., Oreg., Pa., S. Dak., Utah, Wash., W. Va., Wyo.

<sup>3</sup> Conn., Idaho, Minn., W. Va.

<sup>4</sup> Mont., N. Dak., Ohio, Okla., S. Dak.

<sup>5</sup> Calif., Idaho, Nev., N. Mex.

## 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.

Six States<sup>1</sup> 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 North Carolina and 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<sup>2</sup> 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. North Carolina and Pennsylvania statutes confer similar powers on a wife as to her separate property under certain circumstances, as when her husband is insane or has not supported her. In North Carolina a wife who is a "free trader" may exact from her husband full accounting for any income



from her separate property which he has had under his control. 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.

It is said that the sole-trader procedure is no longer used in California and Pennsylvania, but the statutes have not been expressly repealed.

<sup>1</sup> Calif., Fla., Nev., N. C., Pa., Tex.

<sup>2</sup> 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.

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 six States<sup>1</sup> 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. Florida directs the husband to manage the wife's separate estate; but she may qualify as a "free dealer," revoke his control, and take over management of her property.

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. Exceptions are Florida and Texas, which limit the wife's power to sue alone regarding her separate estate. However, 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.

Generally, neither the separate property of a married woman nor its income or profits becomes subject to the husband's liabilities. However, 8 States<sup>2</sup> 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 necessities under specified conditions. (See topic 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 topic 5, and by will under topic 14. The rights of the husband in the wife's property if she dies without a valid will are shown under topic 15.

The common-law form of *estates by the entirety* has been noted in at least four States.<sup>3</sup> Many States recognize an estate under this title between husband and wife, but the husband's common-law right to sole possession, control, and enjoyment during marriage has been modified or abolished. In some States this form of property ownership has no recognition.

<sup>1</sup> Colo., Kans., Maine, Nebr., N. H., Vt.

<sup>2</sup> Ark., Calif., Idaho, Mass., Mont., Nev., Okla., S. Dak.

<sup>3</sup> D. C., Mass., Mich., N. C.

## 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.<sup>1</sup> 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 conveys his real estate without her signature, subject to her dower right after his death.

### PRESENT STATUS.

In a majority of the States, as shown under topic 6, positive statutes or judicial interpretations set apart as a wife's separate property her earnings from work done for others than her husband; in some States the statutes are not explicit on this point, and a few States allow the husband certain rights as to his wife's wages.

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* have been modified by statute in some States to become in effect joint tenancies, that is, each spouse has joint control, use, and benefit during marriage, with full right of ownership to the survivor on the death of either.

### Community property.

Under the community system of marital property, 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 to the husband; 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.**

Six<sup>2</sup> of the eight 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. California has limitations as to the wife's ownership and disposition by will of community property acquired before certain dates.

**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 five<sup>3</sup> of the eight community-property States 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.

**COMMENT.**

At the present time the common-law reason for giving the husband ownership of marital property appears lost in the numerous instances where wives are gainfully employed and contribute to family support as well as to acquisition of a family backlog, in the 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 inheritance rights between spouses, particularly in real property, are very important.

Marriage settlements, also called antenuptial agreements, that dispose of property rights between the parties to an intended marriage, are favored by law, since such contracts tend to prevent 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 depends on the circumstances surrounding the particular case. The trial court in disposing of the property in question 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 awarded custody of the children of the marriage.

<sup>1</sup> Schouler, James. *Marriage, Divorce, Separation, and Domestic Relations*. 6th ed. (1921), vol. 1, sec. 156, p. 177.

<sup>2</sup> Ariz., Calif., Idaho, La., Tex., Wash.

<sup>3</sup> Ariz., Calif., Idaho, N. Mex., 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, expressed by 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 four States<sup>1</sup> the wife's status in this respect is indefinite. In seven States<sup>2</sup> 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 that by positive statute authorize a married woman to earn money for her separate account. See topics 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,<sup>3</sup> by positive statute, damages recovered for injury to a wife's character or reputation belong to her separate estate. In the remaining States the status of the wife's rights in such suits is indefinite. A general enabling statute, giving a married woman the right to sue alone regarding her separate property, may not include an action by her injuries to her character or reputation.

##### **Alienation of affection.**

In at least 25 States<sup>4</sup> a wife may sue to recover damages from a person who has enticed her husband away or willfully intruded upon the marriage relation and alienated her husband's 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.<sup>5</sup>

The right of recovery for loss of consortium as an element of damage has been granted to a wife in at least 10 States<sup>6</sup> and specifically refused to her in at least 6 States.<sup>7</sup> 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. The distinction is important, especially in the light of present-day economic conditions.

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,<sup>8</sup> 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 \* \* \*.

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.<sup>9</sup>

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 \* \* \*."<sup>10</sup>

<sup>1</sup> Fla., N. H., Ohio, Oreg.

<sup>2</sup> Ariz., Calif., Idaho, Nev., N. Mex., Tex., Wash.

<sup>3</sup> Ala., Ark., Colo., Ind., Iowa, La., Md., Mont., N. H., N. J., N. Y., Okla., S. C., S. Dak., Wis., Wyo.

<sup>4</sup> Ala., Ark., Conn., Del., D. C., Fla., Ga., Idaho, Iowa, Kans., Maine, Md., Mass., Miss., Mo., Nebr., N. H., N. Y., Oreg., R. I., S. Dak., Tex., W. Va., Wis., Wyo.

<sup>5</sup> *Kelley v. Railroad Co.* (1897), 168 Mass. 308; 46 N. E. 1063; 38 L. R. A. 631.

<sup>6</sup> Ala., Del., Ga., Idaho, Maine, Mass., Nebr., S. Dak., Wis., Wyo.

<sup>7</sup> Ill., Md., Miss., Mo., N. Y., Oreg.

<sup>8</sup> *Worth v. Worth* (1937), 51 Wyo. 488, 506; 68 Pac. (2d), 881.

<sup>9</sup> *Moberg v. Scott* (1917), 38 S. D. 422; 161 N. W. 998; L. R. A. 1917D 732.

<sup>10</sup> 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."<sup>1</sup>

However, suits for personal torts between husband and wife have been upheld in 11 States<sup>2</sup> and suits for injuries to property in at least 10 States.<sup>3</sup>

**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.

<sup>1</sup> 26 American Jurisprudence, p. 633, Husband and Wife, sec. 3.

<sup>2</sup> Ala., Ark., Colo., Conn., N. H., N. Y., N. C., N. Dak., Okla., S. C., Wis.

<sup>3</sup> 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 eight States<sup>1</sup> she is declared competent to testify against her husband in a prosecution under desertion and nonsupport statutes; in Georgia and North Carolina 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.

Fifteen States<sup>2</sup> 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,<sup>3</sup> 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 31 of this report.

<sup>1</sup> Ala., Colo., Conn., Ga., Mich., Nebr., N. Mex., N. C.

<sup>2</sup> Ala., Del., D. C., Fla., Ill., Ind., La., Maine, Md., N. H., N. Y., S. C., Tenn., Va., Wis.

<sup>3</sup> *Fletcher v. Dunn* (1934), 188 Ark. 734, 737; 67 S. W. (2d) 579.

### 14. Disposition of Separate Property<sup>1</sup> 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. Indiana makes an exception of a widow who has remarried, forbidding her to will away land acquired by virtue of any previous marriage if children of the earlier marriage are living.

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: Illinois and Oregon establish 21 years for men and 18 years for women; 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 and Tennessee permit 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."<sup>2</sup>

<sup>1</sup> For testamentary disposition of community property see Ownership under topic 10.

<sup>2</sup> *Naab v. Smith* (1940), 55 Wyo. 181; 97 Pac. (2d) 677.

### 15. Estate of Deceased Husband or Wife—Share of Surviving Spouse.<sup>1</sup>

#### COMMON-LAW RULE.

#### REAL PROPERTY

##### Absolute inheritance.

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

##### Life interests.

*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.

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

This curtesy 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 topic 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<sup>2</sup> unless there is no descendant of the deceased spouse, nor in 11 States<sup>3</sup> 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.<sup>4</sup>

## II. When the deceased person leaves no descendants:

1. A surviving spouse inherits the entire estate in lands in 11 States.<sup>5</sup>

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

3. A surviving spouse shares in real property, regardless of value, with decedent's parents in 4 States,<sup>9</sup> and with decedent's parents and other blood relatives, as specified by statute, in 14 States.<sup>10</sup>

4. A surviving spouse inherits all the real property if decedent leaves no parent in five States.<sup>11</sup>

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.<sup>12</sup>

**Life interests.**

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

A surviving husband may have a life interest in all the lands of his wife, in 8 States,<sup>14</sup> 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,<sup>15</sup> or in part only in 15 States.<sup>16</sup>

**Protection against sole conveyance.**

In 22 States<sup>17</sup> 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<sup>18</sup> the wife's dower 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 41 of the 49 jurisdictions studied. In the 8 States that distinguish between the spouses, Alabama and Arkansas give 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; North Carolina favors a surviving husband.

**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.<sup>19</sup>
2. A surviving spouse receives all the personal estate within a value set by statute<sup>6</sup> but must share the estate in excess of that value with decedent's parents in 4 States,<sup>7</sup> or must share it with parents and other blood relatives as specified by statute in 12 States.<sup>20</sup>

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,<sup>21</sup> and with the parents and other blood relatives as specified by statute in 12 States.<sup>22</sup>
4. A surviving spouse inherits all the personal property if decedent leaves no parent, in four States.<sup>23</sup>
5. A surviving spouse inherits all the personal property if decedent leaves no parent or other blood relative appointed by statute to inherit, in 26 States.<sup>24</sup>

**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. The State also makes a distinction between the right of a widow of a first marriage and the right of a childless widow of a subsequent marriage when issue of the husband's prior marriage survive. This distinction is not made between surviving husbands of first or subsequent marriages.

In at least 10 States <sup>25</sup> 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 six States <sup>26</sup> 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 her status as a first or subsequent widow when children of a prior marriage survive, or on the character of the estate as ancestral or not. No summary of this phase of inheritance law is attempted, but details appear under topic 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 topic 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.

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

2. Life occupancy may be available to the surviving spouse in 13 States;<sup>3</sup> to the widow only in 15 States.<sup>4</sup>

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;<sup>5</sup> to the widow only in 16 States.<sup>6</sup>

#### 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;<sup>7</sup> to the widow only in 32 States.<sup>8</sup>

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

#### III.—HOUSEHOLD GOODS

Family household equipment may be reserved for the use of the surviving spouse in 16 States,<sup>11</sup> and of the widow only in 20 States.<sup>12</sup>

#### IV.—WEARING APPAREL

The family clothing is reserved to the husband or widow in 18 States,<sup>13</sup> to the widow only in 24 States.<sup>14</sup>

#### V.—SUMMARY ADMINISTRATION

1. Unpaid wages, within limited amounts,<sup>15</sup> owing to the deceased person at death may be collected by the surviving spouse without formal administration in four States;<sup>16</sup> by the widow only in five States.<sup>17</sup>

2. Bank deposits, within limited amounts,<sup>18</sup> belonging to a deceased person may be collected without administration by the surviving spouse in five States;<sup>19</sup> by the widow only in Delaware.

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 nine States,<sup>20</sup> the widow, in 11 States.<sup>21</sup>

#### 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.

<sup>1</sup> Ariz., Calif., Idaho, Kans., Minn., Miss., Nev., Utah, Vt., Wash., Wyo.

<sup>2</sup> Ala., Fla., Wis.

<sup>3</sup> Conn., Ill., Ky., Minn., Mont., Nebr., N. H., N. Mex., N. Dak., Okla., Oreg., S. Dak., Tex.

<sup>4</sup> Ala., Ark., Fla., Maine, Mass., Mich., Miss., Mo., N. J., N. Y., N. C., Ohio, Tenn., Va., Wis.

<sup>5</sup> Calif., Conn., Idaho, Iowa, Ky., N. J., Ohio, Okla., Oreg., S. Dak., Utah, W. Va., Wyo.

<sup>6</sup> Ala., Ariz., Ark., Ga., Ind., La., Maine, Mass., Mich., Mo., Mont., Nev., N. H., N. Y., Vt., Va.

<sup>7</sup> Conn., D. C., La., Maine, Md., Minn., Mo., Mont., Nebr., N. Mex., N. Y., N. Dak., Okla., S. Dak., Utah, Wash., W. Va.

<sup>8</sup> 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.

<sup>9</sup> Idaho, Minn., Mont., Okla., S. Dak.

<sup>10</sup> Ala., Ariz., Ark., Ga., Nev., N. H., N. Dak., Oreg., R. I., Wis., Wyo.

<sup>11</sup> Calif., D. C., Md., Minn., Mo., Mont., Nebr., N. Y., N. Dak., Ohio, Okla., Oreg., S. Dak., Utah, Vt., Wyo.

<sup>12</sup> Ala., Ariz., Ark., Conn., Fla., Ga., Idaho, Iowa, Kans., Mass., Mich., Miss., Nev., N. J., R. I., Tenn., Tex., Va., Wash., Wis.

<sup>13</sup> Calif., D. C., Maine, Minn., Mo., Mont., Nebr., N. H., N. Mex., N. Y., N. Dak., Ohio, Okla., Oreg., S. Dak., Utah, Vt., Wyo.

<sup>14</sup> 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.

<sup>15</sup> Maximum amounts range from \$75 in Delaware and New Jersey to \$500 in Connecticut.

<sup>16</sup> Ariz., Conn., N. Mex., N. Y.

<sup>17</sup> Ala., Del., Ga., N. J., Pa.

<sup>18</sup> Maximum amounts range from \$75 in Delaware to \$500 in California, Connecticut, and Oregon.

<sup>19</sup> Calif., Conn., N. Mex., Oreg., Utah.

<sup>20</sup> Ariz., Calif., Nebr., Nev., N. J., N. Dak., S. C., S. Dak., Utah.

<sup>21</sup> Ark., Calif., Idaho, Ind., Mich., Mont., Okla., Oreg., Pa., S. Dak., 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 topic 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<sup>1</sup> 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 eight community-property States<sup>2</sup> 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.

<sup>1</sup> Ala., Ark., Fla., Mich., N. C., S. C., Utah, Wis.

<sup>2</sup> Ariz., Calif., Idaho, La., Nev., N. Mex., Tex., Wash.

## 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 and court sanction to the marriage are obtained.

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.<sup>1</sup>
- (b) 18 years, both sexes—3 States.<sup>2</sup>
- (c) 21 years, males; 18 years, females—32 States.<sup>3</sup>
- (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, 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—2 States.<sup>4</sup>
- (b) 18 years, males; 16 years, females—21 States.<sup>5</sup>
- (c) 18 years, males; 15 years, females—5 States.<sup>6</sup>
- (d) 18 years, males; 14 years, females—South Carolina.



- (e) 17 years, males; 15 years, females—Virginia.  
 (f) 17 years, males; 14 years, females—3 States.<sup>7</sup>  
 (g) 16 years, both sexes—5 States.<sup>8</sup>  
 (h) 16 years, males; 14 years, females—5 States.<sup>9</sup>  
 (i) 15 years, both sexes—Missouri.  
 (j) 14 years, males; 13 years, females—New Hampshire.

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

3. At least 18 jurisdictions<sup>10</sup> have statutes under class 3, allowing exceptions to the minimum age in extraordinary cases.

Four States<sup>11</sup> have special provisions applicable to the female only.

#### COMMENT.

Parental consent to the marriage of a person who is under the age of majority 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.

<sup>1</sup> Conn., Fla., Ga., Ky., La., Nebr., Ohio, Pa., R. I., Tenn., Va., W. Va., Wyo.

<sup>2</sup> Idaho, N. C., S. C.

<sup>3</sup> 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., Ore., S. Dak., Tex., Utah, Vt., Wash., Wis.

<sup>4</sup> Colo., N. J.

<sup>5</sup> Ariz., Calif., Del., D. C., Fla., Ill., Ind., Kans., La., Mass., Mich., Minn., Mont., Nebr., Nev., N. Mex., Ohio, R. I., Vt., W. Va., Wyo.

<sup>6</sup> N. Dak., Okla., Ore., S. Dak., Wis.

<sup>7</sup> Ala., Ark., Ga.

<sup>8</sup> Conn., Maine, N. C., Pa., Tenn.

<sup>9</sup> Iowa, Ky., N. Y., Tex., Utah.

<sup>10</sup> Ariz., Calif., Colo., Conn., Fla., Kans., La., Maine, Mass., Mo., N. H., Ohio, Okla., Pa., R. I., Tenn., Vt., Va.

<sup>11</sup> Mich., Minn., N. Y., N. C.

## 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-four States<sup>1</sup> 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 topic 21.

The common-law or informal marriage may be contracted in 23 States.<sup>2</sup>

The policies of Maine and Wyoming in regard to the common-law marriage are not clear. Apparently both States may recognize the validity of such marriages under some conditions.

## COMMENT.

It is recognized generally 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 persons may perform the ceremony, that a certain number of witnesses be present, that a certificate of the marriage be signed and returned for record, and may provide 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."<sup>3</sup>

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.

However, the general policy of the courts is to hold that unless a marriage statute declares the common-law union a nullity all directory merely, and therefore do not affect the validity of the directory merely, and therefore do not affect the validity of the informal contract.<sup>4</sup>

<sup>1</sup> Ariz., Ark., Calif., Conn., Del., Ill., Ky., La., Md., Mass., Mo., Nebr., N. H., N. Mex., N. Y., N. C., N. Dak., Oreg., Utah, Vt., Va., Wash., W. Va., Wis.

<sup>2</sup> Ala., Colo., D. C., Fla., Ga., Idaho, Ind., Iowa, Kans., Mich., Minn., Miss., Mont., Nev., N. J., Ohio, Okla., Pa., R. I., S. C., S. Dak., Tenn., Tex.

<sup>3</sup> 18 Ruling Case Law, p. 397.

<sup>4</sup> *Meister v. Moore* (1878), 96 U. S. 76; 24 L. ed. 826.

## 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.

Because of current activity in this legislative field, the data presented in the following summary indicate the legal status as of December 1, 1940. Sources of data not appearing in the State abstracts are listed here by State and year of enactment:

California, 1939, ch. 382.	New York, 1939, ch. 110.	South Dakota, 1939, ch. 36.
Colorado, 1939, ch. 128.	North Dakota, 1939, ch. 162.	Tennessee, 1939, ch. 122.
Illinois, 1939, p. 706.		Virginia, 1940, ch. 102.
Indiana, 1939, p. 514.	Pennsylvania, 1939, Act 76.	Wisconsin, 1939, ch. 252.
Kentucky, 1940, ch. 151.		
Michigan, 1939, Act 112.	Rhode Island, 1938, ch. 2580.	
New Jersey, 1938, ch. 126.		

### Venereal diseases.

More than half the States require certificates of applicants for license to marry, giving evidence of freedom from venereal infection, as specified by statute. Most of these stipulate a medical examination; a few accept the statements of applicants as to their physical condition. The general character of the laws is indicated by the following analysis:

**Physician's certificate:**

- For both applicants after prescribed examination—20 States.<sup>1</sup>
- For applicant infected with specified venereal disease, showing that the disease is not in a communicable state—Maine and Vermont.
- For male applicant only, after prescribed examination—4 States.<sup>2</sup>

**Applicant's certificate the only requirement:**

- For each applicant—Delaware and Nebraska.
- For male applicant only—Washington.

Another approach to regulation of venereal disease appears in the laws of a small group of States that do not require premarital tests. Of these, Delaware and Utah declare unlawful the marriage of any person infected with venereal disease; Nebraska prohibits the marriage of such a person; and three States<sup>3</sup> subject to prescribed penalties any person who marries while capable of transmitting venereal disease. At least three States<sup>4</sup> declare it a penal offense for a person infected with a venereal disease knowingly to perform an act that will expose another to the infection.

**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 four States<sup>5</sup> each applicant must submit a physician's certificate to this effect. Each applicant's certificate, covering the requirement, is accepted in four States.<sup>6</sup>

**Waiting period.**

At least 23 States<sup>7</sup> have a so-called "waiting period," that is, a specified number of hours or days that must elapse after application for the license before the parties can lawfully contract marriage. State laws should be consulted for detailed information.

<sup>1</sup> Calif., Colo., Conn., Ill., Ind., Ky., Mich., N. H., N. J., N. Y., N. C., N. Dak., Oreg., Pa., R. I., S. Dak., Tenn., Va., W. Va., Wis.  
<sup>2</sup> Ala., La., Tex., Wyo.  
<sup>3</sup> Nev., Okla., Wyo.  
<sup>4</sup> Okla., S. C., Wyo.  
<sup>5</sup> N. C., N. Dak., Oreg., R. I.  
<sup>6</sup> Del., N. J., Pa., Wash.  
<sup>7</sup> Calif., Conn., Del., D. C., Ill., Maine, Md., Mass., Mich., Minn., Miss., N. H., N. J., N. Y., Ohio, Oreg., Pa., R. I., Tenn., Vt., Wash., W. Va., Wis.

**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.**

A majority of the States follow the general rule that the validity of a marriage is determined by the place of contract.

At least 15 States<sup>1</sup> test the validity of a marriage by their own laws when their residents go outside the State of domicile to marry, intending to evade its laws and to return afterward as permanent residents. Four of these States<sup>2</sup> have adopted the Uniform Marriage

Law, which seeks reciprocity between jurisdictions in the enforcement of marriage regulations. Louisiana declares void any marriage contracted within its jurisdiction by residents of another State in which the marriage would be illegal, when the parties intend to return afterward to the State of their domicile.

<sup>1</sup> Del., D. C., Ga., Ill., Ind., Maine, Mass., N. C., Okla., Pa., Utah, Vt., Va., W. Va.,

Wis.  
<sup>2</sup> Ill., Mass., Vt., Wis.

## 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, non-age, consanguinity or affinity, a former spouse living, or other fundamental impediment to the union."<sup>1</sup>

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. Two exceptions are noted: New York refuses a decree of nullity to a husband for his wife's insanity until he makes satisfactory provision for her support; West Virginia grants annulment to a husband for his wife's premarital pregnancy by another, when the fact was unknown to him at the time of marriage.

### 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. 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."<sup>2</sup> Some 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 without provision for the trial court to safeguard the interests of innocent parties affected by the decree; and 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.

<sup>1</sup> Schouler, James, *Marriage, Divorce, Separation, and Domestic Relations*. 6th ed. (1921), vol. 2, p. 1413, sec. 1153.

<sup>2</sup> New York Session Laws, 1940, ch. 226.

### 23. Grounds for Divorce—Availability by Sex.

#### 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, at the present time, divorce is regulated for each State by its legislature, and no court has authority to grant divorce except as such authority is delegated to it by State law.

"\* \* \* 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."<sup>1</sup>

As said by the United States Supreme Court:<sup>2</sup>

"\* \* \* 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<sup>3</sup> 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<sup>4</sup> grant only absolute divorce.

South Carolina 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<sup>5</sup>

As might be expected among 49 distinct legislative jurisdictions, many variations occur in the statutory forms prescribing grounds for divorce. No less than 63 separate "causes" appearing in the abstracts of State laws. Yet all these separate statutory "causes," in their essential character, fall into six main groups. These basic grounds follow in tabular arrangement, showing the individual statutory forms springing from them:<sup>6</sup>

#### I. Conduct violating the sanctity of the marriage relation.

##### Either spouse:

1. Adultery—all States but South Carolina (which has no divorce statute).
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.
4. Wife's undisclosed illicit intercourse before marriage—Maryland.

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

1. Cruelty (variously qualified)—42 States:

##### Either spouse:

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

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

**Either spouse:**

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

**Wife only:** Alabama, Pennsylvania, South Carolina, Wisconsin.

## 3. Intolerable indignities—15 States :

**Either spouse:**

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

**Wife only:** South Carolina, Tennessee.

## III. Conduct showing willful and/or negligent disregard of marital obligations.

## 1. Desertion—40 States :

**Either spouse:**

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

**Wife only:** South Carolina (legal separation).

## 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—12 States :

**Either spouse:**

Arizona	Maryland	Washington
Arkansas	Minnesota	Wisconsin
District of Columbia	Nevada	Wyoming
Kentucky	Rhode Island	
	Texas	

## 4. Nonsupport—22 States:

**Either spouse:** North Dakota, Utah.**Wife only:**

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

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

## 2. Drink habit—40 States:

**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—18 States:

**Either spouse:**

Alabama	Kansas	Oregon
Colorado	Minnesota	South Dakota
Connecticut	Mississippi	Utah
Delaware	Nevada	Vermont
Idaho	New Mexico	Washington
Indiana	North Dakota	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
Georgia	Nebraska	Virginia
Idaho	Nevada	Washington
Illinois	New Hampshire	West Virginia
Indiana	New Mexico	Wisconsin
Iowa	North Carolina	Wyoming
Kansas	North Dakota	
	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) Non-age or mental incompetence—3 States:

**Either spouse:** Delaware, Georgia, Mississippi.

(b) Fraud or force to obtain consent—12 States:

**Either spouse:**

Arizona	Kentucky	Pennsylvania
Connecticut	Missouri	Virginia
Georgia	Ohio	Washington
Kansas	Oklahoma	Wyoming

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 noted in the following analysis.

**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's fornication before marriage unknown to husband—2 States: Maryland, 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 being given to intoxication—Wisconsin.

**Wife only:**

Absolute divorce may be granted exclusively to a 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.

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.**

“\* \* \* At the present time 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."<sup>7</sup>

The general rule guiding the courts in such cases is that the child's welfare must be safeguarded, and that neither parent has a superior right to his custody.

#### 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 17 States<sup>8</sup> 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,<sup>9</sup> a statutory "deliberating period" is established between the granting of a decree of legal separation and a decree making the divorce absolute; in 12 States<sup>10</sup> this period follows a final decree of divorce.

In five States,<sup>11</sup> 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.

<sup>1</sup> *Ohio ex rel. Popovici v. Agler* (1930), 280 U. S. 379; 50 S. Ct. 154; 74 L. ed. 489.

<sup>2</sup> *Maynard v. Hill* (1888), 125 U. S. 190, 211; 31 L. ed. 654.

<sup>3</sup> Ala., Ark., Colo., Del., D. C., Ga., Ind., Ky., La., Md., Mich., Mont., Nebr., N. J., N. Y., N. C., N. Dak., Pa., R. I., Tenn., Vt., Va., Wis.

<sup>4</sup> Ariz., Calif., Conn., Fla., Idaho, Ill., Iowa, Kans., Maine, Mass., Minn., Miss., Mo., Nev., N. H., N. Mex., Ohio, Okla., Oreg., S. Dak., Tex., Utah, Wash., W. Va., Wyo.

<sup>5</sup> No distinction is attempted under this heading between absolute and limited divorce.

<sup>6</sup> Pending legislation in the Congress of the United States would (a) amend the Federal Constitution to bring marriage and divorce laws under jurisdiction of the Federal Government, and (b) adopt a marriage and divorce law uniform in its provisions for all the States. Six grounds for divorce are proposed: Adultery, cruel and inhuman treatment, abandonment or failure to provide for a year or more, habitual drunkenness, incurable insanity, conviction of an infamous crime. (S. J. Res. 36 and S. 810, introduced February 10, 1941, by Senator Capper, of Kansas.)

<sup>7</sup> 17 American Jurisprudence, pp. 512, 513, Divorce and Separation, secs. 674, 675.

<sup>8</sup> Ala., Ariz., Calif., Colo., Iowa, La., Mass., N. J., N. Y., N. Dak., Okla., Oreg., Tenn., Vt., Va., Wash., W. Va.

<sup>9</sup> Calif., Colo., La., Mass., N. J., N. Dak., Wash.<sup>10</sup> Ala., Ariz., Iowa, La., Mass., N. Y., Okla., Oreg., Tenn., Vt., Va., W. Va.<sup>11</sup> 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<sup>1</sup> 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.

The eight community-property States<sup>2</sup> appear to consider the child's earnings as community property, owned jointly by the parents but controlled 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<sup>3</sup> 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.

## COMMENT.

The State policy as to the respective rights of parents to the earnings of their minor child is not clear in Colorado, Connecticut, Illinois, Indiana, Louisiana, Virginia, and Wisconsin. These jurisdictions have been classified according to their apparent policies.

<sup>1</sup> 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.<sup>2</sup> Ariz., Calif., Idaho, La., Nev., N. Mex., Tex., Wash.<sup>3</sup> 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,<sup>1</sup> but in Florida and Virginia the mother is eligible for selection for small estates only; the father is preferred in 7 States.<sup>2</sup>

In the 13 remaining States<sup>3</sup> 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 in selecting the guardian by the best interests of the child.

<sup>1</sup> 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.

<sup>2</sup> Ala., Colo., D. C., La., Mont., Oreg., Tex.

<sup>3</sup> 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 does not come 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.

Ten States<sup>1</sup> grant the right of appointment during the marriage solely to the father; in all except three 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 Georgia he may appoint a testamentary guardian for the child's person or estate without the mother's consent, but the mother may have custody of her child until he is of "such age that his education requires the guardian to take possession 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 10 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<sup>2</sup> 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 21 States<sup>3</sup> 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<sup>4</sup> 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,<sup>5</sup> though in 7 of these<sup>6</sup> 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 a mother, if a widow, to appoint as to property the child will receive from her. 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 seven States,<sup>7</sup> and of the child's person only in three.<sup>8</sup>

<sup>1</sup> Ariz., Ga., Idaho, Mont., N. Dak., Okla., Oreg., S. Dak., Utah, Vt.

<sup>2</sup> Calif., Ill., Ind., Minn., N. J., N. Mex., N. Y., S. C., Tenn.

<sup>3</sup> Ark., Colo., Conn., Del., D. C., Fla., Kans., Ky., La., Md., Mass., Mich., Nev., Ohio, Pa., R. I., Tex., Wash., W. Va., Wis., Wyo.

<sup>4</sup> Ala., Iowa, Maine, Miss., Mo., Nebr., N. H., Va.

<sup>5</sup> Ariz., Calif., Del., Idaho, La., Mont., Nev., N. Y., N. Dak., Okla., Pa., S. Dak., Utah.

<sup>6</sup> Ariz., Idaho, Mont., N. Dak., Okla., S. Dak., Utah.

<sup>7</sup> Ariz., Calif., Idaho, Mont., N. Dak., Okla., S. Dak.

<sup>8</sup> 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 in this survey, 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 topic 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, Rhode Island, 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,<sup>1</sup> 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 23 States<sup>2</sup> 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-seven States<sup>3</sup> may require the adjudged father to contribute also to expenses incident to the child's birth.

#### COMMENT.

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

"The objective of paternity legislation is to obtain support for the child born out of wedlock, but the extent to which this ob-

jective may be realized depends largely upon the adequacy of statutory provisions for enforcing the court order for support. The outstanding weakness of many paternity laws is that they do not contain effective provisions for collecting money from the man who because of poverty is unable to pay the judgment when it is rendered or to procure a bond to secure future payments ordered by the court.

\* \* \* \* \*

"The most striking feature of the existing paternity laws is the large number of laws that are wholly unadapted to modern social conditions. \* \* \*

"Far too many laws are based on the assumptions that every man against whom action is brought can pay the amount required to support the child through a number of years or can provide security to guarantee payments in installments, and that imprisoning the man will bring forth undisclosed assets. The experience of the courts has proved that such provisions apply to only a few of the men dealt with in paternity cases."<sup>4</sup>

<sup>1</sup> Missouri requires support only if the father has custody of the child.

<sup>2</sup> Ariz., Ark., Calif., Del., Ga., Iowa, La., Maine, Mich., Nev., N. H., N. J., N. Mex., N. Y., N. C., N. Dak., Pa., S. C., S. Dak., Tenn., Vt., W. Va., Wyo.

<sup>3</sup> Ariz., Ark., Colo., Conn., Del., Fla., Ga., 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.

<sup>4</sup> U. S. Department of Labor, Children's Bureau, chart No. 16. Paternity Laws. Analysis and tabular summary of State laws relating to paternity and support of children born out of wedlock, in effect January 1, 1938, pp. 16, 22. Government Printing Office.

## 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 nine States<sup>1</sup> 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.

<sup>1</sup> 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.<sup>1</sup>

“\* \* \* 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.”<sup>2</sup>

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 seven States;<sup>3</sup> if separated from her husband she may have her own voting domicile, in at least five

other States; <sup>4</sup> (*b*) holding public office, in at least five States; <sup>5</sup> (*c*) jury service, in at least four States; <sup>6</sup> and (*d*) taxation, in three States.<sup>7</sup>

<sup>1</sup> *Wear v. Wear* (1930), 130 Kans. 205; 285 Pac. 606; 72 A. L. R. 425.

<sup>2</sup> 26 American Jurisprudence, p. 639, Husband and Wife, sec. 10.

<sup>3</sup> Maine, Mich., Nev., N. J., N. Y., Va., Wis.

<sup>4</sup> Calif., Mass., N. C., Ohio, Pa.

<sup>5</sup> Maine, Mich., Nev., N. J., N. Y.

<sup>6</sup> Maine, Mich., Nev., N. J.

<sup>7</sup> 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 are open to qualified women in most of the State governments by express provision, by interpretation of general provisions of the statutes in the light of the nineteenth amendment to the Federal Constitution, or by virtue of definite State policies.

Eight States,<sup>1</sup> though without express qualification of women for elective State offices, have no restriction or prohibition against it. Of these, Pennsylvania by its attorney general, and Texas through its supreme court, have declared their women citizens to be eligible for public office.

The constitution of Kentucky employs masculine terms in defining eligibility for public office, which formerly were interpreted to exclude women. No recent decision has been found on the point, but it is understood that the current practice is for women to hold public office.

#### Restrictions.

By constitutional provision Oklahoma excludes women from election to eight major offices. One of the three commissioners of the District of Columbia must be appointed from the Engineer Corps of the United States Army. Wisconsin limits legislative employees to males.

<sup>1</sup> Calif., Ind., Oreg., Pa., S. Dak., Tenn., Tex., W. Va.

### 32. Jury Service—Eligibility of Women.

#### COMMON-LAW RULE.

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

#### PRESENT STATUS.

Twenty-six States<sup>1</sup> admit women to jury service: In 11<sup>2</sup> of these the duty is mandatory; in 14<sup>3</sup> a woman subject to jury duty may be excused on her request presented as required by law. Connecticut makes jury duty for women mandatory, except as to those engaged in specified occupations, such as nursing, or caring for young children.

In 23 States<sup>4</sup> women are not eligible for jury service.

#### COMMENT.

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 provision. The Supreme Court of Iowa, expressing the viewpoint of that State, has said:

"\* \* \* Age, residence, sex, property, educational, moral, or physical qualifications may be recognized and made a condition precedent to jury service, if the State Legislature sees fit by statutory enactment to make them so, provided there is no constitutional inhibition."

Also that—

"Until the privilege of jury service becomes a guaranteed right to all citizens regardless of sex, it is a duty imposed by the State, not a right. It is not a 'right' of the citizen protected by either our State or Federal Constitution, nor is it implied in the right to vote or hold office."<sup>5</sup>

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. The court determines whether a person is entitled to exemption.

<sup>1</sup> Includes Illinois and Montana, laws adopted since January 1, 1938.

<sup>2</sup> Calif., Ill., Iowa, Ky., Maine, Mich., Mont., N. J., Ohio, Pa.

<sup>3</sup> Ark., Del., D. C., Kans., La., Minn., Nev., N. Y., N. Dak., Oreg., R. I., Utah, Wash., Wis.

<sup>4</sup> Ala., Ariz., Colo., Fla., Ga., Idaho, Md., Mass., Miss., Mo., Nebr., N. H., N. Mex., N. C., Okla., S. C., S. Dak., Tenn., Tex., Vt., Va., W. Va., Wyo.

<sup>5</sup> *State v. Walker* (1921), 192 Iowa 823, 830; 185 N. W. 619.

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Part IV  
APPENDIXES

- A—Glossary of Legal Terms Used**
- B—General Bibliography**
- C—Earlier Studies—Foreword or Preface**
- D—Supplementary Information on State Laws**





## 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.

**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.—GENERAL BIBLIOGRAPHY <sup>1</sup>

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A desirable background study of social, economic, and cultural factors that have established woman's position in the United States of America.

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SMITH, ETHEL M. *Toward Equal Rights for Men and Women.* National League of Women Voters, Washington, D. C. May 1929. 139 pp.

A valuable critical study of methods for removing sex discriminations in the law.

VERNIER, CHESTER G. *American Family Laws: A Comparative Study of the Family Law of the Forty-Eight American States, Alaska, the District of Columbia, and Hawaii.* Five volumes and supplement. I. *Introductory Survey and Marriage,* 1931, 311 pp.; II. *Divorce and Separation,* 1932, 523 pp.; III. *Husband and Wife,* 1935, 684 pp.; IV. *Parent and Child,* 1936, 491 pp.; V. *Incompetents and Dependents,* 1938, 707 pp.; Supplement, 1938, 178 pp. Stanford University Press, Stanford University, California, and Oxford University Press, London.

A detailed treatment of State laws regulating family relationships and property rights with critical comment and recommendations.

<sup>1</sup> Sources used in this report have been shown directly in connection with the material used. Listed here are a few important studies by other persons.



## C.—EARLIER STUDIES OF LEGAL STATUS OF WOMEN, MADE BY THE NATIONAL LEAGUE OF WOMEN VOTERS—FOREWORD OR PREFACE

### AUTHOR'S FOREWORD (1924)

In the summer of 1922 a survey was undertaken by the committee then called the Committee on Uniform Laws Concerning Women (Mrs. Catherine Waugh McCulloch being at that time chairman), covering the contractual and property rights of married women, the guardianship of children, certain features of the marriage and divorce law, the eligibility of women for jury service, the relationship of women to public office and the professions, and her political status. Under the direction of the author (then acting as vice chairman of the committee and later chairman) a questionnaire was sent out to the officers in each State with a request that answers be furnished citing authorities. The answers came in very slowly and late in the fall of that year less than half had been received, so that the committee thought it wise to secure the services of Miss Elizabeth Perry, a lawyer of Chicago, to answer the questionnaire for the States from which no reply had been received, and very great credit is due to Miss Perry for the work she did in connection with the preparation of many of the data from which the pamphlet was compiled.

The original purpose of the survey was to enable the committee to place in the hands of the State officers suggestions concerning legislation needed in their own States, and in January 1923 leaflets were sent into all the States with such suggestions. This was deemed important because in 43 States legislatures were in session in 1923.

With this material available, it seemed wise to prepare a pamphlet which would cover the points in the questionnaire and which could be placed in the hands of members of the League.

It is a very difficult thing for anyone not personally familiar with the laws of a State, even with the statutes at hand, to be certain that the points are covered accurately, but the chairman of the committee has checked the data as carefully as it has seemed possible to do and believes them to be substantially accurate.

An explanation of a number of legal terms was appended but has been omitted from the revision.

In considering the present status of the law it is well to have in mind that 75 years ago, with one or two exceptions, our State laws were largely based upon the common law of England, and practically no changes had been made in that law so far as it had to do with the status of married women. At that time an unmarried woman might contract and hold and manage her own property, the legal limitations upon her being largely political in nature. But immediately upon marriage her status changed. She lost all right

to the control of her property. She could not sue or be sued in her own name. She had no standing before the law as a separate entity. The control of her real estate passed to her husband, and he could manage it and have the use of all income, rent, and profits therefrom without her interference. All personal property when reduced to possession passed absolutely into his control, including the right of disposition. Only the fee to her real estate could not be disposed of, and that went to her heirs. She could not make a will, for the law itself disposed of such portion of her estate as was reserved to her at the time of her death. If a living child was born, her husband gained control of her real estate until his death, however long he might outlive her. The survey discloses the fact that much progress has been made since that time and, also, that there is still much to be accomplished.

This pamphlet is of necessity limited in its scope. The intent is to show discriminations against women rather than to give the detail of the law as it exists. For that reason, very few references are made to those limitations which are binding equally upon both husband and wife.

In reference to the States having community property laws, it should be borne in mind that these laws are not at this time developed along the line of the community property principle, which is being endorsed by the League, for none of these laws now operating contemplate a joint control by husband and wife.

It is hoped by the committee that this pamphlet may prove of great assistance to the State committees responsible for legislative programs.

—Esther A. Dunshee, *Chairman,*  
*Committee on the Legal*  
*Status of Women.*

March 1924.

### PREFACE TO REVISED EDITION (1930)

In 1924 Miss Dunshee, then chairman of the Committee on the Legal Status of Women, published this Survey of the Legal Status of Women in the Forty-eight States. It proved to be an extremely useful document and after the legislatures of 1925 had met a supplement was issued. This appeared in 1926. Since that time the legislatures of all the States have met, the document is now out of print, and it seems that a most useful service can be performed by republishing it, bringing the legislation down through the year 1929. This Mrs. Savilla Millis Simons has undertaken to do.

A few comments should be made on the nature of the work Mrs. Simons has done and also on the form in which it now seems perhaps better to publish the material.

In the first place, authorities are now cited in all cases, whereas in some instances in the earlier edition they were omitted as not essential.

Second, in a number of cases the statutory provision is quoted or summarized in addition to the answer "yes" or "no" for which the question calls.

In the third place, in connection with the second question, "Do spouses have an equal interest in each other's real estate?" some further elaboration has been given to the question of the right of the surviving spouse to dissent from the will of the deceased, and the question of the right to the homestead has likewise been included.

In the fourth place, with reference to the discussion of marriage, reliance has been placed on the two publications: Richmond and Hall, *Marriage and the State*, and Geoffrey May, *Marriage Laws and Decisions in the United States*. These were published before the legislatures of 1929 had met and the session laws of that year have of course been consulted, so that where Richmond and Hall and May are cited it means that reliance is placed on the statement and that there has been no amendment since their publication.

With reference to the form in which the material is now cast, it may be said that the object of the survey was stated in Miss Dunshee's foreword to the first edition as being "to enable the committee to place in the hands of the State officers suggestions concerning legislation needed in their own States." It seems to Mrs. Simons and to me that this object may perhaps be equally well accomplished if the material is now published by States rather than by topics or by questions as was done before and that plan is now being followed. In order to do this, however, Mrs. Simons has summarized the material somewhat more fully than was done before.

It should also be said that the statements for each State have been referred to the State member of the committee in any State in which there is a member, and in a number of cases the State member has called in the assistance of another able and experienced lawyer. No attempt was made to supplement the legislation by reference to judicial decisions. When, however, the State members have reviewed the statements, they have in a number of cases felt it essential that judicial decisions should be cited. In those cases, then, in which the statements with reference to the States are largely based upon judicial decisions as, for example, Georgia, Massachusetts, Michigan, and New York, it is understood that the editor is under great obligation to the State members. It is hoped that those who have contributed to the accuracy and comprehensiveness of this survey will realize the gratitude their services have elicited. It is, in fact, a great satisfaction to realize that in attempting to examine the material comparatively the reader may feel that the statement is reasonably accurate.

It is hoped that the new edition will prove as serviceable as the original. One could not wish for it a better fate.

—Sophonisba P. Breckinridge, *Chairman,*  
*Committee on the Legal Status of Women.*

March 10, 1930.

## D.—SUPPLEMENTARY INFORMATION ON STATE LAWS

Additional research has not been practicable for the period between January 1, 1938, and the closing date for publication of this report. However, important legislative changes that have come to the attention of the Women's Bureau during that time either have been noted in the State report or are indicated in the following supplement by topical key number and by State.

*Topic 1: Minnesota*—The age of majority is 21 years for both sexes (1937 Laws, p. 646). This is a correction of Bulletin 157-22.—Ed.

*Topic 10: Oklahoma*—A community system of property ownership may be adopted by husband and wife under their written agreement, recorded as required by statute (1939 Laws, p. 356).

*Topic 14: Mississippi*—A person survived by a spouse or descendant may not by will dispose of more than one-third of his property to charitable, religious, educational, or civil institutions (1940 Laws, p. 576).

*Topic 15: Florida*—The childless widow of a man who dies, with or without a will, leaving issue of a previous marriage, takes as her dower only a child's part in the estate.

A widow's dower is made subject to its proportionate share of estate debts and charges (1939 Laws, p. 16).

*Topic 19: New Jersey*—Common-law marriages are void if contracted on or after December 1, 1939 (1939 Laws, p. 624).

*Topic 20:* Refer to this key number under summary of all States for data on new legislation to December 1, 1940. (See p. 59.)

*Topic 28: Wisconsin*—Each parent of an illegitimate child under 18 years of age is criminally liable for his or her willful failure or refusal to support as prescribed by statute (1939 Statutes, Sec. 351.30).

*Topic 32: Delaware*—Women may be excused from jury duty on request properly made (1923 Laws, p. 679. Omitted from 1935 Revised Code, but not repealed).

*Topic 32: Montana*—Women are eligible for all jury service on the same terms as men (1939 Laws, pp. 691, 692).

*Topic 32: Montana*—Women are eligible for all jury service on the same terms as men (1939 Supp., secs. 8890-8895).

*Topic 32: New York*—Women are eligible for grand jury duty after April 7, 1938 (1938 Laws, p. 1526).

