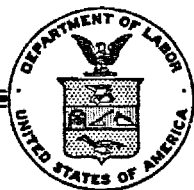


The Legal Status of Women in the United States of America

UNITED STATES SUMMARY

as of January 1, 1953



WOMEN'S BUREAU BULLETIN 157 (Revised 1956)

UNITED STATES DEPARTMENT OF LABOR

JAMES P. MITCHELL, *Secretary*

WOMEN'S BUREAU

Mrs. ALICE K. LEOPOLD, *Director*

The 1956 revision of the United States Summary of The Legal Status of Women in the United States of America was prepared by Laura H. Dale with the assistance of Laura H. Harris, under the general direction of Alice A. Morrison of the Division of Women's Labor Law and Civil and Political Status of the Women's Bureau, U. S. Department of Labor.

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1956

For sale by the Superintendent of Documents, U. S. Government Printing Office
Washington 25, D. C. - Price 35 cents

CONTENTS

	PAGE
Explanatory note.....	1
Background of the law.....	3
The Federal Government.....	5
United States Summary.....	7
Civil rights.....	9
Contracts and property.....	9
1. Age of majority.....	9
2. Contractual powers of a minor.....	10
3. Property exemptions from seizure for debt.....	12
A. Respective rights of man and woman.....	12
B. Homesteads.....	15
4. Ownership and control of property owned at marriage.....	18
5. Contractual powers of a married woman.....	19
6. Earnings of a married woman.....	25
7. Liability for family support.....	26
8. Right of a married woman to engage in a separate business.....	28
9. Rights of a married woman with respect to separate property.....	30
10. Property acquired by joint efforts of husband and wife.....	33
11. Damages for injury to person, property, or character.....	37
A. During marriage.....	37
B. Before marriage.....	39
12. Damages for injury by spouse to person or property.....	40
13. Competency of husband or wife to testify for or against each other.....	41
14. Right to dispose of separate property by will.....	43
15. Inheritance rights in deceased spouse's estate.....	45
16. Provision for survivors during administration of estate.....	54
17. Right of husband or wife to disinherit the other by will.....	57
Marriage and divorce.....	59
18. Age of consent to marriage.....	59
19. Common-law marriage.....	61
20. Premarital requirements.....	63
A. Health examination.....	63
B. Waiting period.....	64
C. Prohibited or void marriages.....	65
21. Interstate cooperation in marriage-law enforcement.....	67
22. Annulment.....	68
23. Divorce.....	72
Parents and children.....	85
24. Parents' right to services and earnings of a minor child.....	85
25. Guardianship of a minor child.....	87
26. Appointment of testamentary guardian for a minor child.....	88

United States Summary—Continued

Civil rights—Continued

Parents and children—Continued

	PAGE
27. Inheritance—child	90
28. Child born out of wedlock	91
29. Inheritance—child born out of wedlock	94
A. Inheritance from a child born out of wedlock	94
B. Inheritance of a child born out of wedlock	95
Political rights	97
30. Domicile of a married woman	97
31. Public office—eligibility of women	98
32. Jury service—eligibility of women	98
Glossary of legal terms used	101

The Legal Status of Women in the United States of America

EXPLANATORY NOTE

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

In 1848, when a few women met at Seneca Falls, N. Y., to draw up their complaint of women's treatment under the law, women could not vote, they had no share in lawmaking, jury duty was barred to them, as was the holding of public office.

Blackstone aptly described the status of married women under the common law—

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during marriage, or at least incorporated and consolidated into that of her husband.

On marriage the woman of the nineteenth century lost her legal identity for various business functions; such property as she may have brought with her into marriage became her husband's, subject to his management and control; divorce laws favored the husband, and guardianship laws the father.

In contrast, the legal status of women in the United States today is equal in most respects, but not necessarily identical, to that of men. Developments in the law and in international relationships have made research on a broad basis essential to an adequate consideration of woman's status. The need for this has been shown by continuous inquiry from individuals, organizations, and libraries addressed to the Women's Bureau, U. S. Department of Labor, as the agency of government charged with the conservation and advancement of the welfare of working women.

This report shows the situation of woman today under State law with respect to property, family, and political relationships. These laws are of importance to all women, employed or not, married or single.

The original Women's Bureau study of the civil and political status of women in the United States, published in 1941, was prepared at

the request of the League of Nations. This study was part of a world survey of women's status and included pertinent court decisions as well as State statutes. Revisions of this study have been limited to statutes, except in some few instances where it has been brought to the attention of the Bureau that a State law has been invalidated. This report supersedes the revision of Bulletin 157 published in 1951.¹

The numbered topics correspond to those in the original study. The headings have been adapted somewhat to permit incorporation of additional material. Topics numbered 1 to 32 have been carried throughout the series so that the laws of the various States may be compared.

Summaries under each topic heading show the prevailing rule in the United States on the respective subjects. The separate State reports should be used in conjunction with the United States Summary in any study of a particular subject. The common-law rule introducing each of the summary topics is a general statement of the law in effect in most of the United States prior to enactment of specific statutes. The common law is still in effect in those instances where it has not been abrogated by statute or court decision. State statutes enacted to January 1, 1953, are included in the text. In addition, statutes enacted in the 5-year period 1948-1952 are brought together under each topic in a section entitled "Recent Enactments (1948-52)," which shows recent developments in all States.

¹ Separate reports are available for each of the 48 States and the District of Columbia. Alaska, Hawaii, Puerto Rico, Virgin Islands, and Canal Zone are not included in the United States Summary; these jurisdictions are reported separately.

BACKGROUND OF THE LAW

The rules that make up the body of law in the United States come from the English common law, from the statutory law of the colonial period, from civil law derived from the French and Spanish civil codes, and from customs and principles based on American experience. These rules include constitutional provisions, legislative acts, and court decisions. They are known, depending on their form, as unwritten law (the common law) or written law (which includes statutory law and court decisions).

COMMON LAW

The common law of the United States consists of the principles of the English common law, developed and modified by American custom and judicial precedent. Because of this common source, the non-statutory law of the several States is similar, in many respects, throughout the United States. However, statutory enactments have led to important differences. In general, except where statutes have expressly amended or abrogated the English common law as it was at the time of the American Revolution 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.

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 frequently simply declare common-law principles without change, or they may change a common-law rule in whole or in part.

The legislative history of the various States demonstrates clearly the role of statutes in improving the legal status of women, particularly that of married women. 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 legal identity. Discriminations against single women were comparatively few in number under the English common law.

COMMUNITY-PROPERTY LAW

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 8 of the States: Louisiana, which retains with modifications the community law of France; Arizona, California, Idaho, Nevada, New Mexico, Texas, and Washington, which trace their community systems to Spanish or Mexican sources.

Community-property law declares equal ownership by husband and wife in all property acquired by either of them during marriage, except property inherited, received as a gift, or purchased with separate funds owned before marriage. In the community-property States actual control of much of the community is given to the husband during the marriage. Because of varied statutory forms and interpretations of the law in the States having the community-property system, the systems are not uniform.

THE FEDERAL GOVERNMENT

The Federal Government in its regulation of individual rights has to do with definite, delegated matters. It may not invade the powers that the respective States have reserved to themselves. Matters within the jurisdiction of the States include marriage and divorce, property rights, and political privileges.

CITIZENSHIP AND NATURALIZATION

A person becomes a citizen of the United States, if subject to its jurisdiction, by birth or by naturalization. A Federal statute implementing the fourteenth amendment of the Federal Constitution provides that all persons born in the United States and not subject to any foreign power are citizens of the United States.

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.

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

An alien woman who marries a United States citizen does not automatically attain citizenship thereby, but must comply with naturalization laws and procedures. She may become a citizen irrespective of whether her husband becomes naturalized or not.

The passage of the Immigration and Nationality Act on June 27, 1952, removed the last discrimination against women on the basis of sex under the United States immigration laws. The law now makes no differentiation between the sexes in its application. Some of the important effects of the law are that alien husbands of United States citizens are permitted to enter the United States as nonquota immigrants on the same terms and conditions as alien wives of citizens. In addition, a minor child entering the country may be charged to the nationality quota of either parent, rather than to that of the father only.

VOTING PRIVILEGES

The nineteenth amendment to the Federal Constitution, adopted in 1920, prohibits discrimination because of sex in the granting of suffrage to citizens by any State. Women as well as men are guaranteed

the right of franchise, subject to the voting qualifications (such as age, residence, and literacy requirements) applied alike to all citizens by the laws of the several States.

JURORS IN FEDERAL COURTS

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

Under the Revised Judicial Code of 1948 uniform qualifications govern the selection and exemption of jurors in Federal courts, except that a person is disqualified if incompetent by State law for jury duty in State courts. This results in disqualification of women as Federal jurors in the few remaining States where they are incompetent by State law for jury duty in State courts.

United States Summary

CIVIL RIGHTS

Contracts and Property

1. Age of Majority

Common law
Current status
Emancipation by marriage
Emancipation by court action
Voting
Recent enactments (1948-52)

COMMON LAW

Under common law, males and females reach majority at 21 years. At that age a person becomes an adult citizen capable at law of making valid contracts and managing his own property.

CURRENT STATUS

Males attain majority at 21 in all States; females, at 18 in 9 States¹ and at 21 in the remaining jurisdictions.

Emancipation by marriage

Marriage emancipates minors, both male and female, for most civil purposes in 10 States,² and female minors only in 13 States.³

Emancipation by court action

Statutes in 10 States⁴ permit a minor of either sex to be emancipated by court action. Indiana and Maryland limit such court action to female minors. A minimum age for emancipation is set in a few statutes, but generally the matter is left to the discretion of the court.

Voting

One State, Georgia, permits minors of both sexes to vote at age 18.

¹ Arkansas, Idaho, Illinois, Montana, Nevada, North Dakota, Oklahoma, South Dakota, Utah.

² Arizona, Arkansas, California, Florida, Iowa, Kansas, Louisiana, New Mexico, Utah, Wyoming.

³ Alabama, Illinois, Indiana, Maine, Massachusetts, Nebraska, New York, Ohio, Oklahoma, Oregon, Texas, Vermont, Washington.

⁴ Alabama, Arkansas, Florida, Kansas, Louisiana, Mississippi, Oklahoma, Tennessee, Texas, Wyoming.

Recent enactments (1948-52)

Arkansas (1949) provides that marriage of a minor terminates the guardianship of the person, with the exception of earnings for personal services; but not the guardianship of the estate.

Texas (1949) permits a minor over 18 who is serving in or is honorably discharged from the Armed Forces to be emancipated by the court for all purposes except voting.

2. Contractual Powers of a Minor

Common law**Current status**

Contracts generally

Necessaries

Conveyances of real property

Dower release or marriage settlement

Fiduciary relationships

Bank deposits, stock, and insurance

Recent enactments (1948-52)

COMMON LAW

Contracts entered into by a minor, except those for necessities, are generally not enforceable, under common law. Contracts for transfer of real property entered into during minority may be disaffirmed by him on attaining majority or within a reasonable time thereafter.

CURRENT STATUS**Contracts generally**

In most States a minor's contract, other than for necessities, may be disaffirmed by him when he reaches the age of majority. Specific types of contracts that are held invalid by statute include those for goods the cost of which exceeds 1 year of a minor's revenue in Louisiana, those involving transfer of real property in New York, and contracts entered into prior to age 18 in South Dakota.

Necessaries

A minor is generally liable in all States for the value of necessities furnished to him. Necessaries are defined as those things which are considered necessary to sustain a person, including food, shelter, and medicine. To be liable for the purchase price of necessities, a minor must actually have need of them and have contracted for them himself.

Conveyances of real property

Contracts with respect to real property which is owned by a minor or in which he has an interest usually may be disaffirmed by him. However, in some States, minors' contracts involving real estate are valid, subject to certain restrictions. In 5 States ¹ a married woman minor must be joined by her husband in any transfer or sale of her real property. In Louisiana, even if a minor has been emancipated, he must have court consent to sell or mortgage real estate. Maryland has a similar provision for unmarried women over 18, and Virginia for married women minors.

Dower release or marriage settlement

A female minor may release her dower or statutory right in her husband's real estate in 21 States,² subject to certain restrictions. In Kentucky a wife may join her adult husband in such a transaction at the discretion of the court; in New Hampshire a minor spouse may join an adult only in releasing dower or curtesy; in Texas any antenuptial agreement is valid only with the written consent of the minor's parents.

Fiduciary relationships

In most States a minor cannot be appointed to a fiduciary position, but 8 States ³ permit a minor to serve as executor or administrator, with Illinois limiting such appointments to females over 18. In Virginia a minor over 18 may be a notary public.

Bank deposits, stock, and insurance

Specific contractual powers have been granted to minors by statute in many States. Such powers have to do with stock ownership in building and loan associations in 11 States;⁴ with bank deposits and credit-union shares in 16 States;⁵ and with life insurance in 3 States.⁶

Recent enactments (1948-52)

Louisiana (1950) permits a minor to make credit-union deposits and withdrawals on his own authority. In Delaware (1949) a minor

¹ Alabama, Florida, Indiana, Massachusetts, Missouri.

² Arkansas, California, District of Columbia, Florida, Idaho, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Wisconsin.

³ Arkansas, District of Columbia, Iowa, Maine, Maryland, Massachusetts, Michigan, Ohio.

⁴ California, Idaho, Illinois, New Hampshire, North Carolina, North Dakota, Oklahoma, South Dakota, Vermont, West Virginia, Wyoming.

⁵ Indiana, Louisiana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, West Virginia, Wyoming.

⁶ Connecticut, New Jersey, Pennsylvania.

between 18 and 21, his heirs, executor, and administrator are bound by a mortgage, bond, or other obligation if it is signed, sealed, and acknowledged by such minor. North Carolina (1951) empowers a married woman under 21 who has not paid all purchase money on real property held as an estate by the entirety to make payment on a mortgage or other lien security and authorizes her to execute valid contracts for construction purposes.

3. Property Exemptions From Seizure for Debt

A. Respective rights of man and woman

Common law

Current status

Eligibility for property exemptions

Personal property, generally

Wages

Insurance

Household furniture and furnishings

Wearing apparel

Family provisions

Tools of trade, professional or farm equipment

Recent enactments (1948-52)

B. Homesteads

Common law

Current status

Definition of homestead

Exemption from seizure for debt

Persons entitled to exemption

Value of property so exempt

Restrictions on alienation

Effect of abandonment of homestead

Disposition of homestead on death of husband or wife

Absolute estate

Life estate

Recent enactments (1948-52)

A. Respective rights of man and woman

COMMON LAW

Under the common law no provision is made for property exemptions from seizure for debt.

CURRENT STATUS

All States have enacted legislation granting exemptions of specified real and personal property from seizure and sale to satisfy the owner's personal debts.

Eligibility for property exemptions

In most States men and women are equally eligible for statutory property exemptions from seizure for debt. Twenty-six States¹ give a larger exemption to a person who is "head of a family" than to a single debtor; the other 23 jurisdictions do not make a differentiation.

The definition of "head of a family" is not uniform in the State laws. Generally, this term applies to a person of either sex who is responsible, wholly or partially, for the support of others.

Personal property, generally

A few States² declare that any personal property up to a certain value is exempt from seizure for debt. This may include any of the property enumerated in the following paragraphs, other than wages, earnings, or insurance. The value of property so exempt ranges from \$200 in West Virginia to \$2,000 in Louisiana. Certain other States³ permit a debtor to claim the exemption of property up to a certain value, in addition to specified articles or classes of personal property. The District of Columbia provides for specific exemptions, and in addition allows a debtor a \$300 exemption for each dependent.

Wages

The amount of wages held exempt from garnishment varies considerably among the States. Twenty States⁴ grant a wage exemption if the money is necessary for family support. Such exemptions range from all the debtor's earnings (unless the debt was contracted for necessities or for personal services rendered by an employee of the debtor) in California, to \$20 a week in Washington.

A certain portion of the wages or earnings of a debtor, regardless of family status, is exempt in 25 States.⁵ Such exemptions vary from a flat \$15 a week in Connecticut to all wages for a 90-day period preceding the levy in Iowa.

Five States⁶ have no specific provision for wage exemption.

A minor's earnings are exempt from seizure for debt in 7 States,⁷ if the debt was not contracted for the minor's benefit.

¹ Arkansas, Colorado, Delaware, District of Columbia, Florida, Georgia, Illinois, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Virginia, Wisconsin, Wyoming.

² Florida, Indiana, Louisiana, Michigan, North Carolina, South Carolina, West Virginia.

³ Alabama, Arkansas, Ohio, South Dakota, Virginia.

⁴ Arizona, California, Colorado, District of Columbia, Idaho, Illinois, Kansas, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Oregon, South Carolina, Utah, Washington, Wisconsin, Wyoming.

⁵ Alabama, Connecticut, Delaware, District of Columbia, Florida, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Montana, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, Vermont, Virginia, West Virginia.

⁶ Arkansas, Georgia, New Hampshire, Pennsylvania, South Dakota.

⁷ Arizona, Maine, Minnesota, Rhode Island, Utah, Vermont, Virginia.

Insurance

All but 10 States⁸ exempt all or a specified part of the proceeds of insurance taken out for the benefit of the wife on the life of her husband. A few States have enacted a corresponding provision for the benefit of the husband as to insurance on the life of his wife.

Household furniture and furnishings

Except for the States² that set a flat value on personal property exempt from seizure for debt, all States provide for some exemption of household furniture and furnishings in use by the debtor and his family. The amount of this exemption varies widely. For example, in Texas all household furniture and furnishings are exempt; in Colorado and Missouri the exemption is up to \$100 worth of furniture and furnishings; sewing machines are exempt by statute in 14 States.⁹

Wearing apparel

The wearing apparel of a debtor and his family is specifically exempt in 39 States.¹⁰ The majority of the laws state that wearing apparel of the debtor and his family is exempt and do not put a valuation on it. Some qualify the exempt apparel by specifying that it must be "necessary." The District of Columbia, however, exempts apparel up to \$300 for each person in the debtor's family. A few States that set a flat exemption value state that wearing apparel is included in computing the amount.

Family provisions

Food and other provisions necessary for family support are included in the statutory exemptions of 29 States.¹¹ A number of States also exempt fuel for family use for a specified period; for example, Wisconsin specifies 1 year's supply. Massachusetts and Ohio place a \$50 value on such provisions; in Wyoming the value is \$500 for family provisions and household equipment.

² Florida, Indiana, Louisiana, Michigan, North Carolina, South Carolina, West Virginia.

⁸ Arkansas, California, Colorado, Delaware, Georgia, Indiana, Massachusetts, Nebraska, Rhode Island, Virginia.

⁹ Arizona, Colorado, Connecticut, Delaware, Georgia, Iowa, Kansas, Maine, Massachusetts, Michigan, New Mexico, Pennsylvania, Tennessee, Vermont.

¹⁰ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, Virginia, Washington, Wisconsin, Wyoming.

¹¹ Arizona, California, Colorado, Connecticut, District of Columbia, Georgia, Idaho, Iowa, Kansas, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Vermont, Virginia, Wisconsin, Wyoming.

Tools of trade, professional or farm equipment

Specific exemption of a debtor's trade tools or his farm or professional equipment is made in 38 States.¹² Statutes governing exemption of such equipment include professional libraries, office furniture, musical instruments, and sewing machines. Generally all equipment is exempt; however, Wisconsin and Ohio set a \$200 value, and Oregon \$400. New Jersey exempts such property only if there are other goods sufficient for levy.

Recent enactments (1948-52)

In the period 1948-52 the following States enacted or amended legislation exempting a portion of a debtor's earnings from garnishment for debt, in most cases raising the amount so exempt:

Alabama (1949)	New York (1950)
Delaware (1951)	Oregon (1949)
Maine (1951)	Rhode Island (1951, 1952)
Massachusetts (1951)	Vermont (1951)
Minnesota (1951)	Virginia (1952)
Mississippi (1948)	

Florida (1949) and New Mexico (1949) extended a special tax exemption to specified classes of residents. In Florida disabled veterans are eligible; in New Mexico, veterans or their widows.

B. Homesteads

COMMON LAW

The common law does not exempt the family homestead from seizure for debt.

CURRENT STATUS

Homestead laws, which have as their purpose the safeguarding of the family, have been enacted by almost all States.¹³ These laws include those exempting the home from seizure for debt, restricting sale or other conveyance without the assent of both husband and wife, and permitting a surviving husband or wife to continue to occupy the family home following the death of one spouse.

¹² Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

¹³ Delaware, District of Columbia, Maryland, Pennsylvania, Rhode Island make no provision for homestead.

Definition of homestead

Statutes of a third of the States ¹⁴ define the homestead. In most of these it is the home occupied by the family, plus outbuildings and—in rural areas—a specified acreage.

Exemption from seizure for debt

PERSONS ENTITLED TO EXEMPTION

Thirty States ¹⁵ declare that the head of a family, that is, a person on whom others are dependent for support, is entitled to a homestead exemption from seizure for debt by creditors. Eleven States ¹⁶ give such an exemption to property owners within the State, regardless of head-of-family status. California and Idaho differentiate between heads of families and property owners, giving a higher exemption to the former. Minnesota law declares that a "husband or wife" is entitled to the statutory exemption. A few States ¹⁷ specifically provide that if a husband fails to claim the homestead exemption, the wife may do so.

VALUE OF PROPERTY SO EXEMPT

Most States set a monetary limit on the value of the homestead exempt from seizure for debt. A few States ¹⁸ do not specify a set money amount. The value set by statute varies considerably. Most of the amounts set are under \$5,000, approximately one-fourth of these being \$1,000.

Restrictions on alienation

The signature of both husband and wife is required in 31 States ¹⁹ to make a valid deed, conveyance, or sale of the homestead, regardless of its ownership by one spouse. Louisiana provides that the husband may sell the homestead without the written consent of the wife. However, if the wife records her declaration of homestead as provided by statute, the husband may not mortgage or sell it without her written consent.

¹⁴ Alabama, Arkansas, Florida, Idaho, Iowa, Kansas, Louisiana, Michigan, Montana, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah.

¹⁵ Arizona, Arkansas, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wyoming.

¹⁶ Alabama, Colorado, Connecticut, Florida, Maine, Michigan, New Hampshire, North Carolina, Vermont, Virginia, Wisconsin.

¹⁷ Arkansas, California, Idaho, Louisiana, New Mexico, North Dakota, South Dakota.

¹⁸ Kansas, Minnesota, Missouri, New York.

¹⁹ Alabama, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, Wyoming.

Effect of abandonment of homestead

A few State laws ²⁰ provide formal procedures for abandonment of the family homestead. Iowa by law provides that if the owner of a homestead changes its limits or vacates it, such action does not affect the rights of the owner's spouse or children if it was made without his or her concurrence.

Disposition of homestead on death of husband or wife

ABSOLUTE ESTATE

In 5 States ²¹ the homestead descends to the surviving spouse on the death of the other. In Utah and Wisconsin it becomes the absolute property of the surviving spouse and children, and may be partitioned if the spouse remarries or when all the children reach majority. Florida and Minnesota give the homestead to the widow absolutely if there are no surviving children, but she takes a life estate if there are surviving children.

The community-property States of Arizona, Idaho, Nevada, and Washington provide that the surviving spouse is entitled to the homestead outright, if it is part of the community.

LIFE ESTATE

The widow is entitled to occupy the homestead for her lifetime or until remarriage, in 14 States.²² Either spouse has such a life estate in 8 jurisdictions.²³ Occupancy for a limited period is permitted to the widow in 6 States;²⁴ 3 States ²⁵ give such right to either spouse. The right of occupancy of the homestead usually vests in the children of the marriage during their minority, in the event of the death or remarriage of the widow.

Recent enactments (1948-52)

The following States have raised the value of the homestead exempt from seizure for debt:

Alabama (1951)	Nevada (1949)
Arizona (1952)	North Dakota (1951)
Colorado (1951)	Oregon (1949)
Mississippi (1950)	Wyoming (1951)

Alabama (1951) provides that no mortgage, deed, or other conveyance of the homestead by a married man is valid without the voluntary

²⁰ California, Idaho, Nevada, Washington.

²¹ California, Colorado, Kansas, Vermont, Wyoming.

²² Arkansas, Florida, Georgia, Massachusetts, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, South Carolina, Tennessee, Virginia.

²³ Connecticut, Illinois, Nebraska, New Hampshire, North Dakota, Oklahoma, South Dakota, Texas.

²⁴ Alabama, Indiana, Maine, Massachusetts, Michigan, Oregon.

²⁵ Iowa, Ohio, West Virginia.

signature and assent of the wife, which must be shown by her examination taken before an authorized officer.

Georgia (1952) amended its law to provide that the owner occupying a homestead need apply only once for a homestead exemption, provided he occupies the residence.

4. Ownership and Control of Property Owned at Marriage

Common law
Current status

COMMON LAW

Under common law, all of the personal property of the wife in her possession at the time of marriage vests absolutely in the husband. The choses in action—such as bonds, corporate stock, and claims for damages—belonging to her at time of marriage vest in the husband if he reduces them into his possession by some act of ownership over them. While the husband does not acquire ownership of his wife's realty upon marriage, he does have a freehold interest in all lands owned by her with the right to possession and control during coverture. (See topic 9.)

CURRENT STATUS

Under statutes relating to the property rights of married women, a wife retains the ownership of all property, both real and personal, belonging to her at the time of marriage.

However, in Louisiana the separate property of a wife owned at the time of marriage is divided into dotal and extradotal. Dotal property or dowry is that which the wife brings to the husband to assist him in bearing the expenses of the marriage establishment. Extradotal or paraphernal property is that which forms no part of the dowry; and it clearly remains her separate property after marriage.

The most common forms of marriage agreements in Louisiana are the settlement of the dowry and the various donations the spouses may make to each other or receive from others in consideration of the marriage. Whatever in the marriage contract is declared to belong to the wife, or to be given to her on account of the marriage by persons other than the husband, is part of the dowry, unless there be a stipulation to the contrary. The income from this dotal property belongs to the husband. He has the administration of the dowry, and his

wife cannot deprive him of it; he may act alone in a court of justice for the preservation or recovery of the dowry.

The husband acquires no rights of ownership in real property forming a part of the dowry. He may acquire an ownership in personal property if the marriage contract fails to declare that its inclusion as dowry does not constitute transfer of title. In this case the husband owes nothing but the estimated value of such personal property if the wife asks the court to separate the property because the husband is dissipating it or the marriage is dissolved.

5. Contractual Powers of a Married Woman

Common law

Current status

Conveyance of real property to third persons

Dower release and marriage settlement

Transfers of personal property to third persons

Contracts between husband and wife

General contracts

Capacity to serve in positions of trust

Wage assignment

Chattel mortgage on household furniture

Effect of incapacity or absence of spouse on contractual powers

Desertion or incapacity of husband

Desertion, absence, or incapacity of either spouse

Right of court action

Recent enactments (1948-52)

COMMON LAW

Under the common law, the legal existence of the wife is merged by marriage in that of her husband. In general, the contracts of a married woman are void.

A married woman may serve as administrator or executor 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 her husband must act in her right. 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 this does not subject her to any personal liability.

An antenuptial contract between prospective husband and wife is voided by the marriage. It is enforceable in equity, however, and in some jurisdictions at law where it is to be executed after termination of the marriage relation.

CURRENT 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.

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

Conveyance of real property to third persons

In 25 States¹ the wife may convey her real property as if she were unmarried. In Georgia, however, a conveyance by the wife to a creditor of the husband in satisfaction of his debts is voidable at the wife's election. In 15 States² a married woman's sole deed or conveyance transfers absolutely her rights and the rights of her representatives in her real estate, but has no effect on the husband's interest in her lands, unless he joins in the deed or conveyance. In 8 States³ the husband must join with the wife in order to make a valid conveyance. In Maine the husband must join to make a valid conveyance of real estate he has conveyed to the wife, except that conveyed as security or in payment of a debt actually due the wife. In Vermont the husband must join in a conveyance of property acquired by the wife prior to February 13, 1919, if the original conveyance is not "to her sole and separate use"; if acquired subsequent to that date she may convey as if unmarried.

Dower release and marriage settlement

In all States where common-law dower is retained or where there is a statutory substitute which attaches to property owned during the marriage, the wife may relinquish this interest in her husband's lands either by joining in a conveyance with him or by her separate deed.⁴ In at least 14 States⁵ this interest may be released by jointure.

Under the married women's laws abolishing the common-law rule that marriage extinguishes any antenuptial contractual relation between husband and wife, property settlements between them are

¹ Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Georgia, Idaho, Louisiana, Michigan, Mississippi, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Utah, Washington, Wisconsin, Wyoming.

² Delaware, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, Oregon, Rhode Island, Virginia, West Virginia.

³ Alabama, Florida, Indiana, Kentucky, North Carolina, Ohio, Pennsylvania, Texas.

⁴ Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Utah, Vermont, Virginia, West Virginia, Wisconsin.

⁵ Arkansas, Florida, Kentucky, Maine, Michigan, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Vermont, West Virginia, Wisconsin.

generally upheld. Marriage settlements that dispose of property rights between the parties to an intended marriage are favored by law, as they tend to reduce litigation over property after marriage. If it is the intent of the parties, as expressed in the agreement, that the wife shall not receive dower, it is an effective release.

Transfers of personal property to third persons

In all jurisdictions except Georgia and Texas a married woman may transfer her personal property to third persons as if she were unmarried. In Georgia a married woman may not bind her separate estate by any contract of suretyship nor by any assumption of the debts of her husband. In North Carolina contracts affecting personal property of the wife for more than 3 years must be in writing. In Texas a wife cannot make a valid transfer of stocks and bonds owned by her without the joint signature of her husband.

Contracts between husband and wife

Husband and wife may contract freely with each other regarding both real and personal property in 18 States.⁶ In 7 States⁷ transactions between husband and wife are subject to the general rules that control the actions of persons occupying confidential relations with each other. Five States⁸ require that any transfer of personal property between the spouses must be by written instrument, and in some instances, acknowledged and filed for record.

In the following States freedom of contract between husband and wife is limited: In Iowa husband and wife may not contract concerning any inchoate right each has in the property owned by the other. In Oregon they may not contract with each other to relinquish rights of curtesy and dower, yet each may appoint the other as attorney in fact to bar dower or curtesy in his or her property. In Maine the wife is prohibited from entering into partnership agreement with her husband. In Minnesota spouses may not contract with each other concerning real estate.

Contracts between husband and wife are apparently prohibited in Massachusetts and Vermont, although in the latter State they may enter into a partnership agreement.

No general statutory right of contracting with the husband appears to be given the wife in the remaining States.⁹

⁶ Arkansas, Colorado, Connecticut, Delaware, Florida, Idaho, Maryland, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, South Carolina, Utah, Wisconsin.

⁷ California, Montana, Nevada, New Mexico, Ohio, Oklahoma, South Dakota.

⁸ Illinois, Kentucky, Mississippi, North Carolina, West Virginia.

⁹ Alabama, Arizona, District of Columbia, Indiana, Kansas, Louisiana, Tennessee, Texas, Virginia, Washington, Wyoming.

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 real property or the common property of herself and husband. In Idaho, Kentucky, and Michigan a married woman may not be a surety. However, in Michigan she may mortgage her separate property to secure her husband's debts, and cannot then escape liability on the ground of coverture. In Georgia she may not bind her separate estate by any contract of suretyship, nor by any assumption of the debts of her husband. In Alabama and New Hampshire, the wife is not liable as a surety or guarantor for her husband. In Texas the wife may not become the joint maker of a note, or a surety unless her husband joins her in making the contract.

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, by specific statutory provision in at least 20 States.¹⁰ Seven States¹¹ consider a woman eligible for appointment as an administrator, but a male person equally entitled to serve will be preferred. In 8 States¹² the marriage of a woman who is serving in a fiduciary capacity may affect her position. In 13 States¹³ the surviving spouse has a prior right to be appointed administrator of his or her deceased spouse's estate.

Wage assignment

Wage assignments, i. e., the promise of a wage earner to pay a portion or all of his earnings to a creditor or other person, are restricted by law in over half the States. In 16 of these States¹⁴ the written assent of the wage earner's husband or wife is necessary to make the assignment valid; 9 States¹⁵ require the wife's assent to an assignment by the husband, but have no corresponding restriction on a wage assignment by the wife. New Mexico provides that the wage assignment of a married man must be recorded to be valid.

¹⁰ Arkansas, California, Connecticut, Florida, Georgia, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Missouri, Montana, New Jersey, North Dakota, Ohio, Rhode Island, South Carolina, Vermont, Wyoming.

¹¹ District of Columbia, Idaho, Maryland, Montana, Nevada, Oklahoma, South Dakota.

¹² Delaware, Indiana, Nevada, New Hampshire, North Carolina, South Carolina, Utah, Virginia.

¹³ Colorado, Idaho, New Mexico, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Vermont, West Virginia, Wisconsin, Wyoming.

¹⁴ Arizona, California, Colorado, Georgia, Idaho, Illinois, Iowa, Maryland, Michigan, Nebraska, Oklahoma, Rhode Island, Utah, Vermont, Virginia, West Virginia.

¹⁵ Arkansas, Indiana, Louisiana, Massachusetts, Minnesota, Montana, Texas, Wisconsin, Wyoming.

Chattel mortgage on household furniture

About a fifth of the States restrict the mortgaging of household furnishings or furniture by married persons. Ten jurisdictions ¹⁶ make the validity of such chattel mortgages contingent on the written signatures of both husband and wife to the instrument. North Carolina and Texas hold that in order for a chattel mortgage executed by a married man to be valid, it must be signed by his wife.

Effect of incapacity or absence of spouse on contractual powers

DESERTION OR INCAPACITY OF HUSBAND

Upon desertion by the husband, in 7 States ¹⁷ the wife may dispose of her separate property and effectively bar any interest the husband may have therein. In Massachusetts this power of disposal includes any property coming to the husband through the marriage. In 6 States ¹⁸ the wife may prosecute or defend actions in the husband's name. Alabama and Indiana remove all restrictions on the contractual powers of a married woman whose husband has been convicted of a crime. In Massachusetts she may sell her property and that of her husband coming to him by virtue of the marriage. When the husband has become insane or incapacitated, the wife may get permission to convey her lands in New Jersey and Texas. In Indiana she has all the powers of an unmarried woman.

DESERTION, ABSENCE, OR INCAPACITY OF EITHER SPOUSE

In 5 States, ¹⁹ if one spouse has abandoned the other, the court may authorize control by the innocent spouse of the property of the other. In New Hampshire the injured spouse may petition to convey his or her own property as if unmarried. In Maryland, after a 7-year absence, the injured party may convey real estate acquired during the absence of the other spouse as if unmarried.

Upon the conviction of either spouse for a crime, the innocent spouse may manage and sell the property of the other, in 4 States. ²⁰

When a spouse has become insane or incapacitated, the other may dispose of his or her separate real property in Delaware, Illinois, Oregon, and Pennsylvania. In Iowa and South Dakota the spouse of an incapacitated person may manage and sell the property of the other spouse. In Maryland a spouse may, without the other's consent, sell real property acquired during the incompetence of the other.

¹⁶ Arizona, Idaho, Illinois, Minnesota, New Hampshire, New Jersey, Rhode Island, Vermont, Virginia, West Virginia.

¹⁷ Delaware, Indiana, Massachusetts, Missouri, Oregon, Pennsylvania, Vermont.

¹⁸ Arkansas, Indiana, Iowa, Minnesota, Nevada, Pennsylvania.

¹⁹ Illinois, Iowa, North Dakota, Oklahoma, South Dakota.

²⁰ Iowa, North Dakota, Oklahoma, South Dakota.

Right of court action

Practically all of 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. In all but 5 States ²¹ a married woman may sue and be sued alone, as if she were unmarried. Arizona, Arkansas, Nevada, and Washington provide that the wife may sue and be sued alone in actions involving her separate property. In Texas the husband may sue alone or with the wife for recovery of her separate property; if the husband neglects to sue, the wife may do so by authority of the court.

Recent enactments (1948-52)

Maine (1951) provides that a married person may own, in his own right, property acquired by descent, gift, or purchase, and may sell or devise it without the joinder of the other spouse, but may not bar the other's interest in such property.

Georgia (1950) repealed a law providing that no contract of sale by a wife of her separate estate to her husband or trustee shall be valid unless allowed by order of the superior court of her domicile.

Tennessee (1949) provides that a married person owning property may convert his interest into an estate by the entirety by direct conveyance of a one-half undivided interest to his spouse.

Oregon (1951) provides that parties to an intended marriage may enter into a prenuptial agreement concerning their respective personal-property holdings, and that such agreement is binding if the marriage is consummated.

Nebraska (1949) provides that every assignment of wages or earnings of the head of a family shall be void unless executed and acknowledged by both husband and wife, except payroll deductions for the purchase of war bonds, union dues, and similar items. Colorado (1949) repealed a law providing that a married man who is the head of a family can make no valid assignment of wages without the written consent of his wife; this State also enacted a statute providing that a married man or woman can make no valid wage assignment without the written consent of the other spouse.

Kentucky (1950) permits a married woman to insure her husband's life without his consent for her own benefit and that of her children.

Louisiana (1952) exempts from all liability for debt all gratuitous payments made by employers to their employees, former employees, or their widows or heirs.

²¹ Arizona, Arkansas, Nevada, Texas, Washington.

6. Earnings of a Married Woman

Common law
Current status
Community-property States
Common-law States

COMMON LAW

Under common law one of the duties imposed on the wife by the marital relation is the duty to render service to her husband in return for his legal obligation to support her. This, together with the merger of the wife's legal existence in that of her husband, prevents her from engaging in any trade or business on her separate account. Her earnings belong to him and are liable for his debts. He, alone, has the right to bring suit to recover such earnings.

CURRENT STATUS

Community-property States ¹

In the eight community-property States the earnings of a wife from third persons for personal services rendered outside the home become part of the community property. The husband has control and management of the wife's earnings along with other common property, except in Idaho and Washington, where the wife is given the control and management. In these two States she also has the power to bring court action to recover her earnings in her own right. In California she may control community-property money earned by her until it is commingled with other community property. In Nevada she may control her earnings when they are used for the support of the family. In those States where the husband manages his wife's earnings as part of the community property, he sues alone or, as in Arizona, joins his wife in the suit.

However, the husband cannot dispose of the community property with intent to defraud the wife's rights. The earnings of a wife living separate and apart from her husband are her separate property.

Common-law States

In all of the remaining States, there are statutes or court decisions which set apart to a wife as her separate property her earnings from third persons for personal services, free from her husband, his creditors, and irrespective of his consent. These States give the wife control and management of her separate earnings, as well as the right to recover them in her own right.

¹ Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington.

In Massachusetts and Montana the work a married woman performs for persons other than her family is presumed to be performed for her separate account. In Virginia the wife must prove her right to such property in a contest between the husband's creditors and herself, since the presumption of law is that property in her possession during marriage belongs to the husband.

Three States—Iowa, North Carolina, and Pennsylvania—provide that a wife may recover from her husband for services rendered to him beyond the scope of family and household duties when a definite agreement or intention between them can be proved.

7. Liability for Family Support

Common law
 Current status
 Civil liability
 Criminal liability
 Support of minor children
 Support of spouse
 Recent enactments (1948-52)
 Civil liability
 Both parents
 Husband
 Wife
 Criminal liability
 Both parents
 Husband

COMMON LAW

Under common law it is the duty of a husband to support and maintain his wife and family; no legal obligation rests upon the wife to support the husband. Necessaries bought by the wife are chargeable to the husband.

CURRENT STATUS

Civil liability

The husband and father has the primary duty of supporting his wife and family in all jurisdictions. However, many States today place a secondary liability on the wife and mother. Twelve States¹ by statute require the wife to support the husband out of her separate property if he has no separate or community property and through infirmity cannot support himself.

In 17 States² contracts for family necessities are an obligation against the common or separate property of husband and wife. In

¹ California, Idaho, Montana, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Washington.

² Arkansas, Colorado, Delaware, Illinois, Iowa, Louisiana, Maryland, Minnesota, Mississippi, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, Wisconsin, Wyoming.

Minnesota, however, the wife has a cause of action against her husband for amounts she spent for family support, and in Oregon a wife's liability ceases 2 years after maturity of the debt.

In most jurisdictions a married woman is able to make a valid contract in her own right; she may, therefore, purchase necessities for herself and family on her own credit and make herself liable for the account, if she chooses to do so. Arizona and Texas require that the husband be joined in a suit on a contract for necessities purchased by the wife, making her liable only when the community property is exhausted.

Criminal liability

All but 12 States³ impose some form of statutory liability on the husband or wife, or both of them, for failure to provide family necessities. The form of criminal liability varies from State to State. In some it is a misdemeanor; in others, a felony. In most States it is punishable by fine and/or imprisonment.

SUPPORT OF MINOR CHILDREN

Maryland and West Virginia have no specific statute imposing criminal liability for nonsupport of children. In 3 States⁴ only the father is liable. California makes the mother liable only if the father is dead or unable to furnish necessities because of physical or mental infirmity. In the balance of the States the same criminal liability is imposed on both parents with the exception of New Hampshire. Here an additional penalty is imposed on the mother, making it unlawful for her to separate herself from her husband or children without cause.

SUPPORT OF SPOUSE

Of the 36 States having penal statutes, only 4 jurisdictions⁵ have no statute imposing liability on the husband for nonsupport of his wife. No State imposes any statutory liability on a wife for nonsupport of the husband.

Recent enactments (1948-52)

CIVIL LIABILITY

Both parents

Arkansas (1949) makes the parents jointly and separately liable for support of minor children. In Connecticut (1949) whenever a child 17 or under is unable to maintain himself, the parents are indi-

³ California, Idaho, Montana, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Dakota, Texas, Wisconsin.

⁴ Colorado, Michigan, South Carolina.

⁵ California, Illinois, Utah, Vermont.

vidually liable for his support; in Rhode Island (1951) the liability is for such children over the age of 18. Rhode Island further provides that the parent's liability is not affected by divorce. California (1951) provides that when a parent has the duty to support children and fails, the other parent or child may bring an action for support against the parent who is liable.

Husband

Connecticut (1949) makes the husband liable for support of children under 17; and Illinois (1949), for support of any dependent child, notwithstanding divorce, separation, or annulment. Kentucky (1952) holds the father primarily liable for custody, care, and support of wholly dependent adult children. Rhode Island (1951) makes the husband liable for support of wife over 50 years of age or physically incapacitated, and for any child under 18.

Wife

Where the father is dead, cannot be found, or is incapable of supporting children, the mother has the duty of support in Connecticut (1949), New York (1953), and Rhode Island (1951). New York also makes the wife liable for the husband's support if he is likely to become a public charge.

CRIMINAL LIABILITY

Both parents

Criminal liability is imposed on any parent who fails to support a minor child in Arizona, Connecticut, Delaware, North Carolina (1949), Kentucky, and Virginia (1950). In Virginia (1950) this liability is extended to a child incapacitated from earning a living.

Husband

New Hampshire (1949), and Nebraska (1951) impose criminal liability on the husband for failure to support his wife and minor children. Delaware (1949), North Carolina (1949), and Virginia (1950) make it a misdemeanor for a husband wilfully to abandon and fail to support his wife. In Kentucky (1950) and in Minnesota and Ohio (1951), it is a crime for a husband to abandon or fail to support a pregnant wife.

8. Right of a Married Woman to Engage in a Separate Business

Common law Current status

- Liability of wife's earnings from her separate business for husband's debts
- Liability of husband for wife's debts arising out of her separate business

COMMON LAW

Under the common law a married woman's contracts are void, and her earnings are the property of her husband. She cannot, therefore, engage in trade or business in her own name for her personal profit.

CURRENT STATUS

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

A small group of States¹ have the so-called free-dealer or sole-trader statutes. These statutes vary in detail, but all require some formal procedure on the part of the married woman who desires to engage in a separate business. This is usually a petition to the superior court of the county in which she resides showing why the disability should be removed. However, in the States having such requirements, it is not the general practice for the wife to petition the court before engaging in a separate business.

Liability of wife's earnings from her separate business for husband's debts

Generally neither spouse is liable for the separate debts of the other. Since the wife's earnings from her separate business are considered a part of her separate estate, these earnings are not liable for her husband's debts. However, Massachusetts provides that in order to protect her business from her husband's creditors, a married woman must have recorded in the town where the business is conducted a "separate business certificate." At least 7 additional States² have statutes that permit a married woman to place on public record a list of her separate personal property, from whatever source derived, in order that her rights of ownership may be protected from her husband's creditors. Such an inventory of record is notice and prima-facie evidence of the title of the wife.

California and Nevada limit the amount of the husband's investment in his wife's business to \$500. In Nevada the wife may also lose the protection of the statute if her husband participates in the management of her business.

Liability of husband for wife's debts arising out of her separate business

The husband is not liable for the debts of his wife arising out of her separate business. In Louisiana the husband may become liable if the profits from the wife's business become community property.

¹ California, Florida, Nevada, Pennsylvania, Texas.

² Arkansas, California, Idaho, Montana, Nevada, Oklahoma, South Dakota.

If a certificate for the wife to engage in separate business is not filed by the husband or wife, the husband may be liable for the wife's business debts in Massachusetts.

9. Rights of a Married Woman with Respect to Separate Property

Common law

Current status

Definition of separate property

Control of property during marriage

Personal property

Real property

Husband as wife's agent

Liability for debts

COMMON LAW

Under the common law a wife has no separate estate. She does have what is termed a general legal estate, that is, property which she holds subject to the interest of her husband.

During the marriage, the husband has a freehold estate in all lands owned by the wife, which gives him the right to possession and control. He owns the rents and profits from her property. He may convey this interest or subject it to payment of his debts. Practically the only restriction on the husband's absolute right over the separate realty of his wife is that he cannot dispose of or encumber it so as to affect her interest or that of her heirs after his death. The freehold differs from curtesy in that it is a right enjoyed by the husband during the life of the wife in her property and ends with her death, while curtesy is an estate in the wife's property which takes effect as to possession only after the death of the wife.

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; her death does not affect his title. On his death, such property passes under his will or is part of his intestate property. He alone has the right to sue for the recovery of such property.

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.

CURRENT STATUS

In most of the States a married woman possesses and enjoys her separate property during marriage free from any personal right of the husband to take or control it. All States have statutes giving the wife the right to acquire property which she may hold as her separate estate.

Definition of separate property

Definitions of a married woman's separate estate vary. 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. In 6 States ¹ the wife's separate estate does not include property of specified kinds given to her by her husband, the object of the exclusion apparently being to prevent fraud against the husband's creditors.

Many States include in the definition of separate property that acquired by the usual means through which any person legally acquires property, including earnings from labor or business. (See topic 6 for ownership and control of a married woman's earnings.)

Control of property during marriage

PERSONAL PROPERTY

In all States a married woman has the right to control her separate personal property. The husband has no interest in such property, except for minor variations in Louisiana and Texas. Louisiana differentiates between property which a woman brings into marriage as dowry (dotal property) and paraphernalia. The administration of dotal property is under the husband; the wife has the right of control and disposition of her paraphernalia. Texas requires the husband's signature to a valid transfer of the wife's stocks and bonds.

REAL PROPERTY

In the majority of States, the wife has an absolute right to control and dispose of her separate real property. In 8 States ² the husband must join in executing a conveyance of his wife's real property. Of these, Florida, North Carolina, and Ohio require the signatures of both husband and wife in any conveyance of the real property of either spouse.

Maine requires a joint conveyance by husband and wife only with respect to the wife's real property which was originally conveyed to her by her husband. In Vermont, the wife may convey any part of her separate real property, except the family homestead, without

¹ Colorado, Kansas, Maine, Nebraska, New Hampshire, Vermont.

² Alabama, Florida, Indiana, Kentucky, North Carolina, Ohio, Pennsylvania, Texas.

her husband's assent. In Louisiana, if the real estate is dotal property, it is under the control of the husband, and income from it belongs to him.

(For dower and curtesy rights following the death of one spouse, see topic 15.)

HUSBAND AS WIFE'S AGENT

A married woman may permit her husband to use and control her property or the income from it if she chooses. Generally this use and control by the husband is not sufficient evidence that she has relinquished title. In Missouri, if the wife gives written authority to her husband to use and control her separate property, it then becomes liable for family necessities. In New York, if the wife permits the husband to collect all the income from her separate estate and use it for his own purposes, a gift from the wife to the husband is presumed. He does not become liable for an accounting until permission is specifically revoked. In Montana, if the wife's property is in sole and exclusive possession of the husband, the property is liable for debts to creditors of the husband dealing with him without knowledge of the wife's ownership. In West Virginia, if either spouse buys real or personal property in the name of the other, it is presumed to be a gift to the spouse named.

In Washington, if either spouse obtains possession or control of the property of the other, the owner may maintain an action therefor. 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 in the absence of a legal agreement between the spouses, all business done with the means of the wife by the husband shall be deemed to be on her account as her agent.

LIABILITY FOR DEBTS

Generally, neither the separate property of a married woman nor its income or profits becomes subject to the husband's debts. However, at least 8 States³ require a wife to place on public record an inventory of her personal property in order to protect her rights if the property is seized by her husband's creditors. (See topic 7 for liability for family necessities.)

As a rule, neither spouse is liable for the debts incurred by the other before marriage. Each spouse is liable for his or her own debts contracted before or after marriage. (See topic 5 for court actions involving a married woman.)

³ Arkansas, California, Idaho, Massachusetts, Montana, Nevada, Oklahoma, South Dakota.

10. Property Acquired by Joint Efforts of Husband and Wife

- Common law
- Current status
 - Noncommunity-property States
 - Tenancy by the entirety
 - Liability for debts
 - Tenancy in common
 - Joint tenancy
 - Community-property States
 - Community property defined
 - Ownership
 - Control
 - Liability for debts
- Recent enactments (1948-52)

COMMON LAW

At common law, property acquired by the joint efforts of husband and wife during marriage belong to the husband and is under his control.

At common law a conveyance or devise to the husband and wife creates an estate by the entirety. During the marriage the husband has an absolute and exclusive right to control of the property, and income derived from it belongs to him. However, he cannot sell or otherwise dispose of it without the consent of his wife. On the death of either spouse, the property belongs outright to the survivor.

CURRENT STATUS

Noncommunity-property States

In the noncommunity-property, or common-law States, property acquired by the husband and wife during marriage is generally under the management and control of the husband. However, every State has imposed statutory restrictions on his disposition and use of certain property. (See topics 3, 5, and 15.) In addition, earnings of the wife for work outside the home are considered her separate property in most States. (See topic 6.)

All States recognize joint ownership in both real and personal property. This system is widely used by husbands and wives with respect to bank accounts, securities, furniture, automobile, and real property ownership since it safeguards the interests of the other if one of the spouses dies or becomes legally incapacitated.

TENANCY BY THE ENTIRETY

Six States ¹ have retained the common-law form of tenancy by the entirety. This estate can be terminated or mortgaged during marriage only by the joint action of the husband and wife. In 11 States ² there is a presumption that where property is held in the joint names of husband and wife it is an estate by the entirety. A contrary intention clearly expressed in the deed or instrument establishing the estate rebuts this presumption. Ordinarily a tenancy by the entirety may not exist in personal property when it cannot exist in real property.

Liability for debts

An estate by the entirety is liable for the joint debts of husband and wife. The rights of survivorship of the husband and his right to possession and enjoyment of the profits of land held as a tenancy by the entirety are liable for the husband's debts.

TENANCY IN COMMON

A tenancy in common is an interest in land by two or more persons who hold such interest by separate and distinct titles, each party entitled to an undivided interest in the property. Each party may dispose of his interest without the assent of the other tenants in common. On death the interest of the parties descends to their heirs or assigns.

In 5 States ³ a conveyance of property to husband and wife creates a tenancy in common, unless the instrument expressly declares an intention to create an estate by the entirety, or a joint tenancy. In 15 States, ⁴ a tenancy in common is created unless an intent to create a joint tenancy is shown. Husband and wife may hold property only as tenants in common in 3 States. ⁵

JOINT TENANCY

A joint tenancy is an interest in land held by several persons. Each party has the right to dispose of his interest without the assent of the other. On the death of one of the parties in interest, the survivor succeeds to the entire estate. Joint tenancies may be held by any two or more persons; the husband-and-wife relationship does not need to exist.

In Wisconsin husband and wife may hold real property only as joint tenants.

¹ Arkansas, Delaware, Massachusetts, Missouri, Vermont, Wyoming.

² District of Columbia, Florida, Indiana, Maryland, Michigan, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Tennessee.

³ Kentucky, Mississippi, Rhode Island, Utah, Virginia.

⁴ Alabama, Colorado, Connecticut, Iowa, Kansas, Maine, Minnesota, Montana, Nebraska, New Hampshire, North Dakota, Oklahoma, South Carolina, South Dakota, West Virginia.

⁵ Georgia, Illinois, Ohio.

Community-property States ⁶**COMMUNITY PROPERTY DEFINED**

Community property generally includes all property acquired by the husband and wife during marriage, except that acquired by gift, devise, descent, or with the separate funds of either husband or wife. (For information on earnings of the wife as community property, see topic 6.)

OWNERSHIP

Under the systems in effect in the 8 community-property States both husband and wife own an estate equal to that of the other. (See topic 15 for disposition of community property on death of husband or wife.)

CONTROL

The general rule in community-property States is that the husband is the head 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; and he may not dispose of personal property without receiving consideration. In 5 States ⁷ the wife must join in a conveyance of real property which is a part of the community. In Louisiana the husband may convey real property alone unless it is in the wife's name, in which case she must give her written consent. In Nevada the wife must join in a conveyance of the homestead. In Texas the husband has sole power of disposition of both real and personal property.

LIABILITY FOR DEBTS

In all community-property States the common property is liable for community debts contracted by the husband during marriage. Generally it is also liable for necessities contracted by the wife on the credit of the husband. The community ordinarily is not liable for the separate debts of the wife. However, in California the debts of the wife incurred before marriage are debts of the husband to the extent of community property in his hands, exclusive of earnings. In California and New Mexico the community property is liable for the debts of the wife made after marriage if it is secured by the hus-

⁶ Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington.

⁷ Arizona, California (affecting property for more than 1 year), Idaho, New Mexico, Washington.

band's pledge or mortgage of community property. In Texas the community property is liable for the wife's contracts if the husband joins in the execution. In at least 3 States⁸ the community is liable for the separate debts of the husband.

Recent enactments (1948-52)

New Jersey (1951) provides that any mortgage covering real estate or chattels or both, made and executed to, or assigned to, any husband and wife shall be held by them as joint tenants and not tenants in common unless the mortgage provides otherwise.

Oregon and Oklahoma (1949) repealed their respective community-property laws. Michigan (1948) repealed its Community Property Act, preserving community-property rights whenever they were created by a clearly expressed intention in the instrument of title. Nebraska (1949) amended its Community Property Law to define community property as that acquired by husband or wife during marriage between September 7, 1947, and April 20, 1949. Such property is not to be regarded as community property unless it is satisfactorily proved that it is in fact community property.

Texas (1949) provides that husband and wife, without prejudice to preexisting creditors, may by written instrument partition between themselves all or any part of the community property, or exchange between themselves all or any part of the community property, or exchange between themselves the community interest of one spouse in one property for the community interest of the other spouse in other community property. Property so set aside shall constitute separate property.

California (1951) provides that the wife shall have management, control, and disposition, other than testamentary, of community-property money earned by her, or community-property damages received by her for personal injuries, until it is commingled with other community property, except that the husband shall have control and disposition of such money damages to the extent necessary to pay for expenses incurred by reason of the wife's personal injuries. She may not dispose of such money without a valuable consideration unless her husband consents in writing.

⁸ California, Idaho, New Mexico.

11. Damages for Injury to Person, Property, or Character

- A. During marriage
 - Common law
 - Current status
 - Injury to the person
 - Injury to separate property
 - Injury to character or reputation
 - Alienation of affections
 - Criminal conversation
 - Recent enactments (1948-52)
- B. Before marriage
 - Breach of promise
 - Recent enactments (1948-52)
 - Seduction
 - Woman's right
 - Parents' right

A. During marriage

COMMON LAW

Only the husband has the right, under common law, to recover damages for injury to his wife through the negligence of a third person. The wife has no right of recovery for injury to her husband caused by the negligence of another. She cannot recover for his loss of ability to support her, for his services, or for her services in nursing him.

The husband only may sue for loss of a damage to the wife's personal property if the claim arises during marriage. Spouses may join in an action to recover damages to her real property, or the husband may sue alone.

In suits for slander or libel against the wife, the husband and wife must join in the action. The husband can bring suit against a third person for alienation of his wife's affections.

CURRENT STATUS

Injury to the person

Separate property of a married woman in most States includes damages awarded in actions for her physical or mental suffering caused by the negligent or willful conduct of another.

In 6 community-property States¹ damages for personal injury to either husband or wife while they are living together become part of the community. In Louisiana, by statute, damages resulting from

¹ Arizona, California, Idaho, New Mexico, Texas, Washington.

personal injuries to the wife are not community property but her separate property. In Nevada, if the wife sues separately, she is awarded all damages sustained by her. If the suit is brought by husband and wife jointly, damages for loss of the wife's services and for the expenses of her hospital, medical, and home care belong to the husband; damages for her personal injury, and for pain and suffering belong to the wife.

Injury to separate property

Damages for injury to a married woman's separate property appear to belong to her in all States by right of ownership in the property and the fact she is empowered to bring actions for recovery in her own name, without joinder of her husband.

Injury to character or reputation

In 28 States ² a married woman may sue for injury to her character or reputation, and damages awarded become part of her separate estate. In California and New Mexico such damages are declared to be community property. In Georgia either husband or wife may bring suit to recover damages for injury to the wife's reputation or character.

Alienation of affections

Ten States ³ have adopted laws abolishing suits for damages by any person, including a wife, for alienation of affections. In Michigan such suits are not allowed except those brought by a husband or wife against parents, brothers, sisters, or persons in loco parentis. Maryland makes an exception to its prohibition in cases involving pregnancy. Louisiana by court decision has held that the law does not provide for such actions.

In 14 States ⁴ the court has held that a wife may bring suit for alienation of her husband's affections. The Georgia ruling is qualified by limiting such right to a wife living separate from her husband. In 5 States ⁵ either spouse has a right of action; by court decision in Illinois only the husband may sue for alienation of affections.

² Alabama, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Wisconsin, Wyoming.

³ Alabama, California, Colorado, Florida, Indiana, Maryland, Nevada, New Jersey, New York, Wyoming.

⁴ Arkansas, Connecticut, Georgia, Iowa, Kansas, Maine, Massachusetts, Missouri, New Hampshire, Oregon, South Dakota, Texas, West Virginia, Wisconsin.

⁵ Delaware, District of Columbia, Idaho, Nebraska, Rhode Island.

Criminal conversation

At common law a cause of action for criminal conversation exists in favor of the husband only. According to the great weight of authority under the married women's laws, the wife also may maintain the action. Thus in the absence of statutes abrogating such action, a husband or a wife ordinarily may sue for criminal conversation. At least 3 States ⁶ have abolished the action.

Recent enactments (1948-52)

Florida (1951) abrogated the common-law rule that a husband is liable for the torts of his wife.

In Nevada a 1949 law provides that where a wife sustains personal injuries through negligence of a third party, suit may be brought by husband and wife jointly or separately. When the suit is joint, damages for personal injuries and for pain and suffering belong to the wife; those for loss of services, hospital and medical expenses, and other care, to the husband. If the wife sues alone, all damages belong to her.

B. Before marriage

Breach of promise

A right of action for breach of marriage promise exists at common law; statutory authorization is, therefore, unnecessary. Thirteen States ⁷ have enacted statutes abolishing this common-law right. Illinois has limited damages to actual injury sustained.

RECENT ENACTMENTS (1948-52)

Tennessee (1949) provides that the judge shall instruct the jury to consider the age and experience of the parties and the previous marital status of the plaintiff, in cases involving mitigation of damages. If the defendant is more than 60 years of age, proof of damages must be limited to the plaintiff's actual financial loss.

Seduction

A civil action by a parent for the seduction of a daughter and the consequent loss of services is permitted at common law. The seduced woman as a general rule has no cause of action in her own right.

WOMAN'S RIGHT

In 9 States ⁸ an unmarried female has a right of action for seduction.

⁶ Florida, Indiana, New Jersey.

⁷ Alabama, California, Colorado, Florida, Indiana, Maine, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, New York, Pennsylvania.

⁸ Alabama, California, Iowa, Nevada, Oregon, South Dakota, Tennessee, Utah, Washington.

Four States ⁹ provide an upper age limit, averaging 20 years, beyond which the action may not be brought. In contrast, Oregon and Washington require that the woman must be at least 21 before the action may be brought. Iowa, South Dakota, and Tennessee set no age requirements.

PARENTS' RIGHT

In South Dakota both parents have the same right to sue for seduction of an unmarried daughter; a person in loco parentis may also bring suit. In California the parent entitled to the services of the daughter may maintain the action. Four States ¹⁰ give the father a superior right to bring suit, allowing the mother to sue only in case of the father's death or desertion. California permits the mother to maintain an action for the seduction of her illegitimate daughter below the age of consent. Four States ¹¹ provide that a parent may bring suit even if the daughter is not living with or in the service of her parent at the time of seduction. No statutory right of action is given either parent in 3 States.¹²

Four States ¹³ have abolished actions for seduction of females over the age of consent. Florida, New Jersey, and New York do not permit such actions with respect to females of any age.

12. Damages for Injury by Spouse to Person or Property

Common law
Current status
Injury to the person
Injury to property
Recent enactments (1948-52)

COMMON LAW

Neither spouse can sue the other for negligent or willful injury to the person or property of the other, under common law.

CURRENT STATUS

Most States do not permit actions by either spouse against the other to recover damages for willful or negligent injuries to the person or property. Exceptions to this common-law rule have been made in

⁹ Alabama, California, Nevada, Utah.

¹⁰ Alabama, Oregon, Utah, Washington.

¹¹ California, Oregon, Utah, Washington.

¹² Iowa, Nevada, Tennessee.

¹³ Indiana, Michigan, California, Alabama.

some jurisdictions, usually by court decision but in some instances by legislative enactment.

Injury to the person

New York, North Carolina, and Wisconsin permit either spouse to bring an action against the other for personal injuries. Six States¹ permit the wife but not the husband to bring such actions.

Injury to property

At least 7 States² permit suits by either spouse against the other for injuries to separate property or for recovery of such property held or controlled by the other. Four States³ allow the wife to bring such actions; Georgia by court decision permits the husband to bring suit against his wife.

Recent enactments (1948-52)

North Carolina (1951) provides that husband and wife have a cause of action against each other to recover damages to either person or property.

13. Competency of Husband or Wife To Testify for or Against Each Other

Common law

Current status

Civil and criminal cases generally

Support cases

Divorce or separation actions

Miscellaneous civil actions

Recent enactments (1948-52)

COMMON LAW

At common law husband and wife are incompetent as witnesses for or against each other in civil or criminal proceedings. An exception to this rule is in prosecution for offenses by one against the other.

¹ Alabama, Colorado, Connecticut, New Hampshire, North Dakota, South Carolina.

² California, Illinois, New York, North Carolina, Oregon, Pennsylvania, Utah.

³ Arizona, Arkansas, Delaware, New Hampshire.

CURRENT STATUS

Civil and criminal cases generally

In the majority of the States ¹ husband and wife are competent witnesses for or against the other in civil and criminal suits, except that they may not testify as to privileged or confidential communications. Delaware, Georgia, and Maine do not restrict the testimony of either husband or wife, declaring by law that either may testify for or against the other. Connecticut has no statute on this point but an early court decision declared that a wife was a competent witness for her husband. Nine States ² declare that neither husband nor wife may testify for or against the other spouse unless the other consents.

Support cases

All but 8 States ³ have a provision making a spouse competent to testify against the other in actions to enforce responsibility for family support. A few of these States ⁴ make the wife competent to testify without the consent of the husband; in the remainder the provision applies to both husband and wife. Many of these laws also state that a spouse may be compelled to testify to any relevant matter.

Divorce or separation actions

A few States ⁵ by law make one spouse competent to testify against the other in divorce actions. In other States spouses are competent to so testify on the basis either of the common-law rule or of statutes making them competent in actions against the other. New Jersey and North Carolina declare that neither husband nor wife is a competent witness in actions for divorce because of adultery, except as to the fact of marriage.

Miscellaneous civil actions

In Connecticut the court may require the wife of an insolvent debtor to attend the hearing on the case and be a witness. If the wife does not comply, the debtor husband is not entitled to the privileges provided by law.

Arizona makes an exception to the rule that neither spouse may testify against the other without consent by making them competent

¹ Alabama, Arkansas, District of Columbia, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin.

² Arizona, Colorado, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, Washington.

³ Florida, Indiana, Maryland, Mississippi, Nevada, New Jersey, Texas, Wisconsin.

⁴ Alabama, Colorado, Connecticut, Georgia, Idaho, New Mexico, Oklahoma.

⁵ Arizona, Kansas, Kentucky, Michigan, Ohio, Rhode Island, Texas.

witnesses in suits for alienation of affections, or in damage suits for bigamy or adultery against the other.

Recent enactments (1948-52)

Uniform reciprocal enforcement of support laws were enacted by 19 States ⁶ in the period 1948-52. These contain a provision that laws attaching a privilege against disclosure of communications between husband and wife are inapplicable to proceedings under such acts. Husband and wife are competent witnesses and may be compelled to testify to any matter, including marriage and parenthood.

Ohio (1951) and Tennessee (1951) make husband and wife competent to testify to any relevant matter in divorce proceedings. North Carolina (1951) makes husband and wife competent and compellable to testify against each other in proceedings to prove marriage in cases of criminal cohabitation.

⁶ Arkansas, California, Louisiana, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Wyoming.

14. Right To Dispose of Separate Property by Will

Common law

Current status

Age requirements

Effect of marriage

Disposition of property by a married woman

Revocation

Recent enactments (1948-52)

COMMON LAW

Under common law, a married woman cannot make a valid will as to real property. With her husband's consent she can make a will disposing of any real property that he had not taken into his possession.

CURRENT STATUS

Age requirements

In 26 States ¹ 21 years is the age at which both males and females are competent to make a valid will disposing of either real or personal property. In 15 jurisdictions ² the age is 18. In Georgia any person

¹ Alabama, Arizona, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Vermont, Washington, West Virginia, Wyoming.

² Arkansas, California, Colorado, Connecticut, Delaware, Florida, Idaho, Illinois, Montana, ³Nevada, North Dakota, Oklahoma, South Dakota, Tennessee, Utah.

over 14 may make a valid will. The District of Columbia and Maryland differentiate between the sexes: 18 is the age for females; 21 for males.

New York, Rhode Island, and Virginia permit a minor of 18 to make a valid will as to personal property. Real property cannot be willed until the testator is 21. Missouri has the same requirement, but only males may will personal property at 18.

Indiana permits members of the Armed Forces or the merchant marine under 21 to make a valid will.

Kentucky permits a father under 21 to appoint a guardian for his minor child by will.

Effect of marriage

A few States³ declare that a married person may make a valid will at an earlier age than an unmarried person. Maine and Wisconsin limit this right to married women.

Disposition of property by a married woman

In general a married woman may dispose of her separate property, both real and personal, as if unmarried. A Montana statute provides that a wife may not deprive her husband of more than two-thirds of her real and personal estate. In South Carolina no man may devise more than one-fourth of his estate to illegitimate children, or to a paramour, if he has either a lawful wife or children.

In Mississippi a decedent who has heirs surviving may not will more than one-third of his estate to religious organizations; New York limits the amount that may be devised to a charitable organization to one-half the estate.

(For provisions as to a husband's or wife's election to take dower, curtesy, or a statutory share, instead of that contained in the deceased spouse's will, see topic 17.)

Revocation

A subsequent marriage revokes the will of a testator of either sex in 20 States⁴ in the absence of a marriage settlement, or in lieu of provision in the will for the testator's spouse, or if no provision is made for the survivor by the will, or if the will shows an intent not to provide.

Alabama, Arkansas, and Montana provide that revocation is effected by marriage of a single woman, but have no provision for revocation by a man's marriage; in contrast Utah provides for revocation only by marriage of a man.

³ Arizona, New Hampshire, Texas.

⁴ California, Colorado, Connecticut, Georgia, Idaho, Illinois, Kentucky, Massachusetts, Minnesota, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Washington, West Virginia.

The will of a testator of either sex is revoked by birth or adoption of children in 10 States ⁵ if no provision is made for the child in the will. Arkansas, Idaho, and Oklahoma provide for revocation of only a man's will by birth, adoption, or legitimation of a child.

A few States ⁶ provide by statute that divorce revokes all provisions of a will made in favor of the testator's husband or wife.

Recent enactments (1948-52)

Arkansas (1949) lowered to 18 the age at which a person may execute a valid will as to both real and personal property. Formerly, real property could be willed at 21, personalty at 18.

Georgia (1952) amended the law governing revocation of wills so that a testator's will is revoked by subsequent marriage, total divorce, or birth of a child for whom no provision was made.

Alabama (1951) and Arkansas (1949) enacted legislation declaring that that part of a testator's will providing for his or her spouse is revoked by divorce.

15. Inheritance Rights in Deceased Spouse's Estate

Common law

Real property

Personal property

Current status

All property

Widow's share

One child or his descendants surviving

More than one child or their descendants surviving

No children, but parents, brothers, or sisters surviving

Widower's share

One child or his descendants surviving

More than one child or their descendants surviving

No children, but parents, brothers, or sisters surviving

Real property

Widow's share

One child or his descendants surviving

More than one child or their descendants surviving

No children, but parents, brothers, or sisters surviving

Widower's share

One child or his descendants surviving

More than one child or their descendants surviving

No children, but parents, brothers, or sisters surviving

Personal property

Widow's share

One child or his descendants surviving

More than one child or their descendants surviving

No children, but parents, brothers, or sisters surviving

⁵ Connecticut, Florida, Georgia, Kansas, Louisiana, Maryland, Missouri, North Dakota, South Carolina, Utah.

⁶ Alabama, Arizona, Georgia, Kansas, Minnesota, North Carolina, Pennsylvania, Washington.

- Widower's share
 - One child or his descendants surviving
 - More than one child or their descendants surviving
 - No children, but parents, brothers, or sisters surviving
- Community property
 - Children surviving
 - No children, but parents, brothers, or sisters surviving
- Recent enactments (1948-52)

COMMON LAW

Real property

Under common law a surviving husband or wife does not take an absolute inheritance in the lands of a deceased spouse. The wife is entitled to dower and the husband to curtesy.

Dower is the widow's right to have during her lifetime the use of, or income from, one-third of the lands that belonged to her husband at any time during the marriage.

In general, dower is a claim superior to any liens or mortgages against the land in which the widow did not join in. Dower is not affected by unsecured debts of the husband. The wife may voluntarily relinquish her dower right, either by a prenuptial agreement, called a jointure, or by a conveyance executed with her husband to a third person. Dower does not pass the legal title to the property. The title passes to the husband's heirs at his death, but they cannot enjoy its use while the dower right exists.

Curtesy is the right of the husband to possess and use for his lifetime all the lands owned by his wife during marriage in which he has not relinquished his right. Curtesy is contingent on the birth of a child born during the marriage capable of inheriting; that is, a legitimate child.

Personal property

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

A surviving husband administers his wife's personal property not taken into his possession during marriage. After payment of debts he is entitled to the surplus estate.

CURRENT STATUS

Most States by statute regulate the share to which a surviving husband or wife is entitled from the estate of a deceased spouse.

In those cases where there is a spouse surviving the decedent, and there are no children or other heirs, all States provide that the entire real and personal estate goes to the surviving spouse.

Twenty-three States ¹ do not differentiate between real and personal separate property. The same proportions of both real and personal property owned by the decedent are allotted to the surviving spouse and heirs under the laws of descent and distribution. States which differentiate in inheritance rights between real and personal property appear under the subheads "Real property" and "Personal property." Variations in State law are shown in separate State reports.

All property

WIDOW'S SHARE

One child or his descendants surviving

Absolute interest.—Fourteen States ² give the surviving wife one-half of her husband's property outright. In Montana and Utah the widow's share is one-half absolutely, plus one-third life estate in Montana, and one-third in fee simple in Utah, after deducting the value of the homestead. Connecticut gives the surviving wife one-third of his property.

Life or absolute interest.—Five States provide that the surviving wife is entitled to either a life or an absolute interest in her husband's estate. In Georgia and South Carolina, the widow's share is one-third for life or one-half absolutely; in Massachusetts, one-third either for life or absolutely; in New York, one-third life interest in lands the husband acquired prior to September 1, 1930, or one-third absolutely.

Life interest.—The surviving wife receives a one-fourth life interest in her husband's property in Louisiana and New Mexico.

More than one child or their descendants surviving

Absolute interest.—Three States ³ give the surviving wife one-half absolutely of her deceased husband's property; in 10 jurisdictions ⁴ her share is one-third. Florida and Mississippi give the wife an absolute interest equal to a child's share, on the apportionment of the estate among the children and the widow.

Life or absolute interest.—Massachusetts, New York, and South Carolina have the same provisions for a widow's life or absolute interest in her husband's property regardless of the number of children

¹ California, Colorado, Connecticut, Florida, Georgia, Idaho, Louisiana, Massachusetts, Mississippi, Montana, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington, Wyoming.

² California, Colorado, Florida, Idaho, Mississippi, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Vermont, Washington, Wyoming.

³ Colorado, Ohio, Wyoming.

⁴ California, Connecticut, Idaho, Montana, Nevada, North Dakota, Oklahoma, Pennsylvania, South Dakota, Utah.

surviving. Georgia gives the widow one-third for life or a child's share absolutely; such child's share may not be less than one-fifth.

Life interest.—In most States, regardless of the type of property, the life interest of the widow does not vary with the number of children surviving the husband. Louisiana is an exception. In this State the widow's share is one-fourth when three or less children survive, and a child's share if there are more than three children.

No children, but parents, brothers, or sisters surviving

Absolute interest.—Six States⁵ provide that the surviving wife receive the entire estate of her deceased husband if there are no children or their descendants surviving. In a number of jurisdictions⁶ the wife gets the entire estate up to a specified value, plus a portion of the excess. The values range from \$2,000 in Connecticut to \$25,000 in Utah. In North Dakota, if parents survive, the amount the widow receives is \$15,000 plus one-half of the excess estate; if no surviving parent, it is \$50,000 plus one-half of the excess. Ohio gives the widow three-fourths absolutely if parents survive, the entire estate if there are no parents. One-half absolutely is her share in 3 States;⁷ in Oklahoma it is one-half of property not acquired by joint effort and all the property acquired jointly.

Life or absolute interest.—In South Carolina the widow may take one-half for life or in the alternative one-third absolutely.

WIDOWER'S SHARE

One child or his descendants surviving

Absolute interest.—Eighteen States⁸ give the surviving husband one-half of the property of his deceased wife; in Connecticut and New York his share is one-third.

Life or absolute interest.—In Massachusetts the widower may take a one-third life interest in realty or one-third absolutely of the entire estate.

Life interest.—New Mexico gives the surviving husband a one-fourth life interest in his wife's property.

More than one child or their descendants surviving

Absolute interest.—The surviving husband's share is one-half his wife's property when more than one child survives, in Colorado and Wyoming; 14 States⁹ give the widower one-third; Florida, Georgia, and Mississippi give him a child's share.

⁵ Colorado, Florida, Georgia, Mississippi, Montana, New Mexico.

⁶ Connecticut, Massachusetts, New York, North Dakota, Pennsylvania, South Dakota, Utah, Vermont, Wyoming.

⁷ California, Idaho, Nevada.

⁸ California, Colorado, Florida, Georgia, Idaho, Mississippi, Montana, Nevada, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington, Wyoming.

⁹ California, Connecticut, Idaho, Montana, Nevada, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Utah, Vermont.

Life or absolute interest.—The alternative life or absolute interest is the same where one or more children survive, in all the States that have such a provision.

Life interest.—The States that give a surviving husband a life estate in all his wife's property do so irrespective of the number of children of the marriage who survive. Louisiana gives the surviving husband a one-fourth interest for life if less than three children of the marriage survive, a child's share if there are more than three. The one-fourth life estate to the widower applies in New Mexico irrespective of the number of children.

No children, but parents, brothers, or sisters surviving

Absolute interest.—Seven States ¹⁰ give the surviving husband the entire estate in the absence of surviving children or their descendants; four States ¹¹ give him one-half. Ohio gives him three-fourths of his wife's estate if parents survive, the entire estate if they are deceased. The entire estate up to a specified value, plus a share of the surplus, is given to the husband in nine States. ¹² The value range is from \$2,000 in Connecticut to \$25,000 in Utah. In New York, if the wife's parents survive her, the husband receives the entire estate up to \$5,000, plus one-half the surplus; if no parents, but brothers or sisters survive, it is \$10,000 plus one-half. In North Dakota the husband receives \$15,000 plus one-half if parents survive, or \$50,000 plus one-half where there are no parents.

Life interest.—In Louisiana ~~if~~ parents or brothers and sisters survive, the widower is entitled to one-fourth of his wife's estate for life in absence of dowry.

Real property

WIDOW'S SHARE

One child or his descendants surviving

Absolute interest.—Five States ¹³ by statute give the surviving wife one-half of her husband's real property outright. One-third of a deceased husband's real property descends to his surviving wife, in four jurisdictions. ¹⁴

Life or absolute interest.—A number of States provide that a surviving wife is entitled to either a life or an absolute interest in the lands of her deceased husband. In Illinois and Maryland, a surviving wife is entitled to one-third either for life or absolutely. Michigan and New Hampshire provide a surviving wife with one-third for life

¹⁰ Colorado, Florida, Georgia, Mississippi, Montana, New Mexico, Oklahoma.

¹¹ California, Idaho, Nevada, South Carolina.

¹² Connecticut, Massachusetts, New York, North Dakota, Pennsylvania, South Dakota, Utah, Vermont, Wyoming.

¹³ Indiana, Kansas, Minnesota, Nebraska, Washington.

¹⁴ District of Columbia, Iowa, Maine, Wisconsin.

plus the family homestead, or one-third absolutely. In Missouri, the surviving wife is entitled to life interest in one-third of lands owned by the decedent at death or an absolute share equal to a child's portion.

Life interest.—The surviving wife receives one-half interest for life in her deceased husband's real property in Delaware and Oregon, one-third life interest in 10 States.¹⁵ New Jersey differentiates between the share a widow receives in lands acquired by her husband after December 31, 1928, and those acquired prior thereto. In the former period it is one-half life interest; in the latter, one-third. Nine States¹⁶ have abolished dower, and it is not recognized in the community-property systems of 5 States.¹⁷

More than one child or their descendants surviving

Absolute interest.—Kansas provides that the widow shall receive one-half of the deceased husband's real property absolutely; 7 jurisdictions¹⁸ state the surviving wife's share to be one-third.

Life or absolute interest.—Illinois, Maryland, Michigan, and New Hampshire have the same provisions—one-third for a widow's life or absolute interest in her husband's real property regardless of the number of children surviving. Missouri provides that the widow receive one-third for life or an absolute share equal to a child's portion.

Life interest.—Texas gives the surviving wife one-third interest in her deceased husband's real property.

No children, but parents, brothers, or sisters surviving

Absolute interest.—Five States¹⁹ provide that the surviving wife receive the entire estate of her deceased husband if there are no children or their descendants surviving. In New Jersey this applies only to property which the decedent owned absolutely. In 4 jurisdictions²⁰ the widow gets the entire estate up to a specified value plus a portion of the excess. One-half absolutely is the widow's share in 6 States.²¹ The District of Columbia gives the surviving wife an outright one-third of real property; Louisiana, one-fourth in absence of dowry. Missouri provides that the surviving wife receive one-third of her deceased husband's lands or one-half absolutely.

Life interest.—Delaware provides that the surviving wife shall have a life interest in the entire estate of her husband. Maryland has

¹⁵ Alabama, Arkansas, Arizona, Kentucky, North Carolina, Rhode Island, Tennessee, Texas, Virginia, West Virginia.

¹⁶ Colorado, Indiana, Kansas, Mississippi, Nebraska, North Dakota, Oklahoma, South Dakota, Wyoming.

¹⁷ California, Idaho, Nebraska, New Mexico, Washington.

¹⁸ District of Columbia, Iowa, Indiana, Maine, Minnesota, Nebraska, Wisconsin.

¹⁹ Kansas, Minnesota, New Jersey, Oregon, Wisconsin.

²⁰ Indiana, Iowa, Maine, New Hampshire.

²¹ Arizona, Illinois, Michigan, Nebraska, Texas, Washington.

set out alternative shares for the widow—one-half if parents survive; if no parents, \$2,000 plus one-half of the residue to the real property.

WIDOWER'S SHARE

One child or his descendants surviving

Absolute interest.—Kansas and Minnesota give the surviving husband an outright one-half in the real property of his deceased wife; in 4 States ²² his share is one-third.

Life or absolute interest.—An alternative of a life interest of one-third or an absolute one-third share is provided in Illinois and Maryland; in New Hampshire it is a one-third life estate plus the family homestead, or one-third absolutely. In Missouri, the surviving husband is entitled to one-third life interest in the wife's lands or an absolute share equal to a child's portion.

Life interest.—Curtesy—a life interest in all lands of the wife owned during marriage, if a child was born capable of inheriting—has been specifically abolished by statute in 14 jurisdictions.²³ In 4 States ²⁴ the husband's common-law right of curtesy still exists; Alabama gives him a life interest in all his deceased wife's lands; Arizona and Texas give him such an interest in one-third of her lands.

More than one child or their descendants surviving

Absolute interest.—Kansas gives the surviving husband one-half of his wife's real property absolutely when more than one child of the marriage or their descendants survive; 6 jurisdictions ²⁵ declare the widower's share to be one-third.

Life or absolute interest.—Missouri gives the surviving husband one-third life interest in his wife's lands or an absolute share equal to a child's portion.

Life interest.—Irrespective of the number of children surviving, Kansas gives the widower a one-half interest in his wife's lands; and Indiana, Iowa, and Texas give him a one-third life interest.

No children, but parents, brothers, or sisters surviving

Absolute interest.—Five States ²⁶ give the surviving husband the entire estate in the absence of surviving children or their descendants; 7 jurisdictions ²⁷ declare the widower's share to be one-half the real property. All the real property up to a specified value is given to the husband in 4 States.²⁸

²² Indiana, Iowa, Maine, Michigan.

²³ Colorado, Indiana, Kansas, Mississippi, Missouri, Nebraska, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, West Virginia, Wyoming.

²⁴ District of Columbia, North Carolina, Rhode Island, Tennessee.

²⁵ Indiana, Iowa, Maine, Michigan, Minnesota, Nebraska.

²⁶ Kansas, Minnesota, New Jersey, Oregon, Wisconsin.

²⁷ Arizona, District of Columbia, Illinois, Michigan, Nebraska, Texas, Washington.

²⁸ Indiana, Iowa, Maine, New Hampshire.

Life or absolute interest.—In Missouri, a surviving husband receives a life interest in one-third of his wife's lands or one-half absolutely.

Life interest.—Alabama and Delaware give a surviving husband the use of the wife's realty for life when there are no surviving children of the marriage, but there are parents or brothers or sisters of the decedent living; Arkansas gives the husband a life interest of one-half, and Kentucky, one-third. Four jurisdictions²⁹ have the common-law form of curtesy; and unless there have been issue born of the marriage capable of inheriting, the widower gets no share of the estate. However, one of these States—Rhode Island—permits the probate court to set off lands up to \$5,000 in value in fee simple, if this property is not required for payment of the wife's debts.

Personal property

WIDOW'S SHARE

One child or his descendants surviving

Thirteen States³⁰ give the wife one-half of her deceased husband's personal property when one child of the marriage, or descendants of such child, also survive; in 13 jurisdictions³¹ her share is one-third.

More than one child or their descendants surviving

Four States³² declare the share of a surviving wife in her husband's personal property to be one-half if more than one child or their descendants survive. In 18 States³³ the widow's share is one-third. A share of the personal property equal to that of a child is provided for the widow in Alabama, North Carolina, and Tennessee. In Alabama if there are more than four children, the widow's share is one-fifth. Missouri provides that the widow is entitled to a child's share.

No children, but parents, brothers, or sisters surviving

The widow gets the entire personal estate in 14 jurisdictions³⁴ when no children survive.

In 7 States³⁵ the surviving wife is entitled to the entire personal estate up to a specified amount, plus a share of the excess. One-half

²⁹ District of Columbia, North Carolina, Rhode Island, Tennessee.

³⁰ Alabama, Indiana, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Carolina, Oregon, Rhode Island, Tennessee, Wisconsin.

³¹ Arizona, Arkansas, Delaware, District of Columbia, Illinois, Iowa, Maine, Maryland, New Hampshire, New Jersey, Texas, Virginia, West Virginia.

³² Kansas, Kentucky, Oregon, Rhode Island.

³³ Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Iowa, Maine, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, Texas, Virginia, West Virginia, Wisconsin.

³⁴ Alabama, Arizona, Delaware, Illinois, Kansas, Minnesota, New Jersey, Oregon, Tennessee, Texas, Virginia, West Virginia, Washington, Wisconsin.

³⁵ Indiana, Iowa, Maine, Michigan, New Hampshire, North Carolina, Rhode Island.

the personal estate is the widow's share in 5 jurisdictions.³⁶ Maryland differentiates between parents and brothers and sisters, giving the widow one-half if parents survive, and \$2,000 plus one-half if the decedent left brothers or sisters or their descendants.

WIDOWER'S SHARE

One child or his descendants surviving

When one child or his descendants survive, the surviving husband's share is one-half of his wife's personal estate in 12 States,³⁷ one-third in 14 jurisdictions.³⁸

More than one child or their descendants surviving

Five States³⁹ give the surviving husband one-half of the personal estate of his wife when more than one child or their descendants survive; 18 jurisdictions⁴⁰ declare his share to be one-third; North Carolina and Missouri give him a child's share.

No children, but parents, brothers, or sisters surviving

When no children survive, the widower is entitled to the entire personal estate of his wife in 14 States.⁴¹ In Indiana, if the estate exceeds \$1,000 and his wife's parents survive, his share is three-fourths; if the personal estate is \$1,000 or less or if parents do not survive, he takes the entire estate. Four States⁴² give the surviving husband his wife's entire personal estate up to a specified amount, plus a share of the surplus. In Missouri, the widower is entitled to one-half his wife's personal estate. Maryland gives him one-half his wife's estate if parents survive; if there are no parents but there are brothers or sisters or their descendants, he receives \$2,000 or its equivalent in property, and one-half the residue. In Louisiana the husband receives one-fourth his wife's personal estate in the absence of dowry.

Community property

Under community-property systems in effect in 8 States⁴³ the surviving spouse is entitled to one-half the community, including both real and personal property, on the death of the other. The widow or

³⁶ Arkansas, District of Columbia, Kentucky, Missouri, Nebraska.

³⁷ Alabama, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Carolina, Oregon, Rhode Island, Tennessee, Wisconsin.

³⁸ Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Iowa, Maine, Maryland, New Hampshire, New Jersey, Texas, Virginia, West Virginia.

³⁹ Alabama, Kansas, Kentucky, Oregon, Rhode Island.

⁴⁰ Arizona, Arkansas, Delaware, District of Columbia, Illinois, Indiana, Iowa, Maine, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, New Jersey, Texas, Virginia, West Virginia, Wisconsin.

⁴¹ Arizona, Delaware, Illinois, Kansas, Minnesota, New Jersey, North Carolina, Oregon, Tennessee, Texas, Virginia, West Virginia, Washington, Wisconsin.

⁴² Iowa, Maine, New Hampshire, Rhode Island.

⁴³ Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington.

widower is entitled to this proportion whether there are children of the marriage or not.

Children surviving

California and Idaho give the surviving spouse the entire estate, if the decedent did not dispose of his one-half by will. Nevada and New Mexico by law provide that the husband only is entitled to the entire estate. In Nevada the children share the one-half not disposed of by the husband's will equally; in New Mexico the surviving wife gets one-fourth, the children the remainder. Arizona, Louisiana, and Texas provide that the one-half not disposed of by will goes to the descendants. However, Louisiana gives the surviving spouse the right to use the property until death or remarriage. Washington provides that the surviving spouse is entitled to one-half the community estate. The other one-half, if not disposed of by will, is disposed of according to the laws of descent and distribution.

No children, but parents, brothers, or sisters surviving

The surviving spouse gets all the community if no children or their descendants survive, in Arizona, California, Idaho, Nevada, New Mexico, and Texas. Louisiana gives one-half of the decedent's estate to the surviving parents, the other one-half to the spouse. Washington gives the surviving spouse the entire personal estate and one-half the real property.

NOTE: Nebraska, which amended its community-property law in 1949, defines community to be that property acquired by joint efforts during marriage from September 7, 1947, to April 4, 1949, which is specifically proved to be community property. One-half belongs to the surviving spouse; the other one-half is transferred to the decedent's personal representative for distribution.

Recent enactments (1948-52)

The following States raised the value of the estate to which a surviving spouse is entitled: Iowa (1951); Maine (1949); New Hampshire (1951); North Carolina, widow only (1951).

North Dakota (1951) provides that where a decedent leaves no issue or surviving parents and the estate does not exceed \$50,000, the whole estate descends to the surviving spouse. Formerly, brothers and sisters were entitled to share in the decedent's estate.

South Carolina (1949) provides that where any person dies intestate, leaving a widow and one child, each takes one-half the estate. If more than one child survives, the widow's share is one-third; the other two-thirds shall be divided equally among the children.

16. Provision for Survivors During Administration of Estate

Common law

Current status

Cash allowance from estate

Wages of deceased spouse

Bank accounts

Furniture, clothing, and provisions

Additional allowance

Property exempt from debt

Summary administration

Recent enactments (1948-52)

COMMON LAW

Under common law, a widow may stay in her husband's home rent-free for a 40-day period (known as the widow's quarantine). During this period she is entitled to reasonable support from her husband's estate. If the estate is not subject to litigation, she may be paid her dower at the end of this time.

A surviving husband has no corresponding right of quarantine if the family home belongs to the wife. He is entitled to receive any of her personal property after payment of her debts.

CURRENT STATUS

All States make some provision for the widow and minor children with respect to occupancy of the family home and maintenance allowance during the period following the death of the husband and father. A few States also give the husband similar benefits on the death of the wife.

(For information on disposition of family home on death of one spouse, see section B, "Homesteads," of topic 3.)

Cash allowance from estate

All States make some provision for a cash allowance for the support of the widow and minor children pending the settlement of a deceased husband's and father's estate.

Fourteen States¹ provide for a cash allowance to either spouse. Generally this is an amount reasonable and necessary to maintain the family according to its established standard of living.

The other States grant such an allowance to the widow and minor children only. Most of these use the "reasonable and necessary"

¹ California, Connecticut, Maine, Maryland, Minnesota, Missouri, Nebraska, New York, North Dakota, Ohio, Pennsylvania, South Dakota, Utah, Washington.

standard, but a few give a stated sum ranging from \$500 in Arkansas to \$2,000 in Wisconsin.

Wages of deceased spouse

Sixteen States have statutes which permit wages owing a decedent to be paid to a surviving spouse. Eleven ² of these allow payment to either spouse; the other States ³ allow payment to the widow only. The highest amount of wages which may be paid under these laws is \$400 in North Dakota; 8 States ⁴ limit such payments to \$300; in the other States the limitation ranges from \$75 to \$250.

Bank accounts

Ten States ⁵ permit a surviving spouse to collect amounts in bank checking or savings accounts without administration. Idaho, Kentucky, and Louisiana limit this right to the surviving widow; the other States permit either spouse to collect.

Furniture, clothing, and provisions

Thirteen States ⁶ give the surviving spouse the household furniture; 18 States ⁷ have such a provision for the wife only.

In 16 jurisdictions ⁸ the surviving spouse is entitled to the family clothing on the death of the other; 21 States ⁹ give the clothing to the wife only.

Provisions on hand become the property of the surviving spouse in 10 jurisdictions; ¹⁰ 14 States ¹¹ give them to the wife only.

Additional allowance

Eleven States ¹² have some provision for giving a surviving spouse an additional allowance pending administration of the estate. Minnesota, Montana, and Oklahoma give such an allowance to either husband or wife; the remaining States make only the widow eligible.

² Arizona, Florida, Indiana, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Washington, West Virginia.

³ Alabama, Delaware, Georgia, New Jersey, Tennessee.

⁴ Alabama, Arizona, Florida, Georgia, Ohio, Utah, Washington, West Virginia.

⁵ California, Delaware, Georgia, Idaho, Indiana, Kentucky, Louisiana, New Mexico, Oregon, Utah.

⁶ California, Connecticut, District of Columbia, Maine, Minnesota, Missouri, Nebraska, New York, Ohio, Oklahoma, Oregon, South Dakota, Utah, Vermont.

⁷ Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Massachusetts, Michigan, Mississippi, Montana, Nevada, Rhode Island, Texas, Virginia, Washington, Wisconsin, Wyoming.

⁸ California, Connecticut, District of Columbia, Maine, Minnesota, Missouri, Nebraska, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Vermont.

⁹ Arizona, Arkansas, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nevada, New Jersey, Rhode Island, Texas, Virginia, Washington, Wisconsin.

¹⁰ Maryland, Montana, Nebraska, New York, North Dakota, Oklahoma, Oregon, South Dakota, Utah, West Virginia.

¹¹ Arkansas, Delaware, Florida, Indiana, Iowa, Kansas, Mississippi, Nevada, Rhode Island, Tennessee, Texas, Virginia, Washington, Wisconsin.

¹² Arizona, Florida, Georgia, Idaho, Minnesota, Montana, Nevada, Oklahoma, Oregon, Rhode Island, Wyoming.

Property exempt from debt

Nine jurisdictions ¹³ give the surviving spouse property which the decedent held exempt from garnishment for debt; 8 States ¹⁴ give the wife property so held by her deceased husband, but make no corresponding provision for a surviving husband.

Summary administration

Slightly less than one-half of the States have some provision for summary administration of small estates. Seven of these States ¹⁵ grant such administration to the surviving wife but not to the husband; 13 others ¹⁶ permit either spouse to secure summary administration. Georgia permits the whole estate to be summarily administered if the wife or the husband left no descendants. In the other States the value of estates that are subject to summary administration range from those under \$150 in Oregon to those under \$3,000 in Florida, Montana, and Oklahoma.

Recent enactments (1948-52)

Ohio in 1951 and Rhode Island, Pennsylvania, and Tennessee in 1949 raised the amount of wages which may be paid to the surviving spouse of a deceased employee.

Louisiana (1952) increased to \$500 the amount a bank may pay to the surviving widow of a decedent depositor.

Arizona and South Dakota in 1951 raised the amount of value of estates subject to summary administration.

The following States liberalized provisions for support of a surviving spouse and/or minor children pending administration of a deceased husband's or wife's estate, in the 5-year period 1948-1952: Alabama, Arkansas, California, Illinois, Indiana, New York, Pennsylvania, Washington.

¹³ Arizona, Connecticut, District of Columbia, Montana, Nebraska, North Dakota, Oklahoma, Oregon, Utah.

¹⁴ Georgia, Iowa, Mississippi, Nevada, Rhode Island, Tennessee, Texas, Virginia.

¹⁵ Arkansas, California, Georgia, Idaho, Oklahoma, Oregon, Vermont.

¹⁶ Arizona, Delaware, Florida, Michigan, Montana, Nebraska, Nevada, New Jersey, North Dakota, Ohio, South Carolina, South Dakota, Utah.

17. Right of Husband or Wife To Disinherit the Other by Will

Common law

Current status

Election in lieu of will

Disinheritance by will

Recent enactments (1948-52)

COMMON LAW

A testator cannot, under common law, 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 her dower.

CURRENT STATUS

Under the laws of most States, neither husband nor wife can disinherit the other by will.

Election in lieu of will

Twenty-five States¹ permit either the husband or the wife to make an election to take real or personal property allowed by statute to a surviving spouse, rather than that devised under the will of the deceased spouse. Missouri and New Jersey permit such an election with respect to real property only; Virginia, with respect to personal property only.

Six States² permit the widow only to elect to take her statutory share of real and personal property in lieu of the provisions of her husband's will. Six States³ limit the widow's right of election to real property; Michigan permits it only with respect to the personal estate. The Wisconsin law specifically states that the husband has no corresponding right of election. Nine States⁴ make no provision for an election by either spouse.

Disinheritance by will

About a fourth of the States have laws placing some limitation on the disinheritance of one spouse by the will of the other.

Three of the community-property States—Arizona, California, Idaho—have statutes declaring that only one-half of the community property may be disposed of by the will of one spouse.

Alabama declares by law that a wife may not be disinherited by her husband's will; no corresponding prohibition is placed on a wife's disinheritance of her husband.

In 5 States⁵ one spouse cannot defeat the common-law or statutory right of one spouse in the estate of the other by will. Colorado specifically preserves joint tenancies of husband and wife by declaring they may not be destroyed by will.

Wyoming by statute provides that if the testator had children of a prior marriage living at death, and no children of the present

¹ Arizona, Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Vermont, West Virginia, Wyoming.

² Alabama, California, Kentucky, Montana, North Carolina, Wisconsin.

³ Delaware, Florida, Rhode Island, South Carolina, Utah, Virginia.

⁴ Idaho, Illinois, Louisiana, Nevada, New Mexico, North Dakota, South Dakota, Texas, Washington.

⁵ Delaware, Missouri, North Dakota, Oklahoma, Virginia.

marriage, he could by will deprive his wife of not more than three-fourths of his estate.

Four jurisdictions—Arkansas, Delaware, District of Columbia, Maryland—construe property devised to a spouse by will to be in lieu of dower or the statutory share, unless the will expresses otherwise.

Recent enactments (1948-52)

Arkansas (1949) provides that when a married man dies intestate as to any part of his estate, or when a married woman dies leaving as her last will one executed prior to marriage, the surviving spouse has the right to elect to take against the will such property as he or she would have been entitled to if the spouse had died intestate.

Connecticut (1949, 1951) requires that where the will of one spouse makes no provision for the other, the survivor must elect to take against the will within a 2-month period. Oregon (1949, 1951) has a similar provision stating the time of election to be within 90 days; and Tennessee (1951) has reduced the time requirement for dissent from 1 year to 9 months.

Marriage and Divorce

18. Age of Consent to Marriage

Common law

Current status

Minimum ages for marriage without parental consent

Minimum ages for marriage with parental consent

Exceptions to minimum-age requirements

Recent enactments (1948-52)

COMMON LAW

At common law a male at 14 years and a female at 12 are capable of consent to marriage. Marriage contracts entered into by minors over 7 years of age are not void but voidable.

CURRENT STATUS

With but few exceptions, all jurisdictions have enacted laws setting a higher age for consent to marriage than that set by common law.

Minimum ages for marriage without parental consent

The following minimum ages at which males and females may contract marriage without parental consent are set by statute:

21 years, both sexes—12 States ¹

18 years, both sexes—4 States ²

21 years, males; 18, females—31 States ³

20 years, males; 18, females—New Hampshire

In Georgia, if the parties applying for a marriage license have not reached age 21, notice must be posted in the office of the ordinary for 5 days, giving the names and addresses of the applicants, unless the

¹ Connecticut, Florida, Kentucky, Louisiana, Nebraska, Ohio, Pennsylvania, Rhode Island, Tennessee, Virginia, West Virginia, Wyoming.

² Idaho, Michigan, North Carolina, South Carolina.

³ Alabama, Arizona, Arkansas, California, Colorado, Delaware, District of Columbia, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Vermont, Washington, Wisconsin.

parents or guardian of the female personally appear and give their written consent. If no objection is made within the specified time, a marriage license may be issued.

Minimum ages for marriage with parental consent

The following minimum ages at which males and females may contract marriage with the consent of parent or guardian are set by statute:

- 18 years, males; 16, females—20 States ⁴
- 18 years, males; 15, females—5 States ⁵
- 17 years, males; 14, females—Alabama and Georgia
- 16 years, both sexes—5 States ⁶
- 16 years, males; 15, females—Minnesota
- 16 years, males; 14, females—6 States ⁷
- 15 years, both sexes—Idaho, Missouri
- 14 years, males; 13, females—New Hampshire
- 14 years, males; 12, females—7 States ⁸

Generally, marriages contracted while parties are under the statutory age are voidable, not void. A few States ⁹ have statutes holding void those marriages contracted while one or both of the parties is under age; in addition, there are laws in 8 jurisdictions ¹⁰ which declare that marriages contracted below specified ages are voidable.

Exceptions to minimum-age requirements

Slightly less than one-half of the States ¹¹ have laws permitting persons under age to marry with or without parental consent. Such laws usually require court approval of the marriage before a license may be issued. Pregnancy of the female is the usual reason for waiver of age requirement, but the court generally is authorized to grant approval for other reasons as well.

Recent enactments (1948-52)

Michigan (1951) raised the minimum age at which females may marry without consent of parent to 18; it was formerly 16.

⁴ Arizona, Arkansas, California, Delaware, District of Columbia, Florida, Illinois, Indiana, Louisiana, Maryland, Michigan, Montana, Nebraska, Nevada, New Mexico, Ohio, Rhode Island, Virginia, West Virginia, Wyoming.

⁵ North Dakota, Oklahoma, Oregon, South Dakota, Wisconsin.

⁶ Colorado, Connecticut, North Carolina, Pennsylvania, Tennessee.

⁷ Iowa, Kentucky, New York, Texas, Utah, Vermont.

⁸ Kansas, Maine, Massachusetts, Mississippi, New Jersey, South Carolina, Washington.

⁹ Colorado, District of Columbia, Iowa, Kentucky, Massachusetts, Michigan, New Hampshire, Utah, Vermont, West Virginia.

¹⁰ Alabama, Arkansas, Colorado, Illinois, Nebraska, New Jersey, South Carolina, Washington.

¹¹ Arizona, California, Colorado, Connecticut, Delaware, Florida, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Vermont, Virginia.

Minnesota (1949) amended its law to permit males of 16 and females of 15 to be married with the consent of both parents or guardians and judge of the juvenile court.

Ohio (1951) enacted legislation permitting a marriage license to be issued, notwithstanding that either or both applicants are under the minimum age, where the female is pregnant or has a child born out of wedlock to the male in question.

Virginia (1952) amended its law to permit a mother to give consent to the marriage of a minor. Previously the father or guardian of the minor had the right to consent to the marriage; the mother was eligible only if the father was deceased or unavailable.

19. Common-Law Marriage

Common law

Current status

Common-law marriages recognized

Common-law marriages not recognized

Formal requirements

Recent enactments (1948-52)

COMMON LAW

Marriages without formal solemnization were not recognized in England as part of the common law. Under the earliest adjudications of the temporal courts of England, the doctrine of the canon law sustaining the validity of marriages without solemnization was expressly repudiated.

In American colonial times the common-law marriage was recognized. This was due in large measure to the shortage of ministers or other persons qualified to perform a marriage ceremony and to the difficulty of transportation, which often made it impossible for ministers to visit isolated areas.

CURRENT STATUS

The validity of common-law marriages has been widely recognized throughout the United States. An increasing number of jurisdictions, generally by enactment of specific legislation, have declared common-law marriages to be invalid. As a general rule, statutes regulating marriage are considered to be directory and do not invalidate a marriage contracted in violation of their provisions.

Common-law marriages recognized

Twenty-one States¹ recognize common-law marriages. In order to constitute a valid common-law marriage there must be a contract or mutual agreement to become husband and wife, and such contract or agreement must contemplate a permanent union.

Common-law marriages not recognized

Common-law marriages have been abolished, either by express legislative enactment or by court decision, in 28 jurisdictions.² Seven of these³ expressly preserve the validity of common-law marriages entered into prior to a specified date. Statutes regulating marriage are generally inapplicable to common-law marriages contracted before their enactment.

Formal requirements

Most States have statutes requiring the parties contemplating marriage to secure a license.

Generally, in those States where common-law marriages are recognized, ceremonial requirements are considered directory, and failure to comply with them does not invalidate the marriage. In those States where common-law marriages are not recognized, solemnization is a prerequisite to the validity of a marriage. As a general rule, either a civil or religious ceremony is sufficient to comply with the marriage statutes governing solemnization. However, in Maryland a religious ceremony is required.

Other legal provisions relating to marriage in most State laws concern requirement of witnesses, recordation of marriage certificate, place of ceremony, and authorization of specified classes of persons to perform the ceremony.

Recent enactments (1948-52)

Oklahoma (1951) requires that all marriages be contracted by a formal ceremony performed and solemnized in the presence of at least two adult, competent witnesses.

¹ Alabama, Colorado, District of Columbia, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Maine, Michigan, Mississippi, Montana, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Wyoming.

² Arizona, Arkansas, California, Connecticut, Delaware, Illinois, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin.

³ California, Minnesota, Missouri, Nevada, New Jersey, New York, North Dakota.

20. Premarital Requirements

- A. Health examination
 - Common law
 - Current status
 - Time of examination
 - Scope of examination
 - Withholding of license
 - Recent enactment (1948-52)
- B. Waiting period
 - Common law
 - Current status
 - Recent enactments (1948-52)
- C. Prohibited or void marriages
 - Common law
 - Current status
 - Health grounds
 - Alcoholism or use of narcotic drugs
 - Prohibited degrees of kinship
 - Interracial marriages
 - Other void marriages
 - Recent enactments (1948-52)

A. Health examination

COMMON LAW

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

CURRENT STATUS

All but 9 States¹ require a health examination prior to issuance of a marriage license. Louisiana requires a health certificate from male applicants only.

Time of examination

About half of the States² require that the physical examination be taken not more than 30 days prior to the time the parties make application for a marriage license; Connecticut and Rhode Island have a 40-day period. Three jurisdictions³ have 20-day provisions; 6 States,⁴ 15-day provisions; Oregon has a 10-day provision; and Tennessee, Virginia, and Washington have not set the time within which the parties must have been examined.

¹ Arizona, Arkansas, District of Columbia, Maryland, Minnesota, Mississippi, Nevada, New Mexico, South Carolina.

² Alabama, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Maine, Massachusetts, Michigan, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Utah, Vermont, West Virginia, Wyoming.

³ Iowa, Montana, South Dakota.

⁴ Illinois, Kentucky, Louisiana, Missouri, Texas, Wisconsin.

Scope of examination

Sixteen States⁵ require that the premarital medical certificate show that the applicant does not have a venereal disease in a communicable stage. Almost half the jurisdictions⁶ specify only that the applicant does not have syphilis. With respect to this disease, the applicants must undergo a standard serologic test.

A few States⁷ require that other diseases also be covered by the medical certificate. Such diseases include tuberculosis, epilepsy, imbecility or feeble-mindedness, alcoholism, and drug addiction.

Generally it is provided by statute that premarital health examinations be given by a licensed physician.

Montana requires that each party to a proposed marriage examine the other's health certificate.

Withholding of license

Generally if the premarital health certificate shows the presence of a venereal disease in a communicable stage, or other disease named in the statute, a marriage license may not be issued. However, most States make provision for exceptions, such as pregnancy of the woman. A few States⁸ provide that when such an exception is made and the parties marry, the infected party must undergo treatment supervised by the State health department.

Recent enactments (1948-52)

Georgia (1949) and Tennessee (1951) require premarital health examinations for applicants for a marriage license. Every resident of Georgia (1949) who marries outside of the State and returns within 60 days is required to file a certificate showing conformance with the premartial health-examination law.

B. Waiting period

COMMON LAW

At common law no waiting period is required between the time of application for a marriage license and the marriage ceremony.

⁵ Alabama, Colorado, Idaho, Illinois, Kansas, Louisiana, Michigan, North Carolina, North Dakota, Oregon, Rhode Island, Tennessee, Utah, Washington, Wisconsin, Wyoming.

⁶ California, Connecticut, Delaware, Florida, Georgia, Indiana, Iowa, Kentucky, Maine, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Vermont, Virginia, West Virginia.

⁷ North Carolina, North Dakota, Oregon, Rhode Island, Washington.

⁸ California, Colorado, Delaware, Georgia, Michigan, Nebraska, North Carolina, Virginia.

CURRENT STATUS

Many States have enacted laws in recent years requiring a waiting period between the time of application for a marriage license and the issuance of the license or performance of the ceremony. This waiting period varies among the States. Ten jurisdictions⁹ set a 5-day waiting period; Rhode Island requires a 5-day period for nonresident women applicants only. A waiting period of 3 days is provided by law in 11 States;¹⁰ 2 days in Maryland; 1 day in Delaware, New York, and South Carolina; no waiting period is set in 22 States.¹¹

Most jurisdictions make provision for waiver of the waiting period if good cause is shown.

Recent enactments (1948-52)

Louisiana (1950), Michigan (1951), and Vermont (1951) provide for a waiting period between application for a marriage license and the marriage ceremony. New Jersey extended its waiting period from 24 to 72 hours. The laws of Louisiana, Michigan, and New Jersey provide that the waiting period may be waived for good cause.

C. Prohibited or void marriages

COMMON LAW

At common law persons are not incapacitated to intermarry by reason of a difference in race or color. Marriage of a person to his or her mother, father, brother, or sister is void; other marriages involving degrees of kinship, either by blood or marriage, are not prohibited.

CURRENT STATUS

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, the general practice is for a court to render a decree for record purposes in the interest of public welfare.

Health grounds

Marriage where one of the parties is of unsound mind is void in 24 States.¹²

⁹ Connecticut, Georgia, Maine, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, Vermont, Wisconsin.

¹⁰ California, District of Columbia, Florida, Kansas, Louisiana, Missouri, New Jersey, Oregon, Tennessee, Washington, West Virginia.

¹¹ Alabama, Arizona, Arkansas, Colorado, Idaho, Illinois, Indiana, Iowa, Kentucky, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Dakota, Texas, Utah, Virginia, Wyoming.

¹² California, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, Utah, Virginia, Wyoming.

Persons who have epilepsy may not contract a valid marriage in 14 jurisdictions.¹³

Marriage of a person who has a venereal disease in a communicable stage is void in 9 States.¹⁴

Other types of physical disability that may prevent a party from entering into a valid marriage are: Tuberculosis in a communicable stage in North Dakota; any communicable disease in Indiana, and such disease if unknown to the other party in Delaware; impotency, in Georgia.

Some States¹⁵ declare that marriages void because of health reasons are valid where the woman party to the marriage is over 45 years of age.

Alcoholism or use of narcotic drugs

Marriages entered into when one of the parties was under the influence of alcohol are void by law in 7 States.¹⁶ Marriages in which one of the parties is an habitual drunkard are void in Delaware, North Dakota (unless the woman is over 45 years of age), and Ohio. Confirmed drug addicts may not marry in Delaware.

Prohibited degrees of kinship

Many States¹⁷ by law declare void marriages of persons related by blood within certain degrees; or those between persons related by marriage. These statutes vary widely among the States.

Interracial marriages

Certain types of interracial marriages are prohibited by statute in 21 jurisdictions.¹⁸ The California law prohibiting such marriages was invalidated by court decision in 1948.

Other void marriages

Marriages entered into when one of the parties is below the age of consent are void in Georgia, New Hampshire, and Utah. Bigamous marriages are declared void in 19 States.¹⁹

¹³ Connecticut, Delaware, Indiana, Kansas, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, North Dakota, Ohio, Pennsylvania, Utah, Virginia.

¹⁴ Delaware, Indiana, Michigan, Nebraska, New Jersey, North Dakota, Ohio, Utah, Wyoming.

¹⁵ Connecticut, Kansas, New Hampshire, Utah, Virginia, Washington.

¹⁶ California, Georgia, Illinois, Indiana, New Jersey, Ohio, Pennsylvania.

¹⁷ Colorado, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Wyoming.

¹⁸ Colorado, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Montana, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wyoming.

¹⁹ District of Columbia, Georgia, Iowa, Kentucky, Massachusetts, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Wyoming.

Indiana and Pennsylvania prohibit the marriage of a male who has been an inmate of a home for the indigent, unless he shows that he is able to support a family. Connecticut declares void a marriage performed by an unauthorized person.

North Dakota and Virginia declare the marriage of an habitual criminal to be void if such criminal is female and under 45 years of age or if the criminal is male and marries a woman under 45.

Recent enactments (1948-52)

Virginia (1952) prohibits marriage of an habitual criminal.

21. Interstate Cooperation in Marriage-Law Enforcement

Common law

Current status

Recent enactments (1948-52)

COMMON LAW

Under common law, validity of a marriage is determined by law of the country where contracted. An exception is made when a marriage is in violation of public policy.

CURRENT STATUS

In 25 States ¹ a marriage that is valid in the State where contracted is recognized as valid in the State where the parties reside. An exception is made in 17 jurisdictions ² in that marriages contracted elsewhere are invalid if in violation of a statute or contrary to public policy; in 12 States ³ marriages contracted elsewhere in order to evade State law are not recognized.

Five States ⁴ declare void those marriages contracted within the State by residents of other jurisdictions who seek to avoid the law of their own domiciliary States.

¹ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Oregon, South Dakota, Texas, Utah, West Virginia, Wyoming.

² District of Columbia, Georgia, Illinois, Louisiana, Maryland, Massachusetts, Michigan, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Utah, Virginia, Washington.

³ Arizona, Arkansas, Delaware, Georgia, Indiana, Louisiana, Maine, North Carolina, Pennsylvania, Vermont, West Virginia, Wisconsin.

⁴ Illinois, Louisiana, Massachusetts, Vermont, Wisconsin.

Laws in at least 7 States⁵ declare void divorce or annulment decrees obtained in other jurisdictions if the parties were not domiciled in the States where the decree was granted.

Recent enactments (1948-52)

Divorce or annulment decrees obtained in a jurisdiction other than the State of domicile were declared invalid by California (1949), Louisiana (1952), New Hampshire (1949), North Dakota (1951), Rhode Island (1949), and South Carolina (1950).

22. Annulment

Common law

Current status

Grounds for marriage annulment

Nonage

Mental incapacity

Fraud

Prohibited degrees of kinship

Duress or force

Physical incapacity

Interracial marriages

Former undivorced spouse living

Other grounds

Effect of cohabitation following marriage on right to secure annulment

Recent enactments (1948-52)

COMMON LAW

Annulment of marriage—that is, the voiding of a marriage because it is violative of law or established public policy—was not known at common law.

CURRENT STATUS

An annulment decree voids a marriage and purports to leave the parties as if no marriage had occurred, so far as property or other rights incident to the marriage are concerned.

Most States provide by statute for legitimation of children of void marriages, and for support and maintenance of children following annulment. Georgia and New Jersey will not grant a decree of nullity when a child has been born or is likely to be born of the marriage.

Practically every State has statutes permitting annulment of marriage on one or more specific grounds. Arizona, which has no statute, permits the superior court to grant an annulment in those cases where

⁵ California, Louisiana, New Hampshire, North Dakota, Rhode Island, South Carolina, Washington.

the marriage contract is invalid. Ohio makes no provision by law for annulment of marriage.

Grounds for marriage annulment

NONAGE

Thirty-two States grant an annulment when one or both parties are below the age of consent to marriage or have not attained the statutory age required to contract a valid marriage:

Alabama	Louisiana	North Dakota
Arkansas	Maine	Oklahoma
California	Michigan	Oregon
Colorado	Minnesota	Rhode Island
District of Columbia	Mississippi	Tennessee
Florida	Missouri	Vermont
Idaho	Nebraska	Washington
Illinois	New Jersey	West Virginia
Indiana	New Mexico	Wisconsin
Iowa	New York	Wyoming
Kansas	North Carolina	

Four additional States make nonage a ground for annulment when the marriage is entered into without parental consent: Kentucky, Montana, Nevada, South Dakota.

MENTAL INCAPACITY

Thirty States permit annulment of marriage on the ground of mental incapacity. The degree of such incapacity is usually prescribed by law, and the statutes vary considerably:

Alabama	Maine	Oklahoma
Arkansas	Michigan	Oregon
California	Minnesota	South Dakota
Delaware	Mississippi	Tennessee
District of Columbia	Missouri	Texas
Florida	Montana	Vermont
Idaho	Nevada	Virginia
Indiana	New York	Washington
Iowa	North Carolina	West Virginia
Kansas	North Dakota	Wisconsin

FRAUD

Twenty-three States permit annulment of marriages that have been procured by fraud:

Alabama	Indiana	North Dakota
Arkansas	Kentucky	Oregon
California	Michigan	South Dakota
Delaware	Minnesota	Vermont
District of Columbia	Montana	Washington
Florida	Nebraska	Wisconsin
Georgia	Nevada	Wyoming
Idaho	New York	

PROHIBITED DEGREES OF KINSHIP

Twenty-two States provide for annulment if the marriage is incestuous or the parties are within prohibited degrees of kinship:

Alabama	Minnesota	Oregon
California	Mississippi	Pennsylvania
Delaware	Missouri	Vermont
Iowa	Nebraska	Virginia
Louisiana	New Jersey	West Virginia
Maine	New Mexico	Wisconsin
Maryland	North Carolina	
Michigan	North Dakota	

DURESS OR FORCE

Twenty-one States grant annulment of marriage to persons whose consent has been induced by duress or force:

Arkansas	Louisiana	Oregon
California	Michigan	South Dakota
Delaware	Minnesota	Tennessee
District of Columbia	Montana	Vermont
Florida	Nebraska	Washington
Idaho	New York	Wisconsin
Kentucky	North Dakota	Wyoming

PHYSICAL INCAPACITY

Physical incapacity to enter into the marriage relationship is a ground for annulment in 19 States:

Arkansas	Montana	Texas
California	Nebraska	Vermont
Delaware	New Jersey	Virginia
District of Columbia	New York	West Virginia
Idaho	North Carolina	Wisconsin
Iowa	North Dakota	
Michigan	South Dakota	

INTERRACIAL MARRIAGES

Seven States permit annulment of certain interracial marriages:

Louisiana	Missouri	Virginia
Mississippi	Nebraska	West Virginia
	Oregon	

The California law prohibiting marriages between white persons and members of certain racial groups was invalidated in 1948 because it was violative of the due process and equal protection clauses of the fourteenth amendment to the United States Constitution.

FORMER UNDIVORCED SPOUSE LIVING

Annulment may be granted in 19 States on the ground that one of the parties had at the time of the marriage a living undivorced spouse:

Delaware	Minnesota	South Dakota
Idaho	Missouri	Tennessee
Iowa	Montana	Vermont
Louisiana	New Jersey	Virginia
Maine	North Dakota	West Virginia
Maryland	Oregon	Wisconsin
	Pennsylvania	

It should be noted that marriages entered into when one of the parties has a living undivorced spouse are void ab initio. Formal annulment is generally provided for in order that the record may be clarified.

OTHER GROUNDS

Maine and Maryland permit a spouse whose husband or wife has been sentenced to life imprisonment to obtain an annulment. New York and North Dakota grant annulment if a husband or wife is absent for 5 years preceding the filing of the complaint and the other spouse has no knowledge of his whereabouts. In Oklahoma, if one of the parties has been divorced for less than 6 months at the time of the marriage, the other party may secure an annulment.

Effect of cohabitation following marriage on right to secure annulment

At least 14 States¹ have laws declaring that cohabitation of the parties ratifies marriages which might be annulled because of nonage, fraud, duress, or force.

Recent enactments (1948-52)

Illinois (1951) enacted legislation declaring that no insane or mentally ill person is capable of contracting marriage.

California (1951), North Carolina (1951), Oregon (1951), and South Carolina (1951) enacted legislation preserving the legitimacy of children born of voidable or bigamous marriages.

¹ California, District of Columbia, Georgia, Kentucky, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oregon, South Carolina, South Dakota, Wyoming.

23. Divorce

Common law

Current status

Grounds on which an absolute divorce may be granted

Grounds on which a limited divorce may be granted

Time restrictions on remarriage of parties to a divorce

Provision for children

Custody and maintenance

Effect of divorce on legitimacy

Disposition of property

Support and maintenance pending divorce

Restraints on disposition and restitution

Alimony

Effect of divorce on inheritance rights

Recent enactments (1948-52)

Grounds for divorce

Limited divorce

Absolute divorce

Restrictions on remarriage

Maintenance without divorce

COMMON LAW

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.

CURRENT STATUS

All States now grant some form of divorce. In 25 jurisdictions¹ both absolute and limited divorces are recognized. In the remaining jurisdictions only absolute divorces are recognized. In many States the 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 States separate grounds are prescribed for each type of divorce.

¹ Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Indiana, Kentucky, Louisiana, Maryland, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Wisconsin.

Grounds on which an absolute divorce may be granted

ADULTERY—all jurisdictions

DESERTION, ABSENCE, OR ABANDONMENT

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

COMMISSION OF CRIME

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

CRUELTY

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

ALCOHOLISM

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

IMPOTENCY

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

MENTAL INCAPACITY

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

NONSUPPORT*Either spouse*

Arkansas	North Dakota	Utah
----------	--------------	------

Wife only

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

VOLUNTARY SEPARATION

Alabama	Louisiana	Texas
Arizona	Maryland	Utah
Arkansas	Minnesota	Vermont
District of Columbia	Nevada	Washington
Idaho	New Hampshire	Wisconsin
Kentucky	North Carolina	Wyoming
	Rhode Island	

WIFE'S UNDISCLOSED PREGNANCY BY ANOTHER MAN AT TIME OF MARRIAGE

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

VIOLENCE

Alabama	Illinois	Missouri
Arizona	Iowa	Tennessee
Arkansas	Kentucky	West Virginia
Colorado	Louisiana	

PRIOR UNDISSOLVED MARRIAGE

Arkansas	Illinois	Missouri
Colorado	Kansas	Ohio
Delaware	Mississippi	Oklahoma
Florida		

FRAUD OR COERCION TO OBTAIN CONSENT

Connecticut	Kentucky	Pennsylvania
Georgia	Ohio	Washington
Kansas	Oklahoma	

DRUG ADDICTION

Alabama	Maine	Rhode Island
Colorado	Massachusetts	West Virginia
	Mississippi	

INDIGNITIES

Either spouse

Arkansas	Oregon	Washington
Missouri	Pennsylvania	Wyoming

Wife only

Tennessee

WILLFUL OR NEGLIGENT DISREGARD OF DUTY

Either spouse

California	Kansas	Oklahoma
Idaho	Ohio	South Dakota

Wife only

Montana

SEPARATION UNDER A DECREE OF LIMITED DIVORCE

District of Columbia	Louisiana	North Dakota
	Minnesota	Virginia

RELATIONSHIP BETWEEN PROHIBITED DEGREES OF KINSHIP

Florida	Georgia	Pennsylvania
	Mississippi	

WANT OF AGE OR LEGAL UNDERSTANDING

Delaware	Mississippi	Washington
Georgia		

DISEASE

Delaware (epilepsy)	Illinois (venereal)	Kentucky (loathsome)
---------------------	---------------------	----------------------

FAILURE TO COHABIT

Kentucky	New Hampshire	North Dakota
----------	---------------	--------------

FRAUDULENT DIVORCE OBTAINED IN ANOTHER JURISDICTION

Florida	Michigan	Ohio
---------	----------	------

CRIME AGAINST NATURE

Alabama	North Carolina
---------	----------------

INCOMPATIBILITY

Florida	New Mexico
---------	------------

LEGALLY VOID OR VOIDABLE MARRIAGE

Maryland	Rhode Island
----------	--------------

VAGRANCY

Wife only

Missouri	Wyoming
----------	---------

GROSS MISBEHAVIOR

Rhode Island

SODOMY AND BUGGERY

Virginia

UNDISCLOSED PRACTICE OF PROSTITUTION BY WIFE BEFORE MARRIAGE

Virginia

UNCHASTE CONDUCT OF WIFE, THOUGH ADULTERY NOT PROVED

Kentucky

Grounds on which a limited divorce may be granted

CRUELTY

Either spouse

Alabama	Louisiana	North Dakota
Arizona	Maryland	Oregon
Arkansas	Michigan	Rhode Island
Delaware	Montana	Tennessee
District of Columbia	Nebraska	Vermont
Indiana	New Hampshire	Virginia
Kentucky	New Jersey	Wisconsin
	North Carolina	

Wife only

Colorado	Pennsylvania
----------	--------------

DESERTION, ABSENCE, OR ABANDONMENT

Either spouse

Alabama	Louisiana	North Carolina
Arizona	Maryland	North Dakota
Arkansas	Michigan	Oregon
Delaware	Montana	Rhode Island
District of Columbia	Nebraska	Vermont
Indiana	New Jersey	Virginia
Kentucky	New York	Wisconsin

Wife only

Colorado	Pennsylvania	Tennessee
----------	--------------	-----------

ADULTERY

*Either spouse*Alabama
Arkansas
Colorado
Delaware
District of ColumbiaIndiana
Kentucky
Louisiana
Montana
New HampshireNew Jersey
North Dakota
Oregon
Rhode Island
Vermont*Wife only*

Arizona

Pennsylvania

NONSUPPORT

Either spouse

Arkansas

North Dakota

*Wife only*Alabama
Arizona
Colorado
Indiana
MichiganMontana
Nebraska
New Hampshire
New York
OregonRhode Island
Tennessee
Vermont
Wisconsin

ALCOHOLISM

*Either spouse*Alabama
Arkansas
Delaware
Indiana
KentuckyLouisiana
Montana
New Hampshire
North CarolinaNorth Dakota
Oregon
Rhode Island
Wisconsin*Wife only*

Arizona

Colorado

COMMISSION OF CRIME

*Either spouse*Alabama
Arkansas
Delaware
District of ColumbiaKentucky
Louisiana
Montana
New HampshireNorth Dakota
Oregon
Rhode Island
Vermont*Wife only*

Arizona

Colorado

VIOLENCE OR THE REASONABLE FEAR THEREOF

*Either spouse*Arkansas
Kentucky
LouisianaMichigan
New HampshireNorth Carolina
Virginia*Wife only*Alabama
Arizona

Colorado

Pennsylvania

IMPOTENCY

Alabama
Arizona
ArkansasColorado
KentuckyNew Hampshire
Rhode Island

MENTAL INCAPACITY

*Either spouse*Alabama
DelawareKentucky
MontanaNorth Dakota
Vermont*Wife only*
Colorado

SEPARATION

*Either spouse*District of
ColumbiaKentucky
New HampshireRhode Island
Vermont*Wife only*
Alabama

Arizona

INDIGNITIES

*Either spouse*Arkansas
Louisiana

North Carolina

Oregon

Wife only

Pennsylvania

Tennessee

CONDUCT RENDERING COHABITATION UNSAFE AND IMPROPER

Either spouse

New York

Wife only

Arizona

Tennessee

Wisconsin

DRUG ADDICTION

Either spouse

Alabama

Indiana

Rhode Island

Wife only

Colorado

PRIOR UNDISSOLVED MARRIAGE

Either spouse

Arkansas

Delaware

Wife only

Colorado

FAILURE TO COHABIT

Kentucky

New Hampshire

North Dakota

EVICTION OF PLAINTIFF

Either spouse

North Carolina

Wife only

Pennsylvania

Tennessee

DISEASE

Delaware (epilepsy)

Kentucky (loathsome)

GROSS MISBEHAVIOR

Indiana

Rhode Island

WIFE'S UNDISCLOSED PREGNANCY BY ANOTHER MAN AT TIME OF MARRIAGE

Alabama

Kentucky

FRAUDULENT MARRIAGE

Kentucky

LEGALLY VOID OR VOIDABLE MARRIAGE

Rhode Island

UNCHASTE CONDUCT OF WIFE, THOUGH ADULTERY NOT PROVED

Kentucky

Time restrictions on remarriage of parties to a divorce*

State	For plaintiff	For defendant
Alabama.....	60 days.....	60 days.
Arizona.....	1 year.....	1 year.
California.....	1 year.....	1 year.
Colorado.....	6 months.....	6 months.
Delaware.....	3 months.....	3 months.
District of Columbia.....	6 months.....	6 months.
Georgia.....		Discretion of court.
Indiana.....	2 years if divorce obtained by default.	
Iowa.....	1 year (may be shortened at discretion of court).	1 year (may be shortened at discretion of court).
Kansas.....	6 months.....	6 months.
Louisiana.....	10 months, if wife.....	10 months, if wife; one divorced for adultery may not marry paramour.
Massachusetts.....	6 months.....	2 years.
Michigan.....	6 months (may be shortened at discretion of court).	6 months (may be shortened or lengthened for a specified period not to exceed 2 years at discretion of court).
Minnesota.....	6 months.....	6 months.
Mississippi.....		Court may prohibit for 1 year remarriage on divorce for adultery.
Nebraska.....	6 months.....	6 months.
New Jersey.....	3 months.....	3 months.
New York.....		Adultery, lifetime of innocent spouse, unless court modifies after expiration of 3 years.
North Dakota.....	Discretion of court.....	Discretion of court.
Oklahoma.....	6 months.....	6 months.
Oregon.....	6 months.....	6 months.
Pennsylvania.....		One divorced for adultery may not marry paramour during lifetime of former spouse.

*See footnote at end of table.

Time restrictions on remarriage of parties to a divorce*—Continued

State	For plaintiff	For defendant
Rhode Island.....	6 months.....	6 months.
South Carolina.....		One divorced for adultery may not marry any person except former spouse until death of latter.
South Dakota.....		Do.
Tennessee.....		Do.
Texas.....	1 year if divorce obtained on ground of cruelty.	1 year if divorce obtained on ground of cruelty.
Utah.....	6 months.....	6 months.
Vermont.....	6 months.....	2 years (may be shortened at discretion of court).
Virginia.....	4 months.....	4 months; court may prohibit for 6 months remarriage of one divorced for adultery.
West Virginia.....	60 days.....	60 days (may be prohibited by court from remarriage during further period not to exceed 1 year).
Wisconsin.....	1 year.....	1 year.

*The following States place no time restriction on remarriage of parties to a divorce: Arkansas, Connecticut, Florida, Idaho, Illinois, Kentucky, Maine, Maryland, Missouri,¹ Montana, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Washington, Wyoming.

Provision for children

CUSTODY AND MAINTENANCE

All States have specific provisions relating to the custody, education, and maintenance of children. These statutes generally authorize the court having jurisdiction of divorce proceedings to determine who shall have the care and custody of the children of a marriage. The general rule guiding the courts in such cases is that the child's welfare must be safeguarded. Neither parent has a superior right to the custody of the child. If the child is of sufficient age and intelligence to form an opinion as to which parent he prefers, the court may consider such preference.

EFFECT OF DIVORCE ON LEGITIMACY

In general, divorce does not affect the legitimacy of children. However, in 6 States² when a divorce is granted the husband for the adultery of the wife, the legitimacy of the children born after the act complained of may be determined by the court. In Michigan and New Hampshire the question of legitimacy may be raised only during divorce proceedings. In Florida, Illinois, and Mississippi children of a bigamous marriage are illegitimate. In New York, children of

¹ California, Idaho, Montana, New York, North Dakota, South Dakota.

marriages annulled because one of the parties had a husband or wife living are the legitimate children of the party who contracted the marriage in good faith.

Disposition of property

Generally, when a marriage is dissolved by divorce, a fair division of the marital property depends on circumstances surrounding the particular case. Examples of elements that may be considered are 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.

SUPPORT AND MAINTENANCE PENDING DIVORCE

Twenty-nine States³ have statutory provisions granting the wife or wife and children support and maintenance pending divorce. In 10 States⁴ either spouse may receive support and maintenance during this period. There is no statutory provision covering this matter in the remaining 10 States.⁵

RESTRAINTS ON DISPOSITION AND RESTITUTION

At least 14 States⁶ have provisions limiting disposition of property after suit for divorce has been filed.

A number of States⁷ provide for restitution of property. These statutes are of three major types. The first, of which Kentucky is an example, provides that each party shall be restored all property not disposed of in the action that either obtained from the other during and in consideration of marriage. Typical of the second type is the Idaho statute, which provides that if the homestead is selected from the separate property of either spouse it must be assigned to the former owner. An illustration of the third type is the Kansas statute, which provides that if a divorce is granted the wife, all property owned by her prior to marriage or acquired in her own right after marriage shall be restored to her. Some States in this third group, such as Michigan, refuse restoration if the divorce was obtained because of the wife's adultery.

³ Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, South Dakota, Texas, Virginia, West Virginia, Wisconsin, Wyoming.

⁴ California, Idaho, Illinois, New Hampshire, North Dakota, Ohio, Oklahoma, Utah, Vermont, Washington.

⁵ Connecticut, Florida, Indiana, Iowa, Kansas, Mississippi, Nebraska, Rhode Island, South Carolina, Tennessee.

⁶ Arizona, California, District of Columbia, Florida, Georgia, Kansas, Kentucky, Louisiana, New Mexico, Oklahoma, Oregon, Texas, Utah, Vermont.

⁷ Arkansas, California, Connecticut, Delaware, Idaho, Indiana, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, Oklahoma, Oregon, Pennsylvania, West Virginia.

ALIMONY

Thirty States ⁸ provide for the issuance of alimony to the wife; 15 jurisdictions, ⁹ to either spouse; and 4 others ¹⁰ have no statutory provision on this matter.

The size of the allowance is discretionary with the court. However, at least 3 States—North Carolina, Pennsylvania, and Louisiana—provide that it may not exceed one-third of the husband's income. In Minnesota it may not exceed one-half of the husband's future earnings.

Some States allowing divorce because of insanity condition the granting of the decree on petitioner's satisfactory provision of support for the afflicted spouse. Eight States ¹¹ require such provision by either husband or wife filing the petition; three States—Arkansas, Colorado, and Kentucky—require it only of the husband.

In 29 States ¹² the court may require the husband to pay the wife's reasonable attorney's fees. In 8 States ¹³ they may be paid to either party. In Colorado and Montana the wife who shows the court an inability to pay may be exempt from court costs.

Alimony may be barred because of the adultery of the wife, in 4 States. ¹⁴ If the wife has sufficient estate or there is sufficient community property, the court may withhold payment from the husband's separate property in at least 9 States. ¹⁵

In New Hampshire, when there are no minor children, an order for alimony shall not be effective more than 3 years, but it may be modified or extended for additional 3-year periods.

EFFECT OF DIVORCE ON INHERITANCE RIGHTS

Dower may be barred by divorce in 11 States. ¹⁶ In 6 States ¹⁷ the guilty party forfeits all or some rights in the property of the other. This is also true in Mississippi, except where divorce is granted on the ground of insanity. Partners to a bigamous marriage in Kentucky forfeit all rights in the estate of the legal spouse.

⁸ Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Pennsylvania, South Carolina, South Dakota, Tennessee, Wisconsin, Wyoming.

⁹ California, Illinois, Iowa, Massachusetts, Michigan, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, Utah, Vermont, West Virginia.

¹⁰ Oregon, Texas, Virginia, Washington.

¹¹ California, Connecticut, Georgia, Kansas, Mississippi, Nebraska, Oregon, Wyoming.

¹² Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Georgia, Idaho, Kansas, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, Wisconsin, Wyoming.

¹³ California, Illinois, Iowa, North Dakota, Ohio, Oklahoma, Utah, Washington.

¹⁴ Delaware, Nebraska, North Carolina, South Carolina.

¹⁵ Alabama, California, Georgia, Idaho, Kentucky, Maryland, Michigan, Montana, North Dakota.

¹⁶ Arkansas, Massachusetts, Missouri, New York, North Carolina, Ohio, South Carolina, Tennessee, Virginia, West Virginia, Wisconsin.

¹⁷ Indiana, Iowa, Michigan, New Hampshire, Rhode Island, Utah.

In some jurisdictions misconduct that does not result in divorce may bar inheritance rights. A wife guilty of conduct constituting cause for divorce is not entitled to any of her husband's estate except that given by will. In Pennsylvania and Maine inheritance rights may be barred by desertion. In the District of Columbia they may be barred by adultery as well as desertion.

Recent enactments (1948-52)

GROUND FOR DIVORCE

Limited divorce

Arkansas (1951) made an additional ground for divorce the failure of either spouse to support the other if legally obligated to do so. In Virginia (1952) the time requirement for desertion or abandonment was reduced to 1 year.

Absolute divorce

Additional grounds for divorce were established in the following States:

Arkansas (1951)—Failure of either spouse to support the other if legally obligated to do so.

Georgia (1951)—Incurable insanity (status of parties as to support and maintenance not altered by divorce for this cause).

Ohio (1951)—Willful absence of other party for 1 year; fraudulent contract.

Virginia (1952)—Sodomy and buggery; separation for 1 year under a decree of limited divorce on grounds of cruelty or desertion. The time requirement for desertion or abandonment was reduced to 1 year.

RESTRICTIONS ON REMARRIAGE

Delaware (1949) reduced the time restriction on remarriage from 1 year to 3 months.

South Carolina (1950) prohibits divorce unless it is stated in the report that an attempt to reconcile the parties has been unavailing.

MAINTENANCE WITHOUT DIVORCE

California and Wyoming (1951) enacted statutes awarding maintenance without divorce. In California either spouse may bring an action when there is any ground for divorce or a failure to provide for the other.

Parents and Children

24. Parents' Right to Services and Earnings of a Minor Child

Common law
Current status
Services
Earnings

COMMON LAW

Under common law, the father is entitled to the services and earnings of a legitimate minor child. On his death the mother becomes entitled to the child's services and earnings.

CURRENT STATUS

Services

The parents are equally entitled to services of minor children in 21 States.¹ The father, by common-law rule, has such right in 14 States;² if the father is dead or incapacitated or has abandoned the family, the minor's mother succeeds to such right. A few States³ that make provision for a parent's control of a minor's earnings have no specific statutes relating to a parent's right to the services of minor children; presumably services and earnings are considered to be synonymous. According to a New Hampshire decision, the parent who supports a minor child is entitled to his services.

Provision is made by statute in some jurisdictions⁴ for parents' suits to recover damages for wrongful or negligent injury to a minor, including loss of services. The parent entitled to the minor's services

¹ California, Delaware, Idaho, Kansas, Kentucky, Maine, Maryland, Mississippi, Montana, Nebraska, New Jersey, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia.

² Arkansas, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Michigan, New York, North Carolina, Oklahoma, Vermont, Wyoming.

³ Alabama, Arizona, District of Columbia, Louisiana, Massachusetts, Minnesota, Missouri, Nevada, New Mexico, Oregon, Texas, Washington, Wisconsin.

⁴ Delaware, Iowa, New Jersey, New York, Pennsylvania, Tennessee.

generally is empowered to bring this suit; but in Colorado, where the common-law rule giving the father the right to services applies, parents may bring a joint action, and each has an equal interest in the judgment.

Earnings

Parents are equally entitled to the earnings of a minor child in slightly more than half the States;⁵ in 18 States⁶ the common-law rule that a minor's earnings belong to the father is in effect. In these jurisdictions if the father is dead, the mother has a right to the minor's earnings. Three of the community-property States⁷ hold that a minor's earnings belong to the community and are under the control of the husband. Louisiana law declares that the parents' right to use of a minor child's estate does not extend to earnings gained through the minor's labor.

A few States⁸ provide that a parent or parents may relinquish the right to a minor's earnings. Abandonment of the child is considered presumptive evidence of relinquishment in most of these States. Some jurisdictions⁹ provide that wages may be paid to a minor unless the minor's parent or guardian files a claim for them, usually within a specified time.

In South Carolina, an employer who has hired a minor without the parents' consent must reimburse the parents for the value of the services rendered, unless the parents have refused to support the minor.

Delaware, New Jersey, and Pennsylvania have laws giving parents equal right to bring suit for recovery of wages due a minor child. Vermont provides that a mother may sue in her own name to recover wages due her minor child when she has made a contract for his labor in her own name because her husband is dead, incapacitated, or has failed to provide for the family.

25. Guardianship of a Minor Child

Common law

Current status

Guardianship of a minor's person

Guardianship of a minor's estate

Recent enactments (1948-52)

⁵ California, Delaware, Idaho, Kansas, Kentucky, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia, Wisconsin.

⁶ Alabama, Arkansas, Colorado, Connecticut, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Massachusetts, Michigan, Minnesota, New York, North Carolina, Oklahoma, Vermont, Wyoming.

⁷ Arizona, Nevada, Texas.

⁸ California, Colorado, Georgia, North Dakota, Oklahoma, South Dakota.

⁹ Idaho, Montana, New York, North Dakota.

COMMON LAW

The father is the natural guardian of the person of a minor child, at common law. This right does not extend to control over a minor's property. In appointment of a guardian of the child's estate, the father is generally preferred. If he is dead or cannot serve, preference is then given to the mother.

CURRENT STATUS

Guardianship of a minor's person

In all but 6 States¹ the parents, if living together, are the joint guardians of the person of their minor child. In those six jurisdictions the father is preferred over the mother, but there is no law which bars the mother from being guardian of a minor child if the father is dead, unfit, or incapable of being the child's guardian.

In the event of death of one parent, the other, if capable, becomes the sole guardian of the person of a minor. California, District of Columbia, and Oklahoma by statute permit a minor over 14 years whose guardianship is in issue before the court to select his own guardian.

In a contest between the parents, a few States² provide that custody of a child of tender years should be given to the mother, provided she is a suitable person.

On dissolution of marriage by annulment or divorce, the minor children become in effect the wards of the court, which is empowered to award custody. The best interests of the child are the controlling factor in the court's decision. Custody may be awarded to either mother or father, or to a third person if the parents are both unfit. (See also topic 23.)

Guardianship of a minor's estate

Neither father nor mother as a matter of right are entitled to take control of the estate of a minor child. A qualified person must be appointed under the supervision of the court in all jurisdictions. The parents, if capable, are preferred for such appointment. In a few States³ the father is preferred over the mother, but in most States one parent has no rights superior to those of the other parent. Wyoming permits a minor over 14 to nominate his own guardian, subject to court approval.

A few States⁴ provide by statute that a parent may administer a small estate belonging to a minor without formal appointment as

¹ Alabama, Georgia, Louisiana, New Mexico, North Carolina, Texas.

² Arizona, Georgia, North Dakota, Oklahoma, South Dakota, Utah.

³ Alabama, District of Columbia, Louisiana, Texas.

⁴ California, Connecticut, Florida, New Jersey, Pennsylvania, Virginia.

guardian. The amount of the estate which may be so administered ranges from \$100 to \$500 in value. Florida specifies that a parent may collect and dispose of personal property only up to \$500.

Recent enactments (1948-52)

Arkansas (1949) gives parents joint rights as to guardianship of person and property of an unmarried minor child. Estates which come to a minor by gift of either parent may be administered by either of them without court appointment of a guardian.

New Mexico (1951) amended its guardianship law to give preference to the father in the appointment of a guardian for a minor's estate. In the case of the father's death or abandonment of the family, the mother is preferred.

26. Appointment of Testamentary Guardian for a Minor Child

Common law

Current status

Guardianship of the person

Guardianship of the estate

Recent enactments (1948-52)

COMMON LAW

The right of a parent to appoint a guardian for the person or estate of his legitimate minor child by deed or will is not derived from common law.

The statute of Charles II of England, which is considered as part of the American colonial law, gives the father the sole right to appoint a testamentary guardian. The mother has no such right, even though the father dies before her.

CURRENT STATUS

Guardianship of the person

Generally the surviving parent, if competent, becomes the guardian of the person of a minor child on the death of the other. Twenty States¹ permit only the surviving parent to appoint a guardian of the person of a minor by will or deed; in Wyoming a surviving father

¹ Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, Texas, Washington, Wisconsin.

has the right of appointment, but no like privilege is given to a surviving mother.

Eleven jurisdictions² permit either parent to name a testamentary guardian for a minor child, provided the consent of the other parent is obtained; in these States the surviving parent succeeds to this right. Ten States³ give this power of appointment to the father only, but to be valid his appointment must be made with the written consent of the mother. A few jurisdictions⁴ have no provisions for appointment of a testamentary guardian for the person of a minor child by a parent.

Guardianship of the estate

Well over one-half of the States⁵ make no provision for a parent to appoint a testamentary guardian for the estate of a minor child. Seven States⁶ give either parent the right to appoint such a testamentary guardian. Maine specifies that the minor must be over 14 years of age, and in Arkansas and Massachusetts court confirmation of the appointment is required; in 4 additional jurisdictions⁷ a testamentary guardian can be named only for property inherited from the parent making the designation.

The father only is empowered to name a testamentary guardian for his child's estate in 5 States;⁸ of these, Arizona requires the mother's written consent to the designation. Only the surviving parent may name such a guardian in Delaware and Nevada.

Recent enactments (1948-52)

Arkansas (1949) enacted legislation requiring that the court in appointing a guardian for the person of a minor child, give due regard to any request contained in a parent's will with respect to such appointment.

² California, Florida, Illinois, Minnesota, New Jersey, New Mexico, New York, Rhode Island, South Carolina, Tennessee, West Virginia.

³ Arizona, Idaho, Montana, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Vermont.

⁴ Alabama, Iowa, Maine, Massachusetts, Nebraska, New Hampshire, Virginia.

⁵ Colorado, Connecticut, District of Columbia, Florida, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, Wyoming.

⁶ Alabama, Arkansas, Georgia, Illinois, Maine, Massachusetts, New York.

⁷ California, Maryland, Pennsylvania, Virginia.

⁸ Arizona, Idaho, Montana, Oklahoma, Utah.

27. Inheritance—Child

Common law

Current status

No descendants or spouse of intestate surviving

Parents and spouse surviving

COMMON LAW

Under common law, parents and lineal ancestors are excluded from inheriting the estate of a person who dies without making a will. In contrast, early United States statutes allowed the father to inherit from an intestate child, but did not grant a similar right to the mother, except that she could inherit lands that came to the child from her ancestral line.

CURRENT STATUS

All States permit both mother and father to inherit both real and personal property from the estate of a legitimate intestate child.

No descendants or spouse of intestate surviving

In 36 States ¹ parents share equally in the real and personal property of an intestate child who died leaving no descendants or spouse; on death of one parent the survivor gets the entire estate.

Arkansas differentiates between lands inherited from an ancestor and those which are not ancestral. The former are inherited by the parent through whom the lands descended; the latter go to the father and mother for life in equal shares. The parents inherit personal property equally, the whole going to the surviving parent. Oregon has a similar provision with respect to land inherited from a minor child. If the decedent is not a minor the property, real and personal, descends to the parents.

California and New Mexico, which have community-property law, give one-half of the community to the decedent's father and mother in equal shares. The parents get the entire estate if it is separate property.

In 10 States ² the estate is divided among the parents, the brothers and sisters, or their descendants.

¹ Alabama, Arizona, Colorado, Connecticut, Delaware, District of Columbia, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, Wisconsin.

² Georgia, Indiana, Louisiana, Mississippi, Missouri, New Jersey, South Carolina, Tennessee, West Virginia, Wyoming.

Parents and spouse surviving

(See topic 15 for share of surviving husband or wife of deceased spouse's estate.)

In 25 States the parents, by law, are entitled to a share of a deceased child's estate if the decedent left a surviving spouse but no children or descendants of children. Six ³ of these jurisdictions give one-half of the estate, both real and personal, to the parents; in another 8 States ⁴ the parents share only in the excess over a certain value, which ranges from \$4,000 in Vermont to \$25,000 in Utah. The parents get one-fourth of the decedent's estate in Ohio, one-fourth of the excess over \$1,000 in Indiana, and one-fourth of the excess over \$20,000 in Wyoming.

A few jurisdictions ⁵ differentiate between real and personal property in giving a portion of the decedent's estate to the parents. In Rhode Island and Tennessee the parents take the title to the real estate, the spouse taking a life interest.

28. Child Born Out of Wedlock

Common law

Current status

Support

Mother's responsibility

Father's responsibility

Legitimation

Intermarriage of parents

Acknowledgment

Recent enactments (1948-52)

COMMON LAW

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 present common law, however, since the mother of an illegitimate child is primarily entitled to its custody, she is considered responsible for its support. The putative father is under no obligation to contribute to the support of his illegitimate child.

³ Arizona, California, Idaho, Nevada, Oklahoma, Washington.

⁴ Connecticut, Iowa, North Dakota, New York, Pennsylvania, South Dakota, Utah, Vermont.

⁵ District of Columbia, Michigan, Rhode Island, Tennessee, Virginia.

CURRENT STATUS

A judicial proceeding established by statute is available in most jurisdictions to establish the paternity of a child born out of wedlock and to compel the father to contribute to its support. In addition a number of States impose a statutory responsibility, apart from paternity proceedings, on a father to support his illegitimate as well as his legitimate children.

Support

MOTHER'S RESPONSIBILITY

In all jurisdictions the mother has the duty of supporting her illegitimate child. In some States this duty still rests on the common law; in others it has been made a part of statutory law.

In 5 States ¹ the mother can be committed to jail unless she either discloses the name of the child's father or gives security for the support of the child.

FATHER'S RESPONSIBILITY

In each of the States, except Idaho and Texas, some statutory provision exists to charge the father of an illegitimate child with the child's support after paternity has been established by prescribed court procedure. The amount of contribution, the terms of payment, the period of liability, and the method of enforcing the liability vary widely among the States. In Louisiana an illegitimate child, if acknowledged by one or both parents, may sue one or both for support and education. If no acknowledgment has been made of him, he has the right to prove his filiation in court. In either case, he must prove his need for support.

In all but 16 States ² the adjudged father who fails to support his illegitimate child is guilty of a misdemeanor or crime and subject to fine and/or imprisonment.

Legitimation

INTERMARRIAGE OF PARENTS

Twenty-two States ³ provide that when the parents of a child born out of wedlock shall intermarry, the child shall be legitimate. In 10 States ⁴ there must be an acknowledgment by the father that the child is his, as well as an intermarriage of the parents. New Hamp-

¹ Arkansas, Georgia, Maryland, South Carolina, Tennessee.

² Alabama, Connecticut, District of Columbia, Florida, Idaho, Illinois, Kansas, Kentucky, Maine, Maryland, Missouri, Nebraska, Oklahoma, Rhode Island, Texas, Virginia.

³ California, Connecticut, Delaware, Idaho, Iowa, Louisiana, Minnesota, Nevada, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia.

⁴ District of Columbia, Illinois, Indiana, Kentucky, Massachusetts, Missouri, Texas, Vermont, Virginia, Wyoming.

shire and New Jersey require recognition by both parents, in addition to intermarriage.

ACKNOWLEDGMENT

In 4 States ⁵ the father of a child born out of wedlock, by publicly acknowledging the child as his own and receiving him into his family with the consent of the wife, and otherwise treating him as if born in wedlock, legitimates such child for all purposes. Florida, Idaho, and Montana provide for legitimation upon the father's acknowledgment. In Michigan and Delaware there must be an acknowledgment in writing by both parents. In Maine the child may be legitimated either by adoption into the family or by public acknowledgment. South Carolina and Tennessee provide for legitimation upon the granting of a petition made by the father to the proper court. In Arizona every child is the legitimate child of its parents.

Recent enactments (1948-52)

North Carolina (1951) raised to 18 the age to which an illegitimate child is entitled to support by its parents. Formerly the father's duty of support terminated when the child became 14; the mother's duty, when the child became 16. Virginia (1952) provides that when it is determined in support proceedings that the parents of a child are not married, but the father admits parentage, the court may compel the father to contribute to the child's maintenance. Utah (1951) amended the law governing support in paternity proceedings so that the father now pays a reasonable sum for the support of his illegitimate child until the child's 18th birthday, instead of the former amounts of \$200 for the first year after birth and \$150 for each of the 17 succeeding years.

Florida (1951) gives an unmarried woman who is pregnant or delivered of an illegitimate child the right to bring court proceedings to determine the paternity of the child. North Carolina (1951) provides that the mother of an illegitimate child may be prosecuted for willful neglect or refusal to support such child at any time before the child attains the age of 18 years.

Connecticut, Michigan (1949), South Carolina (1951), and Tennessee (1949) provide that the subsequent marriage of parents of an illegitimate child legitimates the child.

⁵ Arizona, North Dakota, Oklahoma, Utah.

29. Inheritance—Child Born Out of Wedlock

A. Inheritance from a child born out of wedlock

Common law

Current status

Mother's right

Father's right

B. Inheritance of a child born out of wedlock

Common law

Current status

Estate of both parents

Estate of mother

Estate of father

Recent enactments (1948-52)

A. Inheritance from a child born out of wedlock

COMMON LAW

Under common law, only descendants of a person born out of wedlock can inherit from his estate if he dies without a will.

CURRENT STATUS

In practically all States the mother of an illegitimate person who dies intestate may inherit his estate.

Mother's right

Arizona is the only State having no statutory provision governing the rights of inheritance from a child born out of wedlock. In 5 States¹ the brothers and sisters of the decedent share in the estate along with the mother. In the District of Columbia the mother inherits only if there are no surviving brothers or sisters of the deceased. In Louisiana the mother must have made legal acknowledgment of such child before she may inherit.

Fourteen States² provide that if the mother dies before the child, her heirs at law receive the estate. In this situation South Carolina provides that the estate shall be distributed among the child's next of kin on his mother's side.

Father's right

In at least 11 States³ if the father has made legal acknowledgment of paternity, he may share in the child's estate.

¹ Alabama, Colorado, Georgia, Illinois, Wyoming.

² Florida, Idaho, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oklahoma, South Dakota, Utah, Vermont, Washington, Wisconsin.

³ Idaho, Iowa, Kansas, Louisiana, Maine, Montana, Nevada, New Mexico, North Dakota, Oklahoma, South Dakota.

B. Inheritance of a child born out of wedlock

COMMON LAW

Under common law, a child born out of wedlock was denied all rights as an heir; he had no capacity to inherit from anyone.

CURRENT STATUS

Many jurisdictions have enacted statutes modifying the common-law rule. These statutes are based on the principles that the child ought not to be punished for the offense of the parents and that the relationship of parent and child ought to produce the same legal consequences whether the child is legitimate or not.

Estate of both parents

Intermarriage of the parents legitimates children born out of wedlock so that they may inherit from both intestate parents in 13 States.⁴ Three jurisdictions—Illinois, Iowa, and New Hampshire—require mutual acknowledgment of the child by the parents, and 7 States⁵ require an acknowledgment by the father before the child becomes capable of inheriting his parents' estate. In Michigan, if both parents acknowledge a child born out of wedlock, the child is deemed legitimate and may inherit. Arizona provides that any child may inherit from his natural parents, as well as from their kindred. Seven States⁶ have laws which permit a child legitimated by intermarriage of his parents to inherit from his parents' kindred.

Estate of mother

In 11 States⁷ a child born out of wedlock may inherit from his intestate mother and her kindred; 12 States⁸ permit such a child to inherit from his mother, but not from her kindred. Michigan and Oregon bar inheritance from the mother's kindred if a child born out of wedlock has not been legitimated by the subsequent marriage of his parents.

In Louisiana natural children succeed to the estate of their mother when they have been legally acknowledged by her, if she has left no lawful children or their descendants. If there are lawful children, the natural children are entitled only to a moderate "alimony."

⁴ Colorado, Connecticut, District of Columbia, Louisiana, Maine, New Jersey, New Mexico, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, West Virginia.

⁵ Indiana, North Dakota, Texas, Vermont, Virginia, Washington, Wyoming.

⁶ Louisiana, Maine, North Dakota, Oklahoma, Pennsylvania, Washington, Wyoming.

⁷ California, Colorado, Illinois, Kentucky, Michigan, Minnesota, Montana, New Hampshire, New York, Ohio, South Dakota.

⁸ Delaware, Florida, Iowa, Nebraska, North Dakota, Oklahoma, Oregon, South Carolina, Tennessee, Utah, Washington, Wyoming.

Estate of father

A number of States provide that a child born out of wedlock may inherit from the father. Usually some specific act on the part of the father is required, such as marriage to the mother or acknowledgment of the child as his.

At least 12 States ⁹ provide that if the father acknowledges paternity, which is usually done by signing a document to that effect in the presence of witnesses, the child is his heir. On the other hand, Delaware provides that any child legitimated solely by acknowledgment shall not inherit from the father. The Nevada statute states that properly acknowledged children shall have all rights of inheritance of legitimate children. The Florida statute specifically provides that a child acknowledged by the father may inherit through his paternal ancestors.

Recent enactments (1948-52)

Maine (1951) provides that a child born out of wedlock is the heir of his parents if they intermarry. If the father adopts him into his family or acknowledges him, the child is the heir of the father. In each case the child and his issue inherit from his parents respectively, and from their lineal and collateral kindred; and these inherit from the child and his issue.

Illinois (1951) declares a child born out of wedlock to be the heir of his mother and of any maternal ancestor.

⁹ Florida, Idaho, Maine, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Dakota, Utah, Washington.

POLITICAL RIGHTS

30. Domicile of a Married Woman

Common law
Current status
 For voting
 For office holding
 For separation, annulment, or divorce
 For other purposes

COMMON LAW

The domicile of a married woman is the same as that of her husband for all purposes, under common law.

CURRENT STATUS

For purposes of family relationship, the domicile of a married woman and of the minor children of the marriage is that of the husband and father, in all States. However, for certain specified purposes, a number of States grant a married woman the right to establish a separate domicile.

For voting

Nine States,¹ by statute, permit a married woman to have a domicile separate from her husband for voting purposes.

For office holding

Five States² give a married woman the right to establish a domicile separate from her husband for purpose of holding public office.

Two States, Maine and New Jersey, specifically provide that a married woman may have a domicile separate from her husband for jury-service eligibility.

The Nevada law, in addition to enumerated rights, declares that with respect to "any right dependent on residence" the domicile is the place where the person is actually, physically, or corporeally present in the State or county.

For separation, annulment, or divorce

At least 11 jurisdictions³ provide that if a husband and wife are separated, the wife may establish her own domicile.

¹ California, Maine, Massachusetts, Michigan, New Jersey, New York, North Carolina, Virginia, Wisconsin.

² Maine, Michigan, Nevada, New Jersey, New York.

³ Georgia, Idaho, Iowa, Kentucky, New Jersey, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Washington.

For the purpose of filing an annulment or divorce action, at least 14 States ⁴ permit a married woman to have her own domicile.

For other purposes

Florida permits the wife of a nonresident of the State to have a domicile within the State for probate purposes.

New Jersey permits a wife to have a separate domicile for probate and taxation purposes.

31. Public Office—Eligibility of Women

Common law
Current status

COMMON LAW

Under common law, women are greatly restricted as to political rights on the basis of sex and of marital status.

CURRENT STATUS

In all States, women are eligible for election to public office on the same terms and conditions as men. Generally, women are eligible for all types of State appointive office. There are some types of offices in which State law may require the appointee to be of a designated sex. Examples of such offices are those in State penal or corrective institutions in which the sexes are segregated.

32. Jury Service—Eligibility of Women

Common law
Current status
Mandatory jury service
Voluntary jury service
Recent enactments (1948-52)

COMMON LAW

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

⁴ California, Georgia, Idaho, Iowa, Kansas, Missouri, Nebraska, New York, North Dakota, Oklahoma, South Dakota, Virginia, West Virginia, Wyoming.

CURRENT STATUS

As of January 1, 1953, women were eligible for jury duty in all but 6 States—Alabama, Georgia, Mississippi, South Carolina, Texas, and West Virginia.

Georgia enacted a jury-service law for women in December 1953; and in November 1954 Texas voted to amend its constitution to permit women to serve on juries.

Mandatory jury service

Twenty-three States ¹ make women eligible for jury service on the same terms and conditions as men. Maryland, which has a mandatory basic law, permits its counties and Baltimore City to have local option as to the coverage of this law. As of January 1, 1953, 14 counties and Baltimore City had compulsory jury laws for women; 9 counties were exempt from application of the law.

NOTE: As of December 31, 1955, all but 4 Maryland counties permit women to serve on juries. These laws are mandatory, except for those of Worcester and Charles Counties, which give women the right to be excused on the basis of sex.

Voluntary jury service

Twenty States ² have jury-service laws that permit women to be excused from jury service on the basis of sex. These laws generally set out certain procedures that must be followed to claim an exemption. For example, in Arkansas a woman must make her refusal known to the officer serving the jury-service summons; in Louisiana a woman may serve if she files with the clerk of the district court a written declaration of her desire. Oklahoma, which provides for mandatory jury service, permits a woman with minor children to be exempt on request.

Recent enactments (1948-52)

Laws were enacted making women eligible for jury service in the following States:

Massachusetts (1949)	Tennessee (1951)
New Mexico (1951)	Virginia (1950)
Oklahoma (1949)	Wyoming (1949)

¹ Arizona, California, Colorado, Connecticut, Delaware, Illinois, Indiana, Iowa, Maine, Maryland, Michigan, Montana, Nebraska, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Vermont, Wyoming.

² Arkansas, District of Columbia, Florida, Idaho, Kansas, Kentucky, Louisiana, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New York, North Dakota, Rhode Island, Tennessee, Utah, Virginia, Washington, Wisconsin.

Utah (1949) amended its jury-service law to make women eligible for grand juries. Formerly they were eligible only for service as trial jurors.

NOTE: That section of the Arizona law making women's jury service optional was invalidated by the State Supreme Court in 1948. Women are now compelled to serve on juries if called, subject to statutory exemptions and excuses at the discretion of the presiding judge.³

³ *State v. Pelosi, et al.* (1948), *Ariz. Sup. Ct.*, 99 *Pac.* (2d), p. 125.

GLOSSARY OF LEGAL TERMS USED

- Abrogate**—to repeal a former law by legislative act or court decision.
- Administration**—management and settlement of the estate of an intestate or of a testator who has not appointed an executor in his will. Administration of an estate is subject to court supervision.
- Alienation**—the act of transferring title to property.
- Appurtenant**—belonging to.
- Attachment**—a judicial process of seizing property to enforce payment of a debt.
- Bigamous marriage**—a marriage contracted with knowledge of the existence of a prior undissolved marriage.
- Bona fide**—in good faith.
- Chattel mortgage**—a mortgage on personal property, such as furniture.
- Chose in action**—personal property which may be recovered by legal action.
- Civil injuries**—injuries to person or property for which satisfaction may be obtained by a law suit for money damages.
- Civil rights**—individual rights not connected with the organization or administration of government. These concern property, marriage, protection by law, freedom of contract, and trial by jury.
- Cohabitation**—living together as husband and wife.
- Collateral kindred**—those who descend from a common ancestor, such as brothers and sisters.
- Commitment**—the sending of a person to prison or other institution by lawful authority.
- Competent witness**—legally qualified witness.
- Confidential communications**—communications between persons who stand in a confidential relation to each other which the law will not permit to be divulged or inquired into in court; for example, communications between husband and wife.
- Conjugal right**—right which husband and wife have to each other's society, comfort, and affection.
- Consanguinity**—having the blood of a common ancestor.
- Consortium**—the right of husband or wife to the fellowship, company, cooperation, and aid of the other.
- Conveyance**—the transfer of the title of land from one person to another.
- 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.
- Curtesy**—an estate for life which a husband takes at the death of his wife in all the lands which she owned during the marriage, if a child was born to her during the marriage who could inherit such lands.
- Decedent**—a deceased person.
- Descent**—succession by rightful heirs to the real property of a person who dies without making a will.
- Devise**—a gift of real property by will.
- Distributable portion**—share of decedent's estate to be distributed to heirs after payment of charges.
- Distribution**—division among those legally entitled to it of personal property of a person who dies without making a will.
- Distributive share**—the share which an heir receives on the legal distribution of the estate of a person who dies without making a will.
- Divorce, Absolute**—a complete severance of the marriage relationship.
- Limited**—a legal authorization to live separate and apart.
- Dotal property**—property that the wife brings to the husband to assist him in bearing the expenses of the marriage establishment (Louisiana).

Dower—life interest of a widow in one-third of the lands which the husband had at any time during the marriage. This right takes priority over the claims of the heirs, creditors, or person to whom the land was conveyed without the consent of the wife.

Dowry—property that a woman brings to her husband in marriage (Louisiana).

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

Emancipation—act or process of freeing a minor from legal disabilities occasioned by his minority.

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

Executrix—a woman appointed by a will to administer the estate.

Fee simple—the entire and absolute interest in land.

Felony—a crime of a serious nature.

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

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

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

Guardian—a person who has, or is entitled to, the care and management of the person or property, or both, of another who is incapable of managing his own affairs; e. g., a minor.

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

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

Indictment—formal, written statement charging a person with an offense, based on findings by the grand jury.

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

In lieu of—instead of.

In loco parentis—in place of parent.

Insolvent—unable to pay debts.

Intestate—without making a valid will.

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 an estate in lands in lieu of her dower right.

Judicial proceeding—a court action.

Legal representative—a person who is authorized to represent another.

Lien—a charge upon property for the satisfaction of a debt.

Life interest—an estate in property for the lifetime of the person entitled thereto.

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

Lineal descendant—a person in line of descent from the ancestor, as son or daughter.

Litigation—a suit at law.

Maintenance—the furnishing by one person to another of support; the amount decreed by a court for support.

Majority—the status of being of full legal age.

Misdemeanor—a crime which is less than a felony.

Moiety—one-half.

Necessaries—things that are necessary for support according to a person's station in life; e. g., food, shelter, clothing, medicine.

Next of kin—in the law of inheritance, the persons most closely related to a decedent by blood.

Paraphernal property—property not brought into the marriage by the wife, or given to her in consideration of marriage. This property remains under the control of the wife (Louisiana).

Personalty—personal property.

Political rights—the power to participate, directly or indirectly, in the establishment or administration of government; e. g., the right of citizenship, suffrage, or public office.

Prima-facie evidence—evidence sufficient to establish the fact in question unless rebutted.

Privileged communications—see Confidential communications.

Probate—the act or process of proving a will.

Putative—supposed, alleged.

Quarantine—the widow's right to remain rent-free in her husband's home for a definite period after his death. At common law this period was 40 days.

Separate estate (of a married woman)—property which is under the control of the married woman and which she may control free from interference by her husband; e. g., property coming to her by devise or inheritance or by purchase with separate funds, gifts, earnings from work outside the home.

Statutory—governed by statute law as opposed to the common law.

Surety—a person who binds himself for the payment of a debt of another.

Tenants in common—persons who hold the same land together by separate and distinct titles. Each may dispose of his interest as he chooses.

Testamentary—bequeathed by will.

Testamentary guardian—guardian of a minor child named by will or deed of a parent.

Testator—a person who dies having made a valid will in force at the time of death.

Trustee—a person who holds property in trust for another.

Usufruct—the right to use of, and profits from, the property of another.

Void—without legal force or effect.

Void ab initio—void from the inception.

Voidable—subject to being made void.

Waiver—the intentional or voluntary surrender of a known right.

